



**TO THE HONORABLE MAYOR AND COUNCIL:**

DATE: July 8, 2014

**SUBJECT: APPROVING THE TRANSFER OF FUNDS FROM PROJECT 2019 TO THE INFORMATION TECHNOLOGY CONTRACT SERVICES FOR A FIVE YEAR LEASE AGREEMENT WITH ASTOUND BROADBAND CORPORATION IN THE AMOUNT OF \$10,830 MONTHLY FOR INSTITUTIONAL FIBER AND INTERNET SERVICES. APPROVING A FIVE YEAR AMENDMENT IN THE AMOUNT OF \$4,500 MONTHLY TO A LEASE AGREEMENT FOR CO-LOCATION COMPUTER EQUIPMENT SPACE WITH ASTOUND BROADBAND CORPORATION AND AUTHORIZING THE CITY MANAGER TO EXECUTE THESE AGREEMENTS.**

**Report in Brief**

The City's data, voice and video systems communicate through fiber cable and colocation services provided by Astound Broadband. The fiber was provided by Astound Broadband under a 15 year Cable Franchise Agreement approved in July 1999. This agreement also provided Internet access for the city. The City has rented colocation services for some of its computer equipment from Astound Broadband since July of 2007 co-terminus with the franchise agreement.

The proposed lease and lease amendment will provide the City Internet access, use of Astound's fiber and colocation facilitates for five years with the option to renew the lease agreement for an additional 5 years. During the course of the agreement the City can add and remove fiber strands, site locations and services as needed.

Funding for the City's Internet access and use of Astound's fiber will be from Project 2019, which is a holding account for funds that were provided by Seren (now Astound) and Comcast in 2006 and 2007 for capital related expenditures to support Public, Educational, and Government (PEG) access television as well as the City's I-NET services. . Funding for the proposed colocation lease amendment is included in the Information Technology Department's Operations budget and 10-Year Plan Council approved in June for fiscal year 14-15. Subsequent years' funding remains subject to Council approval in the annual budget process throughout the term of the lease.

Staff recommends Council approve the proposed five year amendment to the lease agreement with Astound Broadband for institutional fiber, colocation and internet services in the amount of \$15,330 to be paid monthly and authorize the City Manager to execute the agreement with the option to renew the agreement for an additional 5 year period.

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July 8, 2014

Page 2

**Background**

The City of Concord requires the use of fiber cable to connect approximately 20 locations throughout the city, internet service connections and colocation facilities for its voice, data and video communications. Since July of 1999, dark fiber and internet access has been provided through a Cable Franchise Agreement with Seren Innovations, Inc. This 15 year agreement expires on July 26, 2014.

On February 14, 2013, the City issues RFP# 2252, Institutional Network Service, Data Center Co-location Service, and High-Speed Internet Service. A mandatory pre-proposal conference was held on February 27, 2013 and proposals were due March 13 of 2013. Proposals were received from Astound, AT&T, Comcast and TW-Telecom. Proposals were evaluated on a best value basis. Astound was the lowest cost submitter and the only vendor to include co-location services. The Astound proposal also did require installation costs since they are currently providing these services to the City under the Seren Cable Franchise Agreement.

**Discussion**

On September 29, 2006, the State of California passed Assembly Bill 2987, the Digital Infrastructure and Video Completion act of 2006. This bill removed the requirement for cable franchise agreements with local municipalities. With the expiration of the Seren Cable Franchise Agreement, the City must now pay for the use of Astound's fiber optic cables as well as Internet Services.

The proposed amended agreement allows the City to adjust the number of sites, fibers and other services over the course of the agreement based on a fixed fee schedule. To fill the City's current communications requirements the following monthly costs are expected.

Monthly Internet Services:	\$750.00
Co-location Services:	\$4,500.00
Institutional Network Fiber:	\$10,080.00
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Monthly Total:	\$15,330.00

**Fiscal Impact**

The monthly costs for the services under this agreement will be approximately \$15,330.00 commencing on July 27 and prorated for the last part of the July. The costs are fixed for the full term of the contract. However if the City elects to add additional fibers the amount will increase by the contracted amount for each additional fiber. If the City requires less fiber the amount will be reduced by the contracted amount for each reduced fiber. Full funding for the term of the agreement is included in the proposed City budget and 10-Year Plans the Council approved in the annual budget process for fiscal year 2014-2015. The FY 2014-15 budget includes a total of

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July 8, 2014

Page 3

\$170,000 from Project 2019, which is a holding account for funds that were provided by Seren (now Astound) and Comcast in 2006 and 2007 for capital related expenditures to support Public, Educational, and Government (PEG) access television as well as the City's I-NET services.

Total contributions to Project 2019 were \$1,236,393 (\$250,000 from Seren/Astound and \$986,393 from Comcast). As of June 2013, the balance in Project 2019 is approximately \$1,066,000. In future annual budgets, staff intends to recommend that annual funding come from Project 2019.

**Public Contact**

Posting of the Council Agenda

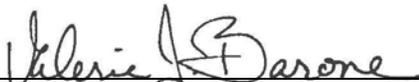
**Recommendation for Action**

Approve the amendment to the five year services agreement with Astound Broadband Corporation for Institutional Fiber, Co-location and Internet Services in the amount \$15,330 monthly and authorize the City Manager to execute the agreement with the option extend the agreement for an additional 5 years.

Prepared by: Doug Elloway  
IT Operations Manager  
[Doug.Elloway@cityofconcord.org](mailto:Doug.Elloway@cityofconcord.org)

Reviewed by: Tom Kuhlman  
Interim Director of Information Technology  
[Tom.Kuhlman@cityofconcord.org](mailto:Tom.Kuhlman@cityofconcord.org)

Reviewed by: Scott P. Johnson  
Assistant City Manager  
[ScottP.Johnson@cityofconcord.org](mailto:ScottP.Johnson@cityofconcord.org)



Valerie J. Barone

City Manager

[Valerie.Barone@cityofconcord.org](mailto:Valerie.Barone@cityofconcord.org)

Attachment 1: Astound – City of Concord Agreement for Professional Services

Attachment 2: Third Amendment to Lease Agreement between the City of Concord and Astound Broadband, LLC

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**AGREEMENT FOR PROFESSIONAL SERVICES**

(Institutional Network Service, Data Center  
Co-Location Service, and High-Speed Internet Service)

THIS AGREEMENT ("Agreement") is entered into on June 20, 2014  
("Effective Date") between the City of Concord, a California municipal corporation ("CITY") and  
Astound Broadband, LLC, a Washington limited liability company ("CONSULTANT").

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

A. On or about July 27, 1999, CITY granted a cable television franchise ("Local Franchise"), which will expire on or about July 27, 2014, ("Local Franchise Expiration Date"), to Seren Innovations, Inc. a Minnesota corporation ("Seren") authorizing the installation and operation of a cable television system ("System") to provide cable television and other lawful communications services to residents in the City of Concord, California. Pursuant to the Local Franchise, Seren was obligated, among other things, to: (i) construct and dedicate certain fiber optic strands for CITY's use as an institutional network connecting various municipally owned and/or operated buildings; (ii) construct and dedicate additional fiber optic strands for CITY's use to connect additional municipally owned and/or operated buildings to that network; (iii) maintain the network; and (iv) provide CITY with internet access services.

B. On November 3, 2005, pursuant to the CITY's duly granted consent, Seren assigned all of its right, title and interest in the System and the Local Franchise to CONSULTANT and CONSULTANT assumed and continued to fulfill the Local Franchise obligations. CONSULTANT is currently providing cable television and other lawful communications services to CITY pursuant to California Video Franchise Certificate Franchise No. 0028 (as amended) issued under the Digital Infrastructure and Video Competition Act of 2006. In accordance therewith, CONSULTANT is required to fulfill the Local Franchise obligations only until the Local Franchise Expiration Date.

1 C. In anticipation of the Local Franchise Expiration Date, CITY issued Request for  
2 Proposals #2252 for Institutional Network Service, Data Center Co-location Service, and High-Speed  
3 Internet Service ("RFP"). CONSULTANT submitted its Response to RFP #2252 dated April 1, 2013  
4 ("Response").

5 D. In accordance with City of Concord Municipal Code ("Municipal Code") Section 2-  
6 647 (Ordinance No. 11-9), CITY determined that CONSULTANT was the lowest responsive bidder  
7 using the "best value" concept which includes price, quality, quantity, and the ability of the Contractor  
8 to perform the contract and to provide future maintenance or repairs. References in the RFP and  
9 Response to "Contractor" and "Proposer" are intended and shall be construed to refer to  
10 CONSULTANT.

11 E. The parties are entering into this Agreement to set forth the terms under which  
12 CONSULTANT will provide the co-location services, network fibers, Internet access and related  
13 professional services described in in this Agreement, upon the terms and conditions in the RFP and  
14 the Response (together attached hereto as Exhibit A) together with certain modifications thereto, all as  
15 hereinafter set forth ("Services"), all of which are incorporated herein by this reference as operative  
16 and enforceable provisions of this Agreement. As part of such Services, CONSULTANT shall:  
17 (i) license CITY's continued use of those network fibers identified on Exhibit C ("Institutional  
18 Network"), (ii) on request of the CITY construct additional fiber optic strands to connect additional  
19 municipally owned and/or operated buildings, (iii) provide maintenance services for the Institutional  
20 Network, (iv) provide CITY with high-speed Internet access services, and (v) provide co-location  
21 services for certain CITY equipment. Network fiber, equipment, facilities or conduit installed by the  
22 CITY in, under, or between CITY-owned or leased facilities shall be and remain the property of  
23 CITY. Network fiber, equipment, facilities or conduit installed by CONSULTANT in, under, or  
24 between CITY-owned or leased facilities shall be and remain the property of CONSULTANT.

25  
26 NOW, THEREFORE, IN CONSIDERATION of the mutual covenants and promises of the  
27 parties herein contained, the parties hereto agree as follows:

1           1.       **TERM.** The term of this Agreement is as set forth in the RFP and Response including  
2 at Section II.N (Term of Contract), subject to the following modifications.

3                   A.       **Initial Term.** This Agreement shall commence on July 27, 2014 and expire on  
4 July 26, 2019 (“Initial Term”). The Initial Term plus any extensions thereof are individually and  
5 collectively referred to herein as the “Term.” Notwithstanding the foregoing, the term of the Lease  
6 shall be as provided in the Third Amendment (as those terms are defined in Section 3 below).

7                   B.       **Extension of Initial Term.** CITY shall have the right to extend the Initial Term  
8 for one additional period of five (5) years commencing upon expiration of the Initial Term. CITY  
9 shall give written notice of its exercise of its option to extend the Initial Term to CONSULTANT’S  
10 Authorized Representative, identified in Section 9 below, at least thirty (30) days before expiration of  
11 the Initial Term. Such extension shall upon the same terms and conditions as the Initial Term and  
12 shall be memorialized in writing by a duly executed Amendment hereto. Notwithstanding the  
13 foregoing, extension of the Lease shall be as provided in the Third Amendment.

14                   C.       **Termination.** Termination rights and obligations shall be as set forth in the RFP  
15 and Response including at Section II.N (Term of Contract), Exhibit A (General and Work Conditions)  
16 Section 7 (Default), and Exhibit B (Special Provisions) Section 3 (Termination for Non-  
17 Appropriations), subject to the following modifications: The Default provisions as set forth in RFP  
18 Exhibit A (General and Work Conditions) Section 7 (Default) are not intended and shall not be  
19 construed to limit other termination provisions provided for in the RFP and Response or this  
20 Agreement. CITY’s termination rights are in addition to and unaffected by any other termination right  
21 provided for in this Agreement or at law.

22  
23           2.       **SCOPE OF SERVICES.** CONSULTANT shall use its commercially reasonable  
24 efforts to perform and provide the Services as set forth in this Agreement, subject to policy direction  
25 and approvals provided by the CITY's Authorized Representative. CONSULTANT shall use its  
26 commercially reasonable efforts to provide the Services immediately on and continuing after the  
27

1 Local Franchise Expiration Date, seamlessly and without interruption in any service provided to CITY  
2 on or before the Local Franchise Expiration Date. CONSULTANT shall use its commercially  
3 reasonable efforts to provide the Services on and after the Local Franchise Expiration Date,  
4 seamlessly and without interruption in any internet or other services provided to CITY, pursuant to the  
5 Local Franchise, on or before the Local Franchise Expiration Date.

6  
7 3. **DATA CENTER CO-LOCATION SPACE.** CITY and CONSULTANT have  
8 entered into that certain Lease Agreement dated June 19, 2007 referenced as City Document No. 4837  
9 (“Original Lease”), the term of which was extended by the First Amendment to Lease dated April 26,  
10 2013 referenced as City Document No. 4837-A (“First Amendment”), and the Second Amendment to  
11 Lease Agreement dated April 8, 2013 referenced as City Document No. 4837-B (“Second  
12 Amendment”), attached hereto as Exhibit B-1, Exhibit B-2, and Exhibit B-3, respectively  
13 (collectively, “Lease”). The Lease provides for co-location space in the same manner and cost as set  
14 forth in the RFP and Response. As such, CITY and the CONSULTANT will enter into the Third  
15 Amendment to Lease substantially similar to the version attached hereto as Exhibit B-4 (“Third  
16 Amendment”) and which, among other things, extends the current Lease term by additional five (5)  
17 years and contains an option for CITY to further extend the Lease term another five (5) years.

18 4. **INTERNET ACCESS PROVISION.** CONSULTANT shall use its commercially  
19 reasonable efforts to provide high-speed Internet access services (“Internet Access”) to CITY as set  
20 forth in the RFP and Response, subject to the following modifications:

21 A. **Internet Access Scope (Point to Point).** The scope of the Internet Access  
22 includes any and all CONSULTANT controlled equipment between and inclusive of those  
23 CONSULTANT devices closest to the CITY Provided Equipment (CPE) that provide a demarcation  
24 point between the Internet and the Institutional Network, e.g., a data router and/or a data switch. A  
25 demarcation point is defined as the Ethernet switched infrastructure and/or optical infrastructure  
26 residing in a CONSULTANT Point of Presence (PoP) on the internet and under the direct control of  
27

1 CONSULTANT or its other contractors.

2  
3 B. Internet Access Performance. CONSULTANT shall use its commercially  
4 reasonable efforts in keeping with normal industry standards to ensure that Internet Access is available  
5 to CITY on a 24 hours per day, seven days per week. Temporary Internet Access  
6 interruptions/outages identified in Section (3)(B)(iv)(ii) of this Agreement shall not constitute a  
7 breach by CONSULTANT to perform its obligations under this Agreement.

8 C. Internet Access Service Levels.

9  
10 i. Standards and Performance (Point to Point).

11 a. Availability. Internet Access will be available to the CITY  
12 99.99 percent of the time as measured on a monthly basis. Said 99.99 percent uptime is defined as a  
13 period or periods of Internet Access outage of duration not to exceed 4.32 minutes in any given  
14 month. An outage is rebuttably calculated from the time Internet Access becomes unavailable to the  
15 time Service is restored as verified by CONSULTANT or its circuit partner(s)'s monitoring systems  
16 and based on the availability of Service during the Service monthly billing period in which the CITY  
17 opens a trouble ticket with the Network Operations Center regarding the Internet Access outage.

18 b. Latency. The average round-trip latency on the internet will not  
19 exceed 50 milliseconds for a period of three samples by CONSULTANT's monitoring facilities, or for  
20 a continuous 20 minute period, whichever is less. Average round-trip latency, with respect to a given  
21 month, is defined as the average time required for a round-trip frame transfer between PoPs on the  
22 internet during that month as measured by CONSULTANT. Average round-trip latency does not  
23 extend past the demarcation between the CPE and the CONSULTANT demarcation point.

24 c. Packet Loss. Point to Point packet loss will be no more than 1%,  
25 or current industry standard, whichever is less.

26  
27 ii. Internet Access. Internet Access performance criteria and

1 responsibilities are as follows:

2 a. Minimum ordered bandwidth is guaranteed or the service charge  
3 shall be pro-rated by the reduction in speed below the minimum ordered bandwidth.

4 b. CONSULTANT shall provide CITY with a /27 IP Address  
5 Block (29 Usable IP addresses).

6 c. Guaranteed unfiltered bidirectional passing of all protocols  
7 (including without limitation IPv4, IPv6, VPN, FTP, etc.) and all ports.  
8

9 d. Filter and reroute on-demand to mitigate Denial of Service  
10 (DOS) and Distributed DOS (DDOS) attacks, and other types of service interruptions or interferences  
11 caused by persons not a party to this Agreement.

12 e. Each full hour of downtime entitles CITY to a one-half-day  
13 Service credit, with a maximum credit of two-half-days per day of interrupted service with no carry-  
14 forward; downtime is defined as an inoperative CONSULTANT- or circuit partner(s)-controlled  
15 circuit impeding access to a third-party circuit provider transporting over the Internet.  
16

17 D. Internet Access Credits.

18 i. Calculation. All credits are based on a monthly billing cycle. Credits  
19 for non-compliance will be credited to the CITY's account within two billing cycles. No credit will  
20 exceed the monthly value for the billing month of the affected circuit/service address exclusive of any  
21 applicable taxes charged to CITY or collected by CONSULTANT. In the event that CONSULTANT  
22 is unable to satisfy the Internet Access standards and performance guarantees as defined herein, the  
23 following credits apply:

24 a. Internet unavailability per incident 20-percent of monthly  
25 recurring charges ("MRC").

26 b. Latency greater than 50-milliseconds, per incident 10-percent of  
27

1 MRC.

2 c. Mean time to repair (MTTR) of 2 hours per month 25-percent of

3 MRC.

4 d. Packet Loss greater than 1-percent, per incident 10-percent of

5 MRC.

6  
7 Where there are multiple simultaneous performance non-compliances  
8 with this Agreement by CONSULTANT the performance penalty metric yielding the highest dollar  
9 credit will be the only one to be applied to the CITY's account and it shall never exceed the net  
10 monthly balance of charges for that particular circuit for the month in which the failure has occurred.

11 ii. Credit Request. CONSULTANT's Authorized Representative is the  
12 only authorized entity to report perceived noncompliance events. Except where noncompliance  
13 events are known to CONSULTANT by its internal monitoring of the Internet Access, in order to  
14 receive credits, CITY must inform the CONSULTANT in writing, which will in turn open a ticket  
15 with the Network Operations Center (NOC) within the time limits as listed in this Agreement. If the  
16 CITY does not open a trouble ticket or does not open a trouble ticket within the prescribed time, CITY  
17 will not be able to receive a credit. The prescribed times are as follows: Internet Access availability  
18 trouble ticket must be opened within two hours of CITY's Authorized Representatives becoming  
19 aware of the occurrence in order to request credits or other remedies as they relate to this document.  
20 Latency trouble ticket must be opened within two hours of CITY's Authorized Representatives  
21 becoming aware of the occurrence in order to request credits or other remedies as they relate to this  
22 Agreement. MTTR trouble ticket must be opened before the end of the billing cycle, defined as the  
23 26th day of every calendar month. In addition to the trouble ticket requirements as listed in this  
24 Agreement, request for credit must be made in writing to CONSULTANT within five days of the  
25 closing of the trouble ticket. The request for credit must include to the extent known to CITY the  
26 trouble ticket number, applicable circuit IDs or account number, and relevant information regarding

1 the scope of the occurrence as it relates to the rights and remedies as specified within this Agreement.  
2 Requests for credit must be made to CONSULTANT's listed contact. CONSULTANT will provide a  
3 formal response to the CITY's request for credits within 10 working days of receipt of such request.

4           iii.       Exceptions. All standards and performance guarantees do not include  
5 periods of Internet Access interruption caused in whole or in part by:

6                   a.       CITY's or CITY's agent's active negligence or willful  
7 misconduct causing such interruption.

8                   b.       CONSULTANT's scheduled maintenance for the shortest  
9 practical period, and which is noticed in advance to and coordinated as to time, date, and duration with  
10 CITY.

11                   c.       Failure of circuits beyond the demarcation point or points on the  
12 Institutional Network, unless such failure is caused in whole or part by CONSULTANT.

13                   d.       Scheduled Maintenance. Scheduled Maintenance" means any  
14 preventative, routine or scheduled maintenance that is performed on a Service, CONSULTANT's  
15 facilities or distribution network or any component thereof, including without limitation the  
16 Institutional Network, that is reasonably likely to affect a Service, for which Company shall provide at  
17 least three days' notice of timing and scope to CITY.

18                   e.       Commercial power outages, or CITY-provided equipment  
19 failures.

20                   f.       Force Majeure events. "Force Majeure" is defined in Section  
21 20, below.

22           5.       Internet Access Trouble Tickets. CONSULTANT response to problems shall occur at  
23 all hours and all days (24x7x365), and CONSULTANT shall diligently work continuously until the  
24 problem is resolved and the normal condition required herein is restored. A CITY-initiated trouble  
25  
26  
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1 ticket is to be routed through the NOC at <888-317-0488> or at such other telephone number as  
2 designated by CONSULTANT in writing at least 30 days prior to the effective date of the replacement  
3 telephone number. Should CITY believe that fault lies on the Institutional Network, it shall call the  
4 NOC, which shall be staffed 24x7x365 by CONSULTANT's competent employees, identifying to the  
5 extent known to CITY the circuit in question by its unique circuit ID or account billing code number.  
6 The NOC will immediately open a trouble ticket and provide the trouble ticket number to CITY.  
7 CONSULTANT shall use its commercially reasonable efforts to place a phone call to CITY's  
8 designated service contact to inform CITY that the situation is being addressed. Appropriate  
9 CONSULTANT technical support personnel shall respond and actively begin working on problems  
10 within 30 minutes of either (a) CONSULTANT's Authorized Representative or the NOC identifying  
11 such problem, or (b) CONSULTANT's Authorized Representative or the NOC receiving a call from  
12 CITY reporting a problem, or (c) CONSULTANT becoming aware such problem by its own  
13 SYSTEM monitoring. Closing of the ticket will be affected with a telephone call back to CITY. In  
14 the event that a trouble ticket remains open or unresolved for a period of eight (8) hours from the time  
15 the trouble ticket was opened, and every eight (8) hours thereafter, CITY, at its sole discretion, may  
16 contact the NOC and require an escalation.

17 6. **INSTITUTIONAL NETWORK.** The parties' obligations with respect to the  
18 Institutional Network are as set forth in the RFP and Response, subject to the following modifications:

19 A. **Sites.** The Initial Site(s) and the Optional Site(s) (as each of those terms are  
20 defined below) are individually and collectively referred to herein as the "Site" or the "Sites."

21 i. **Initial Sites.** The initial CITY sites to be connected to the Institutional  
22 Network ("Initial Site(s)") and the number of fiber strands for each Initial Site shall be as indicated on  
23 the spreadsheet negotiated and agreed to by CITY and CONSULTANT ("Initial Sites" and "Initial  
24 Number of Institutional Network Fibers"), attached hereto as Exhibit C.

25 ii. **Optional Sites (Institutional Network Extension).** Should CITY elect to  
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1 have additional municipally owned and/or operated buildings other than those listed in Exhibit C  
2 connected to the Institutional Network (“Optional Site(s)”), CITY will notify CONSULTANT of its  
3 request and CONSULTANT will develop a construction plan for CITY’s review and approval.  
4 CONSULTANT and CITY will cooperate in determining actual construction costs and expenditures,  
5 and CONSULTANT shall provide CITY with a guaranteed maximum price for the work. If CITY  
6 determines to proceed with the construction, CITY will pay CONSULTANT an amount up to the  
7 guaranteed maximum price, in arrears, in the manner as set forth in the RFP and Response including  
8 at Exhibit A (General and Work Conditions) Section 1 (Compensation), and Exhibit B (Special  
9 Provisions) Section 1 (Installation and Testing), and Section 3 (Payment Terms). All construction  
10 shall be subject to applicable labor laws and prevailing wages including as set forth in the RFP and  
11 Response including in Exhibit A (General and Work Conditions) Section 4 (Hours of Work) and  
12 Section 5 (Prevailing Wages). CONSULTANT shall provide timely refunds or service credits to  
13 CITY for overpayment of estimated construction costs. Construction claim resolution shall be as set  
14 forth in the RFP and Response including at Exhibit A (General and Work Conditions) Section 11  
15 (Construction Claim Resolution). All equipment and/or materials associated with the extension of  
16 CONSULTANT’s network distribution facilities and the Institutional Network to CITY’s designated  
17 Authorized Connection Points (as shown on Exhibit C) at such Optional Site(s), shall be considered  
18 part of CONSULTANT’s System, and remain the property of CONSULTANT; provided, however  
19 that any network fiber, equipment, facilities or conduit installed in, under, or between CITY-owned or  
20 leased facilities shall become and remain the property of CITY upon expiration or other termination of  
21 this Agreement.

22                   iii.           Deletion of Sites. Should CITY elect to reduce the number of Site(s),  
23 CITY will notify CONSULTANT of the Site(s) to which Institutional Network service will be  
24 terminated. No later than one (1) business day after the CITY’s disconnection date specified in its  
25 written notice to CONSULTANT, CONSULTANT shall terminate Institutional Network service to  
26 the Site(s) identified in CITY’s notice. CONSULTANT shall not remove or modify any equipment,  
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1 fibers, or other infrastructure associated with such Site(s), so that, should CITY in the future desire to  
2 reinstate Institutional Network service to the terminated Site(s), no associated construction will be  
3 required and no associated costs will be charged to or payable by CITY.

4 B. Institutional Network License.

5 i. Grant of License. Exhibit C sets forth, as of the Effective Date, the  
6 general configuration of the Institutional Network showing the location of the Institutional Network in  
7 the CITY (“Institutional Network Route”), an identification of the fiber optic strands designated for  
8 CITY’s use (“Institutional Network Fibers”), and an identification of the municipally owned and/or  
9 operated buildings served by the Institutional Network (“Institutional Network Buildings”). Subject  
10 to the provisions hereof, and to the extent not already owned by CITY, CONSULTANT hereby grants  
11 an irrevocable license (“License”) to CITY to use the Institutional Network Fibers on the Institutional  
12 Network Route between the Institutional Network Buildings during the Term, and CITY may use the  
13 Institutional Network for any municipal purpose that is not competitive with the services offered by  
14 CONSULTANT. Following the completion of any CITY-requested or approved extensions of the  
15 Institutional Network, such extensions shall be deemed to be part of the Institutional Network,  
16 connection points shall be included in the concept of “Authorized Connection Points” as used in this  
17 Agreement even if not identified on Exhibit C, the additional fiber optic strands shall be deemed to be  
18 Institutional Network Fibers, and any additional municipally owned and/or operated buildings served  
19 by such additional fiber optic strands shall be deemed to be Institutional Network Buildings. The  
20 License is granted on the terms and is subject to the terms and conditions set forth in this Agreement  
21 and the associated underlying rights (see Section 5.B.ii below). The License pertains only to the  
22 Institutional Network and does not include the right of CITY to own, access, repair or maintain the  
23 Institutional Network, or any other property or rights of CONSULTANT; use building access  
24 facilities; or gain physical access to or use any portion of the System other than access to the  
25 Institutional Network at the Authorized Connection Points designated on Exhibit C at each of the  
26 Institutional Network Buildings. CITY has exclusive control and sole responsibility for determining  
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1 network and service configurations or designs, routing configurations, re-grooming, rearrangements or  
2 channels or circuits assignments, and all related functions with regard to CITY's use of the  
3 Institutional Network.

4           ii.       Underlying Rights. CONSULTANT has obtained or otherwise holds  
5 certain rights of way for construction and operation of the System on the Institutional Network Route  
6 some of which may pre-date both the date of this Agreement and the date of the Local Franchise.  
7 CONSULTANT covenants to CITY that CONSULTANT currently has sufficient underlying rights to  
8 satisfy all of its obligations to CITY under this Agreement.

9           iii.       Relocation. If CONSULTANT elects during the Term to relocate any  
10 portion of the System, including facilities used or required to provide the Institutional Network,  
11 CONSULTANT shall pay all costs associated with the relocation, except in situations where the  
12 relocation is accompanied by additions or other work to benefit CITY and for which CITY agrees in  
13 writing to pay. If, under this Agreement, CITY requests during the Term that CONSULTANT  
14 relocate any portion of the System, including facilities used or required to provide the Institutional  
15 Network, and CONSULTANT is willing to accommodate CITY, CITY shall pay costs associated with  
16 the relocation; provided, however, if any part of the relocation arises out of or is related to changes in  
17 the Services attributable to CONSULTANT's act or omissions in breach of this Agreement, each  
18 party shall pay its pro-rated portion of the costs of relocation; and further provided that in no event  
19 shall CITY pay or bear any costs if all or any portion of a relocation arises out of or is related to CITY  
20 exercising its police powers or other rights under applicable law, including the Concord Municipal  
21 Code, with respect to CITY's right-of-way. If CONSULTANT is required, by a municipality  
22 (including CITY exercising its police powers or other rights under applicable law, including the  
23 Concord Municipal Code, with respect to right-of-way) or other third party having or asserting legal  
24 authority, to relocate any portion of the Institutional Network, CONSULTANT shall bear all costs  
25 arising out of or associated with such relocation,. CONSULTANT, in its reasonable discretion after  
26 consultation with and approval by the CITY (which approval shall not be unreasonably withheld,  
27

1 conditioned, or delayed), shall determine the extent and timing of, and methods to be used for,  
2 relocation, which shall be performed in accordance with the construction and test specifications as  
3 more particularly described below. CONSULTANT shall use commercially reasonable efforts to  
4 minimize the disruption of CITY's use of the Institutional Network. This provision is not intended to  
5 and shall not preempt, control over, or supersede the rights and obligations under law of the CITY of  
6 Concord as to management and control of the public right-of-way.

7 C. Institutional Network Technical Parameters.

8 i. Specifications. All fiber included in the Institutional Network shall  
9 meet or exceed the fiber specifications as more particularly described in Response Schedule II, B.  
10 Network Fiber, C. Network Fiber Requirements, Section 1.a, Option 1.

11 ii. Testing and Warranty. CONSULTANT's obligations with respect to  
12 testing and warranty of the Institutional Network (including each fiber) area as set forth in the RFP  
13 and Response including at Exhibit B (Special Provisions) Section 2 (Installation and Testing) subject  
14 to the following modifications: CONSULTANT shall test Institutional Network to verify that it has  
15 been installed and operates in accordance with the applicable specifications. CONSULTANT shall  
16 provide a copy of the test results to CITY verifying compliance with the applicable specifications.  
17 The test results shall also include and provide an as-built route map and all fiber cable footages, as  
18 well as optical time-domain reflectometer (OTDR) traces and loss-measurements for each strand and  
19 each link. CONSULTANT warrants that, except with respect to those items supplied or specified by  
20 CITY or breaches due to fiber cuts, unscheduled maintenance events, and Force Majeure, the  
21 Institutional Network will comply with the specifications. If at any time during the Term the  
22 Institutional Network does not meet the specifications or warranty provided under this Agreement,  
23 CITY may provide CONSULTANT with written notice of its determination ("Warranty Notice").  
24 After receiving a Warranty Notice from CITY, CONSULTANT shall respond in accordance with the  
25 maintenance and repair procedures set forth in this Agreement. In addressing a defect,  
26 CONSULTANT, at its expense and in its reasonable discretion after consultation with and approval  
27

1 by the CITY (which approval shall not be unreasonably withheld, conditioned, or delayed), shall  
2 repair or replace any portion of the Institutional Network found to be defective. When a defect is  
3 found and the Institutional Network is repaired, CONSULTANT shall retest the Institutional Network  
4 in accordance with the specifications and requirements herein, and provide CITY with a copy of the  
5 test results verifying compliance. CITY may again give Warranty Notice of any defect in such  
6 Institutional Network. This cycle of testing, providing Warranty Notice, taking corrective action, and  
7 retesting may occur as many times as necessary to ensure the Institutional Network is operating in  
8 compliance with the applicable specifications.

9 iii. Failure Events. CONSULTANT must use commercially reasonable  
10 efforts to maintain continuity of the Institutional Network in compliance with the specifications at all  
11 times. If CITY becomes aware that fiber continuity is lost or impaired between locations (each, a  
12 "Failure Event"), the CITY shall notify CONSULTANT immediately. Once CONSULTANT has  
13 been notified of such by CITY, CONSULTANT shall inspect the Institutional Network and report  
14 back to the CITY within four (4) hours after gaining access to each terminated end of the Institutional  
15 Network. CONSULTANT must use commercially reasonable efforts to reestablish continuity of the  
16 Institutional Network as soon as possible or notify CITY that problems encountered are not due to  
17 lack of fiber continuity. If CONSULTANT cannot provide continuity within twenty-four (24) hours  
18 after notification by CITY, then CITY will be allowed a credit equaling two times the effective  
19 Failure Event length.

20 D. Institutional Network Maintenance and Repair. CONSULTANT shall provide  
21 and shall bear any and all costs arising out of or associated with maintenance of the Institutional  
22 Network (including outside plant maintenance of the Institutional Network) and the System; provided,  
23 however, that if Institutional Network maintenance is required due to the active negligence or willful  
24 misconduct of CITY or CITY's employees, agents or volunteers of CITY, CITY will be responsible  
25 for reimbursing CONSULTANT the reasonable actual maintenance costs to the extent arising out of  
26 its or their specific act or omission.  
27

1                   i.        Scheduled Maintenance and Repair. Scheduled maintenance and repair  
2 will not normally result in Services interruption. CONSULTANT shall: (i) notify CITY three (3)  
3 days in advance thereof, (ii) work with CITY to minimize Service interruptions or interference with  
4 CITY's business operations, and (iii) use reasonable efforts to perform such maintenance between  
5 midnight and 6:00 a.m. local time or at such other times as may be agreed to by CITY, such  
6 agreement not to be unreasonably withheld, delayed or conditioned.

7                   ii.       Unscheduled Maintenance and Repair. CONSULTANT reserves the  
8 right to perform emergency maintenance and repair of the Institutional Network. If emergency  
9 maintenance and repair is required, CONSULTANT shall: (i) provide CITY as much advance notice  
10 as is reasonably practicable given the circumstances or notice as soon as possible after such repairs  
11 have commenced if prior notice is impossible, and (ii) work with CITY to minimize Service  
12 interruptions or interference with CITY's business operations. CITY and CONSULTANT shall  
13 promptly notify each other of any known matters pertaining to, or the occurrence (or impending  
14 occurrence) of, any event which would likely give rise to any damage or impending damage to or loss  
15 of the System.

16                   iii.       Mean Time to Repair. CONSULTANT's MTTR goal for any Service is  
17 two hours. However, CITY acknowledges that MMTR may exceed this amount in cases of major  
18 damage to the Institutional Network such as fiber cuts. MTTR commences after the CITY,  
19 CONSULTANT, or one of its circuit partners opens a trouble ticket with the Wave Business Solutions  
20 Network Operations Center ("NOC") at <888-317-0488>. MTTR is defined as the mean time  
21 required to restore the Institutional Network to its normal operating state which is consistent with the  
22 requirements of this Agreement. MTTR is calculated on a monthly average of the time taken to repair  
23 all trouble tickets on a specific circuit provided pursuant to this Agreement with the same severity  
24 level during an Institutional Network outage. The cumulative length of Institutional Network outages  
25 per circuit is divided by the number of trouble tickets in the billing month to compute the monthly  
26 MTTR per circuit.  
27

1                   iv.       Fiber Cuts. In the event of a suspected fiber cut, CITY will provide  
2 notice to the NOC. CONSULTANT shall use its commercially reasonable efforts to have a technician  
3 en route within four hours to isolate the fault and begin service restoration. The NOC shall use its  
4 commercially reasonable efforts to provide hourly status reports to CITY and shall be available to  
5 open a telephone call or telephone bridge for the duration of the outage and provide status reports and  
6 updates every hour as required by CITY.

7                   v.       Local Access. To the extent CONSULTANT needs to access interior  
8 areas of any Institutional Network Building to access the demarcation points, CONSULTANT and  
9 CITY shall cooperate to coordinate such access. Pursuant to RFP Section II.H (Agency  
10 Compliance/License), all persons (including contractors and subcontractors) working on-site must  
11 pass a background check which includes a Live-Scan finger print scan before working in the City of  
12 Concord Police Department building. If emergency maintenance and repair is required, CITY shall  
13 endeavor to provide access to applicable demarcation points; CITY may require that CONSULTANT  
14 be escorted during emergency access. If public safety requires, CITY may suspend repairs in secured  
15 areas and any such suspensions shall not be held against CONSULTANT in the MTTR calculation for  
16 the affected month.

17               7.       PERMITS. CONSULTANT's obligations to secure permits are as set forth in the RFP  
18 and Response including at Section II.H (Agency Compliance/License), Section II.I (Business  
19 License), Exhibit A (General and Work Conditions), Section 2 (Laws to be Observed), and Section 3  
20 (Permits or Licenses), subject to the following addition: Notwithstanding anything in this Agreement  
21 to the contrary, (i) CITY shall retain full rights to exercise its police powers. Any uses or activities  
22 requiring a conditional use permit, variance, or other discretionary permit or approval shall require a  
23 permit or approval pursuant to relevant CITY codes, policies, and applicable law, and (ii) this  
24 Agreement is not intended to vest in CONSULTANT any right to the issuance of any such permit or  
25 approval nor to restrict CITY's good faith exercise of its discretion with respect thereto.

26               8.       PAYMENT. Notwithstanding anything in the RFP and Response or this Agreement to  
27

1 the contrary, payment by CITY of any amount shall not be deemed a waiver of unsatisfactory work,  
2 even if such defects were known to the CITY at the time of payment. CITY shall use its  
3 commercially reasonable efforts to submit written notice of any unsatisfactory work or other matter  
4 that may affect payment due to CONSULTANT together with reasonably sufficient supporting  
5 documentation to CONSULTANT.

6           A.     Process. Except as otherwise set forth in this Agreement (e.g. for construction  
7 costs, and Burstable Internet Access Service), the payment process shall be as set forth in the RFP and  
8 Response including at Exhibit A (General and Work Conditions) Section 1 (Compensation), and RFP  
9 Exhibit B (Special Provisions) Section 1 (Installation and Testing), and Section 3 (Payment Terms).  
10 With respect to non-construction costs only, notwithstanding the language of Exhibit B (Special  
11 Provisions) Section 3 (Payment Terms): (i) CONSULTANT shall submit monthly statements in  
12 arrears for services rendered, and all statements shall include reasonably adequate documentation  
13 demonstrating work performed during the billing period; and (ii) CITY shall use its commercially  
14 reasonable efforts to review such statement and pay CONSULTANT for undisputed services rendered  
15 within 30 days of receipt of a statement that meets all requirements of this Agreement.

16           B.     Compensation. The compensation to be paid to CONSULTANT shall be as  
17 detailed in the RFP and Response, subject to the following modifications:

18                   i.     Data Center Co-Location Space. Terms and conditions shall be as set  
19 forth in the Third Amendment to Lease attached hereto as Exhibit B-4.

20                   ii.    Internet Access Provision. The parties' obligations with respect to  
21 Internet Access are as set forth in Response Schedule II, subject to the following modifications:

22                           a.     CITY shall only be charged for its requested and documented  
23 actual usage of Burstable Internet Access Service at the rates set forth in Exhibit D. Charges for  
24 Burstable Internet Access Service will be calculated by using the industry standard 95th percentile.  
25 The 95th percentile measurement evaluates the regular and sustained use of a network connection and  
26

1 is measured by sampling usage at 5 minute intervals and ignoring the top 5% of usage samples taken  
2 over a month. The 95th percentile measure of regular and sustained bandwidth will then be compared  
3 to the Base Bandwidth and the incremental usage will be billed at the Burst Rate in arrears on a  
4 quarterly basis. Charges for Burstable Internet Access Service will be measured, calculated and  
5 accrued on a monthly basis, and billed in arrears on a quarterly basis.

6 b. There shall be no additional charge for provision of Internet  
7 Service to any Optional Site. CONSULTANT shall delete the monthly charge for any of the Initial  
8 Sites or sites added thereafter if they are subsequently deleted.

9 C. Institutional Network Fiber. The pricing for the Initial Sites shall be as  
10 indicated on Exhibit D attached hereto and made a part hereof by this reference. Should CITY elect to  
11 connect Optional Sites to the Internet in accordance with Sections 2.B.(2) and 2.C.(2), the number of  
12 fiber strands per Optional Site shall be determined by CITY and the price per fiber strand shall be as  
13 indicated on Exhibit D. Construction Costs for the Optional Sites shall be handled in accordance with  
14 Section 2.5.vi above.

15 D. Taxes. Taxes shall be treated as set forth in RFP Exhibit A (General and Work  
16 Conditions) Section 7 (Taxes).

17 E. Increases in Compensation. Any Amendment to this Agreement that includes  
18 an increase to any compensation amount shall be made in accordance with Section 10 below.

19 9. 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 Agreement except where approval for the CITY is specifically required  
22 by the City Council. The "CITY's Authorized Representatives" are those who are from time-to-time  
23 designated in writing from the City Manager to CONSULTANT. The "CONSULTANT's Authorized  
24 Representative" is its Regional Vice President.

25 10. AMENDMENT TO AGREEMENT. This Agreement may be only amended in writing

1 which must be signed by the City Manager and by an authorized executive officer of CONSULTANT.  
2 If additional services are requested by CITY other than as described in the above Scope of Services,  
3 this Agreement may be amended, modified, or changed by the parties subject to mutual written  
4 consent as provided herein and in accordance with the Municipal Code by execution of an  
5 Amendment by Authorized Representatives of both parties setting forth the additional scope of  
6 services to be performed, the performance time schedule, and the compensation for such services.  
7 The City Manager is authorized to execute amendments to the Agreement on behalf of CITY,  
8 including amendments providing for additional compensation to CONSULTANT not to equal or  
9 exceed the lesser of the City Manager's contracting authority or \$50,000 during a fiscal year,  
10 including the base contract amount, throughout the term of this Agreement. Any additional  
11 compensation to CONSULTANT that equals or exceeds \$50,000 for any fiscal year, including the  
12 base contract amount, is subject to approval of the City Council. Consultant's failure to secure  
13 CITY's written authorization for additional compensation or changes to the Scope of Services shall  
14 constitute a waiver of any and all right to adjustment in the price or time due, whether by way of  
15 compensation, restitution, quantum meruit, or similar relief.

16 11. INDEPENDENT CONTRACTOR. The Independent Contractor provisions are as set  
17 forth in the RFP and Response including Exhibit A (General and Work Conditions) Section 9  
18 (Independent Contractor), Section 4 (Hours of Work), and Section 5 (Prevailing Wages).

19 12. STANDARD OF PERFORMANCE. CONSULTANT represents and warrants to  
20 CITY that CONSULTANT is skilled and able to provide such services described in the Scope of  
21 Services and that CONSULTANT will use its commercially reasonable efforts to perform such  
22 services in an expeditious manner, and with the degree of skill and care that is required by current,  
23 good, and sound procedures and practices. CONSULTANT further agrees that CONSULTANT will  
24 use its commercially reasonable efforts to perform the services in conformance with generally  
25 accepted standards prevailing in the telecommunications industry at the time work is performed.

26 13. PERFORMANCE BY CONSULTANT. CITY shall not be obligated or liable for  
27

1 payment hereunder to any party other than the CONSULTANT. CONSULTANT hereby designates  
2 the CONSULTANT'S representative as the person primarily responsible for the day-to-day  
3 performance of CONSULTANT'S work under this Agreement. CONSULTANT shall not change the  
4 CONSULTANT'S representative without written notice to CITY. Unless otherwise expressly agreed  
5 by the CITY, CONSULTANT'S representative shall remain responsible for the quality and timeliness  
6 of performance of the services, notwithstanding any permitted or approved delegation hereunder.

7 14. OWNERSHIP AND MAINTENANCE OF DOCUMENTS. Copies of all plans,  
8 specifications, maps, estimates, reports, manuscripts, drawings, descriptions and other final work  
9 products compiled by the CONSULTANT under the Agreement shall be made available, upon  
10 request, to the CITY without restriction or limitations on their use other than as may be provided  
11 therein. The CITY reserves the right to specify the file format that electronic document deliverables  
12 are presented to the CITY provided such file formats are commonly used in the telecommunications  
13 industry. CONSULTANT may retain copies of the above-described information but agrees not to  
14 disclose any information gathered, discussed or generated in any way through this Agreement without  
15 the written permission of CITY during the term of this Agreement, unless required by judicial order or  
16 law. This Agreement is subject to disclosure as required under Government Code 6150 *et seq.*

17 15. INDEMNIFICATION. CONSULTANT'S indemnification obligations are as set forth  
18 in RFP Exhibit D (City of Concord Insurance and Indemnification Requirements) Section 5  
19 (Indemnity Provisions).

20 16. INSURANCE. The insurance obligations are as set forth in RFP Exhibit D (City of  
21 Concord Insurance and Indemnification Requirements) Sections 1 through 4, inclusive, subject to the  
22 following modification: The first sentence of Section 1 (Insurance – General) is here by deleted and  
23 replaced with the following two sentences: "CONSULTANT shall in good faith endeavor to ensure  
24 that all insurance policies shall bear an endorsement, or have attached a rider, whereby it is provided  
25 that, in the event of expiration or proposed cancellation of such policies for any reason whatsoever,  
26 the CITY shall be notified by registered mail not less than 30 days before expiration or cancellation is  
27

1 effective. In all events, the CONSULTANT shall notify CITY of the expiration or proposed  
2 cancellation of any insurance policy under this Agreement, by registered mail immediately upon  
3 learning of such expiration or proposed cancellation.”

4 17. TIME OF PERFORMANCE. The time and timeliness of performance of the services  
5 under this Agreement is of the essence, and all time deadlines identified in this Agreement or Scope of  
6 Services shall be strictly construed.

7 18. COMPLIANCE WITH CIVIL RIGHTS. During the performance of this Agreement,  
8 CONSULTANT agrees as follows:

9 A. Equal Employment Opportunity. In connection with the execution of this  
10 Agreement and consistent with applicable law, CONSULTANT shall not discriminate against any  
11 employee or applicant for employment because of race, religion, color, sex, or national origin,  
12 including but not limited to, the following: employment, promotion, upgrading, demotion, or transfer;  
13 recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of  
14 compensation; and selection for training including apprenticeship.

15 D. Nondiscrimination Civil Rights Act of 1964. CONSULTANT will comply  
16 with all applicable federal regulations relative to nondiscrimination in federally assisted programs.

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

23 19. CONFLICT OF INTEREST. CONSULTANT covenants and represents that neither it,  
24 nor any officer or principal of its firm, has, or shall knowingly acquire any interest, directly or  
25 indirectly, which would conflict in any material manner with or which would in any way materially  
26

1 hinder CONSULTANT's performance of services under this Agreement. CONSULTANT further  
2 covenants that in the performance of the Agreement, no person having any such interest shall be  
3 employed by it as an officer, employee, agent or subcontractor without the express written consent of  
4 the CITY. CONSULTANT agrees to at all times avoid conflicts of interest, or the appearance of any  
5 conflicts of interest, with the interests of the CITY in the performance of this Agreement.

6 CONSULTANT is not a designated employee within the meaning of the Political Reform Act because  
7 CONSULTANT: (i) will conduct research and arrive at conclusions with respect to its rendition of  
8 information, advice, recommendation or counsel independent of the control and direction of the CITY  
9 or of any CITY official, other than normal contract monitoring; and (ii) possesses no authority with  
10 respect to any CITY decision beyond the rendition of information, advice, recommendation or  
11 counsel. (2 Cal. Code Regs. § 18700(a)(2).)

12 20. EXCUSED FOR NON-PERFORMANCE. Provisions addressing excused performance are as  
13 set forth in RFP Exhibit A (General Work Conditions), Section 6 (Excused for Non-Performance),  
14 subject to the following modifications: The term "Force Majeure" means any event or circumstance  
15 or combination of events or circumstances that is beyond the reasonable control of the party sought to  
16 be held liable, including acts of God, fire, flood, hurricane or other natural catastrophe.

17 Notwithstanding anything in this Agreement to the contrary, if the performance delay exceeds 60  
18 days, CITY may terminate all or part of this Agreement immediately on written notice without  
19 incurring any termination liability.

20 21. COMPLIANCE WITH LAWS. Compliance with Laws obligations are as set forth in  
21 the RFP and Response including at Section II.H (Agency Compliance/License), Section II.I (Business  
22 License), Exhibit A (General Work Conditions) Section 2 (Laws to be Observed), Section 5 (Hours of  
23 Work), Section 5 (Prevailing Wages), Section 8 (Taxes), and Section 10 (Safety).

24 25. CHOICE OF LAW. This Agreement shall be construed and interpreted in accordance  
25 with the laws of the State of California, excluding any choice of law rules which may direct the  
26 application of the laws of another jurisdiction. In the event that suit shall be brought by either party  
27

1 hereunder, the parties agree that trial of such action shall be held exclusively in a state court in the  
2 County of Contra Costa, California (“Court”). All parties hereto agree to waive any claims they may  
3 have which would destroy such sole judicial jurisdiction, and to grant the Court in personam and in  
4 rem jurisdiction to hear and resolve any conflict arising out of or related to this Agreement.

5 Notwithstanding any other provision of this Agreement, any claim against CITY by CONTRACTOR  
6 shall be subject to Municipal Code Chapter 3.05.030 *et seq.*

7 23. NON-WAIVER. The waiver by either party of any breach of any term, covenant, or  
8 condition contained in the Agreement, or any default in their performance of any obligations under the  
9 Agreement shall not be deemed to be a waiver of any other breach or default of the same or any other  
10 term, covenant, condition, or obligation, nor shall any waiver of any incident of breach of default  
11 constitute a continuing waiver of same.

12 24. ENFORCEABILITY; INTERPRETATION. In the event that any of the provisions or  
13 portions of application of any of the provisions of the Agreement are held to be illegal or invalid by  
14 the Court, CITY and CONSULTANT shall negotiate in good faith an equitable adjustment in the  
15 provisions of the Agreement with a view toward affecting the purpose of the Agreement. The  
16 illegality or invalidity of any of the provisions or portions of application of any of the provisions of  
17 the Agreement shall not affect the legality or enforceability of the remaining provisions or portions of  
18 application of any of the provisions of the Agreement. This Agreement shall be interpreted as though  
19 it was a product of a joint drafting effort and no provisions shall be interpreted against a party on the  
20 ground that said party was solely or primarily responsible for drafting the language to be interpreted.

21 25. INTEGRATION. All exhibits identified in this Agreement are attached hereto and  
22 incorporated herein by reference as though fully restated herein, and are included in the defined term  
23 “Agreement.” The Agreement contains the entire agreement and understanding between the parties as  
24 to the subject matter of this Agreement. It merges and supersedes all prior or contemporaneous  
25 agreements, commitments, representation, writings, and discussions between CONSULTANT and  
26 CITY, whether oral or written. In the event of any conflict between this Agreement and the RFP or  
27

1 Response, this Agreement shall control; in the event of any conflict between the RFP and the  
2 Response, the Response shall control.

3 26. ASSIGNMENT. Assignment provisions are as set forth in the RFP and Response  
4 including at Exhibit A (General and Work Conditions) Section 13 (Assignment), subject to the  
5 following modification: CITY's approval of any assignment by CONSULTANT will be contingent  
6 on the assignee or transferee agreeing in writing to assume and to perform all of CONSULTANT's  
7 obligations under this Agreement.

8 27. SUCCESSORS AND ASSIGNS; NO THIRD PARTY BENEFICIARIES; NO JOINT  
9 VENTURE. CITY and CONSULTANT respectively, bind themselves, their successors, assigns, and  
10 legal representatives to the terms and obligations of this Agreement. This Agreement is not intended  
11 and shall not be construed to create any interest in or benefit to any third party concerning this  
12 Agreement. This Agreement is not intended and shall not be construed to create a joint venture or  
13 partnership between the parties. CONSULTANT, its officers, employees and agents shall not have  
14 any power to bind or commit the CITY to any decision.

15 28. FINANCIAL RECORDS. Records of CONSULTANT's direct labor costs, payroll  
16 costs, and reimbursable expenses pertaining to this project covered by this Agreement will be kept on  
17 a generally recognized accounting basis and made available to CITY at a location in the City of  
18 Concord if and when required and upon reasonable prior notice to CONSULTANT.

19 29. ATTORNEY'S FEES. The provisions of RFP Exhibit A (General and Work  
20 Conditions) Section 12 (Attorney's Fees) are hereby deleted.

21 30. NON-LIABILITY. No member of the CITY and no other elected official, officer,  
22 employee, agent or volunteer of the CITY shall be personally liable to CONSULTANT or otherwise  
23 in the event of any default or breach of the CITY, or for any amount which may become due to  
24 CONSULTANT or any successor in interest, or for any obligations directly or indirectly incurred  
25 under the terms of this Agreement.  
26  
27



1 or this Agreement to the contrary:

2           A.     Limitation of Liability. CONSULTANT's total cumulative liability to CITY  
3 under the Agreement is limited to the aggregate amount of fees actually paid by CITY to  
4 CONSULTANT during the immediately preceding twelve (12) months for the Service affected.  
5 CITY hereby irrevocably and forever releases CONSULTANT and its affiliates from all obligations,  
6 liability, claims or demands in excess of the foregoing limitation.

7           B.     No Special Damages. Without limiting any express provisions provided  
8 elsewhere in this Agreement, neither party hereto shall be liable for any damages for lost profits, lost  
9 revenues, loss of goodwill, loss of anticipated savings, loss of data or cost of purchasing replacement  
10 services, or any indirect, incidental, special, consequential, exemplary or punitive damages arising out  
11 of the performance or failure to perform under the Agreement or, even if the party has been advised,  
12 knew or should have known of the possibility of such damages.

13           C.     Risk of Use of Services. CITY ASSUMES ALL RESPONSIBILITY AND  
14 RISK FOR CITY'S AND ITS END USERS' USE OF ANY SERVICES PROVIDED BY  
15 CONSULTANT. CONSULTANT HAS NO CONTROL OVER AND EXPRESSLY DISCLAIMS  
16 ANY LIABILITY OR RESPONSIBILITY WHATSOEVER FOR THE CONTENT OF ANY  
17 INFORMATION TRANSMITTED OR RECEIVED THROUGH THE SERVICES, SERVICE  
18 INTERRUPTIONS ATTRIBUTABLE TO ANY CITY EQUIPMENT FAILURES, OR ANY  
19 OTHER SUCH CAUSES, AND CITY AND CITY'S END USERS ACCESS THE SERVICES AT  
20 THEIR OWN RISK. CITY SHALL BE SOLELY RESPONSIBLE FOR THE SECURITY AND  
21 CONFIDENTIALITY OF INFORMATION IT TRANSMITS OR RECEIVES USING ANY  
22 SERVICES.

23 ///

24 ///

25                                   *[Signatures follow on next page]*

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

3 **CONSULTANT:**

4 Astound Broadband, LLC,  
5 a Washington limited liability company

**CITY:**

City of Concord,  
a California municipal corporation

6 By: 

Name: James A. Penney  
7 Title: Executive Vice President  
8 Address: 401 Kirkland Parkplace, Suite 500  
Kirkland, WA 98199  
Telephone: (425) 896-1891

By: \_\_\_\_\_

Name: Valerie J. Barone  
Title: City Manager  
Address: 1950 Parkside Drive, MS/01A  
Concord, CA 94519  
Telephone: (925) 671-3150

9 APPROVED AS TO FORM:

ATTEST:

10 \_\_\_\_\_  
11 Mark S. Coon, City Attorney

\_\_\_\_\_  
City Clerk

12 **FINANCE DIRECTOR'S CERTIFICATION:**

13 Concord, California

14 Date: \_\_\_\_\_, 2014

15 I HEREBY CERTIFY THAT ADEQUATE FUNDS EXIST OR WILL BE RECEIVED  
16 DURING THE CURRENT FISCAL YEAR 2013/2014 TO PAY THE ANTICIPATED  
EXPENSES TO BE INCURRED PURSUANT TO THIS CONTRACT.  
THE SUM OF \$ \_\_\_\_\_. Account Code \_\_\_\_\_.

17 \_\_\_\_\_  
Finance Director's Signature

18 Exhibits

- 19
- 20 A RFP and Response
  - 21 B Lease Documents
    - 22 B-1 Original Lease
    - 23 B-2 First Amendment
    - 24 B-3 Second Amendment
    - 25 B-4 Third Amendment
  - 26 C Identification of:
    - Initial Sites
    - Initial Number of Institutional Network Fibers
    - Institutional Network Route
    - Institutional Network Fibers
    - Institutional Network Buildings
    - Authorized Connection Points
  - 27 D Pricing Schedule

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## REQUEST FOR PROPOSALS (RFP) #2252

### Institutional Network Service, Data Center Co-location Service, and High-Speed Internet Service

<b>RFP Issued</b>	February 14, 2013
<b>Pre-Proposal Conference (Mandatory)</b>	February 27, 2013 @ 2:00 PM <u>Conference Location:</u> City of Concord-City Hall Council Chamber Room, Wing E 1950 Parkside Drive, Concord, CA 94519
<b>Questions Due</b>	March 5, 2013 @ 4:00 PM
<b>Addendum Issued</b> <i>(if applicable)</i>	March 13, 2013
<b>Proposal Due</b>	April 2, 2013 @ 2:00 PM <u>Submittals To:</u> Office of City Clerk-Wing A City of Concord Civic Center 1950 Parkside Drive-M/S 03 Concord, California 94519

**Contact person for the above RFP:** Debbie Wellnitz  
 Email: [purchasing@cityofconcord.org](mailto:purchasing@cityofconcord.org) / 925-671-3219  
 Purchasing Agent, City of Concord

# REQUEST FOR PROPOSALS (RFP) # 2252

## Institutional Network Service, Data Center Co-location Service, and High-Speed Internet Service

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### TABLE OF CONTENTS

<b>I.</b>	<b>STATEMENT OF WORK.....</b>	<b>5</b>
	A. Intent .....	5
	B. Scope of Services .....	5
	1. General and Work Conditions .....	5
	2. Special Provisions .....	5
	C. Minimum Requirements .....	5
<b>II.</b>	<b>INSTRUCTIONS TO PROPOSERS .....</b>	<b>6</b>
	A. Reservations of Rights .....	6
	B. Schedule of Events .....	6
	C. Pre-Proposal Conference .....	7
	D. Subcontractors .....	7
	E. Examination of Requirements .....	7
	F. Questions, Interpretations, or Corrections of Proposal Document.....	7
	G. Prices, Notations, and Mistakes .....	8
	H. Agency Compliance/License .....	8
	I. Business License .....	8
	J. Insurance .....	9
	K. Exceptions to Specifications/Requirements .....	9
	L. Protests .....	9
	M. Proposal Security and Bonds .....	9
	N. Term of Contract .....	10
	O. Award .....	10
	1. Evaluation Criteria .....	10
	2. Evaluation/Selection Process .....	10
	3. Notice of Award .....	11
	P. Terms of the Offer .....	11
<b>III.</b>	<b>PROPOSER SUBMITTAL REQUIREMENTS .....</b>	<b>11</b>
	A. Contents of Proposal .....	11
	B. Modifications and Withdrawal .....	11
	C. Submittal Deadline .....	12
	D. Proposer Submittal Form .....	12
	E. W-9 Form .....	12
	F. California Public Records Act, Confidential/Proprietary Information.....	12

**EXHIBITS – See next page.**

**EXHIBITS**

<b><u>PROPOSAL SUBMISSION REQUIREMENTS TABLE</u></b>		<b>Page</b>	<b>MUST be submitted with Proposal</b>
Exhibit A	General and Work Conditions (3 pgs)	15	
Exhibit B	Special Provisions (1 pg)	17	
Exhibit C	Local Vendor Preference (1 pg)	19	
Exhibit D	Insurance and Indemnification Requirements (3 pgs)	20	
Exhibit E	Exceptions to Specifications/Requirements (1 pg)	23	√ (if applicable)
Exhibit F	Sample Contract (first and last page only) (2 pgs)	24	
Exhibit G	Proposal Submittal Form (23 pgs) Requirements A. Data Center Co-Location Space (Concord Only) Requirements Schedule I – A & B Costs B. Internet Service Provision (Concord Only) Requirements Schedule II – A & B Costs C. Network Fiber (Concord and Walnut Creek) Requirements Schedule III – A & B Costs Schedule IV – A & B Costs	26-47	√
Exhibit H	W-9 Form	48	√

## ACRONYM AND TERM GLOSSARY

Unless otherwise noted, the terms below may be upper or lower case. Acronyms will always be uppercase.

Best Value Concept	For bids, contract shall be awarded to the lowest responsive bidder. In determining the ‘lowest responsive bidder’, the City will apply the best value concept which includes price, quality, quantity, and the ability of the Contractor to perform the contract and to provide future maintenance or repairs. <i>[Please refer to Municipal Code Sec. 2-647 (Ordinance No. 11-9) for further details.]</i>
Bid	Shall mean the bidders’/contractors’ response to a Request For Bid (RFB).
Bidder	Shall mean the specific person or entity responding to the Request for Bid (RFB) or Request for Quotation (RFQ).
City	When capitalized, shall refer to the City of Concord.
Contract	A written agreement between the City and a vendor or contractor to provide goods, supplies, equipment, and or services. The terms ‘contract’ and ‘agreement’ are synonymous. The term ‘contract’ includes, but is not limited to, a purchase order, a contract for services, an addendum or change order, a letter agreement, or a memorandum of understanding.
Contractor	When capitalized, shall refer to selected bidder that is awarded a contract. The terms ‘vendor’ and ‘contractor are synonymous.
Council	Shall refer to the City Council.
CPRA	Refers to California Public Records Act (Government Code Sections 6250-6270)
Environmentally Preferable Products	Products manufactured in a manner such that the impact on the environment is minimized throughout the entire lifecycle of the product by implementing sustainable practices during material sourcing, manufacturing, transportation, and by providing products that can be used and disposed of in an environmentally sound manner
EPA	United States Environmental Protection Agency
Federal	Refers to United States Federal Government, its departments and/or agencies
F.O.B.	Shall mean without charge for delivery to destination and placing on board a carrier at a specified point (Free On Board)
Labor Code	Refers to California Labor Code
PO	Shall refer to Purchase Order(s)
Proposal	Shall mean proposer response to a Request for Proposal (RFP)
Proposer	Shall mean the specific person or entity responding to the Request for Quotation (RFQ).
Quotation	Shall mean bidder’s response to the Request for Quotation (RFQ). The terms ‘quotation’ and ‘quote’ are synonymous.
RFB	Request for Bid- The solicitation document used for competitive sealed bidding for the purchase of equipment, materials, goods and construction. The contract shall be awarded to the responsive bidder offering the lowest price based on the City’s ‘best value’ concept. A bid may be classified as ‘formal’ or ‘informal’.
RFP	Request for Proposal- The solicitation document used in the competitive sealed proposal process. The RFP procedure permits negotiation of proposals and prices. The contract shall be awarded when factors other than price (e.g., technical expertise) will be considered.
RFQ	Request for Quotation- The solicitation document used in competitive procurement, which requests technical or professional skills and experience. (Informal quote process – minimum 3 quotes.)
Response	Shall refer to proposal or quotation submitted in reply to RFP/Q
State	Refers to State of California, its departments and/or agencies

**REQUEST FOR PROPOSAL (RFP) #2252**  
**Institutional Network Service, Data Center Co-location Service, and  
 High-Speed Internet Service**

**I. STATEMENT OF WORK**

- A. **Intent:** It is the intent of these specifications, terms and conditions to seek proposals to provide information technology network services to the City of Concord and the City of Walnut Creek. References to “City” shall mean, individually and collectively, the City of Concord and the City of Walnut Creek.. City of Concord and the City of Walnut Creek have entered into a letter of agency dated February 13, 2013 (“Letter of Agency”) whereby the City of Walnut Creek has authorized the City of Concord Information Technology Department as Agent in dealings with any and all concerned telecommunication Providers as necessary to facilitate the issuance of this RFP and review of proposals. Although the City of Concord and the City of Walnut Creek are jointly participating in this proposal on network fiber, each City reserves the right to award any combination of services or reject all proposals either jointly or individually.

Each City intends to award a contract (with option to renew) to the proposer selected as the most responsible proposer whose response conforms to the RFP and meets the applicable City’s requirements.

- B. **General Scope of Services:** The City of Concord has entered into a non-exclusive Franchise Agreement with Seren Innovations Inc. effective July 27, 1999 permitting the construction and operation of a cable television system situated in the City of Concord. Subsequently, Seren Innovations sold its cable television unit and all associated franchises to Wave Broadband Holdings and the Name was changed to Astound Broadband LLC. The City of Walnut Creek also entered into a non-exclusive Franchise Agreement with Seren Innovations Inc., now Astound Broadband. Concord’s Franchise Agreement with Astound expires June 30, 2014. Walnut Creek’s Franchise with Astound expires December 31, 2014.

Additionally, the City of Concord entered into a lease for data center co-location space within the Astound Head End dated July 27, 1999 and has or will execute annual extensions to make this co-location lease coterminous with the Astound Franchise Agreement on June 30, 2014.

As such, the City of Concord, on behalf of itself and the City of Walnut Creek, is issuing this Request for Proposal (including all attachments hereto) (“RFP”) in order to solicit proposals to furnish all necessary tools, materials, labor, and supervision (including cost of insurance and all payroll taxes on such labor) to provide information technology services including data center co-location space, Internet Service Provisioning, and network fiber and / or connectivity for the City of Concord and the City of Walnut Creek, all as more particularly described in the applicable Exhibits mentioned below.

1. **General and Work Conditions:** Please refer to ‘**Exhibit A–General and Work Conditions**’ for details on the general terms and work conditions.
2. **Special Provisions:** Please refer to ‘**Exhibit B–Special Provisions**’ for details on the special provisions specific to this RFP.
3. **Local Contractor Preference:** Please refer to ‘**Exhibit C-Local Contractor Preference For the Purchase of Supplies, Services, and Equipment.**’ For costs under \$100,000, all proposers are directed to City of Concord Policy and Procedure 142 (Local Contractor Preference for the Purchase of Supplies, Service and Equipment), a copy of which is attached to this RFP and incorporated by reference.
4. **Proposal Submittal Form:** Please refer to ‘**Exhibit G-Proposal Submittal Form**’ for further information on the scope of services and technical requirements.

- C. **Minimum Requirements:**

1. Proposer shall be regularly and continuously engaged in the business of providing the services provided in this RFP for at least five (5) years.
2. Proposer shall be a certified manufacturer or dealer for the services specified under this RFP.
3. Proposer shall possess all permits, licenses and professional credentials necessary to supply product and perform services as specified under this RFP.
4. No Debarment/Suspension: In order to prohibit the procurement of any goods or services ultimately funded by Federal awards from debarred, suspended or otherwise excluded parties, each proposer will be screened at the time of RFP response to ensure proposer, its principal and their named subcontractors are not debarred, suspended or otherwise excluded by the United States Government in compliance with the requirements of 7 Code of Federal Regulations (CFR). The City will verify proposer, its principal and their named subcontractors are not on the Federal debarred, suspended or otherwise excluded list of contractors located at [www.sam.gov](http://www.sam.gov).

## **II. INSTRUCTIONS TO PROPOSER**

### **A. Reservation of Rights:**

Each City reserves the right to reject any or all proposals and to waive informalities, minor irregularities, and minor variations from specifications in proposals received. The City may accept any item or group of items of any proposal which will produce the most satisfactory results suited to the City's requirements. The contract shall be awarded to the lowest responsive proposer. In determining the "lowest responsive proposer," the City will apply the best value concept. Criteria for determining the lowest responsive proposer shall include, but not be limited to, the following: (1) The ability, capacity, and skill of the proposer to perform the contract or provide the supplies, services, or equipment required; (2) The ability of the proposer to provide the supplies, services, or equipment promptly or within the time specified without delay or interference; (3) The character, integrity, reputation, judgment, experience, and efficiency of the proposer; (4) The quality of the proposer's performance on previous purchases or contracts with the City; (5) The ability of the proposer to provide future maintenance, repair, parts, and services for the use of the supplies purchased. If no responsive proposals are received, the services performed or the supplies or equipment furnished may be obtained without further competitive bidding. The purchase must be made within thirty (30) days of the proposal due date and time.

Nothing in the Contract Documents (defined below) or the Letter of Agency is intended or shall be construed to (a) obligate the City of Concord to accept or reject proposals or enter into agreements or assume payment or performance obligations on behalf of the City of Walnut Creek, (b) obligate the City of Walnut to accept or reject proposals or enter into agreements or assume payment or performance obligations on behalf of the City of Concord, or (c) obligate either City to select the same contractor as the other City. "Contract Documents" means, collectively, this RFP, the chosen proposer's written proposal (as modified by any written best and final offer accepted by the City of Concord), the final contract executed between the City of Concord and the chosen proposer, and any amendments executed in writing by the City of Concord and the chosen proposer.

### **B. Schedule of Events:**

The following schedule details key dates and times related to this RFP. City reserves the right to revise this schedule.

Date	Time	Activity
February 14, 2013	5:00 PM	RFP Issued
February 27, 2013	2:00 PM	Mandatory Pre-Proposal Conference <u>Conference Location:</u> City of Concord-City Hall Council Chamber Room, Wing E 1950 Parkside Drive, Concord, CA 94519
March 5, 2013	4:00 PM	Deadline for RFP Questions
March 13, 2013	4:00 PM	Addendum Issued (Response to RFP Questions)
April 2, 2013	2:00 PM	Proposal Due <u>Submittals To:</u> Office of City Clerk-Wing A City of Concord Civic Center 1950 Parkside Drive-M/S 03 Concord, California 94519
April 24, 2013	5:00 PM	Short List Selected and Proposers Notified
TBD	TBD	Oral Presentation and Review – To be scheduled with the short list proposers (one day in the 3 weeks following short list notification.)
TBD	TBD	Proposer’s best and final offer
TBD	TBD	Contract Negotiation
TBD	TBD	Council Award Date
TBD	TBD	Contract Award and Sign Contract

- C. **Pre-Proposal Conference:** A mandatory meeting will begin **Wednesday, February 27, 2013, at 2:00 PM PST.** Interested potential proposers **MUST** attend for submitted proposal to be considered. The location is the **City of Concord-City Hall, Council Chamber Room, Wing E, 1950 Parkside Drive, Concord, CA 94519.**

Any company NOT attending the mandatory conference or whose company name is NOT listed on the Pre-Proposal Conference Sign-In Sheet may NOT submit a proposal and will be disqualified.

- D. **Subcontractors:** Each proposal shall include a list, for approval by the City, of all subcontractors that proposer contemplates using. Once approved, the list shall not be changed without prior written permission of the applicable City.
- E. **Examination of Requirements:** Before submitting a proposal, each proposer shall be held responsible for having examined this RFP and be fully informed of the physical site conditions (including underground conditions) at each jobsite, requirements, and specifications of the work or materials to be furnished. Failure to do so will be at the proposer’s own risk and relief on a plea of error cannot be secured. This may be cause for the annulment of the award and the forfeiture of the proposer’s bid security.
- F. **Questions, Interpretations, or Corrections of Proposal Document:** Questions regarding this RFP must be submitted in writing, either by mail, email or fax, and addressed to the City of Concord’s purchasing agent (“Purchasing Agent”) at 1950 Parkside Drive, Concord, CA 94519 or (email) purchasing@cityofconcord.org or (fax) 925-676-2290 and shall arrive in the Purchase Office **no later than 4:00 p.m. PST, Tuesday, March 5, 2013.** Proposer shall promptly notify the Purchasing Agent in the same manner of any error, omission, or inconsistency that may be discovered during the examination of the RFP.

Any questions or comments directed to persons or addresses other than specified in the preceding sentence, or received after the deadline specified in the preceding sentence, will not be addressed. Proposer's company name, address, phone number, email address, fax number, contact person, and reference to this RFP must be included with the questions or comments. Questions or comments received and the City's response shall be distributed by email to all known proposers who attended the mandatory pre-proposal conference and be posted on the City's website on or about **Wednesday, March 13, 2013.**

All clarifications, corrections, or changes to this RFP will be made by a formal written addendum or addenda to the RFP issued by the City of Concord ("Addendum" or "Addenda") only. Each Addendum (if any) shall automatically become part of this RFP and thus part of the Contract Documents. Proposer shall not rely upon interpretations, corrections, or changes made in any other manner, (e.g. whether by telephone, in person, or any type of writing) other than an Addendum. Interpretations, corrections, and changes shall not be binding unless made by Addendum. All Addenda issued will be posted on the City of Concord's website at [www.cityofconcord.org/business/purchasing](http://www.cityofconcord.org/business/purchasing). Notifications may (but are not required to) be sent to all known proposers by email; however it is the proposer's sole responsibility to ascertain that it has received all Addenda issued for this RFP.

*Please note that the City of Concord does not use any bidding service. It is the proposer's responsibility to be informed of any changes, revisions or updates by contacting the Purchasing Agent or by going to City's website at [www.cityofconcord.org/business/purchasing](http://www.cityofconcord.org/business/purchasing). If wholly electronically available, RFP documents and any Addenda are posted on the City's website.*

Note: The City of Concord Finance Office telephone number is 925-671-3178, and office hours are 8:00 a.m. to 5:00 p.m. PST, Monday through Friday, excluding City of Concord furlough and holidays. Due to budget constraints the hours of the City of Concord Finance Department front counter is 9:00 a.m. to Noon and 1:00 p.m. to 4:00 p.m. Pacific Time. Furlough and holidays for the City of Concord can be found at <http://www.cityofconcord.org/about/contact/holidays.htm>.

- G. **Prices, Notations, and Mistakes:** No charge shall be allowed for the preparation of a response to this RFP or negotiation or drafting of any other Contract Documents. All prices and notations must be in ink or typewritten. Mistakes may be crossed out and corrections typed or printed adjacent and initialed in ink by the person who signs the proposal. Prices shall be stated in units and bids made separately on each item as provided in Exhibit G. Prices quoted shall be F.O.B. In case of conflict, unit prices will govern. Where there is a conflict between words and figures, words will govern. The total amount of the submittal will be the sum of the total prices of all items in the submittal schedule. The total price of the unit price items will be the product of the unit price and the estimated quantity of the item. In case of discrepancy between the unit price and total price of an item, the unit price shall prevail. If the unit price is ambiguous, unintelligible, or uncertain for any cause, or is omitted, it shall be the amount obtained by dividing the amount set forth as the total price by the estimated quantity of the item.
- H. **Agency Compliance/License:** All equipment and materials shall comply with all federal, state, and local safety rules and regulations, building codes and OSHA regulations. All transactions related to any of the Contract Documents shall be governed by the laws of the State of California. The chosen proposer must possess, at the time of the proposal opening, any and all certifications and/or state mandated licenses to perform the work described in this document. **All contractors and subcontractors working on-site must pass a background check which includes a live-scan finger print scan before working in the City of Concord Police Department building.**
- I. **Business License:** The chosen proposer will be required to obtain a City of Concord business license and keep it current during the period of performance on the contract resulting from this RFP. Questions regarding City of Concord business licenses may be addressed to Mike Snow, City of Concord Finance Department, 925-671-3306. Questions regarding City of Walnut Creek business licenses may be addressed to Sheri Lund, City of Walnut Creek Finance Department, 925-943-5873.

- J. **Insurance:** The chosen proposer must comply with the City of Concord Insurance Requirements included in this RFP, and will be required to provide Certificates of Insurance with separate endorsements naming the **City of Concord and the City of Walnut Creek, and their respective officers, officials, agents, employees, and volunteers** as additional insured and to maintain such insurance throughout the term of the Contract Documents.

Types of insurance required:

1. Workers’ Compensation
2. General Public Liability and Property Damage
3. Automobile and Property Damage

All insurers **MUST** be listed by the State of California, Department of Insurance as being certified to transact surety insurance in the State of California. The insurer must maintain the Certificate of Authority during the entire contract period. If the Certificate is withdrawn during the project, work will be stopped until such time as the contractor furnishes new insurance from a certified insurer.

Please refer to ‘**Exhibit D-City of Concord Insurance and Indemnification Requirements**’ for details.

- K. **Exceptions to Specifications/Requirements:** Mark ‘X’ by the applicable terms.

No exceptions or alternative products are permitted.

Proposer must provide with the submittal utilizing the form in ‘Exhibit E –Exceptions to Specifications/Requirements’ any and all exceptions to either the specifications and/or the terms and conditions contained herein. Failure to note exceptions shall be interpreted to convey the proposer agrees to perform in the manner described and/or specified in this RFP.

- L. **Protests:** Any protest of the award must be submitted in writing to the City no later than 4:00 p.m. of the fifth (5) business day following the date of the proposal opening.

1. The initial protest must contain a complete statement of the basis of the protest.
2. The protest must state the facts and refer to the specific portion of the document or the specific statute that form the basis for the protest. The protest must include the name, address, and telephone number of the person representing the protesting party.
3. The party filing the protest must concurrently transmit a copy of the initial protest to the proposer deemed the lowest responsible proposer.
4. The party filing the protest must have actually submitted a proposal. A party may not rely on the protest submitted by another proposer, but must timely pursue its own protest.
5. The procedure and time limits set forth in this Section are mandatory and are the proposer’s sole and exclusive remedy in the event of a protest. The proposer’s failure to fully comply with these procedures shall constitute a waiver of any right to further to pursue the protest, including filing of a challenge of the award pursuant to the California Public Contracts Code, filing of a claim pursuant to the California Government Code, or filing of any other legal proceedings.
6. The City shall review all timely protests prior to formal award of selected proposal. Neither City shall be required to hold an administrative hearing to consider timely protest, but may do so at the option of the City’s City Manager. At the time of the applicable City’s City Council’s consideration of the award of the proposal, such City Council shall also consider the merits of any timely protest. Such City Council may either accept the protest or award the proposal with respect to such City to the next lowest responsible proposer or reject the protest and award to the lowest responsible proposer.
7. These protest procedures shall not limit the ability of either City’s City Council to reject all proposals.

- M. **Bid Security and Bonds:**  Mark ‘X’ here if not applicable to this bid.

All proposals shall be presented under sealed cover and shall be accompanied by cash, cashier’s or

certified check, or a proposer’s bond executed by a corporate surety insurer listed by the State of California, Department of Insurance as being certificated to transact Surety insurance in the State of California. If a proposal bond is submitted and the insurer is not certificated as required above, the proposal will be deemed non-responsive, and will be disregarded. The proposer’s guaranty shall be in an amount equal to at least **10% of the amount (grand total for one year)**, and made payable to the City of Concord. **All signatures** on the bonds shall be notarized.

N. **Term of Contract:** The City intends to award a 10-year contract (with options to renew).

1. The City has and reserves the right to suspend, terminate or abandon the execution of any work by the selected Proposer without cause at any time upon giving to the selected Proposer prior written notice. In the event that the City should abandon, terminate or suspend the Contractor’s work, the Contractor shall be entitled to payment for services provided hereunder prior to the effective date of said suspension, termination or abandonment. The City may terminate the contract at any time without written notice upon a material breach of contract and substandard or unsatisfactory performance by the selected Proposer. In the event of termination with cause, the City reserves the right to seek any and all damages from the selected Proposer. In the event of such termination with or without cause, the City reserves the right to invite the next highest ranked proposer to enter into a contract or re-bid the project if it is determined to be in its best interest to do so.
2. The City may, at its sole option, terminate any contract that may be awarded as a result of this RFP at the end of any City fiscal year (i.e. each July 1<sup>st</sup> through each June 30<sup>th</sup>), for reason of non-appropriation of funds. In such event, the City will give Contractor adequate notice that such function will not be funded for the next fiscal period. In such event, the City will return any associated equipment to the Contractor in good working order, reasonable wear and tear excepted.
3. By mutual agreement, any contract which may be awarded pursuant to this RFP, may be extended **for up to two (2) additional successive five (5) year terms** at agreed prices with all other terms and conditions remaining the same.

O. **Award:** Any award shall be made in accordance with Applicable Laws (defined in Exhibit A, Section 2).

1. **Evaluation Criteria:**

The Evaluation Criteria and their respective weights are as follows:

	<b>Evaluation Criteria</b>	<b>Weight</b>
a.	<b>Qualifications and Business Viability:</b> The proposer’s structure and stability.	20%
b.	<b>Support and Service:</b> Past performance of a similar nature and the ability of the proposer to provide support during the term of the contract.	20%
c.	<b>Product Capabilities:</b> Ability and capacity to meet all requirements contained in the RFP.	30%
d.	<b>Cost:</b> The total cost of the ‘Services’.	30%

Each submittal must contain detailed descriptive and technical information addressing whether and how each criterion is met or exceeded.

2. **Evaluation and Selection Process:** Proposals will be evaluated by a committee and will be ranked in accordance with the RFP section entitled “Evaluation Criteria” by a selection committee (which committee shall be comprised of such persons as City may determine in its sole discretion).
  - a. The committee will recommend award to the proposer who, in its opinion, has submitted the proposal that best serves the overall interests of the City and attains the highest overall evaluation score. Award may not necessarily be made to the

proposer with the lowest price. Notwithstanding anything herein to the contrary, the City of Concord shall evaluate the criteria in accordance with Concord Municipal Code Section 2-647 (duplicated in part in item II.A. above).

- b. The City reserves the right to award to a single or multiple contractors.
  - c. The City has the right to decline to make any award for any reason.
  - d. Approval of the applicable City’s City Council is required before any award can be made.
  - e. Final contract terms and conditions will be negotiated with the selected proposer, and will include but is not limited to all of the terms and conditions of this RFP. **‘Exhibit F-Sample Contract’**. which includes only the first and last page of a sample contract.
3. **Notice of Award:** Upon written notification of award, the chosen proposer must provide insurance certificates required pursuant to Section II.K. and Exhibit D, business license, and three copies of the contract **within ten (10) business days**. Failure to provide the required documents within the time allowed may result in withdrawal of award.

The contact information once awarded will be:

**City of Concord:**

Ron Puccinelli, Director, Information Technology  
1950 Parkside Drive, Concord, CA 94519  
Telephone: (925) 671-3159 / E-Mail: [Ron.Puccinelli@cityofconcord.org](mailto:Ron.Puccinelli@cityofconcord.org)

**City of Walnut Creek:**

Laura Peabody, Chief Information Officer  
1666 N Main Street, Walnut Creek, CA 94596  
Telephone: (925) 934-5896 / E-Mail: [Peabody@walnut-creek.org](mailto:Peabody@walnut-creek.org)

- P. **Terms of the Offer:** City of Concord’s acceptance of proposer’s offer shall be limited to the Contract Documents, unless expressly agreed in writing by the City of Concord. Each proposer must provide in **Exhibit E** any proposed changes to the terms hereof (including any insurance, indemnification, and bid security language or requirements). Proposals offering terms other than those shown herein may be declared non-responsive and may not be considered.

### **III. SUBMITTAL REQUIREMENTS**

- A. **Contents of Proposal:** Proposals shall be submitted in an 8 ½" x 11" format using a simple method of fastening.

The proposal submittal must include **one original , 5 complete copies, and one electronic copy on CD in Microsoft Office 2010 format**. Each paper copy must be clearly labeled as “copy”. All documents contained in the original proposal submittal must have original signatures and must be signed by a person who is authorized to bind the bidding firm. All additional sets may contain photocopies of the original package.

- B. **Modifications and Withdrawal:** Submittals may not be modified after proposal due date. Proposers may withdraw proposals at any time before the proposal opening, provided that a request in writing, executed by the proposer or its duly-authorized representative for the withdrawal of such proposal, is file with the City prior to the time fixed for the opening of proposals. The withdrawal of a proposal shall not prejudice the right of a proposer to file a new proposal.
- C. **Submittal Deadline:** Proposal submittals will be received until **TUESDAY, APRIL 2, 2013, 2:00**

**P.M. PDT** as determined by [www.time.gov](http://www.time.gov). Late submittals will not be accepted and returned to the proposer unopened. Telephone, telegraphic, electronic, faxed, and late proposals will not be accepted. It is the proposer’s responsibility to see that their proposals have sufficient time to be received by the City Clerk’s Office before the submittal deadline. Proposals are to be submitted in a sealed envelope to: Office of the City Clerk, 1950 Parkside Drive, M/S 03, Concord, California 94519. Proposer assumes the burden of delivery. Proposals are to be submitted in a sealed envelope or box clearly marked as follows:

**REQUEST FOR PROPOSAL (RFP) #2252**  
**‘Institutional Network Service, Data Center Co-location Service, and High-Speed Internet Service’**  
**DUE: APRIL 2, 2013, 2:00 P.M.**

A tabulation of proposals will be available within a reasonable time after the proposal opening. Proposal results will be posted on the City’s website: [www.cityofconcord.org/business/purchasing](http://www.cityofconcord.org/business/purchasing)

- D. Proposal Submittal Form:** Please see complete the form in ‘Exhibit G-Proposal Submittal Form’ and submit along with all applicable, required documents as shown in the ‘Proposal Submission Requirements Table’ after the Table of Contents page.
- E. W-9 Form:** Please complete the attached W-9 form in Exhibit H-W-9 Form as part of your proposal submission.
- F. California Public Records Act, Confidential/Proprietary Information.** All documents submitted in response to this RFP will become the property of the City, and will be regarded as public records under the California Public Records Act (Government Code Section 6250 et seq.) and subject to review by the public. Any confidential or propriety information as defined by the California Public Records Act (“Confidential Information”) must be enclosed in a separate folder or envelope clearly marked as "CONFIDENTIAL/PROPRIETARY INFORMATION" and submitted with the rest of the proposal. Proposal submittals where **all** information is so marked will be disregarded and made available pursuant to the CPRA. However, proposer (by virtue of submitting its proposal or any Confidential Information) acknowledges that City has not made any representations or warranties that Confidential Information is exempt from disclosure under Applicable Laws.

If City's City Attorney, in his or her discretion, determines that release of Confidential Information is required by Applicable Laws, including pursuant to order of a court of competent jurisdiction, City shall notify the applicable proposer of City's intent to release Confidential Information. Proposer shall have five (5) calendar days after the date of City's notice (“Objection Period”) to deliver to City a written objection notice which includes (1) justification for non-disclosure of all or any portion of the requested Confidential Information, and (2) legally binding confirmation of proposer’s indemnity and release obligations as set forth in this section (“Objection Notice”). City may release the Confidential Information if (i) City does not timely receive an Objection Notice, (ii) a final and non-appealable order by a court of competent jurisdiction requires City to release Confidential Information, or (iii) the City’s City Attorney, in his or her discretion, upon review of the Objection Notice, determines that it does not satisfy the requirements set forth in this section or that the requested Confidential Information is not exempt from disclosure under the Applicable Laws. If the City Attorney, in his or her discretion, determines that only a portion of the requested Confidential Information is exempt from disclosure under the Applicable Laws, City may redact, delete, or otherwise segregate the Confidential Information that will not be released from the portion to be released, and may key by footnote or other reference to the appropriate justification for not disclosing the unreleased Confidential Information. Proposer shall defend, indemnify and hold harmless City and its officers, officials, employees, volunteers, agents, attorneys, and representatives (collectively, "Indemnitees") from and against any and all Claims arising out of or in any way connected with disclosure or non-disclosure of any Confidential Information. “Claim” or “Claims” means any and all

present and future liabilities, claims, demands, obligations, grievances, judgments, orders, injunctions, causes of action, assessments, losses, costs, damages, fines, penalties, expenses, suits or actions of every name, kind, description and nature (including attorneys' fees and costs), whether brought forth on account of damages, injuries to or death of any person or damage to property, known or unknown, and whether now existing or hereafter arising, including all costs, attorney's fees, expenses and liabilities incurred in the defense of any of the foregoing or any action or proceeding brought thereon.

Proposer hereby waives, releases and discharges forever the Indemnitees from any and all present and future Claims arising out of or in any way connected with any Confidential Information. Proposer is aware of and familiar with the provisions of Section 1542 of the California Civil Code which provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

As such relates to this Section, proposer hereby waives and relinquishes all rights and benefits which it may have under Section 1542 of the California Civil Code.

**EXHIBITS - ATTACHMENTS**

Exhibit A	General and Work Conditions
Exhibit B	Special Provisions
Exhibit C	Local Vendor Preference
Exhibit D	City of Concord Insurance and Indemnification Requirements
Exhibit E	Exceptions to Specifications/Requirements
Exhibit F	Sample Contract
Exhibit G	Proposal Submittal Form
Exhibit H	W-9 Form

**EXHIBIT A (Page 1 of 3)****GENERAL AND WORK CONDITIONS**

The following conditions prevail:

1. **Compensation:** The Contractor agrees to receive and accept the prices shown as full compensation for furnishing all the materials and for doing all the work contemplated and embraced in the order; also for all loss or damage arising out of the nature of the work aforesaid, or from the action of all elements, or from any unforeseen difficulties or obstructions which may arise or be encountered in the prosecution of work until its acceptance by the City, and for all risks of every description connected with the work; also for all expenses incurred by or in consequence of the suspension or discontinuance of work and for well and faithfully completing the work, and the whole thereof, in the manner according to the requirements of the City's inspection.
2. **Laws to be Observed:** The Contractor shall keep fully informed of and shall comply with all statutes, laws, codes, rules, orders, zoning, ordinances, directions, regulations, regulations, permits, or other requirements of federal, state, county, municipal, or other governmental authorities having or asserting jurisdiction, now in force or which may hereafter be in force, which in any manner affect those engaged, or employed in the work, or the materials used in the work, or which in any way affect the conduct of the work, including the Americans with Disabilities Act, labor codes, and OSHA and other safety standards ("Applicable Law" or "Applicable Laws"). Attention is directed to the provisions of the California Business and Professions Code concerning the licensing of Contractors. All proposers and Contractors shall be licensed in accordance with Applicable Laws and any proposer or Contractor not so licensed is subject to the penalties imposed by Applicable Laws.
3. **Permits or Licenses:** The Contractor shall procure all permits and licenses, pay all charges and fees, and give all notices necessary and incidental to the due and lawful prosecution of the services.
4. **Hours of Work:** Eight hours labor constitutes a legal day's work. The Contractor shall forfeit, as a penalty to the applicable City, \$25 for each worker employed in the execution of the contract by the Contractor or any subcontractor under him/her for each calendar day during which such worker is required or permitted to work more than eight hours in any one calendar day and forty hours in any one calendar week in violation of the California Labor Code ("Labor Code").
5. **Prevailing Wages:** If applicable, the obligations of Contractor under this Section shall survive the expiration or termination of the Contract Documents.
  - a. Pursuant to Labor Code Section 1773.2, there is on file with the Contractor acknowledges and agrees that all or part of the services will constitute construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds under Labor Code Section 1720. Pursuant to Labor Code Section 1773.2, there is on file with the Purchasing Offices of the City of Concord and the City of Walnut Creek a copy of the prevailing rate of per diem wages to be paid by Contractor. Accordingly, Contractor shall comply with prevailing wage policies as set forth in the City of Concord and the City of Walnut Creek Municipal Codes, if applicable, as well as all State Labor Code requirements pertaining to "public works," including the payment of prevailing wages in connection construction, alteration, demolition, installation, or repair work components of the services (collectively, "Prevailing Wage Policies"). Contractor shall submit, upon request by the City, certified copies of payroll records to City and to maintain and make records available to City and its designees for inspection and copying to ensure compliance with Prevailing Wage Policies.

**EXHIBIT A (Page 2 of 3)****GENERAL AND WORK CONDITIONS**

Contractor shall also include in its subcontractor agreements and other contracts a provision, in form acceptable to City, obligating the subcontractors and others as applicable, to comply with Prevailing Wage Policies, and to submit, upon request by the City, certified copies of payroll records to City and to maintain and make such payroll records available to City and its designees for inspection and copying during regular business hours at the City of Concord City Hall and the City of Walnut Creek City Hall, or at another location within the City of Concord and/or City of Walnut Creek.

- b. Contractor shall defend, indemnify and hold harmless City and its officers, officials, employees, volunteers, agents, attorneys, and representatives (collectively, "Indemnitees") from and against any and all Claims arising out of or in any way connected with Contractor's obligation to comply with all laws with respect to the work of Improvements or Prevailing Wage Policies, including all Claims that may be made by contractors, subcontractors or other third party claimants pursuant to Labor Code sections 1726 and 1781, as amended and added by Senate Bill 966. "Claim" or "Claims" means any and all present and future liabilities, claims, demands, obligations, grievances, judgments, orders, injunctions, causes of action, assessments, losses, costs, damages, fines, penalties, expenses, suits or actions of every name, kind, description and nature (including attorneys' fees and costs), whether brought forth on account of damages, injuries to or death of any person or damage to property, known or unknown, and whether now existing or hereafter arising, including all costs, attorney's fees, expenses and liabilities incurred in the defense of any of the foregoing or any action or proceeding brought thereon.
- c. Contractor hereby waives, releases and discharges forever the Indemnitees from any and all present and future Claims arising out of or in any way connected with Contractor's obligation to comply with (i) Applicable Laws, and (ii) Prevailing Wage Policies. Contractor is aware of and familiar with the provisions of Section 1542 of the California Civil Code which provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

As such relates to this Section, Contractor hereby waives and relinquishes all rights and benefits which it may have under Section 1542 of the California Civil Code.

6. **Excused for Non-Performance:** Either party shall be absolved from its obligations under the Contract Documents when and to the extent that performance is delayed or prevented (and in the City's case when and to the extent that its needs or budget for the articles, materials or work to be supplied hereunder is reduced or eliminated) by reason of force majeure, fire, explosion, war, riots, strikes, labor disputes, or governmental laws, orders or regulations; provided, however, that economic difficulties or financial inability are not a factor which shall absolve Contractor from performing its obligations under the Contract Documents.

**EXHIBIT A (Page 3 of 3)****GENERAL AND WORK CONDITIONS**

7. **Default:** If Contractor shall breach any provision hereof or shall become insolvent, enter voluntary or involuntary bankruptcy or receivership proceeding or make an assignment for the benefit of creditors, the City shall have the right (without limiting any other rights or remedies which it may have hereunder or by operation of law) to terminate this contract by written notice to Contractor whereupon the City shall be relieved of all further obligation hereunder except the obligation to pay the reasonable value of Contractor's prior performance (at not exceeding the contract rate), and Contractor shall be liable to the City for all costs incurred by the City in completing or procuring the completion of performance in excess of the contract price herein specified. The City's right to require strict performance of any obligation hereunder shall not be affected by any previous waiver, forbearance or course of dealing. Time is of the essence hereof.
8. **Taxes:** Unless otherwise provided herein or required by law, Contractor assumes exclusive liability for, and shall pay before delinquency, all sales, use, excise, possessory interest, and other taxes, charges or contributions of any kind now or hereafter imposed on or with respect to, or measured by the articles sold or material or work furnished hereunder on the wages, salaries or other remunerations paid to persons employed in connection with the performance of this contract; and Contractor shall indemnify and hold harmless the City from any liability and expense by reason of Contractor's failure to pay such taxes or contributions.
9. **Independent Contractor:** The Contractor is an independent contractor retained by the City to perform the services described herein. All personnel employed by the Contractor, including subcontractors and personnel of said subcontractors approved by the City, are not and shall not be deemed to be employees of the City. The Contractor and subcontractors shall comply with all Applicable Laws pertaining to employment and compensation of their employees or agents, including the provision of Workers' Compensation. The City shall not, under any circumstances, be liable to Contractor for any subcontractor or any other person or persons acting for Contractor for any death, injury, or property destruction or damage received or claimed relating to or stemming from the activities undertaken pursuant to the Contract Documents.
10. **Safety:** Provision of the services, including all equipment and materials shall comply with all Applicable Laws, including local safety rules and regulations and OSHA.
11. **Construction Claim Resolution:** To the extent possible, the parties shall use good faith efforts to engage in an informal meet and confer process in order to resolve any claim, controversy, or dispute which may arise between the City and Contractor regarding the services, work, rights, duties, or obligations under the Contract Documents ("Dispute"). Any Dispute which the parties do not promptly resolve shall be submitted for resolution pursuant to the provisions of Public Contract Code Sections 20104 et seq.
12. **Attorney's Fees:** In the event that it becomes necessary for either party to bring a lawsuit to enforce any of the provisions of the Contract Documents, the parties agree that a court of competent jurisdiction may determine and fix a reasonable attorney's fee to be paid the prevailing party.
13. **Assignment:** The City is entering into the Contract Documents in consideration of the rendition of the services required herein by Contractor. Contractor shall not assign any of the duties, responsibilities, or obligations of the Contract Documents to any other firm, company, entity, or individual, except with the express written consent of City. Nothing set forth in this paragraph shall preclude Contractor from assigning any of the money due and owing to it from City.

**EXHIBIT B****SPECIAL PROVISIONS**

1. **Installation, Testing and Acceptance:** Upon completion of the award process and issuance of a City of Concord and/or City of Walnut Creek purchase order and/or contract, and any required permits, the selected Proposer) may begin installation of the selected services). When installation has been completed, the City of Concord and/or the City of Walnut Creek shall operate the system for a period of thirty (30) business days without incident. If a City determines that it shall not accept the system before the end of the testing period due performance problems, the City shall notify the vendor of the specific problems or deficiencies observed in the performance of the system so that the vendor may repair or make the necessary adjustments to the system. Should problems occur requiring modifications to the system, upon completion of repairs or modifications; an additional thirty (30) days of testing and successful performance of the system will be required prior to acceptance. Once the system has successfully completed testing, the City shall accept the system. Acceptance of the services shall not be unreasonably withheld by either City.
2. **Payment Terms:** Upon formal acceptance of the completed work at Concord jobsites, the City of Concord, upon receipt of a correct invoice shall make a payment for services provided to Concord, including work at Concord jobsites, within thirty (30) days. Upon formal acceptance of the completed work at Walnut Creek jobsites, the City of Walnut Creek, upon receipt of a correct invoice shall make a payment for services provided to Walnut Creek, including work at Walnut Creek, jobsites within thirty (30) days.
3. **Termination for Non-Appropriations:** Each City’s obligation to pay any amounts due for those fiscal periods succeeding the current fiscal period are contingent upon legislative appropriation or approval of funds for that purpose. Therefore, such City may terminate the Contract Documents as to itself only (and not as to the other City) with respect to not less than the entire term effective as of the end of any of its succeeding fiscal periods by giving (60) days prior written notice of the termination and establishing a termination date. No termination fee shall be allowed.  
  
All obligations of the applicable City to make payments due after the termination date will cease. Notwithstanding the foregoing, the City agrees to (a) not terminate the Contract Documents under this provision if any funds are appropriated to perform the services of the Contract Documents, and (b) that the City will use good faith efforts to obtain appropriation of the necessary funds to avoid termination of the Contract Documents.
4. **Ownership:** Please state who owns all components of this system during and after the services have been provided and the initial term expires.

**EXHIBIT C**



**CITY OF CONCORD**

Number:	142
Authority:	Council Motion
Effective:	6/2/92
Revised:	7/27/09
Reviewed:	2004
Initiating Dept.:	FI

**LOCAL VENDOR PREFERENCE  
FOR THE PURCHASE OF SUPPLIES, SERVICES, AND EQUIPMENT**

**1. PURPOSE**

To encourage the purchase of supplies, services, and equipment from vendors located within the boundaries of the City of Concord.

**2. POLICY**

As requests for the purchase of supplies, services, and equipment are received, it is recognized that procuring these from vendors located within the City of Concord promotes a healthy local economy and, therefore, benefits Concord's citizens as a whole. Procurement should seek to involve local vendors to the maximum extent possible while still complying with Chapter 2, Article VIII of the City of Concord Municipal Code.

**3. LOCAL VENDOR DEFINITION**

A local vendor is defined as a business with a physical location within the boundaries of the City of Concord and who maintains a current City of Concord business license.

**4. REQUIREMENTS**

- 4.1 The City will actively seek to identify local vendors interested in doing business with the City of Concord.
- 4.2 The price proposal by Concord vendors will be adjusted by five percent (5%) when prices are compared in the bidding process.
- 4.3 The local vendors preference shall be applied to a maximum of \$100,000 per bid including all costs, except sales tax.

**5. EXCEPTIONS**

This policy shall not apply to the following purchases or agreements:

- 5.1 Goods, equipment, or services provided under a cooperative purchasing agreement.
- 5.2 Purchases or agreements which are funded in whole or in part by a governmental entity, and the laws, regulations, or policies governing such funding prohibit application of that preference.
- 5.3 Purchases for goods, equipment, or services made or agreements let under emergency situations.
- 5.4 Public projects governed under the State of California Public Contract Code.
- 5.5 Professional or consultant services.
- 5.6 Sole source purchases.
- 5.7 Purchases of supplies, services, and equipment not requiring bids.
- 5.8 Application of the local vendor's preference to a particular purchase, agreement or category of agreements for which the City Council is the awarding authority may be waived at the City Council's discretion.

**EXHIBIT D (Page 1 of 3)**

**CITY OF CONCORD INSURANCE AND INDEMNIFICATION REQUIREMENTS**

1. **Insurance – General:** All insurance policies shall bear an endorsement, or shall have attached a rider, whereby it is provided that, in the event of expiration or proposed cancellation of such policies for any reason whatsoever, the City shall be notified by registered mail not less than 30 days before expiration or cancellation is effective.

At the time of execution of the contract, the Contractor shall, at the Contractor's own expense, procure and maintain in full force and effect at all times during the prosecution of the work and for the duration of the warranty period specified in Section SP 2-03 of these Special Provisions, Worker's Compensation Insurance, Commercial General Liability Insurance and Course of Construction Insurance, as follows:

A policy covering the full liability of the contract, to any and all persons employed by him/her directly or indirectly in or upon said work, or their dependents, in accordance with the provisions of the Labor Code of the State of California relating to Worker's Compensation and Insurance.

A policy for "all risk" construction in an amount sufficient to cover all work performed in accordance with the Contract Documents.

A policy of commercial liability insurance naming the City of Concord, the City Council, its servants, agents, and employees, and the City of Walnut Creek, the City Council, its servants, agents, and employees as additional insured, against all loss from liability, contingent or otherwise, for injury to, or death of, any person or persons or damage to real or personal property, arising in or by reason of, or in connection with, the performance of the work herein contemplated and agreeing to defend against all claims, demands, actions, or legal proceedings made or brought by any person by reason of any such injury, death, or damage and to pay all judgments, interests, costs, legal and other expenses arising out of or in connection therewith. One insurance policy shall cover all risks on the work. An additional insured endorsement bearing the designation CG D2 52 01 03 or endorsements containing language similar to that contained in said endorsement is not acceptable by the City and will be rejected.

The policy shall stipulate that the insurance afforded the additional insured shall apply as primary insurance. Any other insurance or self-insurance maintained by the City will be excess only and shall not be called upon to contribute with Contractor's insurance. Such additional insured coverage shall be provided by a policy provision or by an endorsement providing coverage at least as broad as Additional Insured (Form B) endorsement form CG 2010 as published by the Insurance Services Office (ISO)."

Coverage shall not extend to any indemnity coverage for the active negligence of the additionally insured in any case where an agreement to indemnify the additional insured would be invalid under subdivision (b) of section 2782 of the Civil Code.

The policy mentioned in this section shall be issued by an insurance carrier satisfactory to said City and shall be delivered to the City at the time of delivery of such contract. In lieu of actual delivery of such policies, certificate(s) issued by the insurance carrier showing such policies to be in force for the period covered by the contract may be delivered to the City. Such policies and such certificate(s) shall be of a form approved by the City Attorney of said City. Should any policy be canceled before final completion of the work herein contemplated and the Contractor shall fail to immediately procure other insurance as herein required, then the City may procure such insurance and the cost of such insurance shall be deducted from any monies due the Contractor.

With respect to third party claims against the Contractor, the Contractor waives any and all rights of any type of express or implied indemnity against the City, its City Council, officers, employees or agents (excluding agents who are design professionals).

2. **Automobile and Liability Insurance:** The Contractor shall furnish the City a policy or certificate of liability insurance in which the City, its officers, and agents, are named as an additional insured with the Contractor. Notwithstanding any inconsistent statement in the policy or any subsequent endorsement attached thereto, the City, its officers, and agents, shall be named as an additional insured covering all operations of the Contractor, whether liability is attributable to the Contractor or the City.

**EXHIBIT D (Page 2 of 3)**

**CITY OF CONCORD INSURANCE AND INDEMNIFICATION REQUIREMENTS**

The Contractor shall file with the City a satisfactory "blanket coverage" policy of insurance. The policy shall insure the City, its officers, and employees, while acting within the scope of their duties, against all claims arising out of or in connection with the work. The policy shall provide the following minimum limits: Bodily Injury & Property Damage . . . . . **\$2,000,000 CSL per occurrence.**

In those situations where the City, its officers, and agents, are named additional insured with the Contractor, the insurance coverage provided by the Contractor, in accordance with these Specifications, shall be the primary coverage and no other coverage available to City shall be called upon to respond until the limits provided by the Contractor have been exhausted. Contractor shall provide City with evidence of its inclusion in Contractor's insurance, as required by the Specifications, by providing to City a Certificate of Additional Insured Endorsement (ISO Form CG 20 10 11 85).

Except as provided for in Section 7-1.12 of the Standard Specifications, the Contractor shall save, keep, and hold harmless the City, its officers, and agents, from all damages, costs, or expenses in law or equity that may at any time arise or be set up because of damages to property, or of personal injury received by reason of or in the course of performing work, which may be occasioned by any willful or negligent act or omission of the Contractor, any of the Contractor's employees, or any subcontractor. The City will not be liable for any accident, loss, or damage to the work prior to its completion and acceptance, except as provided for in Section 7-1.12 of the Standard Specifications.

3. **Worker's Compensation Insurance:** The Contractor's attention is directed to the certification required for Worker's Compensation under the provisions in Labor Code Section 3700. Before execution of the contract by the City Council, the Contractor shall file with the Engineer the following signed certification:

*"I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the work of this contract."*

The form attached in the proposal documents shall be executed by the Contractor and submitted with the proposal.

The Contractor shall also comply with Labor Code Section 3800 by securing, paying for, and maintaining full force and effect for the duration of the contract, complete Worker's Compensation Insurance, and shall furnish a Certificate of Insurance to the Engineer before execution of the contract. The City, its officers or employees, will not be responsible for any claims in law or equity occasioned by failure of the Contractor to comply with this paragraph.

All compensation insurance policies shall bear an endorsement, or shall have attached a rider, whereby it is provided that, in the event of expiration of proposed cancellation of such policies for any reason, whatsoever, the City shall be notified by registered mail not less than 30 days before expiration or cancellation is effective.

4. **Qualifications of Insurers:** All insurance companies providing coverage to Contractor shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California, and shall have an A.M. Best's rating of not less than "A:VII."

**EXHIBIT D (Page 3 of 3)****CITY OF CONCORD INSURANCE AND INDEMNIFICATION REQUIREMENTS**

5. **Indemnity Provisions:** The obligations of Contractor under this Section shall survive the expiration or other termination of the Contract Documents with respect to any Claims arising prior to such expiration or other termination. Depending on the scope of services or work requested in this RFP, the Contract Documents may or may not constitute a hybrid agreement for a variety of services, potentially including some construction and design components.
- a. Non-Construction and Non-Design Professional Services Claims. Contractor shall indemnify, defend and hold harmless Indemnitees against and from any and all non-construction and non-design professional services related Claims arising from Contractor’s performance of the Contract Documents or from any activity, work, or thing done, permitted or suffered by Contractor in conjunction with the performance of the services, work, or under Contract Documents, or otherwise on or about City real or personal property, and shall further indemnify, defend and hold harmless City against and from any and all claims or suits arising from any breach or default of any performance of any obligation of Contractor, and against and from all costs, attorney’s fees, expenses and liabilities related to any claim or any action or proceeding brought within the scope of this indemnification.
  - b. Construction Claims. To the extent there are construction related Claims, or to the extent the Contract Documents are construed by a court of law to be a construction contract, all indemnity obligations construed to be related to construction shall be read as if including the carve out “except to the extent Claims are caused by the sole or active negligence or willful misconduct of the indemnified party.”
  - c. Design Professional Services Claims. To the extent there are design professional services related Claims, or to the extent the Contract Documents are construed by a court of law to be a contract for design professional services, any indemnity obligations construed to be related to design professional services shall be read as if limited to Claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of a design professional.
  - d. Counsel. Contractor shall provide indemnification called for under the Contract Documents by and through counsel reasonably acceptable to the City of Concord with respect to Claims against the City of Concord Indemnitees, and acceptable to the City of Walnut Creek with respect to Claims against the City of Walnut Creek Indemnitees.
  - e. Definitions. “Indemnitees” means, collectively, City, its officers, officials, employees, volunteers, agents, attorneys, and representatives. “Contractor’s Parties” means, individually and collectively, Contractor’s officers, officials, agents, representatives, employees, volunteers, independent contractors, invitees, customers, licensees, assignees or subtenants while engaged in the Contractor’s business, including with respect to the Service. “Claim” or “Claims” means any and all present and future liabilities, claims, demands, obligations, grievances, judgments, orders, injunctions, causes of action, assessments, losses, costs, damages, fines, penalties, expenses, suits or actions of every name, kind, description and nature (including attorneys’ fees and costs), whether brought forth on account of damages, injuries to or death of any person or damage to property, known or unknown, and whether now existing or hereafter arising, including all costs, attorney’s fees, expenses and liabilities incurred in the defense of any of the foregoing or any action or proceeding brought thereon.

**EXHIBIT E**  
**EXCEPTIONS TO SPECIFICATIONS/REQUIREMENTS**

**RFP No. 2552**  
**Institutional Network Service, Data Center Co-location Service, and**  
**High-Speed Internet Service**

List below requests for clarifications, exceptions and amendments, if any, to the RFP and its exhibits, and submit with your proposal response.

The City is under no obligation to accept any exceptions and such exceptions may be a basis for proposal disqualification.

Item No.	Reference To:		Description
	Page No.	Paragraph No.	

_____ <b>Proposer Name</b>	_____ <b>Proposer Signature</b>	_____ <b>Date</b>
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**EXHIBIT F (Page 1 of 2)**

**SAMPLE CONTRACT**

*(Sample includes only first and last page of a contract. The actual contract will include and is not limited to all of the terms and conditions specified in this RFP.)*

**THIS AGREEMENT** made and entered into on \_\_\_\_\_, 2013 by and between the City of Concord (hereinafter "CITY"), located in the County of Contra Costa, State of California, and \_\_\_\_\_, a California corporation, (hereinafter "CONTRACTOR"), whose mailing address is \_\_\_\_\_.

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

CITY desires to contract with CONTRACTOR to provide \_\_\_\_\_, as further described herein, upon the terms and conditions hereinafter set forth.

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

**1. TERM**

The effective date of this AGREEMENT is \_\_\_\_\_ and shall terminate on \_\_\_\_\_.

**2. SCOPE OF SERVICES**

CONTRACTOR shall provide \_\_\_\_\_, attached as Exhibits A and incorporated herein as though set forth in full.

**3. PAYMENT**

Contractor shall be paid for an amount not to exceed \$\_\_\_\_\_ for the term of this agreement.

**4. INDEPENDENT CONTRACTOR**

CONTRACTOR is and shall be deemed an independent contractor, and shall have responsibility for and control over the details and means of providing its services under this AGREEMENT. CONTRACTOR agrees that its services shall be performed with due diligence and in accordance with generally accepted industry practices and as generally directed by CITY. In assuming and performing the services set forth in this Agreement, CONTRACTOR is an independent contractor and shall not be eligible for any payment, benefits or remuneration of any nature, which the CITY may otherwise

To CITY:

**Contact Name  
City of Concord  
Address  
City, CA Zip Code  
Phone:  
Email:**

**EXHIBIT F (Page 2 of 2)**

**SAMPLE CONTRACT**

*(Sample includes only first and last page of a contract. The actual contract will include and is not limited to all of the terms and conditions specified in this RFP.)*

To CONTRACTOR

**Contact Name**  
**Company Name**  
**Address**  
**City, CA Zip Code**  
**Phone:**  
**Email:**

**IN WITNESS WHEREOF**, the parties to these presents have executed this Contract on the day and year first above written.

CONTRACTOR

CITY OF CONCORD, a Municipal Corporation

\_\_\_\_\_  
Signature

By: \_\_\_\_\_  
Valerie Barone  
Interim City Manager

\_\_\_\_\_  
Name, Title

APPROVED AS TO FORM:

ATTEST:

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
City Clerk

FINANCE DIRECTOR'S CERTIFICATION:

Concord, California

Date: \_\_\_\_\_ 2013

I hereby certify that adequate funds exist or will be received during the current fiscal year 2012/13 to pay the anticipated expenses to be incurred pursuant to this contract. The estimated sum of \$

\_\_\_\_\_  
Finance Director

Account Code:

**EXHIBIT G**

**PROPOSAL SUBMITTAL FORM**

CITY OF CONCORD

**RFP #2252**

**Institutional Network Service, Data Center Co-location Service, and High-Speed Internet Service**

**TO THE CITY OF CONCORD:** In compliance with the notice inviting sealed proposals, the undersigned hereby proposes to furnish all necessary tools and equipment, materials, labor, and supervision (including cost of Workers' Compensation Insurance and all payroll taxes on such labor) to complete services above, in accordance with the Specifications and City of Concord General and Work Conditions therefor, and further agrees to enter into a Contract therefor, at the prices listed in the accompanying proposal. Prices are F.O.B. Destination, California. All prices and fees, including all applicable sales taxes, are included.

**A. If the proposer is an individual, so state, if a firm or co-partnership, state the firm name and give the name of all individual co-partners composing the firm. If a corporation, state legal name of corporation, and provide names of president, secretary, treasurer and manager thereof.**

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**B. All persons submitting proposals shall list the name and location of place of business of each subcontractors regardless of the character of the work. (Attach additional page(s), if necessary.)**

Name	Address	Work to be Performed
1	<hr/>	<hr/>
2	<hr/>	<hr/>
3	<hr/>	<hr/>

**(Proposal Submittal Continued)**

C. Please indicate the total cost here and attached all required documents to follow.

**TOTAL COST: \$** \_\_\_\_\_  
*(inclusive of all Schedules in this Exhibit)*

**Submitted by:**

**COMPANY NAME:** \_\_\_\_\_

**ADDRESS (Not a P.O. Box):** \_\_\_\_\_

**CITY:** \_\_\_\_\_ **STATE, ZIP CODE:** \_\_\_\_\_

**PHONE NO.:** \_\_\_\_\_ **FAX NO.:** \_\_\_\_\_

**EMAIL ADDRESS:** \_\_\_\_\_

**YOUR NAME & TITLE:** \_\_\_\_\_

**YOUR SIGNATURE:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

**(Proposal Submittal Continued )**

**REQUIREMENTS**

1. Contractor Qualifications and Business Viability: The contractor’s structure and stability.

*Contractor Qualifications: Please describe your company, including:*

- Headquarter location
- Date business established
- Current number of employees
- Private or public company
- Annual Sales
- Organization chart
- Statement of Qualifications

*Negotiation Team*

- a. The decision maker and / or person authorized to sign the agreement on behalf of the proposer must be part of the negotiation team commencing with the Oral Presentation and Review Step of the process through to completion
  - Audio and / or Video conferencing is acceptable
- b. All members of the proposer’s negotiation team shall remain on the negotiation team through to completion
  - Separation from service with the proposer is excepted
- c. Provide the name(s) and title(s) of proposer’s negotiation team below

**Proposer’s Negotiation Team**

Expand as needed

	<b>Name &amp; Role</b>	<b>Title</b>	<b>Phone</b>	<b>E-Mail</b>
1	Ex: John Smith – Decision Maker	VP of Sales	(xxx) xxx-xxx	John.Smith@xyz.com
2				
3				
4				
5				
6				

**(Proposal Submittal –continued)**

2. Support and Service: Past performance of a similar nature and the ability of the proposer to provide support during the term of the contract. This phase of the evaluation includes contacting references and equipment demonstration. Please provide three references of similar engagements in the last 10 years for each of the services you are proposing.
3. Product Capabilities: Ability and capacity to meet all “Request for Proposal” requirements contained herein.

Proposers may submit proposals for one or more of the three (3) requested services:

- A. **Data Center co-location space (Concord only)**
- B. **Internet Service Provision (Concord only)**
- C. **Network Fiber (City of Concord and / or City of Walnut Creek)**

**A. Data Center co-location space (Concord only) Requirements:**

1. Secure building / structure including 24 X 7 surveillance meeting SAS-70 requirements
  - a. Proximity to known fault lines, 100 year flood plains, PG&E infrastructure will be considered
  - b. Proof of SAS-70 certification will be required annually as required by DOJ and PCI
2. Dedicated and secure enclosure (HID Card Key) access 24 X 7 X 365 INCLUDING weekends and Holidays
  - a. Space for eight (8) industry standard 19” enclosed cabinets – approximately 250 square feet
  - b. Area secured by industry accepted data center enclosures including secured card access controlled gates
3. Minimum of 20 dedicated (not shared with any other client) 20 Amp (30 Amp preferred) Three-Phase electrical circuits provided to co-lo area
  - a. Circuit Panel housing City’s circuits to be in secure location with access logging
  - b. UPS backup on each circuit capable of supporting 100% load for 30 minutes
  - c. Generator backup capable of supporting 100% load for a minimum of 14 days without requiring fuel service – indefinite run-time with fuel service
4. Fire suppression
  - a. Primary - FM-200 or other currently permitted electronics-safe fire suppression system
    - i. Define the expected time frame to return the primary system full normal protective operation after discharge
  - b. Backup - water sprinkler
    - i. Dry stand-pipe sprinkler system
    - ii. Water system set to activate as back-up ONLY
      - If primary system is discharged **and** fire continues or re-starts

**(Proposal Submittal –continued)**

5. Environmental control
  - a. HVAC sufficient to maintain the co-lo space, including any and all other clients' spaces sharing HVAC service with the City's space at specified temperature and humidity ranges 24 X 7 X 365
    - i. Temperature between
      - Warm Zone 65 and 72 degrees Fahrenheit
      - Cold Zone 55 and 68 degrees Fahrenheit
    - ii. Relative Humidity between 35% and 65% non-condensing
6. Facility monitoring and reporting 24 X 7 X 365 including:
  - a. Alerting designated City staff in the event of fire, electrical utility failure, and environmental excursions above or below set points
  - b. Attempted unauthorized access to Facility and / or City's co-lo space
    - i. Includes successful and unsuccessful access attempts
  - c. Reason to believe civil disobedience, demonstration, or other activity may target the Facility
    - i. i.e. Occupy Protests or any other act(s) of civil disobedience
7. Term of the agreement:
  - a. Initial 5 years
  - b. Option to extend for an additional 5 years (10 years total)

Please respond to each of the above requirements along with any other features you are proposing and complete the costing tables below.

(Proposal Submittal –continued)

**SCHEDULE I:**

For Data Center co-location space (Concord only)

**A. Costs:**

List the one-time costs for installation - *include a total.* (Add additional pages if necessary)

Item	Description	Quantity	Unit Cost	Extended Cost
			TOTAL	\$

**(Proposal Submittal –continued)**

**B. Costs:**

List the on-going costs (annual) for co-location - *include a total for 5 years and annual cost per year for an additional 5 years.* (Add additional pages if necessary)

Item	Description	Quantity	Unit Cost	Extended Cost
			TOTAL	\$

**(Proposal Submittal –continued)**

**B. Internet Service Provision (Concord Only) Requirements:**

1. Must be able to support Border Gateway Protocol (BGP)
  - a. Multi-homed Internet service with multiple providers
  - b. Must be able to support both IP V4 and IP V6 BGP implementation simultaneously
    - i. City is in the process of obtaining its own IPV6 address space from ARIN
    - ii. Must be able to provide Class C IP V4 address block
      - City uses current ISP’s IP V4 address space
2. 50 Mbps with Ethernet hand-off
  - a. Single Mode fiber preferred
  - b. Ability to burst above 50 Mbps
  - c. Ability to expand beyond 50 Mbps in the future without requiring additional infrastructure build-out.
3. Term of the agreement
  - a. Initial 5 years
  - b. Option to extend for an additional 5 years (10 years total)

Please respond to each of the above requirements along with any other features you are proposing and complete the costing tables below.

(Proposal Submittal –continued)

**SCHEDULE II:**

For Internet Service Provision (ISP) (Concord Only)

**A. Costs:**

List the one-time costs for installation - *include a total.* (Add additional pages if necessary)

Item	Description	Quantity	Unit Cost	Extended Cost
			TOTAL	\$

**(Proposal Submittal –continued)**

**B. Costs:**

List the on-going costs (annual) for ISP - *include a total for 5 years and annual cost per year for an additional 5 years.* (Add additional pages if necessary)

Item	Description	Quantity	Unit Cost	Extended Cost
			TOTAL	\$

**(Proposal Submittal –continued)****C. Network Fiber (Concord and Walnut Creek) Requirements:**

1. Type of systems requested – Propose 1 of these three options:
  - a. Option 1:
    - i. Dark Fiber sale / rental / long-term lease
      1. Minimum of 4 Pair (8 strands)
      2. Selected sites will require up to 12 Pair (24 strands)
      3. All connections to be Single Mode Fiber with SC-APC connectors
    - ii. Term of agreement:
      1. Initial 5 years
      2. Option to extend for an additional 5 years (10 years total)
  - b. Option 2: Managed Ethernet service with:
    - i. Minimum of 1Gbps now
    - ii. Capable of expanding to 10Gbps
      - i. Without requiring additional infrastructure build out
      - ii. Describe process, costs, and timing to implement
    - iii. Physical Layer Handoff
      - i. Preferred - Single Mode Fiber with SC-APC connectors
      - ii. Describe proposed hand-off and any available options with associated costs
    - iv. Term:
      1. Initial 5 years
      2. Option to extend for an additional 5 years (10 years total)
  - c. Option 3: City funded “Build-Own-Operate” project to install Fiber, wireless - microwave, laser, other media, or any combination
    - i. Provide a schematic drawing showing media type(s) and all equipment necessary to effect an Ethernet hand off for each location
    - ii. Identify path / routing between sites
      1. Identify mounting location and space required for any provided components
        - a. Acceptable mounting options are:
          - i. Plywood Backboard – With equipment mounted so as to minimize depth of equipment protruding in to room from backboard. Specify depth in inches.
          - ii. Rack Mount – Enclosed four-post cabinet OR open two-post rack.

**(Proposal Submittal – continued)**

1. Specify who provides cabinet or rack
2. Specify space needed in Rack Units (RUs)
2. Identify Aerial, Underground, Microwave, Etc.
  - a. Any aerial segments MUST comply with Federal, State, and Local ordinances regarding permits, vertical clearances, access agreements with pole owners, etc.
3. Identify any segments that require FCC Licensing and associated costs
2. Number of sites and locations
  - a. Concord approximately 28 sites – See attached map of locations
  - b. Walnut Creek approximately 17 sites – See attached map of locations
3. Identify worst-case-scenario time-line (Calendar Time) from “Notice to Proceed” to “in Production use”
4. Proposed solution must be fully operational, including completion of acceptance testing by :
  - a. Concord by End of 1Q 2014
  - b. Walnut Creek End of 2Q 2014
5. Identify any dependencies on City
  - a. Staff or other resources, Data, Permitting, Environmental Impact Report, etc.
  - b. Approximate time-frames both duration and sequence
6. Identify 10-Year Cost of Ownership
  - a. Both one-time and on-going recurring costs
  - b. Identify process and costs to add 1 location
  - c. Identify process and costs to remove 1 location
  - d. Budgetary estimates are sufficient for initial response
    - i. Final proposals will be developed through a Best-And-Final-Offer process
7. Identify process for reporting problems and process to resolve
  - a. For any Managed Service proposal – provide your Service Level Agreement (SLA)
    - i. How and to whom problems are reported and escalated
    - ii. Guaranteed initial response time
    - iii. Guaranteed on-site response time
    - iv. Guaranteed full service restoration time
    - v. Location of nearest field office for dispatching on-site response personnel
    - vi. Any monitoring / pro-active components of the SLA

**(Proposal Submittal -continued)**

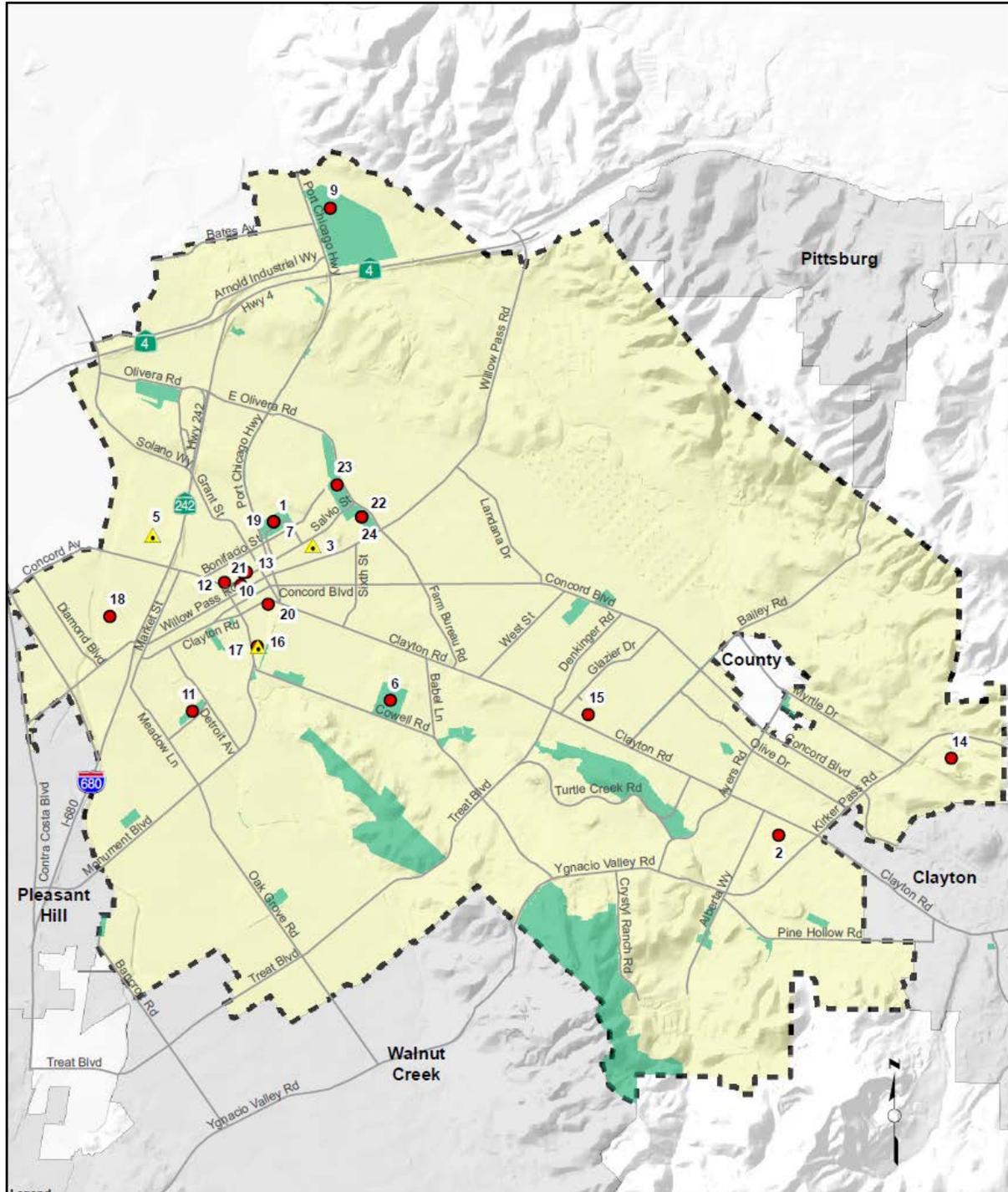
- vii. Any pro-active communication / alerts provided
  - viii. Any service level / performance reporting provided
  - ix. Any fee reductions / service credits for service disruption
  - x. Mean-Time-to-Repair (MTTR) for past 12 calendar months
  - xi. Mean-Time-Between-Failure (MTBF) for the proposed service(s) for past 12 calendar months
8. Support technicians granted access to City of Concord and/or City of Walnut Creek law enforcement secured network facilities shall be fingerprinted and required to complete a criminal records background check prior to accessing the site
9. Support of Television Studio and cameras (Concord only)
- a. Remotely operated cameras operational at 6 sites
    - i. Todos Santos Plaza
      - 1. 4 cameras all PTZ
        - a. 1 Permanently mounted
        - b. 3 temporarily mounted as needed
      - 2. 30 FPS broadcast quality
      - 3. NOT HD at this time
        - a. Should be capable of supporting HD
    - ii. Senior Center
      - 1. 3 cameras all PTZ
        - a. 1 permanently mounted
        - b. 2 temporarily installed as needed
      - 3. 30 FPS broadcast quality
      - 4. NOT HD at this time
        - a. Should be capable of supporting HD
    - iii. Pavilion
      - 1. 3 Cameras all PTZ
        - b. All temporarily mounted as needed

**(Proposal Submittal –continued)**

- iv. Pool, Centre Concord, Willow Pass sports fields
  - 1. Identified as future needs
  - 2. Anticipate 1 PTZ camera
    - c. Temporarily mounted as needed
    - d. 30 FPS broadcast quality
  - b. NOT HD at this time
    - i. Should be capable of supporting HD
- b. Proposal should include any necessary hardware / software needed to adapt current analog cameras and controls for use on proposed system.
- c. All cameras are controlled from the broadcast studio located in the Civic Center Council Chambers Building.

(Proposal Submittal –continued)

## Concord Network Sites



**Legend**

<b>City_inet</b>	● 8 Duplicating	● 17 Old Parking Garage	● 27 Tishman Building
<b>NAME</b>	● 10 Fire Station #10	● 18 Pavilion	● 28 Todos Santos Plaza
● 1 Baldwin Pre School	● Fire Station #2	● 19 Pavilion Radio Bunker	● 29 Willow Pass Field #1
● 2 Centre Concord	● 11 Golf Course	● 24 Police Headquarters	● 30 Willow Pass Rec.
▲ 3 Civic Center	● 12 Heritage Towers	● 22 Police-VFO	● 31 Willow Pass Sport Ctr.
▲ 5 Comp.Yard	● 13 Keller House	● 23 Police-Warehouse	
▲ 6 Cowell Pool	● 15 Meadow Homes Pool	● 25 Pump Station	
● 7 Day Camp/Marham Park	● 16 (New) Parking Center	● 26 Senior Center	

City of Concord  
Institutional Network



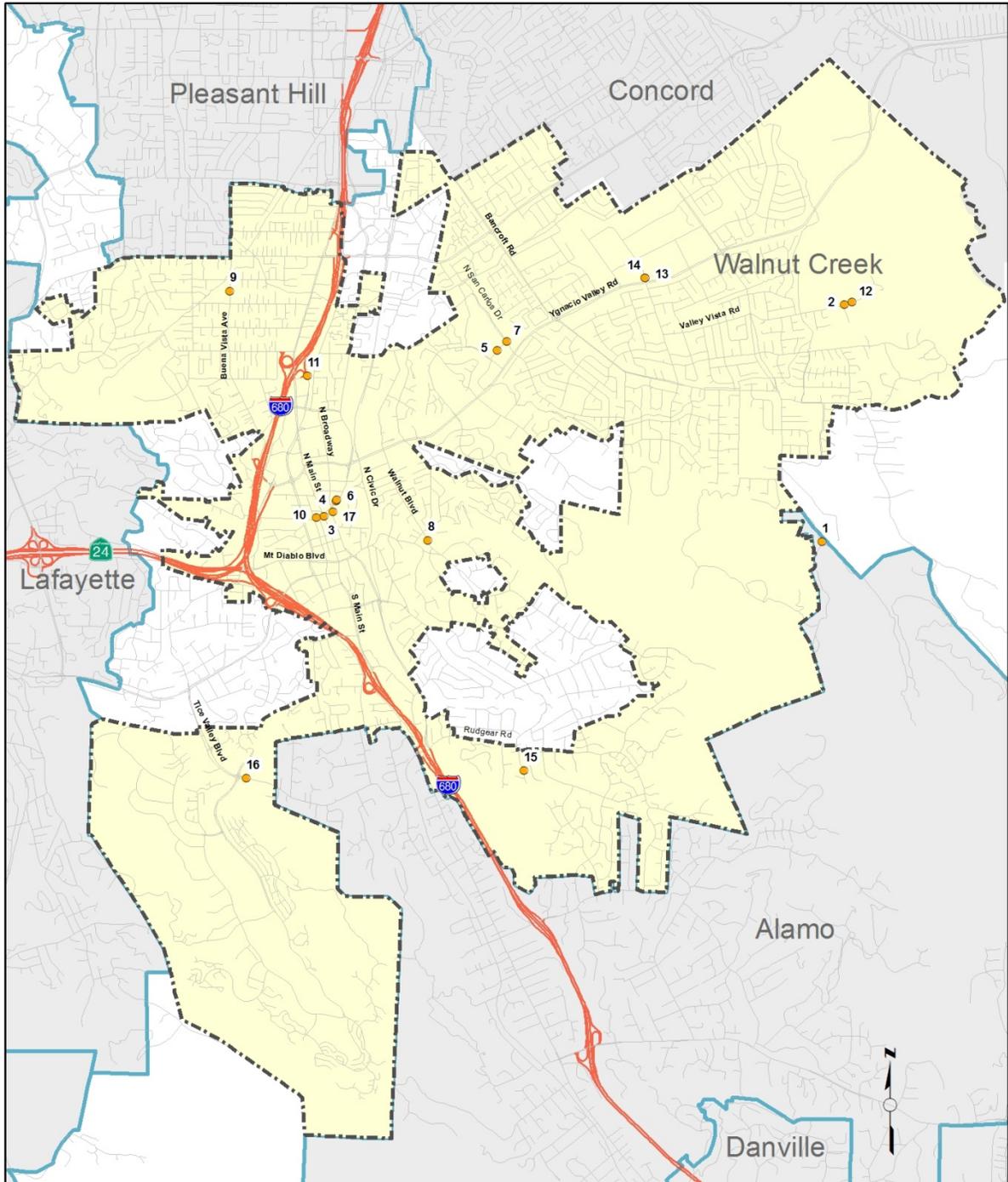
(Proposal Submittal –continued)

**Concord Sites**

<i>Site</i>	<i>Address</i>	<i>Relative Utilization</i>
<b>Baldwin Pre School</b>	2790 Parkside Dr	Low
<b>Centre Concord</b>	5298 Clayton Rd	Low
<b>Civic Center</b>	1950 Parkside Dr	High
<b>Corp Yard</b>	1455 Gasoline Alley	High
<b>Cowell Pool</b>	3501 Cowell Rd	Low
<b>Duplicating</b>	2730 Parkside Dr	Low
<b>Fire Station #2</b>	2010 Geary Rd	Low
<b>Golf Course</b>	4050 Pt Chicago Hy	Low
<b>Heritage Towers</b>	2020 Grant St	Low
<b>Meadow Homes Pool</b>	1351 Detroit Av	Low
<b>(New) Parking Center</b>	2051 Salvio St	Medium
<b>Old Parking Garage</b>	2255 Salvio St	Medium
<b>Pavilion Radio Bunker</b>	2000 Kirker Pass Rd	Low
<b>Police-VFO</b>	4467 Clayton Rd	Low
<b>Police-Warehouse</b>	1350 Galindo St	Medium
<b>Police Headquarters</b>	1350 Galindo St	High – Data Center
<b>Pump Station</b>	2050 Waterworld Py	Low
<b>Senior Center</b>	2727 Parkside Cr	Medium
<b>Tishman Building</b>	2300 Clayton Rd	Low
<b>Todos Santos Plaza</b>	2175 Willow Pass Rd	Medium
<b>Willow Pass Field #1</b>	2850 E Olivera Rd	Low
<b>Willow Pass Rec.</b>	2748 E Olivera Rd	Medium
<b>Willow Pass Sport Ctr.</b>	2850 E Olivera Rd	Medium

(Proposal Submittal –continued)

## Walnut Creek I-Net locations



- Legend**
- City Limit Boundary
  - Walnut Creek (Approximate)
  - I-net Sites**
  - Site**
- |                                    |  |   |
|------------------------------------|--|---|
| ● 1. Borges Ranch                  | ● 4. Civic Park Community Center                 | ● 11. Maintenance Operations (Corp Yard and Traffic Operations) |
| ● 2. Boundary Oak Golf Course      | ● 5. Clarke Swim Center                          | ● 12. Police Firearms Training (Range and Secondary City EOC)   |
| ● 3. City Hall                     | ● 6. Clay Arts Studio                            | ● 13. Shadelands Arts Education                                 |
| ● 7. Heather Farm Community Center | ● 8. Howe Homestead                              | ● 14. Shadelands Arts Education Annex                           |
| ● 9. Larkey Swim Center            | ● 10. Lesher Center for the Arts/Bedford Gallery | ● 15. Sugarloaf   |
| ● 16. Tice Valley Community Gym    | ● 17. Walnut Creek Downtown Library              |   |

City of Walnut Creek  
Institutional Network



Date: 01/10/2013  
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(Proposal Submittal –continued)

**Walnut Creek Sites**

<i>Site</i>	<i>Address</i>	<i>Relative Utilization</i>
<b>City Hall</b>	1666 N Main St	Main Site and Data Center
<b>Maintenance Operations (Corp Yard and Traffic Operations)</b>	511 Lawrence Way	High
<b>Leshner Center for the Arts/Bedford Gallery</b>	1601 Civic Dr	High
<b>Heather Farm Community Center</b>	301 N San Carlos Dr	High
<b>Clarke Swim Center</b>	1750 Heather Dr	High
<b>Shadelands Arts Education</b>	111 N Wiget Ln	Moderate
<b>Shadelands Arts Education Annex</b>	111 N Wiget Ln (Annex Bldg)	Moderate
<b>Police Firearms Training (Range and Secondary City EOC)</b>	3820 Valley Vista Road	Low (Would be High if used as EOC)
<b>Tice Valley Community Gym</b>	2055 Tice Valley Blvd	Moderate
<b>Civic Park Community Center</b>	1375 Civic Dr	Moderate
<b>Walnut Creek Downtown Library</b>	1644 N Broadway	Moderate/High
<b>Clay Arts Studio</b>	1365 Civic Dr	Low/Moderate
<b>Larkey Swim Center</b>	2771 Buena Vista Ave	Low/Seasonal
<b>Borges Ranch</b>	1035 Castle Rock Rd	Low
<b>Sugarloaf</b>	2161 Youngs Valley Rd	Low
<b>Boundary Oak Golf Course</b>	3800 Valley Vista Rd	Inactive/Discontinued (Quote as option?)
<b>Howe Homestead</b>	2950 Walnut Blvd	New Site <a href="#">being deployed 2012/13</a>

Please respond to each of the above requirements along with any other features you are proposing and complete the costing tables below.

(Proposal Submittal –continued)

**SCHEDULE III:**

For Network Fiber (Concord)

**A. Costs:**

List the one-time costs for installation parts and labor *include a total*. (Add additional pages if necessary)

Item	Description	Quantity	Unit Cost	Extended Cost
			TOTAL	\$

**(Proposal Submittal –continued)**

**B. Costs:**

List the on-going costs (annual) for Network Fiber Concord - *include a total for 5 years and annual cost per year for an additional 5 years.* (Add additional pages if necessary)

Item	Description	Quantity	Unit Cost	Extended Cost
			TOTAL	\$

(Proposal Submittal –continued)

**SCHEDULE IV:**

For Network Fiber Walnut Creek

**A. Costs:**

List the one-time costs for installation - *include a total.* (Add additional pages if necessary)

Item	Description	Quantity	Unit Cost	Extended Cost
			TOTAL	\$

**(Proposal Submittal –continued)**

**B. Costs:**

**List the on-going costs (annual) for Network Fiber Walnut Creek - *include a total for 5 years and annual cost per year for an additional 5 years.* (Add additional pages if necessary)**

Item	Description	Quantity	Unit Cost	Extended Cost
			TOTAL	\$

**EXHIBIT H**

Form <b>W-9</b> (Rev. December 2011) Department of the Treasury Internal Revenue Service	<b>Request for Taxpayer                  Identification Number and Certification</b>	Give Form to the requester. Do not send to the IRS.
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Print or type See Specific Instructions on page 2.	Name (as shown on your income tax return)	
	Business name/disregarded entity name, if different from above	
	Check appropriate box for federal tax classification: <input type="checkbox"/> Individual/sole proprietor <input type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate  <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ _____ <input type="checkbox"/> Exempt payee  <input type="checkbox"/> Other (see instructions) ▶ _____	
	Address (number, street, and apt. or suite no.)	Requester's name and address (optional)
	City, state, and ZIP code	
List account number(s) here (optional)		

<b>Part I Taxpayer Identification Number (TIN)</b>	<b>Social security number</b>																						
Enter your TIN in the appropriate box. The TIN provided must match the name given on the "Name" line to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see <i>How to get a TIN</i> on page 3.  <b>Note.</b> If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:10%;"></td> </tr> <tr> <td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td> </tr> </table>																						
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<b>Part II Certification</b>
Under penalties of perjury, I certify that:
1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and 2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and 3. I am a U.S. citizen or other U.S. person (defined below).
<b>Certification instructions.</b> You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 4.

<b>Sign Here</b>	Signature of U.S. person ▶	Date ▶
------------------	----------------------------	--------

**General Instructions**  
 Section references are to the Internal Revenue Code unless otherwise noted.

**Purpose of Form**  
 A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

**Note.** If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

**Definition of a U.S. person.** For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

**Special rules for partnerships.** Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.



## **Response to RFP #2252**

### **Request For Proposal (RFP) # 2252**

**“Institutional Network Service, Data Center Co-Location Service,  
and High-Speed Internet Service”**

**Prepared by: Amos Munoz**

**Sr. Executive – Wholesale Network Markets**

**Astound Broadband, LLC**

**[amunoz@wavebroadband.com](mailto:amunoz@wavebroadband.com) (925) 459-1048**

## **EXHIBIT E**

### **EXCEPTIONS TO SPECIFICATIONS/REQUIREMENTS**

**RFP No. 2552**

#### **Institutional Network Service, Data Center Co-location Service, and Speed Internet Service**

List below requests for clarifications, exceptions and amendments, if any, to the RFP and its exhibits, and submit with your proposal response.

The City is under no obligation to accept any exceptions and such exceptions may be a basis for proposal disqualification.

<b>Item No.</b>	<b>Reference to Page No.</b>	<b>Reference to Paragraph No.</b>	<b>Description</b>
4	20	1	Our insurer will not provide the City of Concord/City of Walnut Creek with 30 day notification prior to expiration or cancellation. Astound, however, can provide the Cities notification of insurance cancellation immediately upon us becoming aware of it.
5	20	1	Astound Broadband does not carry contractual liability insurance

**EXHIBIT G**  
**PROPOSAL SUBMITTAL FORM**  
**CITY OF CONCORD**  
**RFP #2252**

**Institutional Network Service, Data Center Co-location Service, and  
High-Speed Internet Service**

**TO THE CITY OF CONCORD:** In compliance with the notice inviting sealed proposals, the undersigned hereby proposes to furnish all necessary tools and equipment, materials, labor, and supervision (including cost of Workers' Compensation Insurance and all payroll taxes on such labor) to complete services above, in accordance with the Specifications and City of Concord General and Work Conditions therefor, and further agrees to enter into a Contract therefore, at the prices listed in the accompanying proposal. Prices are F.O.B. Destination, California. All prices and fees, including all applicable sales taxes, are included.

**A. If the proposer is an individual, so state, if a firm or co-partnership, state the firm name and give the name of all individual co-partners composing the firm. If a corporation, state legal name of corporation, and provide names of president, secretary, treasurer and manager thereof.**

Astound Broadband LLC– a Washington Limited Liability Company

**B. All persons submitting proposals shall list the name and location of place of business of each subcontractors regardless of the character of the work. (Attach additional page(s), if necessary.)**

Name Address Work to be Performed

1 No Sub-Contractors required by Astound as we are the incumbent provider

2 \_\_\_\_\_

3 \_\_\_\_\_ CITY OF  
CONCORD – REQUEST FOR PROPOSAL (RFP) #2252 27

C. Please indicate the total cost here and attached all required documents to follow.

**TOTAL COST: \$ 1,608,000.00 = Monthly Rate for 60 months + \$13,500 Install Charge for Howe  
Homestead location**

*(inclusive of all Schedules in this Exhibit)*

**Submitted by: Doug Schulz**

**COMPANY NAME: Astound Broadband, LLC**

**ADDRESS (Not a P.O. Box): 215 Mason Cir**

**CITY: STATE, ZIP CODE: Concord, CA 94520**

**PHONE NO.: (925)-459-1000 FAX NO.: 925-459-1102**

**EMAIL ADDRESS: [dschulz@wavebroadband.com](mailto:dschulz@wavebroadband.com)**

**YOUR NAME & TITLE: Doug Schulz, Vice President – Operations**

**SIGNATURE:**

**Signature** \_\_\_\_\_



**Date:** \_\_\_\_\_

4/1/13

## REQUIREMENTS

1. Contractor Qualifications and Business Viability: The contractor's structure and stability.

Astound Broadband, LLC ("Astound") is owned by WaveDivision Holdings, LLC, based in Kirkland, WA. Astound is a highly experienced broadband operating company owning and managing fiber and coax networks serving over 350,000 broadband, cable TV and telephone customers in the states of Washington, Oregon, and California.

### **We own the fiber**

Astound owns an advanced fiber-optic network along the San Francisco Peninsula, as well as in Concord, Walnut Creek, and Pleasant Hill. With Astound Broadband, you get dedicated connectivity on our network.

### **Customer Service**

Our advanced network and 24x7x365 proactive monitoring by our Network Operations Center (NOC) assures reliability. Our owned network eliminates the operational complexity associated with traditional dedicated data services. Our network is fully maintained by Astound employees so we can give you the most affordable option while still providing superior service. Astound is focused on providing world class customer satisfaction from our Enterprise Account Team, Engineering Team, and customer support systems.

### **Reliability/Diversity**

The City of Concord and City of Walnut Creek would be served directly from Astound's state of the art digital headend located at 220 Mason Circle, Concord, CA. Astound headends include robust back-up power and failover systems to insure maximum up time and system reliability.

### **Client Base**

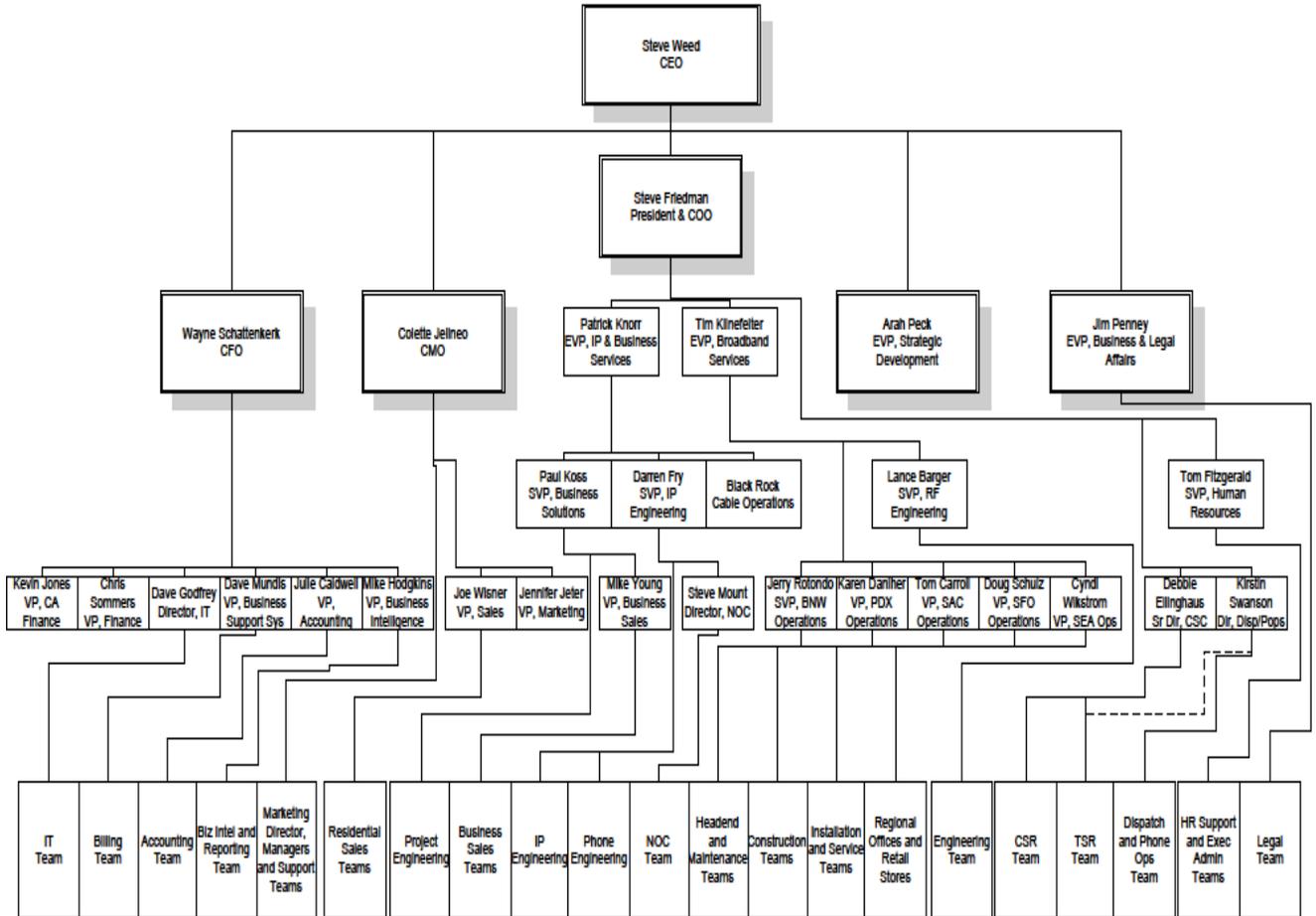
Astound serves many satisfied City and County entities, School Districts, Bio-Tech and Hi-Tech firms, Healthcare providers, and airports/airlines. Our services include residential and commercial Cable TV, Internet connectivity, Point to Point connectivity, Co-Location solutions, and Phone services.

*Contractor Qualifications: Please describe your company, including:*

- Headquarter location  
**Wave Division Holdings - 401 Parkplace Ctr # 500, Kirkland, WA 98033**  
**Astound Broadband office – 215 Mason Cir, Concord, CA. 94520**
- Date business established: **March 2003**
- Current number of employees: **Approx 700**
- Private or public company: **Astound Broadband LLC– a Washington Limited Liability Company**
- Annual Sales: approx. **\$266,000,000**
- Organization chart: **See Attachment**

# WDH Org Chart – October 2012

10/22/12



- Statement of Qualifications:

**Astound Business Solutions (Wave Division Holdings) has a track record of unparalleled performance in delivering quality Phone, Data, and Video solutions to Cities/Counties, Enterprise Businesses, Small Businesses, and Residential customers in California, Oregon, and Washington. Our data services consist of Internet, Point to Point Circuits, Dark Fiber solutions, and Co-Location Services. Our phone services consist of Analog lines, PRIs, and SIP lines and trunks. Our video content is delivered to over 350,000 residences and businesses throughout our serving areas.**

**As your incumbent provider, Astound is proud to deliver this RFP response to the Cities of Concord and Walnut Creek. As providers of Video, Data, and Phone services in your respective communities, we look forward to continuing our valued partnership and continuing to invest in your Cities. We feel the enclosed RFP response provides the Cities with the most aggressive pricing for Dark Fiber, Internet, and Co-Location services. Per the RFP, Astound is open to adjustments, as needed, to ensure our proposal best meets the needs of the City of Concord and Walnut Creek.**

**Astound will continue the level of service we have delivered thus far, all backed by our Service Level Agreements (SLA) and our Network Operations Center (NOC), which operates 365x7x24.**

*Negotiation Team*

- a. The decision maker and / or person authorized to sign the agreement on behalf of the proposer must be part of the negotiation team commencing with the Oral Presentation and Review Step of the process through to completion
  - Audio and / or Video conferencing is acceptable
- b. All members of the proposer’s negotiation team shall remain on the negotiation team through to completion
  - Separation from service with the proposer is excepted
- c. Provide the name(s) and title(s) of proposer’s negotiation team below

**Proposer’s Negotiation Team**

	<b>Name &amp; Role</b>	<b>Title</b>	<b>Phone</b>	<b>E-Mail</b>
<b>1</b>	<b>Doug Schulz Operations</b>	<b>VP Operations</b>	<b>650-464- 0036</b>	<b>dschulz@wavebroadband.com</b>
<b>2</b>	<b>Paul Koss Sales</b>	<b>VP Sales</b>	<b>425-896- 1899</b>	<b>pkoss@wavebroadband.com</b>
<b>3</b>	<b>Amos Munoz Sales</b>	<b>Account Executive</b>	<b>925-459- 1048</b>	<b>amunoz@wavebroadband.com</b>

2. Support and Service: Past performance of a similar nature and the ability of the proposer to provide support during the term of the contract. This phase of the evaluation includes contacting references and equipment demonstration. Please provide three references of similar engagements in the last 10 years for each of the services you are proposing.

**City of Concord Co-Location References:**

- 1) San Bruno Cable – Al Johnson – [ajohnson@sanbruno.ca.gov](mailto:ajohnson@sanbruno.ca.gov)
- 2) Race Technologies – Raul Alcaez – [raul@race.com](mailto:raul@race.com)
- 3) Crosslink Networks – Clark Smith – [csmith@crosslinknetworks.com](mailto:csmith@crosslinknetworks.com)

**City of Concord INET References:**

- 1) City of South San Francisco – Doug Hollis – [doug.hollis@ssf.net](mailto:doug.hollis@ssf.net)
- 2) City of Walnut Creek – Laura Peabody - [Peabody@walnut-creek.org](mailto:Peabody@walnut-creek.org)
- 3) City of Pleasant Hill – Craig Chandler – [cchandler@ci.pleasant-hill.ca.us](mailto:cchandler@ci.pleasant-hill.ca.us)

**City of Walnut Creek INET References**

- 1) City of Concord – Ron Puccinelli – [ron.puccinelli@cityofconcord.org](mailto:ron.puccinelli@cityofconcord.org)
- 2) City of South San Francisco – Doug Hollis – [doug.hollis@ssf.net](mailto:doug.hollis@ssf.net)
- 3) City of Pleasant Hill – Craig Chandler – [cchandler@ci.pleasant-hill.ca.us](mailto:cchandler@ci.pleasant-hill.ca.us)

**City of Concord - Internet References:**

- 1) City of Pleasant Hill – Craig Chandler – [cchandler@ci.pleasant-hill.ca.us](mailto:cchandler@ci.pleasant-hill.ca.us)
- 2) City of Daly City – Jerry Burdick – [jerry@dalycity.org](mailto:jerry@dalycity.org)
- 3) San Bruno Cable – Al Johnson – [ajohnson@sanbruno.ca.gov](mailto:ajohnson@sanbruno.ca.gov)

3. Product Capabilities: Ability and capacity to meet all “Request for Proposal” requirements contained herein.

**Astound, being the incumbent provider, is capable of meeting the Cities’ needs for Dark Fiber (INET), Internet, and Co-Location services. Some modifications to our data center are required to meet the requirements of this RFP. These are noted and will be in place within 12 months of Contract signature.**

Proposers may submit proposals for one or more of the three (3) requested services:

- A. Data Center co-location space (Concord only)

**Astound has provided a bid for this service**

- B. Internet Service Provision (Concord only)

**Astound has provided a bid for this service**

- C. Network Fiber (City of Concord and / or City of Walnut Creek)

**Astound has provided a bid for this service**

**A. Data Center co-location space (Concord only) Requirements:**

1. Secure building / structure including 24 X 7 surveillance meeting SAS-70 requirements

**Astound will comply with this requirement within 12 months of Contract signature.**

- a. Proximity to known fault lines, 100 year flood plains, PG&E infrastructure will be considered  
**Astound's headend at 220 Mason Circle, Concord is not within the 100 year flood plain. It is approximately 1.5 miles East of the Concord fault line, approximately 15 miles East of the Hayward fault line, and approximately 32 miles East of the San Andreas fault line.**
- b. Proof of SAS-70 certification will be required annually as required by DOJ and PCI

**Astound will be SAS-70, or equivalent, within 12 months of Contract signature.**

2. Dedicated and secure enclosure (HID Card Key) access 24 X 7 X 365 INCLUDING weekends and Holidays

**Astound complies with this requirement.**

- a. Space for eight (8) industry standard 19" enclosed cabinets – approximately 250 square feet  
**Astound complies with this requirement.**
- b. Area secured by industry accepted data center enclosures including secured card access controlled gates  
**As the current provider, only 7 of the City's 8 cabinets reside within the caged area. Should the City of Concord request it, Astound will provide a cage for the 8<sup>th</sup> cabinet within 4 months of such request.**

3. Minimum of 20 dedicated (not shared with any other client) 20 Amp (30 Amp preferred) Three- Phase electrical circuits provided to co-lo area

**Astound complies with this requirement, supplying Single phase to the racks**

- a. Circuit Panel housing City's circuits to be in secure location with access logging  
**As the current provider, the circuit panel is located within Astound's secure facility which requires badge access to enter.**
- b. UPS backup on each circuit capable of supporting 100% load for 30 minutes  
**Astound complies with this requirement.**
- c. Generator backup capable of supporting 100% load for a minimum of 14 days without requiring fuel service – indefinite run-time with fuel service

**Astound can support 100% load at the acceptable minimum of 5 days (per Addendum #2, page 2 of 4) without requiring fuel service.**

#### 4. Fire suppression

- a. Primary - FM-200 or other currently permitted electronics-safe fire suppression system  
**Astound complies with this requirement.**

- i. Define the expected time frame to return the primary system full normal protective operation after discharge

**Astound Business Solutions has a primary and secondary discharge system and if only the primary is discharged, the equipment would still be protected with the secondary FM-200 system. If both the primary and secondary systems are discharged, the replenishment of the FM-200 would be subject to scheduling the Astound FM-200 contractor to refill the tanks. Typically, this would occur within 5 business days of the discharge.**

- b. Backup - water sprinkler

- i. Dry stand-pipe sprinkler system

**Astound complies with this requirement.**

- ii. Water system set to activate as back-up ONLY

**Astound complies with this requirement.**

- If primary system is discharged **and** fire continues or re-starts

**Astound Business Solutions complies with this requirement.**

#### 5. Environmental control

- a. HVAC sufficient to maintain the co-lo space, including any and all other clients' spaces sharing HVAC service with the City's space at specified temperature and humidity ranges 24 X 7 X 365

- i. Temperature between

- Warm Zone 65 and 72 degrees Fahrenheit
- Cold Zone 55 and 68 degrees Fahrenheit

**Astound will comply with this requirement within 12 months of Contract signature.**

- ii. Relative Humidity between 35% and 65% non-condensing

**Astound will comply with this requirement within 12 months of Contract signature.**

6. Facility monitoring and reporting 24 X 7 X 365 including:

a. Alerting designated City staff in the event of fire, electrical utility failure, and environmental excursions above or below set points

**Astound will comply with this requirement within 12 months of Contract signature.**

b. Attempted unauthorized access to Facility and / or City's co-lo space

**Astound will comply with this requirement within 12 months of Contract signature.**

i. Includes successful and unsuccessful access attempts

**Astound will comply with this requirement within 12 months of Contract signature.**

c. Reason to believe civil disobedience, demonstration, or other activity may target the Facility  
i.e. Occupy Protests or any other act(s) of civil disobedience

**Astound will comply with this requirement within 12 months of Contract signature.**

7. Term of the agreement:

a. Initial 5 years

**Astound complies with this requirement**

b. Option to extend for an additional 5 years (10 years total)

**Astound complies with this requirement**

Please respond to each of the above requirements along with any other features you are proposing and complete the costing tables below.

**SCHEDULE I:**

For Data Center co-location space (Concord only)

A. Costs:

List the one-time costs for installation – include a total (Add additional pages if necessary)

Item	Description	Quantity	Unit Cost	Extended Cost
1	Industry standard 19" enclosed cabinets – approximately 250 square feet	8	\$0	\$0
Total			\$0	\$0

**(Proposal Submittal –continued)**

B. Costs:

List the on-going costs (annual) for co-location - *include a total for 5 years and annual cost per year for an additional 5 years.* (Add additional pages if necessary)

Item	Description	Quantity	Annual Unit Cost	Extended Cost for 8 cabinets
1	Industry standard 19" enclosed cabinets – approximately 250 square feet	8	\$ 6,000.00 Annually \$500/cab/month	\$ 48,000.00 annually
Total	5 year costs	8	\$ 30,000.00 (\$500/cab x 60 Months)	\$ 240,000
Total	Additional 5 year cost	8	\$ 30,000.00 (\$500/cab x 60 Months)	\$ 240,000

## **B. Internet Service Provision (Concord Only) Requirements:**

1. Must be able to support Border Gateway Protocol (BGP)

### **Astound complies with this requirement**

a. Multi-homed Internet service with multiple providers

**Astound complies with this requirement**

b. Must be able to support both IP V4 and IP V6 BGP implementation simultaneously

**Astound supports IPV4 at the time of this response. We will be able to support IP V6 by end of year 2013.**

i. City is in the process of obtaining its own IPV6 address space from ARIN

ii. Must be able to provide Class C IP V4 address block

**Astound complies with this requirement**

- City uses current ISP's IP V4 address space

2. 50 Mbps with Ethernet hand-off

a. Single Mode fiber preferred \_ **Astound complies with this preference**

b. Ability to burst above 50 Mbps - **Astound complies with this requirement**

c. Ability to expand beyond 50 Mbps in the future without requiring additional infrastructure build-out. **Astound complies with this requirement**

3. Term of the agreement

a. Initial 5 years - **Astound has provided a bid for an initial 5 year term**

b. Option to extend for an additional 5 years (10 years total) - **Astound has provided the option to extend for an additional 5 years (10 years total)**

Please respond to each of the above requirements along with any other features you are proposing and complete the costing tables below.

**Astound Broadband will deliver this Internet Connection to the City of Concord's Co-Location space at 220 Mason Circle, Concord, CA.**

**SCHEDULE II:**

For Internet Service Provision (ISP) (Concord Only)

**A. Costs:****List the one-time costs for installation - *include a total.* (Add additional pages if necessary)**

Item	Description	Quantity	Unit Cost	Extended Cost
1	50 Mbps Internet connection, burstable to 1Gbps. This will be an upgrade of the existing 10 Mbps connection at 220 Mason Cir, Concord, CA	1	\$0	\$ 0
Total			\$ 0	\$ 0

**B. Costs:****List the on-going costs (annual) for ISP - *include a total for 5 years and annual cost per year for an additional 5 years.* (Add additional pages if necessary)**

Item	Description	Quantity	Unit Cost	Extended Cost
1	50 Mbps Internet connection, burstable to 1 Gbps. Includes Class C IP V4 address block. Service to be delivered to City of Concord's Co-Location space at 220 Mason Cir, Concord, CA.	1	\$ 6,000.00 Annually (\$500.00/month)	\$ 6,000.00 Annually
2	Burstable rate as measured by 95 <sup>th</sup> percentile	Rate per Mbps beyond 50 Mbps	\$ 5.00 per Mbps	\$ 5.00 per Mbps
Total	5 year pricing	1	\$ 30,000	\$ 30,000
Total	Optional – Additional 5 years	1	\$ 30,000	\$ 30,000
Item	Description – Optional service	Quantity	Unit Cost	Extended Cost
1	100 Mbps Internet Connection, burstable to 1 Gbps. Includes Class C IP V4 address block. Service to be delivered to City of Concord's Co-Location space at 220 Mason Cir, Concord, CA.	1	\$ 10,800.00 Annually (\$ 900.00 per month)	\$ 10,800.00
2	Burstable rate as measured by 95 <sup>th</sup> percentile	Rate per Mbps beyond 50 Mbps	\$ 4.50 per Mbps per month	\$ 4.50 per Mbps per month
Total	5 year pricing	1	\$ 54,000	\$ 54,000
Total	Optional – Additional 5 years	1	\$ 54,000	\$ 54,000

## **C. Network Fiber (Concord and Walnut Creek) Requirements:**

1. Type of systems requested – Propose 1 of these three options:

a. Option 1; **Astound has provided a bid for long-term lease of Dark Fiber**

i. Dark Fiber sale / rental / long-term lease

1. Minimum of 4 Pair (8 strands) **Astound has provided 3 options (attached);**

- **RFP required Strands option – 8 strands for all locations, 24 strands as specified**
- **A Reduced Strand option**
- **An Existing Strand option**

2. Selected sites will require up to 12 Pair (24 strands) **Astound complies with this. See attached spreadsheet.**

3. All connections to be Single Mode Fiber with SC-APC connectors  
**Astound complies with this**

ii. Term of agreement:

1. Initial 5 years **Astound complies with this**

2. Option to extend for an additional 5 years (10 years total) **Astound complies with this**

b. Option 2: Managed Ethernet service with:

**Astound will not respond to this option**

i. Minimum of 1Gbps now

ii. Capable of expanding to 10Gbps

i. Without requiring additional infrastructure build out

ii. Describe process, costs, and timing to implement

iii. Physical Layer Handoff

i. Preferred - Single Mode Fiber with SC-APC connectors

ii. Describe proposed hand-off and any available options with associated costs

iv. Term:

1. Initial 5 years

2. Option to extend for an additional 5 years (10 years total)

c. Option 3: City funded “Build-Own-Operate” project to install Fiber, wireless - microwave, laser, other media, or any combination

c. **Astound will not Respond to this option**

2. Number of sites and locations

a. Concord approximately 28 sites – See attached map of locations; **Astound shows 22 City of Concord sites + the Data Center at 220 Mason Circle, Concord, CA. Willow Pass Field #1 is not on Astound Fiber at this time.**

b. Walnut Creek approximately 17 sites – See attached map of locations **Astound Business Solutions shows 16 existing sites and 1 potential new site (Howe Homestead)**

3. Identify worst-case-scenario time-line (Calendar Time) from “Notice to Proceed” to “in Production use”

**Astound Business Solutions’ services are in place with no other work to be done. The only exception is the build to Howe Homestead for the City of Walnut Creek. Estimate of 60-90 days for that location. To be confirmed upon Site Survey.**

4. Proposed solution must be fully operational, including completion of acceptance testing by :

a. Concord by End of 1Q 2014 **Astound complies with this requirement**

b. Walnut Creek End of 2Q 2014 **Astound complies with this requirement**

5. Identify any dependencies on City

a. Staff or other resources, Data, Permitting, Environmental Impact Report, etc.

**Assuming that the network architecture is consistent with what has been deployed there will be very little if any impact to the Cities. The Cities will essentially continue to utilize the network as they have to date.**

b. Approximate time-frames both duration and sequence

**Astound’s services are in place**

6. Identify 10-Year Cost of Ownership

a. Both one-time and on-going recurring costs **Astound has provided price sheets**

b. Identify process and costs to add 1 location **Astound Business Solutions would conduct a site survey to develop estimated costs to extend fiber to the location and provide quote to City, including Installation Charges (one time) and Monthly recurring Rate.**

c. identify process and costs to remove 1 location

**Astound would conduct a site survey to develop estimated costs to remove the fiber to the location. Astound would provide a quote to the City for the removal and also provide the reduced monthly recurring monthly rate.**

d. Budgetary estimates are sufficient for initial response

i. Final proposals will be developed through a Best-And-Final-Offer process

7. Identify process for reporting problems and process to resolve;

**Astound’s trouble reporting process is for customer to contact our Network Operations Center (NOC). The NOC can be reached 24x7x365 at 888-317-0488**

**See Astound Service Level Agreement (SLA) below;**

Specifications, Maintenance and Repair for Leased Dark Fiber Strands

- 1) If Wave needs to perform maintenance on the Leased Fiber to comply with the terms of this Agreement, such maintenance will be performed at Wave's reasonable discretion or at Customer's request and must be coordinated between the Parties.. If there will be a scheduled outage, Wave shall notify Customer three days in advance of such maintenance or scheduled outage.
- 2) In the event of a fiber cut, Customer shall notify the Wave Network Operations Center (NOC). Wave shall have a technician en route on site within four hours to isolate the fiber cut and begin repairing and replacing fiber as necessary. The NOC shall provide hourly status reports to Customer and shall be available to open a bridge for the duration of the outage and provide status reports and updates every hour as required by Customer.

- a. For any Managed Service proposal – provide your Service Level Agreement (SLA)

**Astound will not be bidding a Managed Service proposal**

8. Support technicians granted access to City of Concord and/or City of Walnut Creek law enforcement secured network facilities shall be fingerprinted and required to complete a criminal records background check prior to accessing the site **Astound complies with this requirement**

9. Support of Television Studio and cameras (Concord only)

**Astound will not respond to the Support of Television Studio and cameras**

**SCHEDULE III:**

For Network Fiber (Concord)

**A. Costs:**

List the one-time costs for installation parts and labor *include a total*. (Add additional pages if necessary)

Item	Description	Quantity	Unit Cost	Extended Cost
1	22 of the 23 sites are already connected via Dark Fiber to your Data Center at 220 Mason Cir, Concord, CA. Your location identified as "Willow Pass Field #1" requires a Site Survey to determine the costs for adding this location to your network.	1	TBD	Site Survey required to determine the cost for adding this location
Total			TBD	To Be Determined

**B. Costs:**

List the on-going costs (annual) for Network Fiber Concord - *include a total for 5 years and annual cost per year for an additional 5 years*. (Add additional pages if necessary)

Item	Description	Quantity	Unit Cost/Per Site (5 year)	Extended Cost (x Quantity for 5 years)
1	Dark Fiber Connectivity (8 strands) between 20 of the City's identified sites and 220 Mason Cir, Concord, CA	20	\$ 30,000.00 (\$500/Month/site x 60 months)	\$ 600,000.00 (\$ 30,000 x 20 sites)
2	Dark Fiber Connectivity (24 strands) between the 3 of the City's identified sites and 220 Mason Cir, Concord, CA	3	\$ 72,000.00 (\$1,200/month/site x 60 months)	\$ 216,000.00 (\$ 3,600 for 3 sites)
<b>TOTAL</b>	<b>FIRST 5 YEARS</b>	23	n/a	<b>\$ 816,000.00</b>
<b>TOTAL</b>	<b>Cost for an additional 5 years</b>	23	n/a	<b>\$ 816,000.00</b>

\*\*\*\*Please see attached spreadsheet with 2 other configuration options. Pricing above also includes

Astound providing 4 strands of Dark Fiber between 220 Mason Cir, Concord and 1666 N. Main St., Walnut Creek for connecting the 2 INETs.



INET Pricing  
3-29-13.xlsx

For Network Fiber Walnut Creek

**A. Costs:**

List the one-time costs for installation - *include a total.* (Add additional pages if necessary)

Item	Description	Quantity	Unit Cost	Extended Cost
1	Connect Howe Homestead to 1666 N. Main St, Walnut Creek via 8 dark fiber strands	1	\$ 13,500.00	\$ 13,500.00
Total			\$ 13,500.00	\$ 13,500.00

**B. Costs:**

List the on-going costs (annual) for Network Fiber Walnut Creek - *include a total for 5 years and annual cost per year for an additional 5 years.* (Add additional pages if necessary)

Item	Description	Quantity	Unit Cost/Per Site (5 year)	Extended Cost (x Quantity for 5 years)
1	Dark Fiber Connectivity (8 strands) between 15 of the City's identified sites and 1666 N. Main St., Walnut Creek, CA. (Includes Howe Homestead site)	15	\$ 30,000.00 (\$500/site/month x 60 months)	\$ 450,000.00 (\$ 30,000 x 15 sites)
2	Dark Fiber Connectivity (24 strands) at 1666 N. Main St. Walnut Creek, CA	1	\$ 72,000.00 (\$1,200/site/month x 60 months)	\$ 72,000.00
<b>TOTAL</b>	<b>FIRST 5 YEARS</b>	<b>16</b>	<b>n/a</b>	<b>\$ 522,000.00</b>
<b>TOTAL</b>	<b>Cost for an additional 5 years</b>	<b>16</b>	<b>n/a</b>	<b>\$ 522,000.00</b>

\*\*\*\*Please see attached spreadsheet with 2 other configuration options. Pricing above also includes Astound providing 4 strands of Dark Fiber between 220 Mason Cir, Concord and 1666 N. Main St., Walnut Creek for connecting the 2 INETs.



INET Pricing  
3-29-13.xlsx

EXHIBIT H

Form <b>W-9</b> (Rev. December 2011) Department of the Treasury Internal Revenue Service	<h2 style="margin:0;">Request for Taxpayer Identification Number and Certification</h2>	Give Form to the requester. Do not send to the IRS.
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Print or type See Specific Instructions on page 2.	Name (as shown on your income tax return) <b>WaveDivision Holdings, LLC</b>	
	Business name/disregarded entity name, if different from above <b>Wave Broadband, Astound Broadband, Wave Business Solutions, Astound Business Solutions</b>	
	Check appropriate box for federal tax classification: <input type="checkbox"/> Individual/sole proprietor <input type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate <input checked="" type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ <b>P</b>	
	<input type="checkbox"/> Other (see instructions) ▶	
	Address (number, street, and apt. or suite no.) <b>401 Parkplace Center, Ste 500</b> City, state, and ZIP code <b>Kirkland, WA 98033</b>	Requester's name and address (optional)
List account number(s) here (optional)		

<b>Part I Taxpayer Identification Number (TIN)</b>																				
Enter your TIN in the appropriate box. The TIN provided must match the name given on the "Name" line to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see <i>How to get a TIN</i> on page 3.	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td colspan="9" style="text-align: center; font-size: 8px;">Social security number</td> </tr> <tr> <td style="width:20px; height: 20px;"></td> </tr> </table>	Social security number																		
Social security number																				
<b>Note.</b> If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td colspan="9" style="text-align: center; font-size: 8px;">Employer identification number</td> </tr> <tr> <td style="width:20px; height: 20px; text-align: center;">4</td> <td style="width:20px; height: 20px; text-align: center;">5</td> <td style="width:20px; height: 20px; text-align: center;">-</td> <td style="width:20px; height: 20px; text-align: center;">0</td> <td style="width:20px; height: 20px; text-align: center;">4</td> <td style="width:20px; height: 20px; text-align: center;">9</td> <td style="width:20px; height: 20px; text-align: center;">5</td> <td style="width:20px; height: 20px; text-align: center;">5</td> <td style="width:20px; height: 20px; text-align: center;">6</td> <td style="width:20px; height: 20px; text-align: center;">5</td> </tr> </table>	Employer identification number									4	5	-	0	4	9	5	5	6	5
Employer identification number																				
4	5	-	0	4	9	5	5	6	5											

<b>Part II Certification</b>	
Under penalties of perjury, I certify that:	
1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and	
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and	
3. I am a U.S. citizen or other U.S. person (defined below).	
<b>Certification instructions.</b> You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 4.	

<b>Sign Here</b>	Signature of U.S. person ▶	Date ▶ <u>5/18/2012</u>
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**General Instructions**

Section references are to the Internal Revenue Code unless otherwise noted.

**Purpose of Form**

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

- Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
- Certify that you are not subject to backup withholding, or
- Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

**Note.** If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

**Definition of a U.S. person.** For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

**Special rules for partnerships.** Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

Intentionally left blank

**ORIGINAL****LEASE AGREEMENT**

This Lease is entered into effective June 19, 2007, between the City of Concord, a California municipal corporation ("Tenant") and Astound Broadband, LLC, a Washington limited liability company ("Landlord").

**RECITALS**

This Lease is entered into on the basis of the following facts, understandings and intentions of the parties:

A. The Landlord is the owner of those certain real property improvements consisting of space referred to as the "Headend" within a structure located at 220 Mason Circle, Concord, California (the "Building"). Tenant desires to lease space in the Headend to house and operate computer equipment (servers) to be used for police and internal City applications only.

B. Landlord agrees to lease Tenant space within the Headend depicted on the floor plan attached hereto as Exhibit A. The space within the Headend shall be referred to herein as the "Property."

C. Tenant wishes to relocate some of its computer equipment and undertake the responsibility for constructing tenant improvements; other tenant improvements are expressly agreed to be performed by Landlord to make the Property suitable for its intended use and occupancy.

D. Landlord desires to lease to Tenant and Tenant desires to lease from Landlord the Property on the terms and conditions set forth in this Lease.

**TERMS AND CONDITIONS**

For good and valuable consideration, the parties agree as follows:

**Section 1. Lease.** Landlord leases to Tenant and Tenant leases from Landlord the Property on the terms and conditions in this Lease.

**Section 2. Term of Lease.** The term of this Lease ("Term") shall commence on July 1, 2007 ("Commencement Date") and expire on June 30, 2012 ("Expiration Date"), unless sooner terminated pursuant to the terms of this Lease. To terminate the lease, Landlord shall provide written notice of termination to the Tenant at least One Hundred Eighty (180) days prior to the expiration of the Term. Landlord may terminate the lease immediately upon an event of default as set forth in Section 16.

Upon giving no less than Ninety (90) days notice prior to the expiration of the initial term, Tenant may extend the lease for an additional one year period under the

same terms and conditions of this lease, provided Tenant is not in default of any term of this lease.

**Section 3. Rent.** The rent shall be Four Thousand Dollars (\$4000) per month for up to eight equipment cabinets, with an additional (\$500) per month for each additional cabinet installed by Tenant during the Term of this lease. Landlord will bill the Tenant quarterly and in advance. All amounts billed are due within 30 days. Landlord acknowledges that under the terms of the cable franchise agreement between Landlord and Tenant that Tenant is permitted to install one equipment cabinet within the Property at no charge.

**Section 4. Use.**

(a) Tenant shall use the Property for storage and operation of computer equipment in the conduct of Tenant's governmental operations and for no other purpose. Computer equipment may not be used for services that may be deemed as to be in competition with the Landlord. Tenant shall not use the Property for any unlawful purpose.

(b) Tenant shall not allow the commission of any acts on the Property, nor allow use of the Property in any manner that might cause the cancellation of any insurance, self-insurance or joint self-insurance covering the Property.

(c) Tenant shall not allow the commission of any waste or any public or private nuisance upon the Property.

(d) Tenant shall, at its expense, comply with all laws, rules, regulations and orders of all federal, state, and local governments or agencies that may be applicable to use of the Property, including but not limited to the General Plan and Zoning Ordinance of the City of Concord, in their current form or as they may hereafter be amended.

(e) The grant of permission herein shall in no way limit Landlord's right to maintain and operate the Headend as will best enable Landlord to fulfill its own needs, service requirements or obligations.

**Section 5. Utilities.** During the Term, Landlord shall provide Tenant two circuits per equipment cabinet. The circuits shall be UPS protected. Landlord shall also provide Tenant with back up generator power which will provide power to Tenant's equipment for at least a 48 hour period in the event of a power outage. Landlord shall be responsible for and pay, before delinquency, all utilities and services furnished to or used by it with respect to the Property, including without limitation electricity, natural gas, water, telephone, and solid waste collection and all charges related thereto.



**Section 6. Condition of Property.** Tenant acknowledges that it has inspected the Property and conducted all investigations of the Property which Tenant deems necessary or desirable. Tenant accepts the Property in its "as is" condition with no representations or warranties whatsoever from Landlord as to its suitability for Tenant's intended purposes.

**Section 7. Repairs and Maintenance.**

(a) Tenant shall, at its sole expense, maintain the Property in good condition and repair throughout the Term of this Lease.

(b) If, at any time during the Term, Tenant fails to maintain the Property or to make any repairs or replacements as required by this Section 7, Landlord may, but shall not be required to, enter upon the Property and perform the maintenance or make the repairs or replacements for the account of Tenant; any sums expended by Landlord in so doing, together with interest at ten percent (10%) per annum, shall be immediately due in full from Tenant on demand of Landlord.

(c) Tenant waives the provisions of Civil Code Sections 1941 and 1942 and any other law that would require Landlord to maintain the Property in a tenantable condition or would provide Tenant with the right to make repairs and deduct the cost of those repairs from the rent.

(d) Tenant shall at all times conduct its work operations, and maintain the Equipment in a safe manner.

(e) Tenant will be solely responsible for its acts or omissions, or those of its agents or third-party contractors, and liable for any damages caused by any of such parties to the Building or Headend or their contents.

**Section 8. Tenant Improvements.** Subject to Landlord's approval as provided in this Section 8, Tenant shall make such improvements to the Property, as Tenant deems necessary to make the Property suitable for Tenant's intended use.

Landlord shall only be responsible for providing tenant or other improvements pursuant to a fully executed "Service Order" as specified in Exhibit "B".

Tenant shall not make any alterations, additions or improvements to the Property without Landlord's prior written consent which consent may be withheld in Landlord's sole and absolute discretion. As a condition of giving such consent and except as provided in this section 8, Landlord may require that Tenant restore the Property at the end of the Term to the same condition as existed before the alterations. Before commencing any work relating to alterations, additions or improvements affecting the Property, Tenant shall notify Landlord of the expected date of commencement thereof and of the anticipated cost thereof, and shall furnish complete

drawings and specifications describing such work as well as such other information as shall reasonably be requested by Landlord. Landlord shall then have the right at any time and from time to time to post and maintain on the Property such notices as Landlord reasonably deems necessary to protect the Property and Landlord from mechanics' liens or any other liens. In any event, Tenant shall pay, when due, all undisputed claims for labor or materials furnished to or for Tenant at or for use in the Property and shall bond against the full amount of all disputed claims. Tenant shall not permit any mechanics' liens to be levied against the Property for any labor or materials furnished to Tenant or claimed to have been furnished to Tenant or to Tenant's agents or contractors in connection with work of any character performed or claimed to have been performed on the Property by or at the direction of Tenant. All alterations, improvements or additions in or about the Property performed by or on behalf of Tenant shall be done in a first-class, workmanlike manner and in material compliance with all applicable laws, ordinances, regulations and orders of any governmental authority having jurisdiction thereover, as well as the requirements of insurers of the Property. Except for the equipment cabinets which shall be retained by Tenant, all alterations and improvements made to the Property shall become the property of Landlord and shall remain on and be surrendered to Landlord at the expiration or sooner termination of this Lease.

**Section 9. Entry.** Tenant shall permit Landlord and Landlord's agents, representatives, and employees to enter upon the Property at all reasonable times and upon reasonable notice (except in an emergency in which case no notice shall be required) to inspect the Property, to determine whether Tenant is complying with the terms of this Lease and to do other lawful acts that may be necessary to protect Landlord's interest in the Property. Notwithstanding the foregoing, Landlord acknowledges that Tenant's equipment cabinets house highly sensitive information that is maintained as part of Tenant's governmental operations. Landlord's access to these areas is conditioned upon Landlord being accompanied by Tenant's employees and that at least 24 hours advanced notice be given to Tenant prior to access to these areas by Landlord, except in emergency situations where no advance notice is required.

**Section 10. Surrender of Property; Holding Over.**

(a) Surrender. On the Expiration Date or earlier termination of the Term, Tenant shall promptly surrender and deliver possession of the Property to Landlord in the same condition as existed upon the date of completion of the initial Tenant Improvements constructed by Tenant pursuant to Section 8 above, reasonable wear and tear excepted.

(b) Holdover. In the event Tenant holds over with permission of the Landlord for any reason beyond the Expiration Date, in the absence of a written agreement to the contrary, the tenancy shall be month to month.

**Section 11. Indemnity.** Tenant shall defend, hold harmless and indemnify Landlord and its affiliates, officers, partners, agents and employees from any and all claims, demands, actions, damages, judgments, expenses, costs (including reasonable attorney's fees) and liabilities arising out of Tenant's access to or use of the space as depicted on floor plan on Exhibit A, except where such claims and liabilities arise out of the gross negligence or willful misconduct of the Landlord.

**Section 12. Insurance.** Tenant will maintain personal injury and property damage insurance in an amount of not less than \$2,000,000 and employer's liability and workers' compensation insurance.

Tenant represents that it is self insured and participates as a member in the CESAC Excess Insurance Authority and has sufficient reserves to meet claims for personal injury and property damage in an amount of not less than \$2,000,000 and employer's liability and workers' compensation insurance.

Tenant acknowledges Landlord will not insure for any loss or damage to the Equipment or any of the Tenant's property of any kind owned or leased by Tenant or its employees, servants or agents.

**Section 13. Force Majeure.** Neither party shall have any claim or right against the other party for any failure of or delay in performance by such other party (other than Tenant's payment obligations pursuant to Section 3) if the failure or delay is caused by or the result of causes beyond the reasonable control of such other party, including, but not limited to, acts of God, fire, flood, hurricane, or other natural catastrophe; terrorist actions, laws, orders, regulations, directions or actions of governmental authorities, having jurisdiction over the subject matter hereof, or any civil or military authority, national emergency, insurrection, riot or war; inability to obtain equipment, material or other supplies, or other similar occurrence beyond the control and without fault or negligence of the affected party. Notwithstanding the foregoing, if the excusable delay exceeds 60 days, either party may terminate this Agreement immediately upon written notice without incurring any termination liability.

**Section 14. Condemnation.**

(a) Full Condemnation. If, during the Term, the whole of the Property shall be taken pursuant to any condemnation proceeding, this Lease shall terminate as of the date that actual physical possession of the Property is taken, and after that, both Landlord and Tenant shall be released from all obligations under this Lease.

(b) Partial Condemnation. If, during the Term only a part of the Property is taken pursuant to any condemnation proceeding and the remaining portion is not suitable or adequate for the purposes for which Tenant was using the Property prior to the taking, or if by reason of any law or ordinance the use of the Property for the purposes specified in this Lease shall become unlawful, then after the taking or the occurrence of the other above-described events, Tenant shall have the option to terminate this Lease upon ten (10) days' written notice to Landlord.

(c) Restoration. If only a part of the Property is taken pursuant to any condemnation proceeding and provided Tenant does not have the option to terminate this Lease as provided in Subsection (b) above, or having the option to terminate Tenant elects not to terminate, then Landlord shall at Landlord's expense promptly proceed to restore the remainder of the Property.

(d) Condemnation Award. Landlord shall be entitled to the entirety of any condemnation award in the event the whole or any part of the Property is taken pursuant to any condemnation proceeding.

**Section 15. Assignment and Subletting.** Tenant shall not have any right to assign this Lease or sublease the Property.

**Section 16. Default.**

Any of the following events or occurrences shall constitute a material breach of this Lease by Tenant and, after the expiration of any applicable cure period, shall constitute an event of default (each an Event of Default):

(a) The failure by Tenant to pay any amount in full when it is due under this Lease;

(b) The failure by Tenant to perform any other obligation under this Lease, if the failure has continued for a period of ten (10) days after Landlord demands in writing that Tenant cure the failure. If, however, by its nature the failure cannot be cured within ten (10) days, Tenant may have a longer period as is necessary to cure the failure, in any event not to exceed sixty (60) days, but this is conditioned upon Tenant's promptly commencing to cure within the ten (10) day period and thereafter diligently completing the cure. Notwithstanding the foregoing, if Tenant has defaulted in the performance of the same obligation more than one time in any twelve-month period and notice of such default has been given by Landlord in each instance, no cure period shall thereafter be applicable hereunder. Tenant shall indemnify, defend and hold harmless Landlord against any liability, claim, damage, loss, or penalty that may be threatened or may in fact arise from that failure during the period the failure is uncured;

(c) The appointment of a trustee or receiver to take possession of all or substantially all of Tenant's assets; or the attachment, execution or other judicial seizure of all or substantially all of Tenant's assets located at the Property or of Tenant's interest in this Lease, unless the appointment or attachment, execution, or seizure is discharged within thirty (30) days; or the involuntary filing against Tenant, of (i) a petition to have Tenant declared bankrupt, or (ii) a petition for reorganization or arrangement of Tenant under any law relating to insolvency or bankruptcy, unless, in the case of any involuntary filing, it is dismissed within sixty (60) days;

(d) The abandonment of the Property by Tenant;

(e) The failure by Tenant to continuously operate the Property for the permitted use described in Section 4 above; and

**Section 17. Remedies.** Upon the occurrence of an Event of Default, Landlord, in addition to any other rights or remedies available to Landlord at law or in equity, shall have the right to terminate this Lease and all rights of Tenant under this Lease by giving Tenant written notice that this Lease is terminated.

Except where inconsistent with or contrary to any express provisions of this Lease, no right or remedy conferred upon or reserved to either party is intended to be exclusive of any other right or remedy, or any right or remedy given or now or later existing at law or in equity or by statute.

**Section 18. Default Interest.** If Tenant fails to pay any amount due under this Lease as and when due, that amount shall bear interest at the rate of ten percent (10%) per annum from the due date until paid, or at such lower rate as may be the highest rate legally permitted.

**Section 19. No Waiver of Breach.** Any express or implied waiver of a breach of any term of this Lease shall not constitute a waiver of any further breach of the same or any other term of this Lease; and the acceptance of rent shall not constitute a waiver of any breach of any term of this Lease, except as to the payment of rent accepted.

**Section 20. Attorney's Fees.** If any action at law or in equity is brought to recover any rent or other sums due under this Lease, or for or on account of any breach of, or to enforce or interpret any of, the covenants, terms, or conditions of this Lease, or for the recovery of the possession of the Property, the prevailing party shall be entitled to recover from the other party as part of prevailing party's costs reasonable attorneys' fees, the amount of which shall be fixed by the court and shall be made a part of any judgment rendered.

**Section 21. Notices.** Except as otherwise expressly provided by law, all notices or other communications required or permitted by this Lease or by law to be served on or given to either party to this Lease by the other party shall be in writing and shall be deemed served when personally delivered to the party to whom they are directed, or three (3) business days after deposit in the United States Mail, first-class, postage prepaid, addressed as follows:

*Handwritten initials*

to Tenant at:

City of Concord  
1950 Parkside Dr.  
Concord, CA 94519  
Attn: Ron Puccinelli

to Landlord at:

Astound Broadband  
215 Mason Circle  
Concord, CA 94520  
Attn: Will Minyard

with a copy to:

Astound Broadband  
401 Kirkland Parkplace, Suite 500  
Kirkland, WA 98033  
Attn: Steve Weed and Jim Penney

Either party, Tenant or Landlord, may change the address for the purpose of this Section by giving written notice of the change to the other party in the manner provided in this Section.

**Section 22. Successors in Interest.** Subject to the provisions of this Lease prohibiting assignment or subletting by Tenant, this Lease shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of Landlord and Tenant.

**Section 23. Severability.** Should any provision of this Lease be held by a court of competent jurisdiction to be either invalid or unenforceable, the remaining provisions of this Lease shall remain in effect to the fullest extent allowed by law.

**Section 24. Entire Agreement.** This Lease constitutes the sole agreement between Landlord and Tenant respecting the Property, the leasing of the Property to Tenant, and the specified lease term, and correctly sets forth the obligations of Landlord and Tenant. Any other oral or written understandings, agreements or representations respecting the Property or their leasing by Landlord to Tenant not expressly set forth in this Lease are of no force or effect.

**Section 25. Time of Essence.** Time is of the essence in this Lease.

**Section 26. Amendments.** This Lease may be modified only in writing and only if signed by the parties at the time of the modification.

**Section 27. Subordination.**

(a) This Lease shall be subordinate to any ground lease, mortgage, deed of trust, or any other hypothecation for security now or later placed upon the Property and to any advances made on such security or Landlord's interest in the Property, and to all renewals, modifications, consolidations, replacements, and extensions thereof. However, if any mortgagee, trustee, or ground lessor elects to have this Lease prior to the lien of its mortgage or deed of trust or prior to its ground lease, and gives notice of such election to Tenant, this Lease shall be deemed prior to the mortgage, deed of trust, or ground lease, whether this Lease is dated prior or subsequent to the date of the mortgage, deed of trust, or ground lease, or the date of recording thereof. If any mortgage or deed of trust to which this Lease is subordinate is foreclosed or a deed in lieu of foreclosure is given to the mortgagee or beneficiary, Tenant shall attorn to the purchaser at the foreclosure sale or to the grantee under the deed in lieu of foreclosure. If any ground lease to which this Lease is subordinate is terminated, Tenant shall attorn to the ground lessor. Tenant agrees to execute any documents, in form and substance reasonably acceptable to Tenant, required to subordinate this Lease, to make this Lease prior to the lien of any mortgage or deed of trust or ground lease, or to evidence the attornment.

(b) If any mortgage or deed of trust to which this Lease is subordinate is foreclosed or a deed in lieu of foreclosure is given to the mortgagee or beneficiary, or if any ground lease to which this Lease is subordinate is terminated, this Lease shall not be barred, terminated, cut off, or foreclosed. Neither shall the rights and possession of Tenant under this Lease be disturbed, if Tenant is not then in default in the payment of rental and other sums due under this Lease or otherwise in default under the terms of this Lease, and if Tenant attorns to the purchaser, grantee, or ground lessor or, if requested, enters into a new lease for the balance of the term of this Lease on the same terms and provisions in this Lease. Tenant's covenant to subordinate this Lease to any ground lease, mortgage, deed of trust, or other hypothecation later executed is conditioned on each senior instrument containing the commitments specified in this subsection.

**Section 28. Merger.** Subject to the provisions of this Lease prohibiting assignment or subletting by Tenant, the voluntary or other surrender of this Lease by Tenant, or a mutual cancellation of the Lease, or a termination by Landlord, shall not work a merger, and shall, at the option of Landlord, terminate all or any existing sub-tenancies or may, at the option of Landlord, operate as an assignment to Landlord of any of the sub-tenancies.

**Section 29. Governing Law.** This Lease shall be governed by and construed in accordance with the laws of the State of California.

**Section 30. Disclaimers of Warranty and Liability.** THE SPACE IS PROVIDED ON AN "AS IS" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR

IMPLIED INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE. NO ADVICE OR INFORMATION GIVEN BY LANDLORD, ITS AFFILIATES OR ITS CONTRACTORS OR THEIR RESPECTIVE EMPLOYEES SHALL CREATE A WARRANTY. LANDLORD EXPRESSLY DISCLAIMS ANY LIABILITY FOR DAMAGES TO, OR LOSS OF, THE EQUIPMENT RESULTING FROM ANY CAUSE WHATSOEVER, EXCEPT AS A RESULT OF LANDLORD'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

**Section 31. Limitation of Liability.** NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, LANDLORD'S TOTAL CUMULATIVE LIABILITY TO TENANT UNDER THIS AGREEMENT SHALL BE LIMITED TO THE LESSOR OF (I) THE FAIR MARKET VALUE OF THE EQUIPMENT OR (II) 25% OF THE FEES ACTUALLY PAID BY TENANT TO LANDLORD FOR THE RIGHTS OBTAINED UNDER THIS AGREEMENT, EXCLUSIVE OF ANY AMOUNTS EXPENDED BY LANDLORD HEREUNDER. TENANT HEREBY IRREVOCABLY AND FOREVER RELEASES LANDLORD FROM ANY AND ALL OBLIGATIONS, LIABILITY, CLAIMS OR DEMANDS IN EXCESS OF THE FOREGOING LIMITATION.

IN WITNESS WHEREOF, the parties have executed this Lease as of the date first above written.

**TENANT:**

**LANDLORD:**

**CITY OF CONCORD**

**ASTOUND BROADBAND, LLC**

By: *Lydia DuBorg*  
Lydia DuBorg, City Manager

By: *James A. Penney*  
James A. Penney, Executive Vice  
President

Approved as to Form:

*Craig Labadie*  
Craig Labadie, City Attorney

**ATTEST:**

*Nausha Schirada*  
City Clerk

**EXHIBIT A**

**Exhibit A**

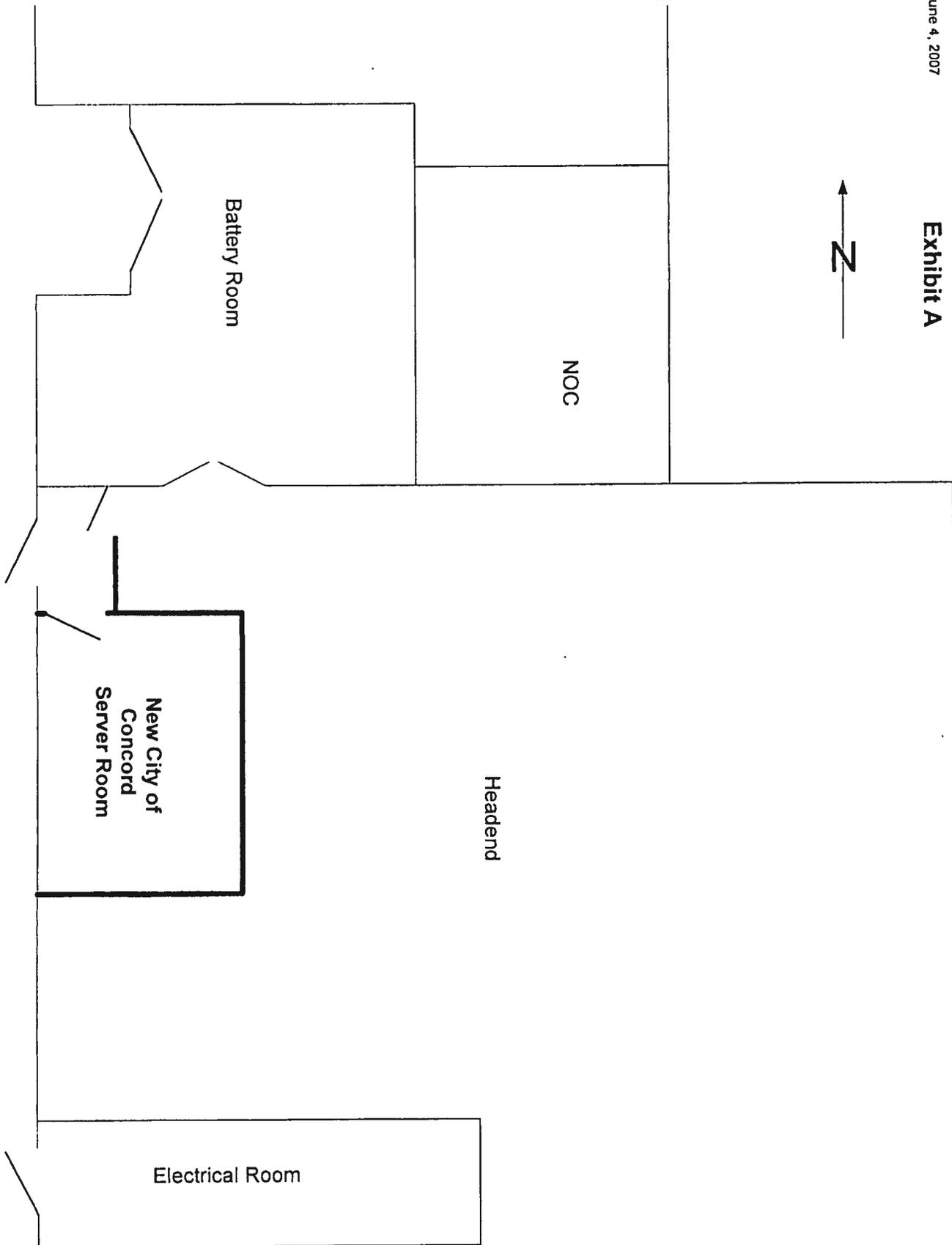


Exhibit A

June 4, 2007

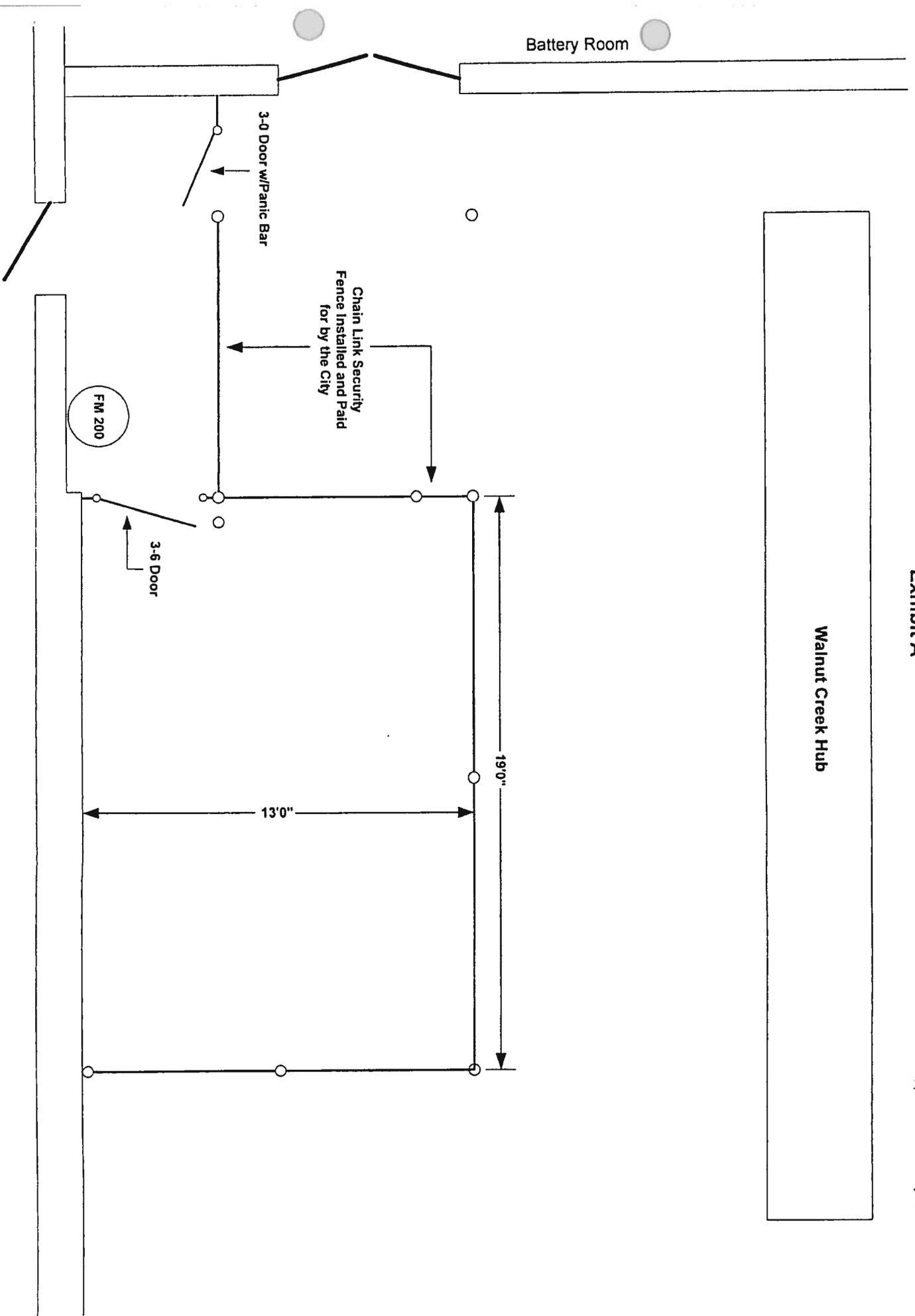
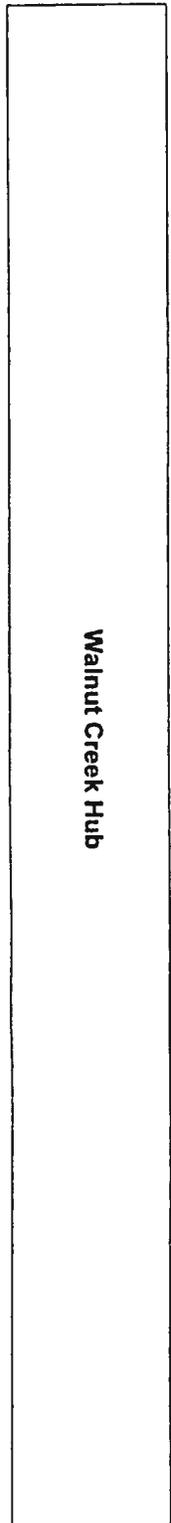




Exhibit B

**Astound Broadband Service Order**

**Customer Information**

Company Name	City of Concord		
Address 1	1950 Parkside Drive		
Address 2			
City	Concord	State	CA
Zip	94519		

Contact	Ron Melancon	Title	Network and Telecommunications Manager
Phone #	925-671-3311	Cell #	925-260-5056
Fax #	925-798-0636	E-mail	<a href="mailto:rmelancon@ci.concord.ca.us">rmelancon@ci.concord.ca.us</a>

Billing Address  Same as Above

Company Name			
Attention			
Address 1			
Address 2			
City	State	Zip	

**Service Description**

Service Type	Collocation Room Lease
Service Location	220 Mason Circle
	Concord, CA 94520

Service Commitment Duration	5 Years with One Year Options Thereafter
Turn Up Date	TBD
Non-Recurring Charges	\$13,680.00
Monthly Recurring Charge	\$ 4,000.00 (\$500.00 per month per cabinet foot print)
First Month's Invoice	\$17,680.00

**Special Conditions**

City of Concord to pay for installation of wire mesh security fencing enclosing an area not to exceed 19 feet by 13 feet 6 inches for a total of 256.5 square feet. (See Exhibit A) The City will pay for all electrical work needed for their equipment. The City will also reimburse Astound through a one time non-recurring charge for card reading key pads, locks, distribution fiber cables and all labor required to relocate the City's INET equipment. The City is also providing and installing their own cabinets. The City will have access to their space 24 hours per day seven days per week.

**Early Termination Liability**

100% of the remaining contract if terminated during months 1 - 12. If terminated after month 12 then a payment equal to the remaining unpaid RMC determined by using a 10% per annum discount rate associated with the terminated Service.



## Astound Broadband Service Agreement

6-19-07  
Date

June 19, 2007  
Date

Lydia E. Du Borg  
Customer Signature

[Signature]  
Astound Signature

Lydia E. Du Borg  
Name

James A. Perney  
Name

City Manager  
Title

Executive Vice President  
Title

Intentionally left blank

**FIRST AMENDMENT TO THE LEASE AGREEMENT  
BETWEEN THE CITY OF CONCORD AND ASTOUND BROADBAND, LLC  
DATED JUNE 19, 2007**

This First Amendment to the June 19, 2007 Lease Agreement (the "Lease") entered into between the City of Concord (the "City") and Astound Broadband, LLC, a Washington limited liability company ("Landlord") and referenced as City Document No. 4837 is made as of the date of execution set forth below.

The parties agree that the Lease shall be amended as follows:

Section 2. Term of Lease: Landlord confirms that the City provided Landlord with a letter ninety (90) days prior to the expiration of the initial term of the Lease by which the City exercised its right under the Lease to extend the term of the Lease for one (1) year. Accordingly, the Lease has been extended for an additional one (1) year period, commencing July 1, 2012 and ending on June 30, 2013.

Other than as noted above, all recitals, terms, conditions and obligations set forth in the June 19, 2007 Lease shall remain unchanged, in full force and effect. The City shall have no further right to extend the term of the Lease, unless such extension is agreed upon in writing by Landlord.

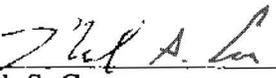
**IN WITNESS WHEREOF**, the parties have executed this First Amendment to the original Lease in triplicate as of the date and year written below.

First Amendment Executed: April 26, 2012

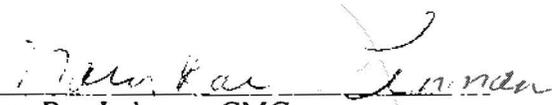
  
James A. Penney  
Executive Vice President  
Astound Broadband, LLC

  
Valerie J. Barone  
Interim City Manager  
City of Concord

APPROVED AS TO FORM:

  
Mark S. Coon  
Acting City Attorney

ATTEST:

  
Mary Rae Lehman, CMC  
City Clerk

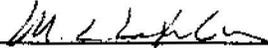
**Finance Director's Certification**  
**City of Concord**

Date: Apr. 17, 2012

Account Code: 63426151201-63800-400

Amount: \$ 48,000.00 sm 4/18/12

I hereby certify that adequate funds exist or will be received during the current fiscal year 2011/2012 to pay the anticipated expenses to be incurred pursuant to this contract.

  
\_\_\_\_\_  
Margaret L. Lefebvre  
Director of Finance

**COPY**

**SECOND AMENDMENT TO THE LEASE AGREEMENT**

**BETWEEN THE CITY OF CONCORD AND ASTOUND BROADBAND, LLC**

**DATED JUNE 19, 2007**

This Second Amendment to Lease Agreement ("Second Amendment") is made and entered into by the City of Concord ("City") and Astound Broadband, LLC, a Washington limited liability company ("Landlord") as of the date of execution set forth below. City and Landlord previously entered into a Lease Agreement dated June 19, 2007 and referenced as City Document No. 4837, as amended by that certain First Amendment to Lease dated April 26, 2012 and referenced as City Document No. 4837-A (collectively, "Lease").

The parties agree that the Lease shall be further amended as follows:

Section 2. Term of Lease: The extended Term of the Lease was scheduled to expire on June 2013. The City and Landlord mutually desire to extend the Term of the Lease for an additional one (1) year period. Accordingly, the Term of the Lease is hereby extended for one (1) additional year ending on June 30, 2014. Other than as noted above, all recitals, terms, conditions and obligations set forth in the Lease shall remain unchanged, in full force and effect. The City shall have no further right to extend the term of the Lease, unless such extension is agreed upon in writing by Landlord.

**IN WITNESS WHEREOF**, the parties have executed this Second Amendment in triplicate as of the date and year written below.

Second Amendment Executed: \_\_\_\_\_ April 8 \_\_\_\_\_, 2013

[Signature]

Astound Broadband, LLC

[Signature]

Valerie J. Barone,  
Interim City Manager

APPROVED AS TO FORM:

[Signature]

City Attorney

ATTEST:

[Signature]

City Clerk

Finance Director's Certification  
City of Concord

Date: 4/4/13

Account Code: 63426151201-63800-400

Amount: \$ 48,000.00 *OP 4/2/13*

I hereby certify that adequate funds exist or will be received during the current fiscal year 2012/2013 to pay the anticipated expenses to be incurred pursuant to this contract.

*C. Wilson*  
Finance Director

**Exhibit C**

**INSTITUTIONAL NETWORK SITES - CITY OF CONCORD**

<b>Site</b>	<b>Address</b>	<b>Revised Strands 3/19/2014</b>	<b>Proposed Monthly Rate for Revised Strands 3/19/2014</b>
Centre Concord	5298 Clayton Rd	2	\$400
City Hall Basement Comp rm	1950 Parkside Dr	12	\$660
Corp Yard	1455 Gasoline Alley	12	\$660
Cowell Pool	3501 Cowell Rd	2	\$400
Fire Station #10	3959 Treat Blvd	6	\$460
Fire Station #2	2010 Geary Rd	6	\$460
Golf Course	4050 Port Chicago Hwy	2	\$400
Keller House	1760 Clayton Rd	2	\$400
Limeridge Park	3701 Treat Blvd	2	\$400
Pavilion	200 Kirker Pass Rd	2	\$400
Pavilion Radio Bunker	2000 Kirker Pass Rd	2	\$400
Police - 3rd flr comp rm	1350 Galindo St.	26	\$1,300
Police - VFO	4467 Clayton Rd	2	\$400
Police - Warehouse	1350 Galindo St	8	\$500
Printing/Duplicating	2730 Parkside Dr	2	\$400
Pump Station	2050 Waterworld Pky	2	\$400
Salvio St Garage (old)	2255 Salvio St	2	\$400
Senior Center	2727 Parkside Dr	4	\$420
Todos Santos Garage (new)	2051 Salvio St	2	\$400
Todos Santos Plaza Pit	2175 Willow Pass Rd	4	\$420
Willow Pass Rec	2748 E. Olivera Rd	2	\$400
			<hr/> \$10,080

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**Exhibit D**  
Pricing Schedule

**SCHEDULE I:**

For Data Center co-location space

A. Costs:

List the one-time costs for installation – include a total

Item	Description	Quantity	Unit Cost	Extended Cost
1	Industry standard 19" enclosed cabinets – approximately 250 square feet	9	\$0	\$0
Total			\$0	\$0

B. Costs:

List the on-going costs (annual) for co-location - *include a total for 5 years and annual cost per year for an additional 5 years.*

Item	Description	Quantity	Annual Unit Cost	Extended Cost for 9 cabinets
1	Industry standard 19" enclosed cabinets – approximately 250 square feet – 220 Mason Circle, Concord, CA	8	\$ 6,000.00 Annually \$500/cab/month	\$ 48,000.00 annually
2	Industry standard 19" enclosed cabinets – approximately 250 square feet – Wave Broadband – Co-Location site in Rocklin, CA	1	\$ 6,000.00 Annually \$500/cab/month	\$ 6,000.00 annually
Total	5 year costs	9	\$ 54,000.00 (\$500/cab x 12 Months)	\$ 270,000
Total	Additional 5 year cost	9	\$ 54,000.00 (\$500/cab x 12 Months)	\$ 270,000

***A Term Sheet for selection of service will accompany order for level of service***

**Exhibit D**  
Pricing Schedule

**SCHEDULE II:**

For Internet Access Provision

A. Costs:

List the one-time costs for installation - *include a total.*

Item	Description	Quantity	Unit Cost
1	50 Mbps Internet connection, burstable to 1Gbps. This will be an upgrade of the existing 10 Mbps connection at 220 Mason Cir, Concord, CA	1	\$0
2	Internet connection to Wave Broadband – Co-Location site in Rocklin, CA	Waived	\$0
Total			\$ 0

B. Costs:

List the on-going costs (annual) for Internet Access Provision

Item	Description	Quantity	Unit Cost
1	10 Mbps Internet Connection – 1 IP address - Wave Broadband – Co-Location site in Rocklin, CA	1	\$ 3,000.00 Annually (\$250.00/month)
2	20 Mbps Internet Connection – 1 IP address - Wave Broadband – Co-Location site in Rocklin, CA	1	\$ 4,800.00 Annually (\$400.00/month)
3	50 Mbps Internet Connection – 1 IP address - Wave Broadband – Co-Location site in Rocklin, CA	1	\$ 6,000.00 Annually (\$500.00/month)
4	50 Mbps Internet connection, burstable to 1 Gbps. Includes Class C IP V4 address block. Service to be delivered to City of Concord’s Co-Location space at 220 Mason Cir, Concord, CA.	1	\$ 6,000.00 Annually (\$500.00/month)
4b	Burstable rate as measured by 95 <sup>th</sup> percentile	Rate per Mbps beyond 50 Mbps	\$ 5.00 per Mbps

**Exhibit D**  
Pricing Schedule

Item	Description – Optional service	Quantity	Unit Cost
5	100 Mbps Internet Connection, burstable to 1 Gbps. Includes Class C IP V4 address block. Service to be delivered to City of Concord's Co-Location space at 220 Mason Cir, Concord, CA.	1	\$ 10,800.00 Annually (\$ 900.00 per month)
5b	Burstable rate as measured by 95 <sup>th</sup> percentile	Rate per Mbps beyond 50 Mbps	\$ 4.50 per Mbps per month

***A Term Sheet for selection of service will accompany order for level of service***

**Exhibit D**  
Pricing Schedule

**SCHEDULE III:**

For Institutional Network

- A. Costs:  
List the one-time costs for installation parts and labor

Item	Description	Quantity	Unit Cost	Extended Cost
1	Sites are already connected via Dark Fiber to your Data Center at 220 Mason Cir, Concord, CA.		Waved	0
2	Locations not already connected via Dark Fiber require a Site Survey to determine the costs for adding this location to your network.			Site Survey required to determine the cost for adding this location
3	30 Mbps Point to point circuit back to 220 Mason Circle, Concord from Wave Broadband – Co-Location site in Rocklin, CA		Waved	0
Total			TBD	To Be Determined

- B. Costs:  
List the on-going costs (annual) for Network Fiber - *include a total for 5 years and annual cost per year for an additional 5 years.*

Item	Description	# of Strands	Monthly Rate
1	Dark Fiber Connectivity between the City's identified sites and 220 Mason Cir, Concord, CA ****	2	\$400.00
2	Dark Fiber Connectivity between the City's identified sites and 220 Mason Cir, Concord, CA ****	4	\$420.00
3	Dark Fiber Connectivity between the City's identified sites and 220 Mason Cir, Concord, CA ****	6	\$460.00
4	Dark Fiber Connectivity between the City's identified sites and 220 Mason Cir, Concord, CA ****	8	\$500.00
5	Dark Fiber Connectivity between the City's identified sites and 220 Mason Cir, Concord, CA ****	10	\$580.00
6	Dark Fiber Connectivity between the City's identified sites and 220 Mason Cir, Concord, CA ****	12	\$660.00
7	Dark Fiber Connectivity between the City's identified sites and 220 Mason Cir, Concord, CA ****	16	\$800.00

**Exhibit D**  
Pricing Schedule

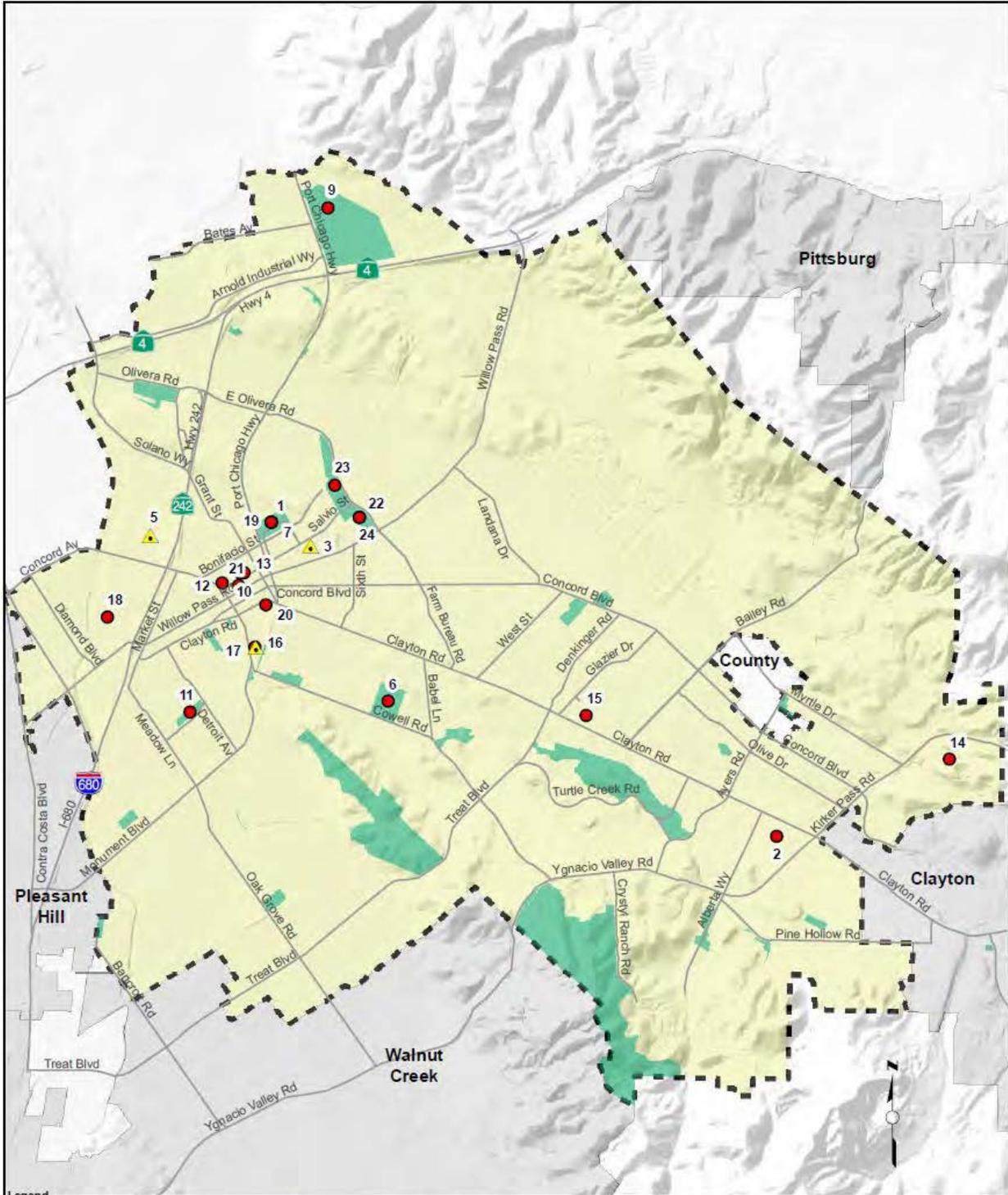
8	Dark Fiber Connectivity between the City's identified sites and 220 Mason Cir, Concord, CA ****	24	\$1200.00
9	Dark Fiber Connectivity between the City's identified sites and 220 Mason Cir, Concord, CA ****	26	\$1300.00
10	Dark Fiber Connectivity between the City's identified sites and 220 Mason Cir, Concord, CA ****	36	\$1800.00
11	Dark Fiber Connectivity between the City's identified sites and 220 Mason Cir, Concord, CA ****	72	\$3200.00

1	Private 30 Mbps Point to point circuit back to 220 Mason Circle, Concord from Wave Broadband – Co-Location site in Rocklin, CA	1	\$ 5,400.00 Annually (\$450.00/month)
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**\*\*\*\*Please see attached list and map of City identified sites.**

***A Term Sheet for selection of service will accompany order for level of service***

# Exhibit D Pricing Schedule



Legend

City_inet	NAME	8 Duplicating	10 Fire Station #10	17 Old Parking Garage	27 Tishman Building
1	Baldwin Pre School	9 Fire Station #2	11 Golf Course	18 Pavilion	28 Todos Santos Plaza
2	Centre Concord	12 Heritage Towers	13 Keller House	19 Pavilion Radio Bunker	29 Willow Pass Field #1
3	Civic Center	14 Meadow Homes Pool	15 Pump Station	20 Police Headquarters	30 Willow Pass Rec.
4	Corp Yard	16 (New) Parking Center	21 Senior Center	21 Police-VFO	31 Willow Pass Sport Ctr.
5	Cowell Pool			22 Police-Warehouse	
6	Day Camp/Marham Park			23 Pump Station	
				24 Senior Center	

City of Concord  
Institutional Network



Date: 12/19/2012  
Path: G:\data\concord\arc\_projects\infrastructure\lastound\_inet\tx11.mxd

**THIRD AMENDMENT TO LEASE AGREEMENT BETWEEN  
THE City OF CONCORD AND Astound BROADBAND, LLC**

This Third Amendment to Lease Agreement (“Third Amendment”) is made and entered into by the City of Concord (“Tenant” or “City”) and Astound Broadband, LLC, a Washington limited liability company (“Landlord” or “Astound”) as of \_\_\_\_\_, 2014 (“Effective Date”).

RECITALS

A. City and Astound have entered into that certain Lease Agreement dated June 19, 2007 referenced as City Document No. 4837 (“Original Lease”), the Term of which was extended by the First Amendment to Lease dated April 26, 2013 referenced as City Document No. 4837-A (“First Amendment”), and further extended by the Second Amendment to Lease Agreement dated April 8, 2013 referenced as City Document No. 4837-B (“Second Amendment”) (collectively, “Lease”).

B. City issued Request for Proposals #2252 for Institutional Network Service, Data Center Co-location Service, and High-Speed Internet Service (“RFP”). Astound submitted its Response to RFP #2252 dated April 1, 2013 (“Response”). References in the RFP and Response to “Contractor” and “Proposer” are intended and shall be construed to refer to Astound.

C. Pursuant thereto, City and Landlord have entered into an Agreement for Professional Services (Institutional Network Service, Data Center Co-Location Service, and High-Speed Internet Service) dated \_\_\_\_\_, 2014 (“Agreement”). The Agreement sets forth the terms and conditions for Astound’s provision of certain Services (as defined Agreement Recital E) to City, and cross-references to the RFP, Response, and the Lease with respect to City’s data center co-location requirements.

D. The parties desire to enter into this Third Amendment to Lease in order to extend the current Lease Term so that it is co-terminous with the Agreement Term, provide City with an option to extend the Lease Term an additional five (5) years, add a co-location site(s), and

incorporate the applicable terms and conditions of the RFP and Response (including rent and security requirements).

AGREEMENT

For good and valuable consideration, the parties hereby amend the Lease as follows:

1. Section 1, Lease. Landlord leases to Tenant, and Tenant Leases from Landlord, certain co-location space at 220 Mason Circle, Concord, CA 94520 (“Concord Site”) and 4120 Citrus Avenue, Rocklin California, 95677 (“Rocklin Site”). The term “Property” as defined in Lease Recital B is hereby revised to include the Rocklin Site.
2. Section 2, Term of Lease: The Lease Term is hereby extended so that the new “Expiration Date” is July 26, 2019. City shall have the right to extend the Term for one additional period of five (5) years. City shall give written notice of its exercise of its option to extend the Term to in accordance with Lease Section 21 (Notices), on or before June 26, 2019. Such extension shall upon the same terms and conditions as the Lease as amended by this Third Amendment and shall be memorialized in writing by a duly executed amendment hereto.
3. Section 3, Rent. Rent shall be as set forth in RFP and Response Schedule 1, attached hereto as Exhibit A and incorporated by reference.
4. Section 4, Additional Requirements. Additional data center co-location requirements are as set forth in RFP ad Response Section A, attached hereto as Exhibit B and incorporated by reference.
5. Lease In Effect. Other than as noted above, all recitals, terms, conditions and obligations set forth in the Lease shall remain unchanged, in full force and effect.

///

*[Signatures follow on next page]*

**IN WITNESS WHEREOF**, the parties have executed this Third Amendment in triplicate as of the Effective Date.

**LANDLORD/ASTOUND:**

Astound Broadband, LLC,  
a Washington limited liability company

**CITY:**

City of Concord,  
a California municipal corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Valerie J. Barone, City Manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**ATTEST:**  
By: \_\_\_\_\_  
Mary Rae Lehman, City Clerk

\_\_\_\_\_  
\_\_\_\_\_

**APPROVED AS TO FORM:**  
By: \_\_\_\_\_  
Mark S. Coon, City Attorney

**FINANCE DIRECTOR'S CERTIFICATION:**

Concord, California

Date: \_\_\_\_\_, 2014

I hereby certify that adequate funds exist or will be received during the current fiscal year 20\_\_/\_ to pay the anticipated expenses to be incurred pursuant to this contract. The sum of \$\_\_\_\_\_.

\_\_\_\_\_  
Finance Director

Account Code: \_\_\_\_\_

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**Exhibit A**

## Rent

**SCHEDULE I:**

For Data Center co-location space

## A. Costs:

List the one-time costs for installation – include a total

Item	Description	Quantity	Unit Cost	Extended Cost
1	Industry standard 19" enclosed cabinets – approximately 250 square feet	9	\$0	\$0
Total			\$0	\$0

## B. Costs:

List the on-going costs (annual) for co-location - *include a total for 5 years and annual cost per year for an additional 5 years.*

Item	Description	Quantity	Annual Unit Cost	Extended Cost for 9 cabinets
1	Industry standard 19" enclosed cabinets – approximately 250 square feet – 220 Mason Circle, Concord, CA	8	\$ 6,000.00 Annually \$500/cab/month	\$ 48,000.00 annually
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Total	5 year costs	9	\$ 54,000.00 (\$500/cab x 12 Months)	\$ 270,000
Total	Additional 5 year cost	9	\$ 54,000.00 (\$500/cab x 12 Months)	\$ 270,000

***A Term Sheet for selection of service will accompany order for level of service***

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**Exhibit B**  
**Additional Requirements**

**A. Data Center co-location space (Concord only) Requirements:**

**1. Secure building / structure including 24 X 7 surveillance meeting SAS-70 requirements**

**Astound will comply with this requirement within 12 months of Contract signature.**

- a. Proximity to known fault lines, 100 year flood plains, PG&E infrastructure will be considered  
**Astound's headend at 220 Mason Circle, Concord is not within the 100 year flood plain. It is approximately 1.5 miles East of the Concord fault line, approximately 15 miles East of the Hayward fault line, and approximately 32 miles East of the San Andreas fault line.**
- b. Proof of SAS-70 certification will be required annually as required by DOJ and PCI

**Astound will be SAS-70, or equivalent, within 12 months of Contract signature.**

**2. Dedicated and secure enclosure (HID Card Key) access 24 X 7 X 365 INCLUDING weekends and Holidays**

**Astound complies with this requirement.**

- a. Space for eight (8) industry standard 19" enclosed cabinets – approximately 250 square feet  
**Astound complies with this requirement.**
- b. Area secured by industry accepted data center enclosures including secured card access controlled gates  
**As the current provider, only 7 of the City's 8 cabinets reside within the caged area. Should the City of Concord request it, Astound will provide a cage for the 8<sup>th</sup> cabinet within 4 months of such request.**

**3. Minimum of 20 dedicated (not shared with any other client) 20 Amp (30 Amp preferred) Three- Phase electrical circuits provided to co-lo area**

**Astound complies with this requirement, supplying Single phase to the racks**

- a. Circuit Panel housing City's circuits to be in secure location with access logging  
**As the current provider, the circuit panel is located within Astound's secure facility which requires badge access to enter.**
- b. UPS backup on each circuit capable of supporting 100% load for 30 minutes  
**Astound complies with this requirement.**
- c. Generator backup capable of supporting 100% load for a minimum of 14 days without requiring fuel service – indefinite run-time with fuel service

**Astound can support 100% load at the acceptable minimum of 5 days (per Addendum #2, page 2 of 4) without requiring fuel service.**

#### 4. Fire suppression

- a. Primary - FM-200 or other currently permitted electronics-safe fire suppression system  
**Astound complies with this requirement.**

- i. Define the expected time frame to return the primary system full normal protective operation after discharge

**Astound Business Solutions has a primary and secondary discharge system and if only the primary is discharged, the equipment would still be protected with the secondary FM-200 system. If both the primary and secondary systems are discharged, the replenishment of the FM-200 would be subject to scheduling the Astound FM-200 contractor to refill the tanks. Typically, this would occur within 5 business days of the discharge.**

- b. Backup - water sprinkler

- i. Dry stand-pipe sprinkler system  
**Astound complies with this requirement.**

- ii. Water system set to activate as back-up ONLY  
**Astound complies with this requirement.**

- If primary system is discharged and fire continues or re-starts

**Astound Business Solutions complies with this requirement.**

#### 5. Environmental control

- a. HVAC sufficient to maintain the co-lo space, including any and all other clients' spaces sharing HVAC service with the City's space at specified temperature and humidity ranges 24 X 7 X 365

- i. Temperature between
- Warm Zone 65 and 72 degrees Fahrenheit
  - Cold Zone 55 and 68 degrees Fahrenheit

**Astound will comply with this requirement within 12 months of Contract signature.**

- ii. Relative Humidity between 35% and 65% non-condensing

**Astound will comply with this requirement within 12 months of Contract signature.**

6. Facility monitoring and reporting 24 X 7 X 365 including:

a. Alerting designated City staff in the event of fire, electrical utility failure, and environmental excursions above or below set points

**Astound will comply with this requirement within 12 months of Contract signature.**

b. Attempted unauthorized access to Facility and / or City's co-lo space

**Astound will comply with this requirement within 12 months of Contract signature.**

i. Includes successful and unsuccessful access attempts

**Astound will comply with this requirement within 12 months of Contract signature.**

c. Reason to believe civil disobedience, demonstration, or other activity may target the Facility  
i.e. Occupy Protests or any other act(s) of civil disobedience

**Astound will comply with this requirement within 12 months of Contract signature.**

7. Term of the agreement:

a. Initial 5 years

**Astound complies with this requirement**

b. Option to extend for an additional 5 years (10 years total)

**Astound complies with this requirement**

Please respond to each of the above requirements along with any other features you are proposing and complete the costing tables below.

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