

**REPORT TO MAYOR AND COUNCIL**

TO THE HONORABLE MAYOR AND COUNCIL:

DATE: June 23, 2015

SUBJECT: APPROVE THIRTY-THREE (33) MASTER SERVICES AGREEMENTS FOR VARIOUS CONSULTANT SERVICES FOR CAPITAL IMPROVEMENT PROJECTS; APPROVE THIRTEEN (13) MASTER SERVICES AGREEMENT AMENDMENTS FOR EXTENSIONS OF TIME; AND AUTHORIZE THE CITY MANAGER TO EXECUTE THE AGREEMENTS

Report in Brief

The Engineering Services Division within the Community and Economic Development Department is responsible for the design and construction of projects identified in the Capital Improvement Program (CIP), Transportation Improvement Program (TIP), as well as the review of private development projects. The Engineering Division fulfills its responsibilities by relying on both internal staff and professional consultant resources.

The Master Services Agreement process simplifies and accelerates the design delivery of small to medium-sized projects that require professional consultant support. This process pre-approves and establishes contractual relationships with specialized firms, allowing them to perform work associated with specific projects by Task Order. It is estimated that the use of Master Services Agreements will save the City over \$100,000 this year alone in the staff time that would otherwise be spent requesting and evaluating multiple proposals and issuing and processing contracts for each small project or need. The Master Services Agreement process has been used successfully for the past 6 years.

With the Council's approval and City Manager's execution of the Master Services Agreements, the City Engineer will be authorized to issue Task Orders up to \$75,000. Task Orders with compensation greater than \$75,000 are brought to the City Council for consideration. The proposed Master Services Agreements would all expire on June 30, 2017, with the option for a mutually agreed upon one-year extension. Funding of each Task Order must be identified and available prior to issuance and each Task Order, regardless of amount, requires review and approval by the City Attorney and the Finance Director. Under the proposed Master Services Agreements, the total not-to-exceed cost of services is \$250,000 per fiscal year per consultant firm. The City Attorney's office has reviewed the 33 proposed Master Services Agreements attached to this report.

Staff recommends that the City Council approve thirty-three (33) Master Services Agreements for various consultant services; approve thirteen (13) Master Services Agreement Amendments for extensions of time; and authorize the City Manager to execute the Agreements.

**APPROVE THIRTY-THREE (33) MASTER SERVICES AGREEMENTS FOR
VARIOUS CONSULTANT SERVICES; APPROVE THIRTEEN (13) MASTER
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Background

Each year, the City Council allocates funds for improvement projects when it adopts the annual Capital Improvement Program and Transportation Improvement Program (CIP and TIP), which funds and authorizes implementation of individual projects. The Engineering Division is responsible for managing the design and construction of those capital improvement projects. In FY 2015-16, the Engineering Division will design and/or construct approximately 50 existing and proposed projects, which range in value from \$30,000 to \$3.8 million.

The Master Services Agreement (MSA) process supplements the traditional Request for Proposal (RFP) process, which will continue to be used for both large and special projects. The MSA process is a more efficient means to authorize work for smaller expenditures. There are projects in the CIP that will require use of the traditional RFP process, with the contracts brought before the City Council for approval. An example of the use of the RFP process for larger projects includes the recent design services approved by the City Council in October 2014, for the Concord Various Streets Preservation (Concord Boulevard – 6th Street to Port Chicago Hwy and Arnold Industrial Blvd – Port Chicago Hwy to Pike Lane - PJ2292).

The purpose of the MSA process is to simplify and accelerate the delivery of small to medium-sized projects by authorizing staff to issue project-specific Task Orders to pre-selected consultants. The use of these consultant firms is needed by the City as they provide specialized expertise and/or professional experience that is needed for certain projects, but is not within the skill set or capacity of existing City staff. This process accelerates the project schedule by at least six weeks, which is the time it would take to bring a contract to the City Council for approval. The MSA process, as developed by Engineering Division, was identified as a Best Management Practice during the City's E-Government study, and is now used by other City departments.

The Council's approval of the MSAs authorizes City staff to assign projects to selected consultants under the Agreements and authorizes staff to issue Task Orders for each project, within the limits set in the MSAs. For each project, staff will select a consultant based on their qualifications, availability, and the specific needs of the project. Staff and consultant will then negotiate a contract including the scope of work, schedule and compensation. The contract will be executed through a Task Order. After approval of the Task Order by the City, the consultant will proceed with the requested work.

Under the proposed Master Agreements, the City Engineer is authorized to approve up to \$75,000 for a Task Order. Task Orders with compensation of more than \$75,000 will continue to be considered by the City Council. The proposed MSAs will all expire on June 30, 2017, with the option for a one-year extension upon mutual agreement. None of the proposed MSAs will be active longer than a three year period. Each Task Order requires review and approval by the City Attorney and the Finance Director. Under the Master Agreements, the total not-to-exceed cost of the services is \$250,000 per fiscal year. It is clear to all of the proposed firms that entering into an MSA is not a guarantee of future work with the City.

A Request for Qualifications (RFQ) was advertised in the Contra Costa Times on February 13, 23, and March 3, 2015. Responses were requested by March 9, 2015. Staff received one hundred and

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eighteen (118) Statements of Qualifications (SOQs). The firms were separated into thirteen disciplines (or areas of expertise) for evaluation: Civil Design, Project/Construction Management and Inspection, Geotechnical and Materials Testing, California Environmental Quality Act and National Environmental Policy Act (CEQA/NEPA), Environmental Engineering and Assessment, Structural Engineering, Architecture, Land Survey, Right-of-Way Services (appraisal and acquisition), Landscape Architecture, Transportation/Traffic Engineering, Hydraulic Engineering, and Development Review. Ten panel committees including staff from Community and Economic Development, Public Works, and the City Attorney's Office reviewed the SOQs based on discipline. A total of 58 firms were invited to participate in the interview process. The committees selected the firms best suited to providing services for the City's projects and anticipated needs and are recommending award of a total of 33 Master Agreements.

Discussion

Historically, the consultants awarded a MSA under this process have worked almost exclusively on CIP and TIP Projects. This year, Engineering staff solicited input from several other City functions to include in the release of the RFQ to widen the range of expertise so that the consultants could be used to meet citywide needs. Based on this process, several of the consultants included in the MSA list below will also be available to assist with Planning, Current Development Engineering, and/or Public Works projects, to name a few. City staff will work together to manage issuance of Task Orders and track expenditure limits.

The recipients of a Master Services Agreement fully understand that such an agreement is not a guarantee of work. This selection process and award of an Agreement only provides a smaller pool of go-to firms when specialty work is required on capital improvement projects, which allows staff to expedite the process, should the City require necessary services. Multiple firms are chosen in each discipline to allow staff the ability to select a firm based on schedule and/or availability depending on project needs.

The proposed MSAs with thirty-three (33) consultants (Attachments 1 through 33) include consulting firms selected to provide professional and specialized services in most of the disciplines described above. Staff reviewed each firm's past experience, performance and availability in considering the best choices at this time to provide the needed services for projects slated for implementation in FY 2015-16 through FY 2016-17. Staff recommends the following thirty-three (33) firms for the proposed Master Agreements:

- Bellecci & Associates (Civil Design and Land Surveying Services)
- Harrison Engineering, Inc. (Civil Design) (NEW)
- Nichols Consulting Engineers, Chtd. (Civil Design and Environmental Services)
- Pavement Engineering, Inc. (Civil Design)
- Diablo Engineering Group (Civil Design) (NEW)
- Harris and Associates, Inc. (Civil Design and Development Review)

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- F. J. Kennedy and Associates, Inc. (Stormwater/Cleanwater Program and Surveyor)
- CSG Consultants, Inc. (Development Review) (NEW)
- Swinerton Management & Consulting (Project and Construction Management)
- Vali Cooper & Associates (Project and Construction Management)
- Park Engineering (Project and Construction Management) (NEW)
- 4LEAF, Inc. (Project and Construction Management) (NEW)
- tBP Architecture, Inc. (Architectural Design)
- SVA Architects, Inc. (Architectural Design) (NEW)
- Interactive Resources (Architectural and Structural Design) (NEW)
- JMEC Engineering, Inc. (Structural Engineering Services)
- Associated Right of Way Services, Inc. (Right of Way Services)
- Paragon Partners, Ltd. (Right of Way Services) (NEW)
- Balance Hydrologics, Inc. (Hydraulic Engineering)
- WRECO Engineers (Hydraulics Engineering)
- TJKM Transportation Consultants (Transportation/Traffic Engineering Services) (NEW)
- DKS Associates (Transportation/Traffic Engineering Services)
- McArdle Design, Inc. (Landscape Architectural Services)
- Golden Associates (Landscape Architectural Services) (NEW)
- LCC, Inc. (Land Surveying Services)
- Mark Thomas & Company (Land Surveying Services) (NEW)
- Analytical Environmental Services (CEQA/NEPA) (NEW)
- Rincon Consultants, Inc. (CEQA/NEPA) (NEW)

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- LSA Associates, Inc. (CEQA/NEPA) (NEW)
- Kimley-Horn and Associates, Inc. (CEQA/NEPA)
- Kleinfelder West, Inc. (Geotechnical and Materials Testing Services)
- Neil O. Anderson & Associates (Geotechnical and Materials Testing Services) (NEW)
- Geocon Consultants, Inc. (Geotechnical, Materials Testing, and Environmental Services) (NEW)

The current Master Services Agreements (FY 2013-14 to FY 2014-15) are set to expire on June 30, 2015. There are several Task Orders that have been issued for active projects that remain ongoing. Staff is requesting that Council approve amendments allowing an extension of time for a period up to one (1) year (June 30, 2016), to complete work for the following Task Orders:

| <u>Consultant</u> | <u>Task Order #</u> | <u>Project Name and Number</u> |
|----------------------|---------------------|--|
| ARWS | 2 | Commerce Ave Bridge @ Pine Creek (PJ1761) |
| JMEC | 2 | Seismic Retrofit of the Marsh (PJ1854) |
| Hansen McArdle | 2 | Clayton Rd/Treat Blvd Capacity Improvements (PJ2144) |
| Kimley-Horn | 5 | Clayton Rd/Treat Blvd Capacity Improvements (PJ2144) |
| RBF Consulting | 6 | Clayton Rd/Treat Blvd Capacity Improvements (PJ2144) |
| Nichols Consulting | 1 | Clayton Rd/Treat Blvd Capacity Improvements (PJ2144) |
| Swinerton Management | 15 | Centre Concord Movable Walls & Coverings (PJ2182) |
| tBP Architecture | 3 | Centre Concord Movable Walls & Coverings (PJ2182) |
| RBF Consulting | 4 | Farm Bureau SR2S (PJ2251) |
| Swinerton Management | 11 | Farm Bureau SR2S (PJ2251) |
| Kleinfelder | 9 | Farm Bureau SR2S (PJ2251) |
| RBF Consulting | 3 | Farm Bureau Pavement Reconstruction (PJ2252) |
| Nichols Consulting | 5 | Downtown Concord Bike Lane Improvements (PJ2277) |
| RMA Group | 2 | Traffic Signal Improvements (PJ2284) |
| Kleinfelder | 12 | Todos Santos Plaza Archway (PJ2294) |
| Swinerton Management | 16 | Todos Santos Plaza Archway (PJ2294) |
| JMEC | 5 | Todos Santos Plaza Archway (PJ2294) |
| Harris & Associates | 7 | Concord Blvd Paving & Striping (PJ2296) |
| Engeo | 6 | Concord Blvd Paving & Striping (PJ2296) |
| Swinerton Management | 13 | Concord Blvd Paving & Striping (PJ2296) |
| Kleinfelder | 10 | Citywide Curb Ramp Improvements (PJ2324) |
| PEI | 5 | FY 2014-15 Pavement Main Zone 3 (PJ2329) |

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Fiscal Impact

Funding for the CIP projects, including all project consultant costs, is included in the adopted 10-year Capital Improvement Program budget. It is estimated that the use of Master Agreements will save the City over \$100,000 this year alone in staff time. Additionally, for needs outside of the Capital Improvement Program, staff has accounted for funding in the FY 2015-16 to FY 2016-17 Operating Budget, including the estimation of annual fee collection (i.e., CEQA/NEPA review for Development projects).

Public Contact

The City Council Agenda was posted.

Recommendation for Action

Staff recommends that the City Council approve thirty-three (33) Master Services Agreements for various consultant services; approve thirteen (13) Master Services Agreement Amendments for extensions of time; and authorize the City Manager to execute the Agreements.

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- Attachment 1 – Bellecci & Associates, Inc. Master Agreement
- Attachment 2 – Harrison Engineering, Inc. Master Agreement
- Attachment 3 – Nichols Consulting Engineers, Chtd. Master Agreement
- Attachment 4 – Pavement Engineering, Inc. Master Agreement
- Attachment 5 – Diablo Engineering Group Master Agreement
- Attachment 6 – Harris and Associates, Inc. Master Agreement
- Attachment 7 – F. J. Kennedy and Associates, Inc. Master Agreement
- Attachment 8 – CSG Consultants, Inc. Master Agreement
- Attachment 9 – Swinerton Management & Consulting Master Agreement
- Attachment 10 – Vali Cooper & Associates Master Agreement
- Attachment 11 – Park Engineering Master Agreement
- Attachment 12 – 4LEAF, Inc. Master Agreement
- Attachment 13 – tBP Architecture, Inc. Master Agreement
- Attachment 14 – SVA Architects, Inc. Master Agreement

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- Attachment 15 – Interactive Resources Master Agreement
- Attachment 16 – JMEC Engineering, Inc. Master Agreement
- Attachment 17 – Associated Right of Way Services, Inc. Master Agreement
- Attachment 18 – Paragon Partners, Ltd. Master Agreement
- Attachment 19 – Balance Hydrologics, Inc. Master Agreement
- Attachment 20 – WRECO Engineers Master Agreement
- Attachment 21 – TJKM Transportation Consultants Master Agreement
- Attachment 22 – DKS Associates Master Agreement
- Attachment 23 – McArdle Design Master Agreement
- Attachment 24 – Golden Associates Master Agreement
- Attachment 25 – LCC, Inc. Master Agreement
- Attachment 26 – Mark Thomas & Company Master Agreement
- Attachment 27 – Analytical Environmental Services Master Agreement
- Attachment 28 – Rincon Consultants, Inc. Master Agreement
- Attachment 29 – LSA Associates, Inc. Master Agreement
- Attachment 30 – Kimley-Horn and Associates, Inc. Master Agreement
- Attachment 31 – Kleinfelder West, Inc. Master Agreement
- Attachment 32 – Neil O. Anderson & Associates Master Agreement
- Attachment 33 – Geocon Consultants, Inc. Master Agreement
- Attachment 34 – ARWS Amendment
- Attachment 35 – JMEC Engineering Amendment
- Attachment 36 – Hansen McCaArdle, Inc. Amendment
- Attachment 37 – Kimley-Horn and Associates Amendment
- Attachment 38 – RBF Consulting Amendment
- Attachment 39 – Swinerton Management Amendment
- Attachment 40 – tBP Architecture, Inc. Amendment
- Attachment 41 – Nichols Consulting Amendment
- Attachment 42 – Kleinfelder Amendment
- Attachment 43 – RMA Group Amendment
- Attachment 44 – Harris & Associates Amendment
- Attachment 45 – Engeo Incorporated Amendment
- Attachment 46 – Pavement Engineering Amendment

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

1 **THIS AGREEMENT** made and entered into on **July 1st, 2015** by and between the City of Concord
2 (hereinafter "CITY"), located in the County of Contra Costa, State of California, and **Bellecci & Associates,**
3 **Inc.**, (hereinafter "CONSULTANT"), whose address is 2290 Diamond Blvd., Suite 100, Concord, CA 94520.

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

6 CITY desires to contract with CONSULTANT and CONSULTANT to contract with CITY for
7 provision by CONSULTANT to CITY for professional services as further described herein, upon the terms and
8 conditions hereinafter set forth.

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

11 1. SERVICES

12 CONSULTANT shall provide services for specific projects as may be requested by CITY;
13 such services shall be defined, scheduled, and authorized in subsequent Task Orders. Services may include, but
14 not be limited to:

- 15 ● Civil Engineering services related to CIP Projects
- 16 ● Land Survey services related to CIP Projects
- 17 ● Other as-needed services;

18 CONSULTANT shall be an independent contractor and shall have responsibility for and
19 control over the details and means of providing its services under this AGREEMENT. CONSULTANT agrees
20 that its services shall be performed with due diligence and in accordance with generally accepted engineering
21 practices.

22 CONSULTANT shall use its best efforts to perform and coordinate all activities in a timely
23 manner so that the projects will be completed according to the established project schedules.

24 2. AUTHORIZED REPRESENTATIVES

25 Authorized representatives shall represent CITY and CONSULTANT in all matters pertaining
26 to the services to be ordered by CITY or rendered by CONSULTANT under this Agreement except where
27 approval for the CITY is specifically required by the City Council. The CITY'S authorized representative shall
28

1 be the City Engineer. Said City Engineer is authorized to execute Task Orders on behalf of CITY, including
2 providing for CONSULTANT to be compensated not more than \$75,000 for each project. Task Orders
3 providing for more than \$75,000 compensation for one project shall be presented to the City Council for its
4 consideration.

5 CONSULTANT authorized representative shall be **Frank Bellecci, President.**

6 3. COMPENSATION

7 CONSULTANT shall be compensated, not to exceed \$250,000 per fiscal year for basic
8 services rendered under Section 1, as more particularly described in authorized Task Orders, in accordance with
9 the terms and conditions included therein.

10 CONSULTANT may submit monthly statements for services rendered; all statements shall
11 include adequate documentation demonstrating work performed during the billing period and shall conform to
12 Federal Funding invoicing requirements, if applicable. It is intended that payments to CONSULTANT will be
13 made by CITY within thirty (30) days of receipt of invoice. Consultant's failure to secure CITY's written
14 authorization for additional compensation or changes to the Scope of Work shall constitute a waiver of any and
15 all right to adjustment in the price or time due, whether by way of compensation, restitution, quantum meruit,
16 or similar relief.

17 4. INDEMNIFICATION

18 CONSULTANT agrees to defend, indemnify and hold harmless the CITY, its officers,
19 officials, employees, agents and volunteers from and against any and all claims, demands, actions, losses,
20 damages, injuries, and liability (including all attorney's fees and other litigation expenses) arising out of the
21 CONSULTANT's performance under the terms of this Agreement. This indemnification obligation on
22 CONSULTANT'S part shall not apply to demands, actions, losses, damages, injuries, and liability arising out
23 of sole negligence or willful misconduct on the part of CITY.

24 5. OWNERSHIP AND MAINTENANCE OF DOCUMENTS

25 All documents furnished by CONSULTANT pursuant to this AGREEMENT are instruments
26 of CONSULTANT's services in respect to this project. They are not intended nor represented to be suitable for
27 reuse by others on extensions of this project or on any other project. Any reuse without specific written
28 verification and adoption by CONSULTANT for the specific purposes intended will be at user's sole risk and

1 without liability or legal exposure and expenses to CONSULTANT, including attorney's fees arising out of
2 such unauthorized reuse.

3 CONSULTANT's records, documents, calculations, and all other instruments of service pertaining to
4 actual project shall be given to CITY at the completion of the project. The CITY reserves the right to specify
5 the file format that electronic document deliverables are presented to the CITY. Title to all plans,
6 specifications, maps, estimates, reports, manuscripts, drawings, descriptions and other final work products
7 compiled by the CONSULTANT under the Agreement shall be vested in the CITY, none of which shall be
8 used in any manner whatsoever, by any person, firm, corporation, or agency without the expressed written
9 consent of the CITY. Basic survey notes and sketches, charts, computations, and other data prepared or
10 obtained under the Agreement shall be made available, upon request, to the CITY without restriction or
11 limitations on their use. CONSULTANT may retain copies of the above-described information but agrees not
12 to disclose or discuss any information gathered, discussed or generated in any way through this Agreement
13 without the written permission of CITY during the term of this Agreement, unless required by law.

14 6. STANDARD OF PERFORMANCE

15 CONSULTANT represents to CITY that the services shall be performed in an expeditious
16 manner, and with the degree of skill and care that is required by current, good, and sound procedures and
17 practices. CONSULTANT further agrees that the services shall be in conformance with generally accepted
18 professional standards prevailing at the time work is performed.

19 7. INSURANCE REQUIRED

20 CONSULTANT shall, at its own expense, procure and maintain in full force at all times during
21 the term of this AGREEMENT the following insurance:

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

26 **B. Automobile Liability Coverage.** CONSULTANT shall maintain automobile liability
27 insurance covering all vehicles used in the performance of this Agreement providing a one million dollar
28 (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage.

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

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

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

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

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

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

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

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

11 8. SUSPENSION OF WORK

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

18 9. TERMINATION

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

26 10. COMPLIANCE WITH CIVIL RIGHTS

27 During the performance of this contract, CONSULTANT agrees as follows:

28 **A. Equal Employment Opportunity.** In connection with the execution of this

1 AGREEMENT, CONSULTANT shall not discriminate against any employee or applicant for employment
2 because of race, religion, color, sex, or national origin. Such actions shall include, but not be limited to, the
3 following: employment, promotion, upgrading, demotion, or transfer; recruitment or recruitment advertising;
4 layoff or termination; rate of pay or other forms of compensation; and selection for training including
5 apprenticeship.

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

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

14 11. CONFLICT OF INTEREST

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

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

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

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

1 12. INDEPENDENT CONTRACTOR

2 In assuming and performing the services, CONSULTANT is an independent contractor and
3 shall not be eligible for any benefits, which the CITY may provide its employees, except as expressly provided
4 for in the AGREEMENT. All persons, if any, hired by CONSULTANT shall be employees or subcontractors of
5 CONSULTANT and shall not be construed as employees or agents of the CITY in any respect.
6 CONSULTANT shall have responsibility for and control over the means of providing services under this
7 AGREEMENT.

8 13. COMPLIANCE WITH LAWS

9 CONSULTANT shall comply with all applicable federal, State of California, and local laws,
10 rules, and regulations and shall obtain all applicable licenses and permits for the conduct of its business and the
11 performance of the services.

12 14. CHOICE OF LAW

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

17 15. NON-WAIVER

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

22 16. ENFORCEABILITY; INTERPRETATION

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

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

4 17. INTEGRATION

5 The AGREEMENT contains the entire AGREEMENT and understanding between the parties
6 as to the subject matter of this AGREEMENT. It merges and supersedes all prior or contemporaneous
7 agreements, commitments, representation, writings, and discussions between CONSULTANT and CITY,
8 whether oral or written.

9 18. SUCCESSORS AND ASSIGNS: NO THIRD PARTY BENEFICIARIES; NO JOINT
10 VENTURE

11 CITY and CONSULTANT respectively, bind themselves, their successors, assigns, and legal
12 representatives to the terms and obligations of this Agreement. CONSULTANT shall not assign or transfer any
13 interest in the Agreement without the CITY's prior written consent, which consent shall be in the CITY's sole
14 discretion. Any attempted assignment or transfer in breach of this provision shall be void. This Agreement is
15 not intended and shall not be construed to create any third party benefit. This Agreement is not intended and
16 shall not be construed to create a joint venture or partnership between the parties. CONSULTANT, its officers,
17 employees and agents shall not have any power to bind or commit the CITY to any decision.

18 19. FINANCIAL RECORDS

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

22 20. NOTICES

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

28 To CITY

Robert Ovardia, City Engineer

Community & Economic Development Department
City of Concord
1950 Parkside Drive, MS/40
Concord, CA 94519
Phone: (925) 671-3470
Fax: (925) 798-9692

To CONSULTANT

Frank Bellecci, President
Bellecci & Associates
2290 Diamond Blvd., Suite 100
Concord, CA 94520
Phone: (925) 685-4569
Fax: (925) 685-4838

21. TERM

The term of this AGREEMENT shall be from the date executed above through **June 30th, 2017**, with the option of one one-year extension upon mutual agreement by both CITY and CONSULTANT. The City Manager is authorized to approve the extension.

22. NON-LIABILITY

No member of the CITY and no other officer, employee or agent of the CITY shall be personally liable to CONSULTANT or otherwise in the event of any default or breach of the CITY, or for any amount which may become due to CONSULTANT or any successor in interest, or for any obligations directly or indirectly incurred under the terms of this Agreement.

23. EXECUTION

Each individual or entity executing this Agreement on behalf of CONSULTANT represents and warrants that he or she or it is duly authorized to execute and deliver this Agreement on behalf of CONSULTANT and that such execution is binding upon CONSULTANT.

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

IN WITNESS WHEREOF, the parties have executed this AGREEMENT in three (3) copies as of the date and year first written above.

CONSULTANT

CITY OF CONCORD

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By: Frank C Belleci

By: _____

Name: Frank Belleci
Title: President
Address: 2290 Diamond Blvd., Suite 100
Concord, CA 94520
Telephone: (925) 685-4569

Name: Valerie Barone
Title: City Manager
Address: 1950 Parkside Drive, MS 01
Concord, CA 94519
Telephone: (925) 671-3175

APPROVED AS TO FORM:

ATTEST:

City Attorney

City Clerk

Date: _____, 2015

FINANCE DIRECTOR'S CERTIFICATION:

Concord, California

Date: _____, 2015

I HEREBY CERTIFY THAT ADEQUATE FUNDS EXIST OR WILL BE RECEIVED DURING THE CURRENT FISCAL YEARS 2015-16 AND 2016-17 TO PAY THE ANTICIPATED EXPENSES TO BE INCURRED PURSUANT TO THIS CONTRACT.

THE SUM OF **\$250,000.**

Finance Director's Signature

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

1 **THIS AGREEMENT** made and entered into on **July 1st, 2015** by and between the City of Concord
2 (hereinafter "CITY"), located in the County of Contra Costa, State of California, and **Harrison Engineering**
3 **Inc.**, (hereinafter "CONSULTANT"), whose address is 399 Taylor Boulevard, Suite 100, Pleasant Hill, CA
4 94523.

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

7 CITY desires to contract with CONSULTANT and CONSULTANT to contract with CITY for
8 provision by CONSULTANT to CITY for professional services as further described herein, upon the terms and
9 conditions hereinafter set forth.

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

12 1. SERVICES

13 CONSULTANT shall provide services for specific projects as may be requested by CITY;
14 such services shall be defined, scheduled, and authorized in subsequent Task Orders. Services may include, but
15 not be limited to:

- 16 ● Civil Engineering services related to CIP Project
- 17 ● Other as-needed services;

18 CONSULTANT shall be an independent contractor and shall have responsibility for and
19 control over the details and means of providing its services under this AGREEMENT. CONSULTANT agrees
20 that its services shall be performed with due diligence and in accordance with generally accepted engineering
21 practices.

22 CONSULTANT shall use its best efforts to perform and coordinate all activities in a timely
23 manner so that the projects will be completed according to the established project schedules.

24 2. AUTHORIZED REPRESENTATIVES

25 Authorized representatives shall represent CITY and CONSULTANT in all matters pertaining
26 to the services to be ordered by CITY or rendered by CONSULTANT under this Agreement except where
27 approval for the CITY is specifically required by the City Council. The CITY'S authorized representative shall
28

1 be the City Engineer. Said City Engineer is authorized to execute Task Orders on behalf of CITY, including
2 providing for CONSULTANT to be compensated not more than \$75,000 for each project. Task Orders
3 providing for more than \$75,000 compensation for one project shall be presented to the City Council for its
4 consideration.

5 CONSULTANT authorized representative shall be **Randell Harrison, President**

6 3. COMPENSATION

7 CONSULTANT shall be compensated, not to exceed \$250,000 per fiscal year for basic
8 services rendered under Section 1, as more particularly described in authorized Task Orders, in accordance with
9 the terms and conditions included therein.

10 CONSULTANT may submit monthly statements for services rendered; all statements shall
11 include adequate documentation demonstrating work performed during the billing period and shall conform to
12 Federal Funding invoicing requirements, if applicable. It is intended that payments to CONSULTANT will be
13 made by CITY within thirty (30) days of receipt of invoice. Consultant's failure to secure CITY's written
14 authorization for additional compensation or changes to the Scope of Work shall constitute a waiver of any and
15 all right to adjustment in the price or time due, whether by way of compensation, restitution, quantum meruit,
16 or similar relief.

17 4. INDEMNIFICATION

18 CONSULTANT agrees to defend, indemnify and hold harmless the CITY, its officers,
19 officials, employees, agents and volunteers from and against any and all claims, demands, actions, losses,
20 damages, injuries, and liability (including all attorney's fees and other litigation expenses) arising out of the
21 CONSULTANT's performance under the terms of this Agreement. This indemnification obligation on
22 CONSULTANT'S part shall not apply to demands, actions, losses, damages, injuries, and liability arising out
23 of sole negligence or willful misconduct on the part of CITY.

24 5. OWNERSHIP AND MAINTENANCE OF DOCUMENTS

25 All documents furnished by CONSULTANT pursuant to this AGREEMENT are instruments
26 of CONSULTANT's services in respect to this project. They are not intended nor represented to be suitable for
27 reuse by others on extensions of this project or on any other project. Any reuse without specific written
28 verification and adoption by CONSULTANT for the specific purposes intended will be at user's sole risk and

1 without liability or legal exposure and expenses to CONSULTANT, including attorney's fees arising out of
2 such unauthorized reuse.

3 CONSULTANT's records, documents, calculations, and all other instruments of service pertaining to
4 actual project shall be given to CITY at the completion of the project. The CITY reserves the right to specify
5 the file format that electronic document deliverables are presented to the CITY. Title to all plans,
6 specifications, maps, estimates, reports, manuscripts, drawings, descriptions and other final work products
7 compiled by the CONSULTANT under the Agreement shall be vested in the CITY, none of which shall be
8 used in any manner whatsoever, by any person, firm, corporation, or agency without the expressed written
9 consent of the CITY. Basic survey notes and sketches, charts, computations, and other data prepared or
10 obtained under the Agreement shall be made available, upon request, to the CITY without restriction or
11 limitations on their use. CONSULTANT may retain copies of the above-described information but agrees not
12 to disclose or discuss any information gathered, discussed or generated in any way through this Agreement
13 without the written permission of CITY during the term of this Agreement, unless required by law.

14 6. STANDARD OF PERFORMANCE

15 CONSULTANT represents to CITY that the services shall be performed in an expeditious
16 manner, and with the degree of skill and care that is required by current, good, and sound procedures and
17 practices. CONSULTANT further agrees that the services shall be in conformance with generally accepted
18 professional standards prevailing at the time work is performed.

19 7. INSURANCE REQUIRED

20 CONSULTANT shall, at its own expense, procure and maintain in full force at all times during
21 the term of this AGREEMENT the following insurance:

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

26 **B. Automobile Liability Coverage.** CONSULTANT shall maintain automobile liability
27 insurance covering all vehicles used in the performance of this Agreement providing a one million dollar
28 (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage.

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

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

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

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

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

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

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

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

11 8. SUSPENSION OF WORK

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

18 9. TERMINATION

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

26 10. COMPLIANCE WITH CIVIL RIGHTS

27 During the performance of this contract, CONSULTANT agrees as follows:

28 A. **Equal Employment Opportunity.** In connection with the execution of this

1 AGREEMENT, CONSULTANT shall not discriminate against any employee or applicant for employment
2 because of race, religion, color, sex, or national origin. Such actions shall include, but not be limited to, the
3 following: employment, promotion, upgrading, demotion, or transfer; recruitment or recruitment advertising;
4 layoff or termination; rate of pay or other forms of compensation; and selection for training including
5 apprenticeship.

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

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

14 11. CONFLICT OF INTEREST

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

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

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

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

1 12. INDEPENDENT CONTRACTOR

2 In assuming and performing the services, CONSULTANT is an independent contractor and
3 shall not be eligible for any benefits, which the CITY may provide its employees, except as expressly provided
4 for in the AGREEMENT. All persons, if any, hired by CONSULTANT shall be employees or subcontractors of
5 CONSULTANT and shall not be construed as employees or agents of the CITY in any respect.
6 CONSULTANT shall have responsibility for and control over the means of providing services under this
7 AGREEMENT.

8 13. COMPLIANCE WITH LAWS

9 CONSULTANT shall comply with all applicable federal, State of California, and local laws,
10 rules, and regulations and shall obtain all applicable licenses and permits for the conduct of its business and the
11 performance of the services.

12 14. CHOICE OF LAW

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

17 15. NON-WAIVER

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

22 16. ENFORCEABILITY; INTERPRETATION

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

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

4 17. INTEGRATION

5 The AGREEMENT contains the entire AGREEMENT and understanding between the parties
6 as to the subject matter of this AGREEMENT. It merges and supersedes all prior or contemporaneous
7 agreements, commitments, representation, writings, and discussions between CONSULTANT and CITY,
8 whether oral or written.

9 18. SUCCESSORS AND ASSIGNS; NO THIRD PARTY BENEFICIARIES; NO JOINT
10 VENTURE

11 CITY and CONSULTANT respectively, bind themselves, their successors, assigns, and legal
12 representatives to the terms and obligations of this Agreement. CONSULTANT shall not assign or transfer any
13 interest in the Agreement without the CITY's prior written consent, which consent shall be in the CITY's sole
14 discretion. Any attempted assignment or transfer in breach of this provision shall be void. This Agreement is
15 not intended and shall not be construed to create any third party benefit. This Agreement is not intended and
16 shall not be construed to create a joint venture or partnership between the parties. CONSULTANT, its officers,
17 employees and agents shall not have any power to bind or commit the CITY to any decision.

18 19. FINANCIAL RECORDS

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

22 20. NOTICES

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

28 To CITY

Robert Ovadia, City Engineer

Community & Economic Development Department
City of Concord
1950 Parkside Drive, MS/40
Concord, CA 94519
Phone: (925) 671-3470
Fax: (925) 798-9692

To CONSULTANT

Randell Harrison, President
Harrison Engineering Inc.
399 Taylor Blvd., Suite 100
Pleasant Hill, CA 94523
Phone: (925) 691-0450

21. TERM

The term of this AGREEMENT shall be from the date executed above through **June 30th, 2017**, with the option of one one-year extension upon mutual agreement by both CITY and CONSULTANT.

The City Manager is authorized to approve the extension.

22. NON-LIABILITY

No member of the CITY and no other officer, employee or agent of the CITY shall be personally liable to CONSULTANT or otherwise in the event of any default or breach of the CITY, or for any amount which may become due to CONSULTANT or any successor in interest, or for any obligations directly or indirectly incurred under the terms of this Agreement.

23. EXECUTION

Each individual or entity executing this Agreement on behalf of CONSULTANT represents and warrants that he or she or it is duly authorized to execute and deliver this Agreement on behalf of CONSULTANT and that such execution is binding upon CONSULTANT.

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

IN WITNESS WHEREOF, the parties have executed this AGREEMENT in three (3) copies as of the date and year first written above.

CONSULTANT

CITY OF CONCORD

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By: Randell Harrison

By: _____

Name: Randell Harrison
Title: President
Address: 399 Taylor Blvd., Suite 100
Pleasant Hill, CA 94523
Telephone: (925) 691-0450

Name: Valerie Barone
Title: City Manager
Address: 1950 Parkside Drive, MS 01
Concord, CA 94519
Telephone: (925) 671-3175

APPROVED AS TO FORM:

ATTEST:

City Attorney

City Clerk

Date: _____, 2015

FINANCE DIRECTOR'S CERTIFICATION:

Concord, California

Date: _____, 2015

I HEREBY CERTIFY THAT ADEQUATE FUNDS EXIST OR WILL BE RECEIVED DURING THE CURRENT FISCAL YEARS 2015-16 AND 2016-17 TO PAY THE ANTICIPATED EXPENSES TO BE INCURRED PURSUANT TO THIS CONTRACT.

THE SUM OF **\$250,000**.

Finance Director's Signature

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

1 **THIS AGREEMENT** made and entered into on **July 1st, 2015** by and between the City of Concord
2 (hereinafter "CITY"), located in the County of Contra Costa, State of California, and **Nichols Consulting**
3 **Engineers, Chtd., (NCE)** (hereinafter "CONSULTANT"), whose address is 501 Canal Boulevard, Suite I, Pt.
4 Richmond, CA 94804.

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

7 CITY desires to contract with CONSULTANT and CONSULTANT to contract with CITY for
8 provision by CONSULTANT to CITY for professional services as further described herein, upon the terms and
9 conditions hereinafter set forth.

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

12 1. SERVICES

13 CONSULTANT shall provide services for specific projects as may be requested by CITY;
14 such services shall be defined, scheduled, and authorized in subsequent Task Orders. Services may include, but
15 not be limited to:

- 16 ● Civil Engineering services related to CIP Projects
- 17 ● Environmental services related to CIP Projects
- 18 ● Other as-needed services;

19 CONSULTANT shall be an independent contractor and shall have responsibility for and
20 control over the details and means of providing its services under this AGREEMENT. CONSULTANT agrees
21 that its services shall be performed with due diligence and in accordance with generally accepted engineering
22 practices.

23 CONSULTANT shall use its best efforts to perform and coordinate all activities in a timely
24 manner so that the projects will be completed according to the established project schedules.

25 2. AUTHORIZED REPRESENTATIVES

26 Authorized representatives shall represent CITY and CONSULTANT in all matters pertaining
27 to the services to be ordered by CITY or rendered by CONSULTANT under this Agreement except where
28

1 approval for the CITY is specifically required by the City Council. The CITY'S authorized representative shall
2 be the City Engineer. Said City Engineer is authorized to execute Task Orders on behalf of CITY, including
3 providing for CONSULTANT to be compensated not more than **\$75,000** for each project. Task Orders
4 providing for more than **\$75,000** compensation for one project shall be presented to the City Council for its
5 consideration.

6 CONSULTANT authorized representative shall be **Gregory L. Fasiano, Principal**

7 3. COMPENSATION

8 CONSULTANT shall be compensated, not to exceed **\$250,000** per fiscal year for basic
9 services rendered under Section 1, as more particularly described in authorized Task Orders, in accordance with
10 the terms and conditions included therein.

11 CONSULTANT may submit monthly statements for services rendered; all statements shall
12 include adequate documentation demonstrating work performed during the billing period and shall conform to
13 Federal Funding invoicing requirements, if applicable. It is intended that payments to CONSULTANT will be
14 made by CITY within thirty (30) days of receipt of invoice. Consultant's failure to secure CITY's written
15 authorization for additional compensation or changes to the Scope of Work shall constitute a waiver of any and
16 all right to adjustment in the price or time due, whether by way of compensation, restitution, quantum meruit,
17 or similar relief.

18 4. INDEMNIFICATION

19 CONSULTANT agrees to defend, indemnify and hold harmless the CITY, its officers,
20 officials, employees, agents and volunteers from and against any and all claims, demands, actions, losses,
21 damages, injuries, and liability (including all attorney's fees and other litigation expenses) arising out of the
22 CONSULTANT's performance under the terms of this Agreement. This indemnification obligation on
23 CONSULTANT'S part shall not apply to demands, actions, losses, damages, injuries, and liability arising out
24 of sole negligence or willful misconduct on the part of CITY.

25 5. OWNERSHIP AND MAINTENANCE OF DOCUMENTS

26 All documents furnished by CONSULTANT pursuant to this AGREEMENT are instruments
27 of CONSULTANT's services in respect to this project. They are not intended nor represented to be suitable for
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5 actual project shall be given to CITY at the completion of the project. The CITY reserves the right to specify
6 the file format that electronic document deliverables are presented to the CITY. Title to all plans,
7 specifications, maps, estimates, reports, manuscripts, drawings, descriptions and other final work products
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9 used in any manner whatsoever, by any person, firm, corporation, or agency without the expressed written
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11 obtained under the Agreement shall be made available, upon request, to the CITY without restriction or
12 limitations on their use. CONSULTANT may retain copies of the above-described information but agrees not
13 to disclose or discuss any information gathered, discussed or generated in any way through this Agreement
14 without the written permission of CITY during the term of this Agreement, unless required by law.

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16 CONSULTANT represents to CITY that the services shall be performed in an expeditious
17 manner, and with the degree of skill and care that is required by current, good, and sound procedures and
18 practices. CONSULTANT further agrees that the services shall be in conformance with generally accepted
19 professional standards prevailing at the time work is performed.

20 7. INSURANCE REQUIRED

21 CONSULTANT shall, at its own expense, procure and maintain in full force at all times during
22 the term of this AGREEMENT the following insurance:

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

27 **B. Automobile Liability Coverage.** CONSULTANT shall maintain automobile liability
28 insurance covering all vehicles used in the performance of this Agreement providing a one million dollar

1 (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage.

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

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

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

17 **(1) Additional Insured.** CITY, its officers, agents, employees, and volunteers are
18 to be covered as an additional insured as respects: Liability arising out of activities performed by or on behalf
19 of CONSULTANT and operations of CONSULTANT, premises owned, occupied, or used by CONSULTANT.
20 The coverage shall contain no special limitations on the scope or protection afforded to CITY, its officers,
21 officials, employees, or volunteers.

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

26 **(2) Primary Coverage.** CONSULTANT'S insurance coverage shall be primary
27 insurance with respect to CITY, its officers, officials, employees, and volunteers. Any insurance, risk pooling
28 arrangement, or self-insurance maintained by CITY, its officers, officials, employees, or volunteers shall be in

1 excess of CONSULTANT'S insurance and shall not contribute with it.

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

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

12 8. SUSPENSION OF WORK

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

19 9. TERMINATION

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

27 10. COMPLIANCE WITH CIVIL RIGHTS

28 During the performance of this contract, CONSULTANT agrees as follows:

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

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

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

15 11. CONFLICT OF INTEREST

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

23 **B.** CONSULTANT is not a designated employee within the meaning of the Political
24 Reform Act because CONSULTANT:

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

28 (2) Possesses no authority with respect to any CITY decision beyond the rendition of

1 information, advice, recommendation or counsel. (2 Cal. Code Regs. § 18700(a)(2).)

2 12. INDEPENDENT CONTRACTOR

3 In assuming and performing the services, CONSULTANT is an independent contractor and
4 shall not be eligible for any benefits, which the CITY may provide its employees, except as expressly provided
5 for in the AGREEMENT. All persons, if any, hired by CONSULTANT shall be employees or subcontractors of
6 CONSULTANT and shall not be construed as employees or agents of the CITY in any respect.
7 CONSULTANT shall have responsibility for and control over the means of providing services under this
8 AGREEMENT.

9 13. COMPLIANCE WITH LAWS

10 CONSULTANT shall comply with all applicable federal, State of California, and local laws,
11 rules, and regulations and shall obtain all applicable licenses and permits for the conduct of its business and the
12 performance of the services.

13 14. CHOICE OF LAW

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

18 15. NON-WAIVER

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

23 16. ENFORCEABILITY; INTERPRETATION

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

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

5 17. INTEGRATION

6 The AGREEMENT contains the entire AGREEMENT and understanding between the parties
7 as to the subject matter of this AGREEMENT. It merges and supersedes all prior or contemporaneous
8 agreements, commitments, representation, writings, and discussions between CONSULTANT and CITY,
9 whether oral or written.

10 18. SUCCESSORS AND ASSIGNS: NO THIRD PARTY BENEFICIARIES; NO JOINT
11 VENTURE

12 CITY and CONSULTANT respectively, bind themselves, their successors, assigns, and legal
13 representatives to the terms and obligations of this Agreement. CONSULTANT shall not assign or transfer any
14 interest in the Agreement without the CITY's prior written consent, which consent shall be in the CITY's sole
15 discretion. Any attempted assignment or transfer in breach of this provision shall be void. This Agreement is
16 not intended and shall not be construed to create any third party benefit. This Agreement is not intended and
17 shall not be construed to create a joint venture or partnership between the parties. CONSULTANT, its officers,
18 employees and agents shall not have any power to bind or commit the CITY to any decision.

19 19. FINANCIAL RECORDS

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

23 20. NOTICES

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

1 To CITY

**Robert Ovadia, City Engineer
Community & Economic Development Department
City of Concord
1950 Parkside Drive, MS/40
Concord, CA 94519
Phone: (925) 671-3470
Fax: (925) 798-9692**

2
3
4
5 To CONSULTANT

**Gregory L. Fasiano, Principal
Nichols Consulting Engineers, Chtd.
501 Canal Blvd., Suite I
Richmond, CA 94804
Phone: (510) 215-3620
Fax: (510) 215-2898**

6
7
8
9 21. TERM

10 The term of this AGREEMENT shall be from the date executed above through **June 30th**,
11 **2017**, with the option of one one-year extension upon mutual agreement by both CITY and CONSULTANT.
12 The City Manager is authorized to approve the extension.

13
14 22. NON-LIABILITY

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

19 23. EXECUTION

20 Each individual or entity executing this Agreement on behalf of CONSULTANT represents
21 and warrants that he or she or it is duly authorized to execute and deliver this Agreement on behalf of
22 CONSULTANT and that such execution is binding upon CONSULTANT.

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

27 **IN WITNESS WHEREOF**, the parties have executed this AGREEMENT in three (3) copies as of the
28 date and year first written above.

1 **CONSULTANT**

CITY OF CONCORD

2 By: 

By: _____

3 Name: Gregory L. Fasiano
4 Title: Principal
5 Address: 501 Canal Blvd., Suite I
6 Richmond, CA 94804
7 Telephone: (510) 215-3620

Name: Valerie Barone
Title: City Manager
Address: 1950 Parkside Drive, MS 01
Concord, CA 94519
Telephone: (925) 671-3175

8 APPROVED AS TO FORM:

ATTEST:

9 _____
10 City Attorney

_____ City Clerk

11 Date: _____, 2015

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

14 Concord, California

15 Date: _____, 2015

16
17 I HEREBY CERTIFY THAT ADEQUATE FUNDS EXIST OR WILL BE RECEIVED
18 DURING THE CURRENT FISCAL YEARS 2015-16 AND 2016-17 TO PAY THE
19 ANTICIPATED EXPENSES TO BE INCURRED PURSUANT TO THIS CONTRACT.

20 THE SUM OF **\$250,000.**

21 _____
22 Finance Director's Signature

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

1 **THIS AGREEMENT** made and entered into on **July 1st, 2015** by and between the City of Concord
2 (hereinafter "CITY"), located in the County of Contra Costa, State of California, and **Pavement Engineering**
3 **Inc.**, (hereinafter "CONSULTANT"), whose address is 3485 Sacramento Drive, Suite A, San Luis Obispo, CA
4 93401.

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

7 CITY desires to contract with CONSULTANT and CONSULTANT to contract with CITY for
8 provision by CONSULTANT to CITY for professional services as further described herein, upon the terms and
9 conditions hereinafter set forth.

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

12 1. SERVICES

13 CONSULTANT shall provide services for specific projects as may be requested by CITY;
14 such services shall be defined, scheduled, and authorized in subsequent Task Orders. Services may include, but
15 not be limited to:

- 16 ● Civil Engineering services related to CIP Projects
- 17 ● Other as-needed services;

18 CONSULTANT shall be an independent contractor and shall have responsibility for and
19 control over the details and means of providing its services under this AGREEMENT. CONSULTANT agrees
20 that its services shall be performed with due diligence and in accordance with generally accepted engineering
21 practices.

22 CONSULTANT shall use its best efforts to perform and coordinate all activities in a timely
23 manner so that the projects will be completed according to the established project schedules.

24 2. AUTHORIZED REPRESENTATIVES

25 Authorized representatives shall represent CITY and CONSULTANT in all matters pertaining
26 to the services to be ordered by CITY or rendered by CONSULTANT under this Agreement except where
27 approval for the CITY is specifically required by the City Council. The CITY'S authorized representative shall
28

1 be the City Engineer. Said City Engineer is authorized to execute Task Orders on behalf of CITY, including
2 providing for CONSULTANT to be compensated not more than \$75,000 for each project. Task Orders
3 providing for more than \$75,000 compensation for one project shall be presented to the City Council for its
4 consideration.

5 CONSULTANT authorized representative shall be **Joe Ririe, President**

6 3. COMPENSATION

7 CONSULTANT shall be compensated, not to exceed \$250,000 per fiscal year for basic
8 services rendered under Section 1, as more particularly described in authorized Task Orders, in accordance with
9 the terms and conditions included therein.

10 CONSULTANT may submit monthly statements for services rendered; all statements shall
11 include adequate documentation demonstrating work performed during the billing period and shall conform to
12 Federal Funding invoicing requirements, if applicable. It is intended that payments to CONSULTANT will be
13 made by CITY within thirty (30) days of receipt of invoice. Consultant's failure to secure CITY's written
14 authorization for additional compensation or changes to the Scope of Work shall constitute a waiver of any and
15 all right to adjustment in the price or time due, whether by way of compensation, restitution, quantum meruit,
16 or similar relief.

17 4. INDEMNIFICATION

18 CONSULTANT agrees to defend, indemnify and hold harmless the CITY, its officers,
19 officials, employees, agents and volunteers from and against any and all claims, demands, actions, losses,
20 damages, injuries, and liability (including all attorney's fees and other litigation expenses) arising out of the
21 CONSULTANT's performance under the terms of this Agreement. This indemnification obligation on
22 CONSULTANT'S part shall not apply to demands, actions, losses, damages, injuries, and liability arising out
23 of sole negligence or willful misconduct on the part of CITY.

24 5. OWNERSHIP AND MAINTENANCE OF DOCUMENTS

25 All documents furnished by CONSULTANT pursuant to this AGREEMENT are instruments
26 of CONSULTANT's services in respect to this project. They are not intended nor represented to be suitable for
27 reuse by others on extensions of this project or on any other project. Any reuse without specific written
28 verification and adoption by CONSULTANT for the specific purposes intended will be at user's sole risk and

1 without liability or legal exposure and expenses to CONSULTANT, including attorney's fees arising out of
2 such unauthorized reuse.

3 CONSULTANT's records, documents, calculations, and all other instruments of service pertaining to
4 actual project shall be given to CITY at the completion of the project. The CITY reserves the right to specify
5 the file format that electronic document deliverables are presented to the CITY. Title to all plans,
6 specifications, maps, estimates, reports, manuscripts, drawings, descriptions and other final work products
7 compiled by the CONSULTANT under the Agreement shall be vested in the CITY, none of which shall be
8 used in any manner whatsoever, by any person, firm, corporation, or agency without the expressed written
9 consent of the CITY. Basic survey notes and sketches, charts, computations, and other data prepared or
10 obtained under the Agreement shall be made available, upon request, to the CITY without restriction or
11 limitations on their use. CONSULTANT may retain copies of the above-described information but agrees not
12 to disclose or discuss any information gathered, discussed or generated in any way through this Agreement
13 without the written permission of CITY during the term of this Agreement, unless required by law.

14 6. STANDARD OF PERFORMANCE

15 CONSULTANT represents to CITY that the services shall be performed in an expeditious
16 manner, and with the degree of skill and care that is required by current, good, and sound procedures and
17 practices. CONSULTANT further agrees that the services shall be in conformance with generally accepted
18 professional standards prevailing at the time work is performed.

19 7. INSURANCE REQUIRED

20 CONSULTANT shall, at its own expense, procure and maintain in full force at all times during
21 the term of this AGREEMENT the following insurance:

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

26 **B. Automobile Liability Coverage.** CONSULTANT shall maintain automobile liability
27 insurance covering all vehicles used in the performance of this Agreement providing a one million dollar
28 (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage.

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

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

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

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17 to be covered as an additional insured as respects: Liability arising out of activities performed by or on behalf
18 of CONSULTANT and operations of CONSULTANT, premises owned, occupied, or used by CONSULTANT.
19 The coverage shall contain no special limitations on the scope or protection afforded to CITY, its officers,
20 officials, employees, or volunteers.

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

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

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

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4 certificates of insurance and the original endorsements effecting coverage required by this Agreement. The
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6 to bind coverage on its behalf. The aforementioned policies shall be issued by an insurance carrier having a
7 rating of Best A-7 or better which is satisfactory to the City Attorney and shall be delivered to CITY at the time
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14 manner, and CONSULTANT shall be paid for services performed and reimbursable expenses incurred prior to
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16 services, or expenses, except for reasonable administration expenses, incurred by CONSULTANT by reason of
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21 this Agreement. In the event of any termination, CONSULTANT shall promptly deliver to the CITY any and
22 all finished and unfinished reports or other written, recorded, photographic, or visual materials, documents,
23 data, and other deliverables ("Work Materials") prepared for the CITY prior to the effective date of such
24 termination, all of which shall become CITY's sole property. After receipt of the Work Materials, CITY will
25 pay CONSULTANT for the services performed as of the effective date of the termination.

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27 During the performance of this contract, CONSULTANT agrees as follows:

28 A. **Equal Employment Opportunity.** In connection with the execution of this

1 AGREEMENT, CONSULTANT shall not discriminate against any employee or applicant for employment
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3 following: employment, promotion, upgrading, demotion, or transfer; recruitment or recruitment advertising;
4 layoff or termination; rate of pay or other forms of compensation; and selection for training including
5 apprenticeship.

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

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

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

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

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

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

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5 CONSULTANT and shall not be construed as employees or agents of the CITY in any respect.
6 CONSULTANT shall have responsibility for and control over the means of providing services under this
7 AGREEMENT.

8 13. COMPLIANCE WITH LAWS

9 CONSULTANT shall comply with all applicable federal, State of California, and local laws,
10 rules, and regulations and shall obtain all applicable licenses and permits for the conduct of its business and the
11 performance of the services.

12 14. CHOICE OF LAW

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

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

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

1 interpreted as though it was a product of a joint drafting effort and no provisions shall be interpreted against a
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3 interpreted.

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6 as to the subject matter of this AGREEMENT. It merges and supersedes all prior or contemporaneous
7 agreements, commitments, representation, writings, and discussions between CONSULTANT and CITY,
8 whether oral or written.

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10 VENTURE

11 CITY and CONSULTANT respectively, bind themselves, their successors, assigns, and legal
12 representatives to the terms and obligations of this Agreement. CONSULTANT shall not assign or transfer any
13 interest in the Agreement without the CITY's prior written consent, which consent shall be in the CITY's sole
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17 employees and agents shall not have any power to bind or commit the CITY to any decision.

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20 pertaining to this project covered by this AGREEMENT will be kept on a generally recognized accounting
21 basis and made available to CITY if and when required.

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

28 To CITY

Robert Ovadia, City Engineer

1 **Community & Economic Development Department**
2 **City of Concord**
3 **1950 Parkside Drive, MS/40**
4 **Concord, CA 94519**
5 **Phone: (925) 671-3470**
6 **Fax: (925) 798-9692**

7 To CONSULTANT

8 **Joe Ririe, President**
9 **Pavement Engineering Inc.**
10 **3485 Sacramento Drive, Suite A**
11 **San Luis Obispo, CA 93401**
12 **Phone: (805) 781-2265**
13 **Fax: (805) 781-2267**

14 21. TERM

15 The term of this AGREEMENT shall be from the date executed above through **June 30th**,
16 **2017**, with the option of one one-year extension upon mutual agreement by both CITY and CONSULTANT.
17 The City Manager is authorized to approve the extension.

18 22. NON-LIABILITY

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

23 23. EXECUTION

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

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

IN WITNESS WHEREOF, the parties have executed this AGREEMENT in three (3) copies as of the
date and year first written above.

CONSULTANT

CITY OF CONCORD

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By: _____
Name: Mr. Joseph Ririe
Title: President
Address: 3485 Sacramento Drive, Suite A
San Luis Obispo, CA 93401
Telephone: (805) 781-2265

By: _____
Name: Valerie Barone
Title: City Manager
Address: 1950 Parkside Drive, MS 01
Concord, CA 94519
Telephone: (925) 671-3175

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

Date: _____, 2015

FINANCE DIRECTOR'S CERTIFICATION:
Concord, California
Date: _____, 2015

I HEREBY CERTIFY THAT ADEQUATE FUNDS EXIST OR WILL BE RECEIVED
DURING THE CURRENT FISCAL YEARS 2015-16 AND 2016-17 TO PAY THE
ANTICIPATED EXPENSES TO BE INCURRED PURSUANT TO THIS CONTRACT.
THE SUM OF **\$250,000**.

Finance Director's Signature

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

1 **THIS AGREEMENT** made and entered into on **July 1st, 2015** by and between the City of Concord
2 (hereinafter "CITY"), located in the County of Contra Costa, State of California, and Diablo Engineering Group
3 (hereinafter "CONSULTANT"), whose address is 500 Ygnacio Valley Road, Suite 300, Walnut Creek, CA
4 94596.

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

7 CITY desires to contract with CONSULTANT and CONSULTANT to contract with CITY for
8 provision by CONSULTANT to CITY for professional services as further described herein, upon the terms and
9 conditions hereinafter set forth.

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

12 1. SERVICES

13 CONSULTANT shall provide services for specific projects as may be requested by CITY;
14 such services shall be defined, scheduled, and authorized in subsequent Task Orders. Services may include, but
15 not be limited to:

- 16 ● Civil Engineering services related to CIP Projects
- 17 ● Other as-needed services;

18 CONSULTANT shall be an independent contractor and shall have responsibility for and
19 control over the details and means of providing its services under this AGREEMENT. CONSULTANT agrees
20 that its services shall be performed with due diligence and in accordance with generally accepted engineering
21 practices.

22 CONSULTANT shall use its best efforts to perform and coordinate all activities in a timely
23 manner so that the projects will be completed according to the established project schedules.

24 2. AUTHORIZED REPRESENTATIVES

25 Authorized representatives shall represent CITY and CONSULTANT in all matters pertaining
26 to the services to be ordered by CITY or rendered by CONSULTANT under this Agreement except where
27 approval for the CITY is specifically required by the City Council. The CITY'S authorized representative shall
28

1 be the City Engineer. Said City Engineer is authorized to execute Task Orders on behalf of CITY, including
2 providing for CONSULTANT to be compensated not more than \$75,000 for each project. Task Orders
3 providing for more than \$75,000 compensation for one project shall be presented to the City Council for its
4 consideration.

5 CONSULTANT authorized representative shall be **Jennifer Harmon, Principal**

6 3. COMPENSATION

7 CONSULTANT shall be compensated, not to exceed \$250,000 per fiscal year for basic
8 services rendered under Section 1, as more particularly described in authorized Task Orders, in accordance with
9 the terms and conditions included therein.

10 CONSULTANT may submit monthly statements for services rendered; all statements shall
11 include adequate documentation demonstrating work performed during the billing period and shall conform to
12 Federal Funding invoicing requirements, if applicable. It is intended that payments to CONSULTANT will be
13 made by CITY within thirty (30) days of receipt of invoice. Consultant's failure to secure CITY's written
14 authorization for additional compensation or changes to the Scope of Work shall constitute a waiver of any and
15 all right to adjustment in the price or time due, whether by way of compensation, restitution, quantum meruit,
16 or similar relief.

17 4. INDEMNIFICATION

18 CONSULTANT agrees to defend, indemnify and hold harmless the CITY, its officers,
19 officials, employees, agents and volunteers from and against any and all claims, demands, actions, losses,
20 damages, injuries, and liability (including all attorney's fees and other litigation expenses) arising out of the
21 CONSULTANT's performance under the terms of this Agreement. This indemnification obligation on
22 CONSULTANT'S part shall not apply to demands, actions, losses, damages, injuries, and liability arising out
23 of sole negligence or willful misconduct on the part of CITY.

24 5. OWNERSHIP AND MAINTENANCE OF DOCUMENTS

25 All documents furnished by CONSULTANT pursuant to this AGREEMENT are instruments
26 of CONSULTANT's services in respect to this project. They are not intended nor represented to be suitable for
27 reuse by others on extensions of this project or on any other project. Any reuse without specific written
28 verification and adoption by CONSULTANT for the specific purposes intended will be at user's sole risk and

1 without liability or legal exposure and expenses to CONSULTANT, including attorney's fees arising out of
2 such unauthorized reuse.

3 CONSULTANT's records, documents, calculations, and all other instruments of service pertaining to
4 actual project shall be given to CITY at the completion of the project. The CITY reserves the right to specify
5 the file format that electronic document deliverables are presented to the CITY. Title to all plans,
6 specifications, maps, estimates, reports, manuscripts, drawings, descriptions and other final work products
7 compiled by the CONSULTANT under the Agreement shall be vested in the CITY, none of which shall be
8 used in any manner whatsoever, by any person, firm, corporation, or agency without the expressed written
9 consent of the CITY. Basic survey notes and sketches, charts, computations, and other data prepared or
10 obtained under the Agreement shall be made available, upon request, to the CITY without restriction or
11 limitations on their use. CONSULTANT may retain copies of the above-described information but agrees not
12 to disclose or discuss any information gathered, discussed or generated in any way through this Agreement
13 without the written permission of CITY during the term of this Agreement, unless required by law.

14 6. STANDARD OF PERFORMANCE

15 CONSULTANT represents to CITY that the services shall be performed in an expeditious
16 manner, and with the degree of skill and care that is required by current, good, and sound procedures and
17 practices. CONSULTANT further agrees that the services shall be in conformance with generally accepted
18 professional standards prevailing at the time work is performed.

19 7. INSURANCE REQUIRED

20 CONSULTANT shall, at its own expense, procure and maintain in full force at all times during
21 the term of this AGREEMENT the following insurance:

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

26 **B. Automobile Liability Coverage.** CONSULTANT shall maintain automobile liability
27 insurance covering all vehicles used in the performance of this Agreement providing a one million dollar
28 (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage.

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

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

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

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

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

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

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

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

11 8. SUSPENSION OF WORK

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

18 9. TERMINATION

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

26 10. COMPLIANCE WITH CIVIL RIGHTS

27 During the performance of this contract, CONSULTANT agrees as follows:

28 A. **Equal Employment Opportunity.** In connection with the execution of this

1 AGREEMENT, CONSULTANT shall not discriminate against any employee or applicant for employment
2 because of race, religion, color, sex, or national origin. Such actions shall include, but not be limited to, the
3 following: employment, promotion, upgrading, demotion, or transfer; recruitment or recruitment advertising;
4 layoff or termination; rate of pay or other forms of compensation; and selection for training including
5 apprenticeship.

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

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

14 11. CONFLICT OF INTEREST

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

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

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

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

1 12. INDEPENDENT CONTRACTOR

2 In assuming and performing the services, CONSULTANT is an independent contractor and
3 shall not be eligible for any benefits, which the CITY may provide its employees, except as expressly provided
4 for in the AGREEMENT. All persons, if any, hired by CONSULTANT shall be employees or subcontractors of
5 CONSULTANT and shall not be construed as employees or agents of the CITY in any respect.
6 CONSULTANT shall have responsibility for and control over the means of providing services under this
7 AGREEMENT.

8 13. COMPLIANCE WITH LAWS

9 CONSULTANT shall comply with all applicable federal, State of California, and local laws,
10 rules, and regulations and shall obtain all applicable licenses and permits for the conduct of its business and the
11 performance of the services.

12 14. CHOICE OF LAW

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

17 15. NON-WAIVER

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

22 16. ENFORCEABILITY; INTERPRETATION

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

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

4 17. INTEGRATION

5 The AGREEMENT contains the entire AGREEMENT and understanding between the parties
6 as to the subject matter of this AGREEMENT. It merges and supersedes all prior or contemporaneous
7 agreements, commitments, representation, writings, and discussions between CONSULTANT and CITY,
8 whether oral or written.

9 18. SUCCESSORS AND ASSIGNS: NO THIRD PARTY BENEFICIARIES; NO JOINT
10 VENTURE

11 CITY and CONSULTANT respectively, bind themselves, their successors, assigns, and legal
12 representatives to the terms and obligations of this Agreement. CONSULTANT shall not assign or transfer any
13 interest in the Agreement without the CITY's prior written consent, which consent shall be in the CITY's sole
14 discretion. Any attempted assignment or transfer in breach of this provision shall be void. This Agreement is
15 not intended and shall not be construed to create any third party benefit. This Agreement is not intended and
16 shall not be construed to create a joint venture or partnership between the parties. CONSULTANT, its officers,
17 employees and agents shall not have any power to bind or commit the CITY to any decision.

18 19. FINANCIAL RECORDS

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

22 20. NOTICES

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

28 To CITY

Robert Ovadia, City Engineer

1 **Community & Economic Development Department**
2 **City of Concord**
3 **1950 Parkside Drive, MS/40**
4 **Concord, CA 94519**
5 **Phone: (925) 671-3470**
6 **Fax: (925) 798-9692**

7 To CONSULTANT

8 **Jennifer Harmon, Principal**
9 **Diablo Engineering Group**
10 **500 Ygnacio Valley Road, Suite 300**
11 **Walnut Creek, CA 94596**
12 **Phone: (925) 348-4509**
13 **Fax: (925) 906-1465**

14 21. TERM

15 The term of this AGREEMENT shall be from the date executed above through **June 30th, 2017**, with the option of one one-year extension upon mutual agreement by both CITY and CONSULTANT.
16 The City Manager is authorized to approve the extension.

17 22. NON-LIABILITY

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

22 23. EXECUTION

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

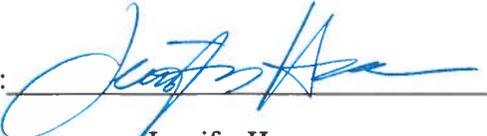
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27 and the same instrument and shall become binding upon the parties when at least one copy hereof shall have
28 been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or
account for more than one such counterpart.

IN WITNESS WHEREOF, the parties have executed this AGREEMENT in three (3) copies as of the
date and year first written above.

CONSULTANT

CITY OF CONCORD

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By: 

Name: Jennifer Harmon
Title: Principal
Address: 500 Ygnacio Valley Road, Suite 300
Walnut Creek, CA 94596
Telephone: (925) 348-4509

By: _____

Name: Valerie Barone
Title: City Manager
Address: 1950 Parkside Drive, MS 01
Concord, CA 94519
Telephone: (925) 671-3175

APPROVED AS TO FORM:

ATTEST:

City Attorney

City Clerk

Date: _____, 2015

FINANCE DIRECTOR'S CERTIFICATION:

Concord, California

Date: _____, 2015

I HEREBY CERTIFY THAT ADEQUATE FUNDS EXIST OR WILL BE RECEIVED DURING THE CURRENT FISCAL YEARS 2015-16 AND 2016-17 TO PAY THE ANTICIPATED EXPENSES TO BE INCURRED PURSUANT TO THIS CONTRACT.

THE SUM OF **\$250,000.**

Finance Director's Signature

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

1 **THIS AGREEMENT** made and entered into on **July 1st, 2015** by and between the City of Concord
2 (hereinafter "CITY"), located in the County of Contra Costa, State of California, and **Harris & Associates,**
3 **Inc.**, (hereinafter "CONSULTANT"), whose address is 1401 Willow Pass Road, Suite 500, Concord, CA
4 94520.

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

7 CITY desires to contract with CONSULTANT and CONSULTANT to contract with CITY for
8 provision by CONSULTANT to CITY for professional services as further described herein, upon the terms and
9 conditions hereinafter set forth.

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

12 1. SERVICES

13 CONSULTANT shall provide services for specific projects as may be requested by CITY;
14 such services shall be defined, scheduled, and authorized in subsequent Task Orders. Services may include, but
15 not be limited to:

- 16 ● Civil Engineering services related to CIP Projects
- 17 ● Development Review services related to CIP Projects
- 18 ● Other as-needed services;

19 CONSULTANT shall be an independent contractor and shall have responsibility for and
20 control over the details and means of providing its services under this AGREEMENT. CONSULTANT agrees
21 that its services shall be performed with due diligence and in accordance with generally accepted engineering
22 practices.

23 CONSULTANT shall use its best efforts to perform and coordinate all activities in a timely
24 manner so that the projects will be completed according to the established project schedules.

25 2. AUTHORIZED REPRESENTATIVES

26 Authorized representatives shall represent CITY and CONSULTANT in all matters pertaining
27 to the services to be ordered by CITY or rendered by CONSULTANT under this Agreement except where
28

1 approval for the CITY is specifically required by the City Council. The CITY'S authorized representative shall
2 be the City Engineer. Said City Engineer is authorized to execute Task Orders on behalf of CITY, including
3 providing for CONSULTANT to be compensated not more than \$75,000 for each project. Task Orders
4 providing for more than \$75,000 compensation for one project shall be presented to the City Council for its
5 consideration.

6 CONSULTANT authorized representative shall be **Jasmine Cuffee, Director of Engineering**
7 **Services**

8 3. COMPENSATION

9 CONSULTANT shall be compensated, not to exceed \$250,000 per fiscal year for basic
10 services rendered under Section 1, as more particularly described in authorized Task Orders, in accordance with
11 the terms and conditions included therein.

12 CONSULTANT may submit monthly statements for services rendered; all statements shall
13 include adequate documentation demonstrating work performed during the billing period and shall conform to
14 Federal Funding invoicing requirements, if applicable. It is intended that payments to CONSULTANT will be
15 made by CITY within thirty (30) days of receipt of invoice. Consultant's failure to secure CITY's written
16 authorization for additional compensation or changes to the Scope of Work shall constitute a waiver of any and
17 all right to adjustment in the price or time due, whether by way of compensation, restitution, quantum meruit,
18 or similar relief.

19 4. INDEMNIFICATION

20 CONSULTANT agrees to defend, indemnify and hold harmless the CITY, its officers,
21 officials, employees, agents and volunteers from and against any and all claims, demands, actions, losses,
22 damages, injuries, and liability (including all attorney's fees and other litigation expenses) arising out of the
23 CONSULTANT's performance under the terms of this Agreement. This indemnification obligation on
24 CONSULTANT'S part shall not apply to demands, actions, losses, damages, injuries, and liability arising out
25 of sole negligence or willful misconduct on the part of CITY.

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27 All documents furnished by CONSULTANT pursuant to this AGREEMENT are instruments
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3 without liability or legal exposure and expenses to CONSULTANT, including attorney's fees arising out of
4 such unauthorized reuse.

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6 actual project shall be given to CITY at the completion of the project. The CITY reserves the right to specify
7 the file format that electronic document deliverables are presented to the CITY. Title to all plans,
8 specifications, maps, estimates, reports, manuscripts, drawings, descriptions and other final work products
9 compiled by the CONSULTANT under the Agreement shall be vested in the CITY, none of which shall be
10 used in any manner whatsoever, by any person, firm, corporation, or agency without the expressed written
11 consent of the CITY. Basic survey notes and sketches, charts, computations, and other data prepared or
12 obtained under the Agreement shall be made available, upon request, to the CITY without restriction or
13 limitations on their use. CONSULTANT may retain copies of the above-described information but agrees not
14 to disclose or discuss any information gathered, discussed or generated in any way through this Agreement
15 without the written permission of CITY during the term of this Agreement, unless required by law.

16 6. STANDARD OF PERFORMANCE

17 CONSULTANT represents to CITY that the services shall be performed in an expeditious
18 manner, and with the degree of skill and care that is required by current, good, and sound procedures and
19 practices. CONSULTANT further agrees that the services shall be in conformance with generally accepted
20 professional standards prevailing at the time work is performed.

21 7. INSURANCE REQUIRED

22 CONSULTANT shall, at its own expense, procure and maintain in full force at all times during
23 the term of this AGREEMENT the following insurance:

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

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1 insurance covering all vehicles used in the performance of this Agreement providing a one million dollar
2 (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage.

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4 maintain professional liability insurance with coverage for all negligent errors, acts or omissions committed by
5 CONSULTANT, its agents and employees in the performance of this Agreement. The amount of this insurance
6 shall be not less than one million dollars (\$1,000,000) on a claims made annual aggregate basis or a combined
7 single limit per occurrence basis.

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

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

18 **(1) Additional Insured.** CITY, its officers, agents, employees, and volunteers are
19 to be covered as an additional insured as respects: Liability arising out of activities performed by or on behalf
20 of CONSULTANT and operations of CONSULTANT, premises owned, occupied, or used by CONSULTANT.
21 The coverage shall contain no special limitations on the scope or protection afforded to CITY, its officers,
22 officials, employees, or volunteers.

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

27 **(2) Primary Coverage.** CONSULTANT'S insurance coverage shall be primary
28 insurance with respect to CITY, its officers, officials, employees, and volunteers. Any insurance, risk pooling

1 arrangement, or self-insurance maintained by CITY, its officers, officials, employees, or volunteers shall be in
2 excess of CONSULTANT'S insurance and shall not contribute with it.

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

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

13 8. SUSPENSION OF WORK

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

20 9. TERMINATION

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

28 10. COMPLIANCE WITH CIVIL RIGHTS

1 During the performance of this contract, CONSULTANT agrees as follows:

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

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

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

16 11. CONFLICT OF INTEREST

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

24 **B.** CONSULTANT is not a designated employee within the meaning of the Political
25 Reform Act because CONSULTANT:

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

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

3 12. INDEPENDENT CONTRACTOR

4 In assuming and performing the services, CONSULTANT is an independent contractor and
5 shall not be eligible for any benefits, which the CITY may provide its employees, except as expressly provided
6 for in the AGREEMENT. All persons, if any, hired by CONSULTANT shall be employees or subcontractors of
7 CONSULTANT and shall not be construed as employees or agents of the CITY in any respect.
8 CONSULTANT shall have responsibility for and control over the means of providing services under this
9 AGREEMENT.

10 13. COMPLIANCE WITH LAWS

11 CONSULTANT shall comply with all applicable federal, State of California, and local laws,
12 rules, and regulations and shall obtain all applicable licenses and permits for the conduct of its business and the
13 performance of the services.

14 14. CHOICE OF LAW

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

19 15. NON-WAIVER

20 The waiver by either party of any breach of any term, covenant, or condition contained in the
21 AGREEMENT, or any default in their performance of any obligations under the AGREEMENT shall not be
22 deemed to be a waiver of any other breach or default of the same or any other term, covenant, condition, or
23 obligation, nor shall any waiver of any incident of breach or default constitute a continuing waiver of same.

24 16. ENFORCEABILITY; INTERPRETATION

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

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

6 17. INTEGRATION

7 The AGREEMENT contains the entire AGREEMENT and understanding between the parties
8 as to the subject matter of this AGREEMENT. It merges and supersedes all prior or contemporaneous
9 agreements, commitments, representation, writings, and discussions between CONSULTANT and CITY,
10 whether oral or written.

11 18. SUCCESSORS AND ASSIGNS: NO THIRD PARTY BENEFICIARIES; NO JOINT
12 VENTURE

13 CITY and CONSULTANT respectively, bind themselves, their successors, assigns, and legal
14 representatives to the terms and obligations of this Agreement. CONSULTANT shall not assign or transfer any
15 interest in the Agreement without the CITY's prior written consent, which consent shall be in the CITY's sole
16 discretion. Any attempted assignment or transfer in breach of this provision shall be void. This Agreement is
17 not intended and shall not be construed to create any third party benefit. This Agreement is not intended and
18 shall not be construed to create a joint venture or partnership between the parties. CONSULTANT, its officers,
19 employees and agents shall not have any power to bind or commit the CITY to any decision.

20 19. FINANCIAL RECORDS

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

24 20. NOTICES

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

1 upon personal delivery.

2 To CITY

**Robert Ovadia, City Engineer
Community & Economic Development Department
City of Concord
1950 Parkside Drive, MS/40
Concord, CA 94519
Phone: (925) 671-3470
Fax: (925) 798-9692**

6 To CONSULTANT

**Jasmine Cuffee, Director of Engineering Services
Harris & Associates, Inc.
1401 Willow Pass Road, Suite 500
Concord, CA 94520
Phone: (925) 827-4900**

10 21. TERM

11 The term of this AGREEMENT shall be from the date executed above through **June 30th**,
12 **2017**, with the option of one one-year extension upon mutual agreement by both CITY and CONSULTANT.

13 The City Manager is authorized to approve the extension.

14 22. NON-LIABILITY

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

19 23. EXECUTION

20 Each individual or entity executing this Agreement on behalf of CONSULTANT represents
21 and warrants that he or she or it is duly authorized to execute and deliver this Agreement on behalf of
22 CONSULTANT and that such execution is binding upon CONSULTANT.

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

27 **IN WITNESS WHEREOF**, the parties have executed this AGREEMENT in three (3) copies as of the
28

1 date and year first written above.

2 **CONSULTANT**

CITY OF CONCORD

3 By:  _____

By: _____

4 Name: Jasmine Cuffee
5 Title: Director of Engineering Services
6 Address: 1401 Willow Pass Road, Suite 500
7 Concord, CA 94520
Telephone: (925) 827-4900

Name: Valerie Barone
Title: City Manager
Address: 1950 Parkside Drive, MS 01
Concord, CA 94519
Telephone: (925) 671-3175

8 APPROVED AS TO FORM:

ATTEST:

9
10 _____
11 City Attorney

12 Date: _____, 2015

13
14 **FINANCE DIRECTOR'S CERTIFICATION:**

15 Concord, California

16 Date: _____, 2015

17
18 I HEREBY CERTIFY THAT ADEQUATE FUNDS EXIST OR WILL BE RECEIVED
19 DURING THE CURRENT FISCAL YEARS 2015-16 AND 2016-17 TO PAY THE
ANTICIPATED EXPENSES TO BE INCURRED PURSUANT TO THIS CONTRACT.

20 THE SUM OF **\$250,000**.

21
22 _____
23 Finance Director's Signature

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

1 **THIS AGREEMENT** made and entered into on **July 1st, 2015** by and between the City of Concord
2 (hereinafter "CITY"), located in the County of Contra Costa, State of California, and **F. J. Kennedy and**
3 **Associates, Inc**, (hereinafter "CONSULTANT"), whose address is 2586 Comistas Drive, Walnut Creek, CA
4 94598.

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

7 CITY desires to contract with CONSULTANT and CONSULTANT to contract with CITY for
8 provision by CONSULTANT to CITY for professional services as further described herein, upon the terms and
9 conditions hereinafter set forth.

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

12 1. SERVICES

13 CONSULTANT shall provide services for specific projects as may be requested by CITY;
14 such services shall be defined, scheduled, and authorized in subsequent Task Orders. Services may include, but
15 not be limited to:

- 16 ● Development Plan Review services related to CIP Projects
- 17 ● Other as-needed services;

18 CONSULTANT shall be an independent contractor and shall have responsibility for and
19 control over the details and means of providing its services under this AGREEMENT. CONSULTANT agrees
20 that its services shall be performed with due diligence and in accordance with generally accepted engineering
21 practices.

22 CONSULTANT shall use its best efforts to perform and coordinate all activities in a timely
23 manner so that the projects will be completed according to the established project schedules.

24 2. AUTHORIZED REPRESENTATIVES

25 Authorized representatives shall represent CITY and CONSULTANT in all matters pertaining
26 to the services to be ordered by CITY or rendered by CONSULTANT under this Agreement except where
27 approval for the CITY is specifically required by the City Council. The CITY'S authorized representative shall
28

1 be the City Engineer. Said City Engineer is authorized to execute Task Orders on behalf of CITY, including
2 providing for CONSULTANT to be compensated not more than \$75,000 for each project. Task Orders
3 providing for more than \$75,000 compensation for one project shall be presented to the City Council for its
4 consideration.

5 CONSULTANT authorized representative shall be **Frank Kennedy, President**

6 3. COMPENSATION

7 CONSULTANT shall be compensated, not to exceed \$250,000 per fiscal year for basic
8 services rendered under Section 1, as more particularly described in authorized Task Orders, in accordance with
9 the terms and conditions included therein.

10 CONSULTANT may submit monthly statements for services rendered; all statements shall
11 include adequate documentation demonstrating work performed during the billing period and shall conform to
12 Federal Funding invoicing requirements, if applicable. It is intended that payments to CONSULTANT will be
13 made by CITY within thirty (30) days of receipt of invoice. Consultant's failure to secure CITY's written
14 authorization for additional compensation or changes to the Scope of Work shall constitute a waiver of any and
15 all right to adjustment in the price or time due, whether by way of compensation, restitution, quantum meruit,
16 or similar relief.

17 4. INDEMNIFICATION

18 CONSULTANT agrees to defend, indemnify and hold harmless the CITY, its officers,
19 officials, employees, agents and volunteers from and against any and all claims, demands, actions, losses,
20 damages, injuries, and liability (including all attorney's fees and other litigation expenses) arising out of the
21 CONSULTANT's performance under the terms of this Agreement. This indemnification obligation on
22 CONSULTANT'S part shall not apply to demands, actions, losses, damages, injuries, and liability arising out
23 of sole negligence or willful misconduct on the part of CITY.

24 5. OWNERSHIP AND MAINTENANCE OF DOCUMENTS

25 All documents furnished by CONSULTANT pursuant to this AGREEMENT are instruments
26 of CONSULTANT's services in respect to this project. They are not intended nor represented to be suitable for
27 reuse by others on extensions of this project or on any other project. Any reuse without specific written
28 verification and adoption by CONSULTANT for the specific purposes intended will be at user's sole risk and

1 without liability or legal exposure and expenses to CONSULTANT, including attorney's fees arising out of
2 such unauthorized reuse.

3 CONSULTANT's records, documents, calculations, and all other instruments of service pertaining to
4 actual project shall be given to CITY at the completion of the project. The CITY reserves the right to specify
5 the file format that electronic document deliverables are presented to the CITY. Title to all plans,
6 specifications, maps, estimates, reports, manuscripts, drawings, descriptions and other final work products
7 compiled by the CONSULTANT under the Agreement shall be vested in the CITY, none of which shall be
8 used in any manner whatsoever, by any person, firm, corporation, or agency without the expressed written
9 consent of the CITY. Basic survey notes and sketches, charts, computations, and other data prepared or
10 obtained under the Agreement shall be made available, upon request, to the CITY without restriction or
11 limitations on their use. CONSULTANT may retain copies of the above-described information but agrees not
12 to disclose or discuss any information gathered, discussed or generated in any way through this Agreement
13 without the written permission of CITY during the term of this Agreement, unless required by law.

14 6. STANDARD OF PERFORMANCE

15 CONSULTANT represents to CITY that the services shall be performed in an expeditious
16 manner, and with the degree of skill and care that is required by current, good, and sound procedures and
17 practices. CONSULTANT further agrees that the services shall be in conformance with generally accepted
18 professional standards prevailing at the time work is performed.

19 7. INSURANCE REQUIRED

20 CONSULTANT shall, at its own expense, procure and maintain in full force at all times during
21 the term of this AGREEMENT the following insurance:

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

26 **B. Automobile Liability Coverage.** CONSULTANT shall maintain automobile liability
27 insurance covering all vehicles used in the performance of this Agreement providing a one million dollar
28 (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage.

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

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

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

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

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

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

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

3 (4) **Verification of Coverage.** CONSULTANT shall furnish CITY with
4 certificates of insurance and the original endorsements effecting coverage required by this Agreement. The
5 certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer
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7 rating of Best A-7 or better which is satisfactory to the City Attorney and shall be delivered to CITY at the time
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10 insurance policies at any time.

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13 CONSULTANT. All suspensions shall extend the time schedule for performance in a mutually satisfactory
14 manner, and CONSULTANT shall be paid for services performed and reimbursable expenses incurred prior to
15 the suspension date. During the period of suspension, CONSULTANT shall not receive any payment for
16 services, or expenses, except for reasonable administration expenses, incurred by CONSULTANT by reason of
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21 this Agreement. In the event of any termination, CONSULTANT shall promptly deliver to the CITY any and
22 all finished and unfinished reports or other written, recorded, photographic, or visual materials, documents,
23 data, and other deliverables ("Work Materials") prepared for the CITY prior to the effective date of such
24 termination, all of which shall become CITY's sole property. After receipt of the Work Materials, CITY will
25 pay CONSULTANT for the services performed as of the effective date of the termination.

26 10. COMPLIANCE WITH CIVIL RIGHTS

27 During the performance of this contract, CONSULTANT agrees as follows:

28 A. **Equal Employment Opportunity.** In connection with the execution of this

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2 because of race, religion, color, sex, or national origin. Such actions shall include, but not be limited to, the
3 following: employment, promotion, upgrading, demotion, or transfer; recruitment or recruitment advertising;
4 layoff or termination; rate of pay or other forms of compensation; and selection for training including
5 apprenticeship.

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

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

14 11. CONFLICT OF INTEREST

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

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

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

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

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5 CONSULTANT and shall not be construed as employees or agents of the CITY in any respect.
6 CONSULTANT shall have responsibility for and control over the means of providing services under this
7 AGREEMENT.

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9 CONSULTANT shall comply with all applicable federal, State of California, and local laws,
10 rules, and regulations and shall obtain all applicable licenses and permits for the conduct of its business and the
11 performance of the services.

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

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

22 16. ENFORCEABILITY; INTERPRETATION

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

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

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7 agreements, commitments, representation, writings, and discussions between CONSULTANT and CITY,
8 whether oral or written.

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11 CITY and CONSULTANT respectively, bind themselves, their successors, assigns, and legal
12 representatives to the terms and obligations of this Agreement. CONSULTANT shall not assign or transfer any
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17 employees and agents shall not have any power to bind or commit the CITY to any decision.

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21 basis and made available to CITY if and when required.

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

28 To CITY

Robert Ovdia, City Engineer

1 **Community & Economic Development Department**
2 **City of Concord**
3 **1950 Parkside Drive, MS/40**
4 **Concord, CA 94519**
5 **Phone: (925) 671-3470**
6 **Fax: (925) 798-9692**

7 To CONSULTANT

8 **Frank Kennedy, President**
9 **F.J. Kennedy and Associates, Inc.**
10 **2586 Comistas Drive**
11 **Walnut Creek, CA 94598**
12 **Phone: (925) 932-7857**
13 **Fax: (925) 465-4841**

14 21. TERM

15 The term of this AGREEMENT shall be from the date executed above through **June 30th**,
16 **2017**, with the option of one one-year extension upon mutual agreement by both CITY and CONSULTANT.
17 The City Manager is authorized to approve the extension.

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

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

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

IN WITNESS WHEREOF, the parties have executed this AGREEMENT in three (3) copies as of the
date and year first written above.

CONSULTANT

CITY OF CONCORD

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By: _____

Name: Frank Kennedy
Title: President
Address: 2586 Comistas Drive
Walnut Creek, CA 94598
Telephone: (925) 932-7857

By: _____

Name: Valerie Barone
Title: City Manager
Address: 1950 Parkside Drive, MS 01
Concord, CA 94519
Telephone: (925) 671-3175

APPROVED AS TO FORM:

ATTEST:

City Attorney

City Clerk

Date: _____, 2015

FINANCE DIRECTOR'S CERTIFICATION:

Concord, California

Date: _____, 2015

I HEREBY CERTIFY THAT ADEQUATE FUNDS EXIST OR WILL BE RECEIVED DURING THE CURRENT FISCAL YEARS 2015-16 AND 2016-17 TO PAY THE ANTICIPATED EXPENSES TO BE INCURRED PURSUANT TO THIS CONTRACT.

THE SUM OF **\$250,000**.

Finance Director's Signature

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

1 **THIS AGREEMENT** made and entered into on **July 1st, 2015** by and between the City of Concord
2 (hereinafter "CITY"), located in the County of Contra Costa, State of California, and **CSG Consultants, Inc.**
3 (hereinafter "CONSULTANT"), whose address is 6200 Stoneridge Mall Road, #300, Pleasanton, CA 94588

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

6 CITY desires to contract with CONSULTANT and CONSULTANT to contract with CITY for
7 provision by CONSULTANT to CITY for professional services as further described herein, upon the terms and
8 conditions hereinafter set forth.

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

11 1. SERVICES

12 CONSULTANT shall provide services for specific projects as may be requested by CITY;
13 such services shall be defined, scheduled, and authorized in subsequent Task Orders. Services may include, but
14 not be limited to:

- 15 ● Development Plan Review services related to CIP Projects
- 16 ● Other as-needed services;

17 CONSULTANT shall be an independent contractor and shall have responsibility for and
18 control over the details and means of providing its services under this AGREEMENT. CONSULTANT agrees
19 that its services shall be performed with due diligence and in accordance with generally accepted engineering
20 practices.

21 CONSULTANT shall use its best efforts to perform and coordinate all activities in a timely
22 manner so that the projects will be completed according to the established project schedules.

23 2. AUTHORIZED REPRESENTATIVES

24 Authorized representatives shall represent CITY and CONSULTANT in all matters pertaining
25 to the services to be ordered by CITY or rendered by CONSULTANT under this Agreement except where
26 approval for the CITY is specifically required by the City Council. The CITY'S authorized representative shall
27 be the City Engineer. Said City Engineer is authorized to execute Task Orders on behalf of CITY, including
28

1 providing for CONSULTANT to be compensated not more than **\$75,000** for each project. Task Orders
2 providing for more than **\$75,000** compensation for one project shall be presented to the City Council for its
3 consideration.

4 CONSULTANT authorized representative shall be **Hatem Ahmed, Principal**

5 3. COMPENSATION

6 CONSULTANT shall be compensated, not to exceed **\$250,000** per fiscal year for basic
7 services rendered under Section 1, as more particularly described in authorized Task Orders, in accordance with
8 the terms and conditions included therein.

9 CONSULTANT may submit monthly statements for services rendered; all statements shall
10 include adequate documentation demonstrating work performed during the billing period and shall conform to
11 Federal Funding invoicing requirements, if applicable. It is intended that payments to CONSULTANT will be
12 made by CITY within thirty (30) days of receipt of invoice. Consultant's failure to secure CITY's written
13 authorization for additional compensation or changes to the Scope of Work shall constitute a waiver of any and
14 all right to adjustment in the price or time due, whether by way of compensation, restitution, quantum meruit,
15 or similar relief.

16 4. INDEMNIFICATION

17 CONSULTANT agrees to defend, indemnify and hold harmless the CITY, its officers,
18 officials, employees, agents and volunteers from and against any and all claims, demands, actions, losses,
19 damages, injuries, and liability (including all attorney's fees and other litigation expenses) arising out of the
20 CONSULTANT's performance under the terms of this Agreement. This indemnification obligation on
21 CONSULTANT'S part shall not apply to demands, actions, losses, damages, injuries, and liability arising out
22 of sole negligence or willful misconduct on the part of CITY.

23 5. OWNERSHIP AND MAINTENANCE OF DOCUMENTS

24 All documents furnished by CONSULTANT pursuant to this AGREEMENT are instruments
25 of CONSULTANT's services in respect to this project. They are not intended nor represented to be suitable for
26 reuse by others on extensions of this project or on any other project. Any reuse without specific written
27 verification and adoption by CONSULTANT for the specific purposes intended will be at user's sole risk and
28 without liability or legal exposure and expenses to CONSULTANT, including attorney's fees arising out of

1 such unauthorized reuse.

2 CONSULTANT's records, documents, calculations, and all other instruments of service pertaining to
3 actual project shall be given to CITY at the completion of the project. The CITY reserves the right to specify
4 the file format that electronic document deliverables are presented to the CITY. Title to all plans,
5 specifications, maps, estimates, reports, manuscripts, drawings, descriptions and other final work products
6 compiled by the CONSULTANT under the Agreement shall be vested in the CITY, none of which shall be
7 used in any manner whatsoever, by any person, firm, corporation, or agency without the expressed written
8 consent of the CITY. Basic survey notes and sketches, charts, computations, and other data prepared or
9 obtained under the Agreement shall be made available, upon request, to the CITY without restriction or
10 limitations on their use. CONSULTANT may retain copies of the above-described information but agrees not
11 to disclose or discuss any information gathered, discussed or generated in any way through this Agreement
12 without the written permission of CITY during the term of this Agreement, unless required by law.

13 6. STANDARD OF PERFORMANCE

14 CONSULTANT represents to CITY that the services shall be performed in an expeditious
15 manner, and with the degree of skill and care that is required by current, good, and sound procedures and
16 practices. CONSULTANT further agrees that the services shall be in conformance with generally accepted
17 professional standards prevailing at the time work is performed.

18 7. INSURANCE REQUIRED

19 CONSULTANT shall, at its own expense, procure and maintain in full force at all times during
20 the term of this AGREEMENT the following insurance:

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

25 B. **Automobile Liability Coverage.** CONSULTANT shall maintain automobile liability
26 insurance covering all vehicles used in the performance of this Agreement providing a one million dollar
27 (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage.

28 C. **Professional Liability Coverage (Errors and Omissions).** CONSULTANT shall

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

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

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

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

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

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

28 (3) **Reporting Provisions.** Any failure to comply with the reporting provisions of

1 the policy shall not affect the coverage provided to the CITY, its officers, officials, employees, or volunteers.

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

10 8. SUSPENSION OF WORK

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

17 9. TERMINATION

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

25 10. COMPLIANCE WITH CIVIL RIGHTS

26 During the performance of this contract, CONSULTANT agrees as follows:

27 **A. Equal Employment Opportunity.** In connection with the execution of this
28 AGREEMENT, CONSULTANT shall not discriminate against any employee or applicant for employment

1 because of race, religion, color, sex, or national origin. Such actions shall include, but not be limited to, the
2 following: employment, promotion, upgrading, demotion, or transfer; recruitment or recruitment advertising;
3 layoff or termination; rate of pay or other forms of compensation; and selection for training including
4 apprenticeship.

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

7 **C. Solicitations for Subcontractors including Procurement of Materials and**
8 **Equipment.** In all solicitation, either by competitive bidding or negotiations, made by CONSULTANT for
9 work to be performed under a subcontract including procurement of materials or leases of equipment, each
10 potential subcontractor, supplier or lessor shall be notified by CONSULTANT of CONSULTANT'S obligation
11 under this AGREEMENT and the regulations relative to nondiscrimination on the grounds of race, religion,
12 color, sex, or national origin.

13 11. CONFLICT OF INTEREST

14 A. CONSULTANT covenants and represents that neither it, nor any officer or principal of
15 its firm, has, or shall acquire any interest, directly or indirectly, which would conflict in any manner with the
16 interests of CITY or which would in any way hinder CONSULTANT's performance of services under this
17 Agreement. CONSULTANT further covenants that in the performance of the Agreement, no person having
18 any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express
19 written consent of the CITY. CONSULTANT agrees to at all times avoid conflicts of interest, or the
20 appearance of any conflicts of interest, with the interests of the CITY in the performance of this Agreement.

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

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

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

28 12. INDEPENDENT CONTRACTOR

1 In assuming and performing the services, CONSULTANT is an independent contractor and
2 shall not be eligible for any benefits, which the CITY may provide its employees, except as expressly provided
3 for in the AGREEMENT. All persons, if any, hired by CONSULTANT shall be employees or subcontractors of
4 CONSULTANT and shall not be construed as employees or agents of the CITY in any respect.
5 CONSULTANT shall have responsibility for and control over the means of providing services under this
6 AGREEMENT.

7 13. COMPLIANCE WITH LAWS

8 CONSULTANT shall comply with all applicable federal, State of California, and local laws,
9 rules, and regulations and shall obtain all applicable licenses and permits for the conduct of its business and the
10 performance of the services.

11 14. CHOICE OF LAW

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

16 15. NON-WAIVER

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

21 16. ENFORCEABILITY; INTERPRETATION

22 In the event that any of the provisions or portions of application of any of the provisions of the
23 AGREEMENT are held to be illegal or invalid by a court of competent jurisdiction, CITY and CONSULTANT
24 shall negotiate an equitable adjustment in the provisions of the AGREEMENT with a view toward affecting the
25 purpose of the AGREEMENT. The illegality or invalidity of any of the provisions or portions of application of
26 any of the provisions of the AGREEMENT shall not affect the legality or enforceability of the remaining
27 provisions or portions of application of any of the provisions of the AGREEMENT. This Agreement shall be
28 interpreted as though it was a product of a joint drafting effort and no provisions shall be interpreted against a

1 party on the ground that said party was solely or primarily responsible for drafting the language to be
2 interpreted.

3 17. INTEGRATION

4 The AGREEMENT contains the entire AGREEMENT and understanding between the parties
5 as to the subject matter of this AGREEMENT. It merges and supersedes all prior or contemporaneous
6 agreements, commitments, representation, writings, and discussions between CONSULTANT and CITY,
7 whether oral or written.

8 18. SUCCESSORS AND ASSIGNS: NO THIRD PARTY BENEFICIARIES; NO JOINT
9 VENTURE

10 CITY and CONSULTANT respectively, bind themselves, their successors, assigns, and legal
11 representatives to the terms and obligations of this Agreement. CONSULTANT shall not assign or transfer any
12 interest in the Agreement without the CITY's prior written consent, which consent shall be in the CITY's sole
13 discretion. Any attempted assignment or transfer in breach of this provision shall be void. This Agreement is
14 not intended and shall not be construed to create any third party benefit. This Agreement is not intended and
15 shall not be construed to create a joint venture or partnership between the parties. CONSULTANT, its officers,
16 employees and agents shall not have any power to bind or commit the CITY to any decision.

17 19. FINANCIAL RECORDS

18 Records of CONSULTANT's direct labor costs, payroll costs, and reimbursable expenses
19 pertaining to this project covered by this AGREEMENT will be kept on a generally recognized accounting
20 basis and made available to CITY if and when required.

21 20. NOTICES

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

27 To CITY

Robert Ovadia, City Engineer
Community & Economic Development Department
City of Concord

1 1950 Parkside Drive, MS/40
2 Concord, CA 94519
3 Phone: (925) 671-3470
4 Fax: (925) 798-9692

5 To CONSULTANT

6 Hatem Ahmed, Principal
7 CSG Consultants, Inc.
8 6200 Stoneridge Mall Road, #300
9 Pleasanton, CA 94588
10 Phone: (925) 931-0370
11 Fax: (925) 931-0388

12 21. TERM

13 The term of this AGREEMENT shall be from the date executed above through **June 30th**,
14 **2017**, with the option of one one-year extension upon mutual agreement by both CITY and CONSULTANT.
15 The City Manager is authorized to approve the extension.

16 22. NON-LIABILITY

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

21 23. EXECUTION

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

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

IN WITNESS WHEREOF, the parties have executed this AGREEMENT in three (3) copies as of the
date and year first written above.

CONSULTANT

CITY OF CONCORD

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By: 

Name: Cyrus Khanpour, PE, PLS
Title: President
Address: 6200 Stoneridge Mall Road, #300
Pleasanton, CA 94588
Telephone: (925) 931-0370

By: _____

Name: Valerie Barone
Title: City Manager
Address: 1950 Parkside Drive, MS 01
Concord, CA 94519
Telephone: (925) 671-3175

APPROVED AS TO FORM:

ATTEST:

City Attorney

City Clerk

Date: _____, 2015

FINANCE DIRECTOR'S CERTIFICATION:

Concord, California

Date: _____, 2015

I HEREBY CERTIFY THAT ADEQUATE FUNDS EXIST OR WILL BE RECEIVED
DURING THE CURRENT FISCAL YEARS 2015-16 AND 2016-17 TO PAY THE
ANTICIPATED EXPENSES TO BE INCURRED PURSUANT TO THIS CONTRACT.

THE SUM OF **\$250,000**.

Finance Director's Signature

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

1 **THIS AGREEMENT** made and entered into on **July 1st, 2015** by and between the City of Concord
2 (hereinafter "CITY"), located in the County of Contra Costa, State of California, and **Swinerton Management**
3 **& Consulting**, (hereinafter "CONSULTANT"), whose address is 260 Townsend Street, San Francisco, CA
4 94107.

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

7 CITY desires to contract with CONSULTANT and CONSULTANT to contract with CITY for
8 provision by CONSULTANT to CITY for professional services as further described herein, upon the terms and
9 conditions hereinafter set forth.

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

12 1. SERVICES

13 CONSULTANT shall provide services for specific projects as may be requested by CITY;
14 such services shall be defined, scheduled, and authorized in subsequent Task Orders. Services may include, but
15 not be limited to:

- 16 ● Construction Management services related to CIP Projects
- 17 ● Project Management services related to CIP Projects
- 18 ● Other as-needed services;

19 CONSULTANT shall be an independent contractor and shall have responsibility for and
20 control over the details and means of providing its services under this AGREEMENT. CONSULTANT agrees
21 that its services shall be performed with due diligence and in accordance with generally accepted engineering
22 practices.

23 CONSULTANT shall use its best efforts to perform and coordinate all activities in a timely
24 manner so that the projects will be completed according to the established project schedules.

25 2. AUTHORIZED REPRESENTATIVES

26 Authorized representatives shall represent CITY and CONSULTANT in all matters pertaining
27 to the services to be ordered by CITY or rendered by CONSULTANT under this Agreement except where
28

1 approval for the CITY is specifically required by the City Council. The CITY'S authorized representative shall
2 be the City Engineer. Said City Engineer is authorized to execute Task Orders on behalf of CITY, including
3 providing for CONSULTANT to be compensated not more than \$75,000 for each project. Task Orders
4 providing for more than \$75,000 compensation for one project shall be presented to the City Council for its
5 consideration.

6 CONSULTANT authorized representative shall be **Jeffrey S. Gee, Vice President.**

7 3. COMPENSATION

8 CONSULTANT shall be compensated, not to exceed \$250,000 per fiscal year for basic
9 services rendered under Section 1, as more particularly described in authorized Task Orders, in accordance with
10 the terms and conditions included therein.

11 CONSULTANT may submit monthly statements for services rendered; all statements shall
12 include adequate documentation demonstrating work performed during the billing period and shall conform to
13 Federal Funding invoicing requirements, if applicable. It is intended that payments to CONSULTANT will be
14 made by CITY within thirty (30) days of receipt of invoice. Consultant's failure to secure CITY's written
15 authorization for additional compensation or changes to the Scope of Work shall constitute a waiver of any and
16 all right to adjustment in the price or time due, whether by way of compensation, restitution, quantum meruit,
17 or similar relief.

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21 damages, injuries, and liability (including all attorney's fees and other litigation expenses) arising out of the
22 CONSULTANT's performance under the terms of this Agreement. This indemnification obligation on
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3 such unauthorized reuse.

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6 the file format that electronic document deliverables are presented to the CITY. Title to all plans,
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10 consent of the CITY. Basic survey notes and sketches, charts, computations, and other data prepared or
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12 limitations on their use. CONSULTANT may retain copies of the above-described information but agrees not
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19 professional standards prevailing at the time work is performed.

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22 the term of this AGREEMENT the following insurance:

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24 commercial general liability insurance with limits of no less than one million dollars (\$1,000,000) combined
25 single limit per occurrence or two million dollars (\$2,000,000) aggregate limit for bodily injury, personal
26 injury, and property damage.

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28 insurance covering all vehicles used in the performance of this Agreement providing a one million dollar

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6 single limit per occurrence basis.

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9 California Labor Code §3700, et seq. CONSULTANT shall, at all times, upon demand of the City, furnish
10 proof that Workers' Compensation Insurance is being maintained by it in force and effect in accordance with
11 the California Labor Code. The insurer shall also agree to waive all rights of subrogation against the CITY, its
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14 no employees.

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18 to be covered as an additional insured as respects: Liability arising out of activities performed by or on behalf
19 of CONSULTANT and operations of CONSULTANT, premises owned, occupied, or used by CONSULTANT.
20 The coverage shall contain no special limitations on the scope or protection afforded to CITY, its officers,
21 officials, employees, or volunteers.

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

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27 insurance with respect to CITY, its officers, officials, employees, and volunteers. Any insurance, risk pooling
28 arrangement, or self-insurance maintained by CITY, its officers, officials, employees, or volunteers shall be in

1 excess of CONSULTANT'S insurance and shall not contribute with it.

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

4 **(4) Verification of Coverage.** CONSULTANT shall furnish CITY with
5 certificates of insurance and the original endorsements effecting coverage required by this Agreement. The
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12 8. SUSPENSION OF WORK

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

19 9. TERMINATION

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

27 10. COMPLIANCE WITH CIVIL RIGHTS

28 During the performance of this contract, CONSULTANT agrees as follows:

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

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

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

15 11. CONFLICT OF INTEREST

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

23 **B.** CONSULTANT is not a designated employee within the meaning of the Political
24 Reform Act because CONSULTANT:

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

28 (2) Possesses no authority with respect to any CITY decision beyond the rendition of

1 information, advice, recommendation or counsel. (2 Cal. Code Regs. § 18700(a)(2).)

2 12. INDEPENDENT CONTRACTOR

3 In assuming and performing the services, CONSULTANT is an independent contractor and
4 shall not be eligible for any benefits, which the CITY may provide its employees, except as expressly provided
5 for in the AGREEMENT. All persons, if any, hired by CONSULTANT shall be employees or subcontractors of
6 CONSULTANT and shall not be construed as employees or agents of the CITY in any respect.
7 CONSULTANT shall have responsibility for and control over the means of providing services under this
8 AGREEMENT.

9 13. COMPLIANCE WITH LAWS

10 CONSULTANT shall comply with all applicable federal, State of California, and local laws,
11 rules, and regulations and shall obtain all applicable licenses and permits for the conduct of its business and the
12 performance of the services.

13 14. CHOICE OF LAW

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

18 15. NON-WAIVER

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

23 16. ENFORCEABILITY; INTERPRETATION

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

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

5 17. INTEGRATION

6 The AGREEMENT contains the entire AGREEMENT and understanding between the parties
7 as to the subject matter of this AGREEMENT. It merges and supersedes all prior or contemporaneous
8 agreements, commitments, representation, writings, and discussions between CONSULTANT and CITY,
9 whether oral or written.

10 18. SUCCESSORS AND ASSIGNS; NO THIRD PARTY BENEFICIARIES; NO JOINT
11 VENTURE

12 CITY and CONSULTANT respectively, bind themselves, their successors, assigns, and legal
13 representatives to the terms and obligations of this Agreement. CONSULTANT shall not assign or transfer any
14 interest in the Agreement without the CITY's prior written consent, which consent shall be in the CITY's sole
15 discretion. Any attempted assignment or transfer in breach of this provision shall be void. This Agreement is
16 not intended and shall not be construed to create any third party benefit. This Agreement is not intended and
17 shall not be construed to create a joint venture or partnership between the parties. CONSULTANT, its officers,
18 employees and agents shall not have any power to bind or commit the CITY to any decision.

19 19. FINANCIAL RECORDS

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

23 20. NOTICES

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

1 To CITY

**Robert Ovadia, City Engineer
Community & Economic Development Department
City of Concord
1950 Parkside Drive, MS/40
Concord, CA 94519
Phone: (925) 671-3470
Fax: (925) 798-9692**

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4
5 To CONSULTANT

**Jeffrey S. Gee
Swinerton Management & Consulting
260 Townsend Street
San Francisco, CA 94107
Phone: (415) 421-2980
Fax: (415) 984-1292**

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10 21. TERM

11 The term of this AGREEMENT shall be from the date executed above through **June 30th,
12 2017**, with the option of one one-year extension upon mutual agreement by both CITY and CONSULTANT.
13 The City Manager is authorized to approve the extension.

14 22. NON-LIABILITY

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

19 23. EXECUTION

20 Each individual or entity executing this Agreement on behalf of CONSULTANT represents
21 and warrants that he or she or it is duly authorized to execute and deliver this Agreement on behalf of
22 CONSULTANT and that such execution is binding upon CONSULTANT.

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

27 **IN WITNESS WHEREOF**, the parties have executed this AGREEMENT in three (3) copies as of the
28 date and year first written above.

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CONSULTANT

CITY OF CONCORD

By: 

By: _____

Name: Jeffrey S. Gee
Title: Vice President
Address: 260 Townsend Street
San Francisco, CA 94107
Telephone: (415) 421-2980

Name: Valerie Barone
Title: City Manager
Address: 1950 Parkside Drive, MS 01
Concord, CA 94519
Telephone: (925) 671-3175

APPROVED AS TO FORM:

ATTEST:

City Attorney

City Clerk

Date: _____, 2015

FINANCE DIRECTOR'S CERTIFICATION:

Concord, California

Date: _____, 2015

I HEREBY CERTIFY THAT ADEQUATE FUNDS EXIST OR WILL BE RECEIVED DURING THE CURRENT FISCAL YEARS 2015-16 AND 2016-17 TO PAY THE ANTICIPATED EXPENSES TO BE INCURRED PURSUANT TO THIS CONTRACT.

THE SUM OF \$250,000.

Finance Director's Signature

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

1 **THIS AGREEMENT** made and entered into on **July 1st, 2015** by and between the City of Concord
2 (hereinafter "CITY"), located in the County of Contra Costa, State of California, and **Vali Cooper &**
3 **Associates**, (hereinafter "CONSULTANT"), whose address is 2000 Powell Street, Suite 550, Emeryville, CA
4 94608.

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

7 CITY desires to contract with CONSULTANT and CONSULTANT to contract with CITY for
8 provision by CONSULTANT to CITY for professional services as further described herein, upon the terms and
9 conditions hereinafter set forth.

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

12 1. SERVICES

13 CONSULTANT shall provide services for specific projects as may be requested by CITY;
14 such services shall be defined, scheduled, and authorized in subsequent Task Orders. Services may include, but
15 not be limited to:

- 16 ● Construction Management services related to CIP Projects
- 17 ● Project Management services related to CIP Projects
- 18 ● Other as-needed services;

19 CONSULTANT shall be an independent contractor and shall have responsibility for and
20 control over the details and means of providing its services under this AGREEMENT. CONSULTANT agrees
21 that its services shall be performed with due diligence and in accordance with generally accepted engineering
22 practices.

23 CONSULTANT shall use its best efforts to perform and coordinate all activities in a timely
24 manner so that the projects will be completed according to the established project schedules.

25 2. AUTHORIZED REPRESENTATIVES

26 Authorized representatives shall represent CITY and CONSULTANT in all matters pertaining
27 to the services to be ordered by CITY or rendered by CONSULTANT under this Agreement except where
28

1 approval for the CITY is specifically required by the City Council. The CITY'S authorized representative shall
2 be the City Engineer. Said City Engineer is authorized to execute Task Orders on behalf of CITY, including
3 providing for CONSULTANT to be compensated not more than \$75,000 for each project. Task Orders
4 providing for more than \$75,000 compensation for one project shall be presented to the City Council for its
5 consideration.

6 CONSULTANT authorized representative shall be **John Collins, Chief Operating Officer.**

7 3. COMPENSATION

8 CONSULTANT shall be compensated, not to exceed \$250,000 per fiscal year for basic
9 services rendered under Section 1, as more particularly described in authorized Task Orders, in accordance with
10 the terms and conditions included therein.

11 CONSULTANT may submit monthly statements for services rendered; all statements shall
12 include adequate documentation demonstrating work performed during the billing period and shall conform to
13 Federal Funding invoicing requirements, if applicable. It is intended that payments to CONSULTANT will be
14 made by CITY within thirty (30) days of receipt of invoice. Consultant's failure to secure CITY's written
15 authorization for additional compensation or changes to the Scope of Work shall constitute a waiver of any and
16 all right to adjustment in the price or time due, whether by way of compensation, restitution, quantum meruit,
17 or similar relief.

18 4. INDEMNIFICATION

19 CONSULTANT agrees to defend, indemnify and hold harmless the CITY, its officers,
20 officials, employees, agents and volunteers from and against any and all claims, demands, actions, losses,
21 damages, injuries, and liability (including all attorney's fees and other litigation expenses) arising out of the
22 CONSULTANT'S performance under the terms of this Agreement. This indemnification obligation on
23 CONSULTANT'S part shall not apply to demands, actions, losses, damages, injuries, and liability arising out
24 of sole negligence or willful misconduct on the part of CITY.

25 5. OWNERSHIP AND MAINTENANCE OF DOCUMENTS

26 All documents furnished by CONSULTANT pursuant to this AGREEMENT are instruments
27 of CONSULTANT'S services in respect to this project. They are not intended nor represented to be suitable for
28 reuse by others on extensions of this project or on any other project. Any reuse without specific written

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

4 CONSULTANT's records, documents, calculations, and all other instruments of service pertaining to
5 actual project shall be given to CITY at the completion of the project. The CITY reserves the right to specify
6 the file format that electronic document deliverables are presented to the CITY. Title to all plans,
7 specifications, maps, estimates, reports, manuscripts, drawings, descriptions and other final work products
8 compiled by the CONSULTANT under the Agreement shall be vested in the CITY, none of which shall be
9 used in any manner whatsoever, by any person, firm, corporation, or agency without the expressed written
10 consent of the CITY. Basic survey notes and sketches, charts, computations, and other data prepared or
11 obtained under the Agreement shall be made available, upon request, to the CITY without restriction or
12 limitations on their use. CONSULTANT may retain copies of the above-described information but agrees not
13 to disclose or discuss any information gathered, discussed or generated in any way through this Agreement
14 without the written permission of CITY during the term of this Agreement, unless required by law.

15 6. STANDARD OF PERFORMANCE

16 CONSULTANT represents to CITY that the services shall be performed in an expeditious
17 manner, and with the degree of skill and care that is required by current, good, and sound procedures and
18 practices. CONSULTANT further agrees that the services shall be in conformance with generally accepted
19 professional standards prevailing at the time work is performed.

20 7. INSURANCE REQUIRED

21 CONSULTANT shall, at its own expense, procure and maintain in full force at all times during
22 the term of this AGREEMENT the following insurance:

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

27 **B. Automobile Liability Coverage.** CONSULTANT shall maintain automobile liability
28 insurance covering all vehicles used in the performance of this Agreement providing a one million dollar

1 (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage.

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

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

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

17 **(1) Additional Insured.** CITY, its officers, agents, employees, and volunteers are
18 to be covered as an additional insured as respects: Liability arising out of activities performed by or on behalf
19 of CONSULTANT and operations of CONSULTANT, premises owned, occupied, or used by CONSULTANT.
20 The coverage shall contain no special limitations on the scope or protection afforded to CITY, its officers,
21 officials, employees, or volunteers.

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

26 **(2) Primary Coverage.** CONSULTANT'S insurance coverage shall be primary
27 insurance with respect to CITY, its officers, officials, employees, and volunteers. Any insurance, risk pooling
28 arrangement, or self-insurance maintained by CITY, its officers, officials, employees, or volunteers shall be in

1 excess of CONSULTANT'S insurance and shall not contribute with it.

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

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

12 8. SUSPENSION OF WORK

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

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

27 10. COMPLIANCE WITH CIVIL RIGHTS

28 During the performance of this contract, CONSULTANT agrees as follows:

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

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

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

15 11. CONFLICT OF INTEREST

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

23 **B.** CONSULTANT is not a designated employee within the meaning of the Political
24 Reform Act because CONSULTANT:

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

28 (2) Possesses no authority with respect to any CITY decision beyond the rendition of

1 information, advice, recommendation or counsel. (2 Cal. Code Regs. § 18700(a)(2).)

2 12. INDEPENDENT CONTRACTOR

3 In assuming and performing the services, CONSULTANT is an independent contractor and
4 shall not be eligible for any benefits, which the CITY may provide its employees, except as expressly provided
5 for in the AGREEMENT. All persons, if any, hired by CONSULTANT shall be employees or subcontractors of
6 CONSULTANT and shall not be construed as employees or agents of the CITY in any respect.
7 CONSULTANT shall have responsibility for and control over the means of providing services under this
8 AGREEMENT.

9 13. COMPLIANCE WITH LAWS

10 CONSULTANT shall comply with all applicable federal, State of California, and local laws,
11 rules, and regulations and shall obtain all applicable licenses and permits for the conduct of its business and the
12 performance of the services.

13 14. CHOICE OF LAW

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

18 15. NON-WAIVER

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

23 16. ENFORCEABILITY; INTERPRETATION

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

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

5 17. INTEGRATION

6 The AGREEMENT contains the entire AGREEMENT and understanding between the parties
7 as to the subject matter of this AGREEMENT. It merges and supersedes all prior or contemporaneous
8 agreements, commitments, representation, writings, and discussions between CONSULTANT and CITY,
9 whether oral or written.

10 18. SUCCESSORS AND ASSIGNS: NO THIRD PARTY BENEFICIARIES; NO JOINT
11 VENTURE

12 CITY and CONSULTANT respectively, bind themselves, their successors, assigns, and legal
13 representatives to the terms and obligations of this Agreement. CONSULTANT shall not assign or transfer any
14 interest in the Agreement without the CITY's prior written consent, which consent shall be in the CITY's sole
15 discretion. Any attempted assignment or transfer in breach of this provision shall be void. This Agreement is
16 not intended and shall not be construed to create any third party benefit. This Agreement is not intended and
17 shall not be construed to create a joint venture or partnership between the parties. CONSULTANT, its officers,
18 employees and agents shall not have any power to bind or commit the CITY to any decision.

19 19. FINANCIAL RECORDS

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

23 20. NOTICES

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

1 To CITY

Robert Ovadia, City Engineer
Community & Economic Development Department
City of Concord
1950 Parkside Drive, MS/40
Concord, CA 94519
Phone: (925) 671-3470
Fax: (925) 798-9692

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6 To CONSULTANT

John Collins, Chief Operating Officer
Vali Cooper & Associates, Inc.
2000 Powell Street, Suite 550
Emeryville, CA 94608
Phone: (510) 446-8301

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9
10 21. TERM

11 The term of this AGREEMENT shall be from the date executed above through **June 30th**,
12 **2017**, with the option of one one-year extension upon mutual agreement by both CITY and CONSULTANT.
13 The City Manager is authorized to approve the extension.

14 22. NON-LIABILITY

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

19 23. EXECUTION

20 Each individual or entity executing this Agreement on behalf of CONSULTANT represents
21 and warrants that he or she or it is duly authorized to execute and deliver this Agreement on behalf of
22 CONSULTANT and that such execution is binding upon CONSULTANT.

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

27 **IN WITNESS WHEREOF**, the parties have executed this AGREEMENT in three (3) copies as of the
28 date and year first written above.

1 **CONSULTANT**

CITY OF CONCORD

2 By:  _____

By: _____

3 Name: John Collins
4 Title: Chief Operating Officer
5 Address: 2000 Powell Street, Suite 550
6 Emeryville, CA 94608
7 Telephone: (510) 446-8301

Name: Valerie Barone
Title: City Manager
Address: 1950 Parkside Drive, MS 01
Concord, CA 94519
Telephone: (925) 671-3175

8 APPROVED AS TO FORM:

ATTEST:

9 _____
10 City Attorney

_____ City Clerk

11 Date: _____, 2015

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

14 Concord, California

15 Date: _____, 2015

16
17 I HEREBY CERTIFY THAT ADEQUATE FUNDS EXIST OR WILL BE RECEIVED
18 DURING THE CURRENT FISCAL YEARS 2015-16 AND 2016-17 TO PAY THE
19 ANTICIPATED EXPENSES TO BE INCURRED PURSUANT TO THIS CONTRACT.

20 THE SUM OF **\$250,000**.

21 _____
22 Finance Director's Signature

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

1 **THIS AGREEMENT** made and entered into on **July 1st, 2015** by and between the City of Concord
2 (hereinafter "CITY"), located in the County of Contra Costa, State of California, and **Park Engineering**,
3 (hereinafter "CONSULTANT"), whose address is 372 Village Square, Orinda, CA 94563.

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

6 CITY desires to contract with CONSULTANT and CONSULTANT to contract with CITY for
7 provision by CONSULTANT to CITY for professional services as further described herein, upon the terms and
8 conditions hereinafter set forth.

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

11 1. SERVICES

12 CONSULTANT shall provide services for specific projects as may be requested by CITY;
13 such services shall be defined, scheduled, and authorized in subsequent Task Orders. Services may include, but
14 not be limited to:

- 15 ● Construction Management services related to CIP Projects
- 16 ● Project Management services related to CIP Projects
- 17 ● Other as-needed services;

18 CONSULTANT shall be an independent contractor and shall have responsibility for and
19 control over the details and means of providing its services under this AGREEMENT. CONSULTANT agrees
20 that its services shall be performed with due diligence and in accordance with generally accepted engineering
21 practices.

22 CONSULTANT shall use its best efforts to perform and coordinate all activities in a timely
23 manner so that the projects will be completed according to the established project schedules.

24 2. AUTHORIZED REPRESENTATIVES

25 Authorized representatives shall represent CITY and CONSULTANT in all matters pertaining
26 to the services to be ordered by CITY or rendered by CONSULTANT under this Agreement except where
27 approval for the CITY is specifically required by the City Council. The CITY'S authorized representative shall
28

1 be the City Engineer. Said City Engineer is authorized to execute Task Orders on behalf of CITY, including
2 providing for CONSULTANT to be compensated not more than **\$75,000** for each project. Task Orders
3 providing for more than **\$75,000** compensation for one project shall be presented to the City Council for its
4 consideration.

5 CONSULTANT authorized representative shall be **Jaemin Park, President**

6 3. COMPENSATION

7 CONSULTANT shall be compensated, not to exceed **\$250,000** per fiscal year for basic
8 services rendered under Section 1, as more particularly described in authorized Task Orders, in accordance with
9 the terms and conditions included therein.

10 CONSULTANT may submit monthly statements for services rendered; all statements shall
11 include adequate documentation demonstrating work performed during the billing period and shall conform to
12 Federal Funding invoicing requirements, if applicable. It is intended that payments to CONSULTANT will be
13 made by CITY within thirty (30) days of receipt of invoice. Consultant's failure to secure CITY's written
14 authorization for additional compensation or changes to the Scope of Work shall constitute a waiver of any and
15 all right to adjustment in the price or time due, whether by way of compensation, restitution, quantum meruit,
16 or similar relief.

17 4. INDEMNIFICATION

18 CONSULTANT agrees to defend, indemnify and hold harmless the CITY, its officers,
19 officials, employees, agents and volunteers from and against any and all claims, demands, actions, losses,
20 damages, injuries, and liability (including all attorney's fees and other litigation expenses) arising out of the
21 CONSULTANT's performance under the terms of this Agreement. This indemnification obligation on
22 CONSULTANT'S part shall not apply to demands, actions, losses, damages, injuries, and liability arising out
23 of sole negligence or willful misconduct on the part of CITY.

24 5. OWNERSHIP AND MAINTENANCE OF DOCUMENTS

25 All documents furnished by CONSULTANT pursuant to this AGREEMENT are instruments
26 of CONSULTANT's services in respect to this project. They are not intended nor represented to be suitable for
27 reuse by others on extensions of this project or on any other project. Any reuse without specific written
28 verification and adoption by CONSULTANT for the specific purposes intended will be at user's sole risk and

1 without liability or legal exposure and expenses to CONSULTANT, including attorney's fees arising out of
2 such unauthorized reuse.

3 CONSULTANT's records, documents, calculations, and all other instruments of service pertaining to
4 actual project shall be given to CITY at the completion of the project. The CITY reserves the right to specify
5 the file format that electronic document deliverables are presented to the CITY. Title to all plans,
6 specifications, maps, estimates, reports, manuscripts, drawings, descriptions and other final work products
7 compiled by the CONSULTANT under the Agreement shall be vested in the CITY, none of which shall be
8 used in any manner whatsoever, by any person, firm, corporation, or agency without the expressed written
9 consent of the CITY. Basic survey notes and sketches, charts, computations, and other data prepared or
10 obtained under the Agreement shall be made available, upon request, to the CITY without restriction or
11 limitations on their use. CONSULTANT may retain copies of the above-described information but agrees not
12 to disclose or discuss any information gathered, discussed or generated in any way through this Agreement
13 without the written permission of CITY during the term of this Agreement, unless required by law.

14 6. STANDARD OF PERFORMANCE

15 CONSULTANT represents to CITY that the services shall be performed in an expeditious
16 manner, and with the degree of skill and care that is required by current, good, and sound procedures and
17 practices. CONSULTANT further agrees that the services shall be in conformance with generally accepted
18 professional standards prevailing at the time work is performed.

19 7. INSURANCE REQUIRED

20 CONSULTANT shall, at its own expense, procure and maintain in full force at all times during
21 the term of this AGREEMENT the following insurance:

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

26 **B. Automobile Liability Coverage.** CONSULTANT shall maintain automobile liability
27 insurance covering all vehicles used in the performance of this Agreement providing a one million dollar
28 (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage.

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

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

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

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

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

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

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

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

11 8. SUSPENSION OF WORK

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

18 9. TERMINATION

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

26 10. COMPLIANCE WITH CIVIL RIGHTS

27 During the performance of this contract, CONSULTANT agrees as follows:

28 A. **Equal Employment Opportunity.** In connection with the execution of this

1 AGREEMENT, CONSULTANT shall not discriminate against any employee or applicant for employment
2 because of race, religion, color, sex, or national origin. Such actions shall include, but not be limited to, the
3 following: employment, promotion, upgrading, demotion, or transfer; recruitment or recruitment advertising;
4 layoff or termination; rate of pay or other forms of compensation; and selection for training including
5 apprenticeship.

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

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

14 11. CONFLICT OF INTEREST

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

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

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

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

1 12. INDEPENDENT CONTRACTOR

2 In assuming and performing the services, CONSULTANT is an independent contractor and
3 shall not be eligible for any benefits, which the CITY may provide its employees, except as expressly provided
4 for in the AGREEMENT. All persons, if any, hired by CONSULTANT shall be employees or subcontractors of
5 CONSULTANT and shall not be construed as employees or agents of the CITY in any respect.
6 CONSULTANT shall have responsibility for and control over the means of providing services under this
7 AGREEMENT.

8 13. COMPLIANCE WITH LAWS

9 CONSULTANT shall comply with all applicable federal, State of California, and local laws,
10 rules, and regulations and shall obtain all applicable licenses and permits for the conduct of its business and the
11 performance of the services.

12 14. CHOICE OF LAW

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

17 15. NON-WAIVER

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

22 16. ENFORCEABILITY; INTERPRETATION

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

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

4 17. INTEGRATION

5 The AGREEMENT contains the entire AGREEMENT and understanding between the parties
6 as to the subject matter of this AGREEMENT. It merges and supersedes all prior or contemporaneous
7 agreements, commitments, representation, writings, and discussions between CONSULTANT and CITY,
8 whether oral or written.

9 18. SUCCESSORS AND ASSIGNS: NO THIRD PARTY BENEFICIARIES; NO JOINT
10 VENTURE

11 CITY and CONSULTANT respectively, bind themselves, their successors, assigns, and legal
12 representatives to the terms and obligations of this Agreement. CONSULTANT shall not assign or transfer any
13 interest in the Agreement without the CITY's prior written consent, which consent shall be in the CITY's sole
14 discretion. Any attempted assignment or transfer in breach of this provision shall be void. This Agreement is
15 not intended and shall not be construed to create any third party benefit. This Agreement is not intended and
16 shall not be construed to create a joint venture or partnership between the parties. CONSULTANT, its officers,
17 employees and agents shall not have any power to bind or commit the CITY to any decision.

18 19. FINANCIAL RECORDS

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

22 20. NOTICES

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

28 To CITY

Robert Ovadia, City Engineer

1 **Community & Economic Development Department**
2 **City of Concord**
3 **1950 Parkside Drive, MS/40**
4 **Concord, CA 94519**
5 **Phone: (925) 671-3470**
6 **Fax: (925) 798-9692**

7 To CONSULTANT

8 **Jaemin Park, President**
9 **Park Engineering**
10 **372 Village Square**
11 **Orinda, CA 94563**
12 **Phone: (925) 257-2508**

13 21. TERM

14 The term of this AGREEMENT shall be from the date executed above through **June 30th, 2017**, with the option of one one-year extension upon mutual agreement by both CITY and CONSULTANT.

15 The City Manager is authorized to approve the extension.

16 22. NON-LIABILITY

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

18 23. EXECUTION

19 Each individual or entity executing this Agreement on behalf of CONSULTANT represents and warrants that he or she or it is duly authorized to execute and deliver this Agreement on behalf of CONSULTANT and that such execution is binding upon CONSULTANT.

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

21 **IN WITNESS WHEREOF**, the parties have executed this AGREEMENT in three (3) copies as of the date and year first written above.

22 **CONSULTANT**

23 **CITY OF CONCORD**

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By: 

By: _____

Name: Jaemin Park
Title: President
Address: 372 Village Square
Orinda, CA 94563
Telephone: (925) 257-2508

Name: Valerie Barone
Title: City Manager
Address: 1950 Parkside Drive, MS 01
Concord, CA 94519
Telephone: (925) 671-3175

APPROVED AS TO FORM:

ATTEST:

City Attorney

City Clerk

Date: _____, 2015

FINANCE DIRECTOR'S CERTIFICATION:

Concord, California

Date: _____, 2015

I HEREBY CERTIFY THAT ADEQUATE FUNDS EXIST OR WILL BE RECEIVED DURING THE CURRENT FISCAL YEARS 2015-16 AND 2016-17 TO PAY THE ANTICIPATED EXPENSES TO BE INCURRED PURSUANT TO THIS CONTRACT.

THE SUM OF **\$250,000**.

Finance Director's Signature

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

1 **THIS AGREEMENT** made and entered into on **July 1st, 2015** by and between the City of Concord
2 (hereinafter "CITY"), located in the County of Contra Costa, State of California, and **4LEAF, Inc.**, (hereinafter
3 "CONSULTANT"), whose address is 2110 Rheem Drive, Suite A, Pleasanton, CA 94588.

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

6 CITY desires to contract with CONSULTANT and CONSULTANT to contract with CITY for
7 provision by CONSULTANT to CITY for professional services as further described herein, upon the terms and
8 conditions hereinafter set forth.

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

11 1. SERVICES

12 CONSULTANT shall provide services for specific projects as may be requested by CITY;
13 such services shall be defined, scheduled, and authorized in subsequent Task Orders. Services may include, but
14 not be limited to:

- 15 ● Construction Management services related to CIP Projects
- 16 ● Project Management services related to CIP Projects
- 17 ● Other as-needed services;

18 CONSULTANT shall be an independent contractor and shall have responsibility for and
19 control over the details and means of providing its services under this AGREEMENT. CONSULTANT agrees
20 that its services shall be performed with due diligence and in accordance with generally accepted engineering
21 practices.

22 CONSULTANT shall use its best efforts to perform and coordinate all activities in a timely
23 manner so that the projects will be completed according to the established project schedules.

24 2. AUTHORIZED REPRESENTATIVES

25 Authorized representatives shall represent CITY and CONSULTANT in all matters pertaining
26 to the services to be ordered by CITY or rendered by CONSULTANT under this Agreement except where
27 approval for the CITY is specifically required by the City Council. The CITY'S authorized representative shall
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1 be the City Engineer. Said City Engineer is authorized to execute Task Orders on behalf of CITY, including
2 providing for CONSULTANT to be compensated not more than **\$75,000** for each project. Task Orders
3 providing for more than **\$75,000** compensation for one project shall be presented to the City Council for its
4 consideration.

5 CONSULTANT authorized representative shall be **Gene Barry, Vice President**

6 3. COMPENSATION

7 CONSULTANT shall be compensated, not to exceed **\$250,000** per fiscal year for basic
8 services rendered under Section 1, as more particularly described in authorized Task Orders, in accordance with
9 the terms and conditions included therein.

10 CONSULTANT may submit monthly statements for services rendered; all statements shall
11 include adequate documentation demonstrating work performed during the billing period and shall conform to
12 Federal Funding invoicing requirements, if applicable. It is intended that payments to CONSULTANT will be
13 made by CITY within thirty (30) days of receipt of invoice. Consultant's failure to secure CITY's written
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15 all right to adjustment in the price or time due, whether by way of compensation, restitution, quantum meruit,
16 or similar relief.

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18 CONSULTANT agrees to defend, indemnify and hold harmless the CITY, its officers,
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20 damages, injuries, and liability (including all attorney's fees and other litigation expenses) arising out of the
21 CONSULTANT's performance under the terms of this Agreement. This indemnification obligation on
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23 of sole negligence or willful misconduct on the part of CITY.

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26 of CONSULTANT's services in respect to this project. They are not intended nor represented to be suitable for
27 reuse by others on extensions of this project or on any other project. Any reuse without specific written
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7 compiled by the CONSULTANT under the Agreement shall be vested in the CITY, none of which shall be
8 used in any manner whatsoever, by any person, firm, corporation, or agency without the expressed written
9 consent of the CITY. Basic survey notes and sketches, charts, computations, and other data prepared or
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16 manner, and with the degree of skill and care that is required by current, good, and sound procedures and
17 practices. CONSULTANT further agrees that the services shall be in conformance with generally accepted
18 professional standards prevailing at the time work is performed.

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21 the term of this AGREEMENT the following insurance:

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24 single limit per occurrence or two million dollars (\$2,000,000) aggregate limit for bodily injury, personal
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5 single limit per occurrence basis.

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27 arrangement, or self-insurance maintained by CITY, its officers, officials, employees, or volunteers shall be in
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13 CONSULTANT. All suspensions shall extend the time schedule for performance in a mutually satisfactory
14 manner, and CONSULTANT shall be paid for services performed and reimbursable expenses incurred prior to
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23 data, and other deliverables ("Work Materials") prepared for the CITY prior to the effective date of such
24 termination, all of which shall become CITY's sole property. After receipt of the Work Materials, CITY will
25 pay CONSULTANT for the services performed as of the effective date of the termination.

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5 apprenticeship.

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7 federal regulations relative to nondiscrimination in federally assisted programs.

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10 work to be performed under a subcontract including procurement of materials or leases of equipment, each
11 potential subcontractor, supplier or lessor shall be notified by CONSULTANT of CONSULTANT'S obligation
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13 color, sex, or national origin.

14 11. CONFLICT OF INTEREST

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

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

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

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

1 12. INDEPENDENT CONTRACTOR

2 In assuming and performing the services, CONSULTANT is an independent contractor and
3 shall not be eligible for any benefits, which the CITY may provide its employees, except as expressly provided
4 for in the AGREEMENT. All persons, if any, hired by CONSULTANT shall be employees or subcontractors of
5 CONSULTANT and shall not be construed as employees or agents of the CITY in any respect.
6 CONSULTANT shall have responsibility for and control over the means of providing services under this
7 AGREEMENT.

8 13. COMPLIANCE WITH LAWS

9 CONSULTANT shall comply with all applicable federal, State of California, and local laws,
10 rules, and regulations and shall obtain all applicable licenses and permits for the conduct of its business and the
11 performance of the services.

12 14. CHOICE OF LAW

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

17 15. NON-WAIVER

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

22 16. ENFORCEABILITY; INTERPRETATION

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

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

4 17. INTEGRATION

5 The AGREEMENT contains the entire AGREEMENT and understanding between the parties
6 as to the subject matter of this AGREEMENT. It merges and supersedes all prior or contemporaneous
7 agreements, commitments, representation, writings, and discussions between CONSULTANT and CITY,
8 whether oral or written.

9 18. SUCCESSORS AND ASSIGNS; NO THIRD PARTY BENEFICIARIES; NO JOINT
10 VENTURE

11 CITY and CONSULTANT respectively, bind themselves, their successors, assigns, and legal
12 representatives to the terms and obligations of this Agreement. CONSULTANT shall not assign or transfer any
13 interest in the Agreement without the CITY's prior written consent, which consent shall be in the CITY's sole
14 discretion. Any attempted assignment or transfer in breach of this provision shall be void. This Agreement is
15 not intended and shall not be construed to create any third party benefit. This Agreement is not intended and
16 shall not be construed to create a joint venture or partnership between the parties. CONSULTANT, its officers,
17 employees and agents shall not have any power to bind or commit the CITY to any decision.

18 19. FINANCIAL RECORDS

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

22 20. NOTICES

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

28 To CITY

Robert Ovadia, City Engineer

1 **Community & Economic Development Department**
2 **City of Concord**
3 **1950 Parkside Drive, MS/40**
4 **Concord, CA 94519**
5 **Phone: (925) 671-3470**
6 **Fax: (925) 798-9692**

7 To CONSULTANT

8 **Gene Barry, Vice President**
9 **4LEAF Inc.**
10 **2110 Rheem Drive, Suite A**
11 **Pleasanton, CA 94588**
12 **Phone: (925) 462-5959**
13 **Fax: (925) 462-5958**

14 21. TERM

15 The term of this AGREEMENT shall be from the date executed above through **June 30th**,
16 **2017**, with the option of one one-year extension upon mutual agreement by both CITY and CONSULTANT.
17 The City Manager is authorized to approve the extension.

18 22. NON-LIABILITY

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

23 23. EXECUTION

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

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

IN WITNESS WHEREOF, the parties have executed this AGREEMENT in three (3) copies as of the
date and year first written above.

CONSULTANT

CITY OF CONCORD

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By:  us 4LEAF VP

By: _____

Name: Gene Barry
Title: Vice President
Address: 2110 Rheem Drive, Suite A
Pleasanton, CA 94588
Telephone: (925) 462-5959

Name: Valerie Barone
Title: City Manager
Address: 1950 Parkside Drive, MS 01
Concord, CA 94519
Telephone: (925) 671-3175

APPROVED AS TO FORM:

ATTEST:

City Attorney

City Clerk

Date: _____, 2015

FINANCE DIRECTOR'S CERTIFICATION:

Concord, California

Date: _____, 2015

I HEREBY CERTIFY THAT ADEQUATE FUNDS EXIST OR WILL BE RECEIVED DURING THE CURRENT FISCAL YEARS 2015-16 AND 2016-17 TO PAY THE ANTICIPATED EXPENSES TO BE INCURRED PURSUANT TO THIS CONTRACT.

THE SUM OF **\$250,000**.

Finance Director's Signature

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

1 **THIS AGREEMENT** made and entered into on **July 1st, 2015** by and between the City of Concord
2 (hereinafter "CITY"), located in the County of Contra Costa, State of California, and **tBP Architecture, Inc.**,
3 (hereinafter "CONSULTANT"), whose address is 1000 Burnett Avenue, Suite 320, Concord, CA 94520.

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

6 CITY desires to contract with CONSULTANT and CONSULTANT to contract with CITY for
7 provision by CONSULTANT to CITY for professional services as further described herein, upon the terms and
8 conditions hereinafter set forth.

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

11 1. SERVICES

12 CONSULTANT shall provide services for specific projects as may be requested by CITY;
13 such services shall be defined, scheduled, and authorized in subsequent Task Orders. Services may include, but
14 not be limited to:

- 15 ● Architectural services related to CIP Projects
- 16 ● Other as-needed services;

17 CONSULTANT shall be an independent contractor and shall have responsibility for and
18 control over the details and means of providing its services under this AGREEMENT. CONSULTANT agrees
19 that its services shall be performed with due diligence and in accordance with generally accepted engineering
20 practices.

21 CONSULTANT shall use its best efforts to perform and coordinate all activities in a timely
22 manner so that the projects will be completed according to the established project schedules.

23 2. AUTHORIZED REPRESENTATIVES

24 Authorized representatives shall represent CITY and CONSULTANT in all matters pertaining
25 to the services to be ordered by CITY or rendered by CONSULTANT under this Agreement except where
26 approval for the CITY is specifically required by the City Council. The CITY'S authorized representative shall
27 be the City Engineer. Said City Engineer is authorized to execute Task Orders on behalf of CITY, including
28

1 providing for CONSULTANT to be compensated not more than \$75,000 for each project. Task Orders
2 providing for more than \$75,000 compensation for one project shall be presented to the City Council for its
3 consideration.

4 CONSULTANT authorized representative shall be **Philip Newsom, Principal**

5 3. COMPENSATION

6 CONSULTANT shall be compensated, not to exceed \$250,000 per fiscal year for basic
7 services rendered under Section 1, as more particularly described in authorized Task Orders, in accordance with
8 the terms and conditions included therein.

9 CONSULTANT may submit monthly statements for services rendered; all statements shall
10 include adequate documentation demonstrating work performed during the billing period and shall conform to
11 Federal Funding invoicing requirements, if applicable. It is intended that payments to CONSULTANT will be
12 made by CITY within thirty (30) days of receipt of invoice. Consultant's failure to secure CITY's written
13 authorization for additional compensation or changes to the Scope of Work shall constitute a waiver of any and
14 all right to adjustment in the price or time due, whether by way of compensation, restitution, quantum meruit,
15 or similar relief.

16 4. INDEMNIFICATION

17 CONSULTANT agrees to defend, indemnify and hold harmless the CITY, its officers,
18 officials, employees, agents and volunteers from and against any and all claims, demands, actions, losses,
19 damages, injuries, and liability (including all attorney's fees and other litigation expenses) arising out of the
20 CONSULTANT's performance under the terms of this Agreement. This indemnification obligation on
21 CONSULTANT'S part shall not apply to demands, actions, losses, damages, injuries, and liability arising out
22 of sole negligence or willful misconduct on the part of CITY.

23 5. OWNERSHIP AND MAINTENANCE OF DOCUMENTS

24 All documents furnished by CONSULTANT pursuant to this AGREEMENT are instruments
25 of CONSULTANT's services in respect to this project. They are not intended nor represented to be suitable for
26 reuse by others on extensions of this project or on any other project. Any reuse without specific written
27 verification and adoption by CONSULTANT for the specific purposes intended will be at user's sole risk and
28 without liability or legal exposure and expenses to CONSULTANT, including attorney's fees arising out of

1 such unauthorized reuse.

2 CONSULTANT's records, documents, calculations, and all other instruments of service pertaining to
3 actual project shall be given to CITY at the completion of the project. The CITY reserves the right to specify
4 the file format that electronic document deliverables are presented to the CITY. Title to all plans,
5 specifications, maps, estimates, reports, manuscripts, drawings, descriptions and other final work products
6 compiled by the CONSULTANT under the Agreement shall be vested in the CITY, none of which shall be
7 used in any manner whatsoever, by any person, firm, corporation, or agency without the expressed written
8 consent of the CITY. Basic survey notes and sketches, charts, computations, and other data prepared or
9 obtained under the Agreement shall be made available, upon request, to the CITY without restriction or
10 limitations on their use. CONSULTANT may retain copies of the above-described information but agrees not
11 to disclose or discuss any information gathered, discussed or generated in any way through this Agreement
12 without the written permission of CITY during the term of this Agreement, unless required by law.

13 6. STANDARD OF PERFORMANCE

14 CONSULTANT represents to CITY that the services shall be performed in an expeditious
15 manner, and with the degree of skill and care that is required by current, good, and sound procedures and
16 practices. CONSULTANT further agrees that the services shall be in conformance with generally accepted
17 professional standards prevailing at the time work is performed.

18 7. INSURANCE REQUIRED

19 CONSULTANT shall, at its own expense, procure and maintain in full force at all times during
20 the term of this AGREEMENT the following insurance:

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

25 **B. Automobile Liability Coverage.** CONSULTANT shall maintain automobile liability
26 insurance covering all vehicles used in the performance of this Agreement providing a one million dollar
27 (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage.

28 **C. Professional Liability Coverage (Errors and Omissions).** CONSULTANT shall

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

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

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

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

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

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

28 **(3) Reporting Provisions.** Any failure to comply with the reporting provisions of

1 the policy shall not affect the coverage provided to the CITY, its officers, officials, employees, or volunteers.

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

10 8. SUSPENSION OF WORK

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

17 9. TERMINATION

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

25 10. COMPLIANCE WITH CIVIL RIGHTS

26 During the performance of this contract, CONSULTANT agrees as follows:

27 **A. Equal Employment Opportunity.** In connection with the execution of this
28 AGREEMENT, CONSULTANT shall not discriminate against any employee or applicant for employment

1 because of race, religion, color, sex, or national origin. Such actions shall include, but not be limited to, the
2 following: employment, promotion, upgrading, demotion, or transfer; recruitment or recruitment advertising;
3 layoff or termination; rate of pay or other forms of compensation; and selection for training including
4 apprenticeship.

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

7 **C. Solicitations for Subcontractors including Procurement of Materials and**
8 **Equipment.** In all solicitation, either by competitive bidding or negotiations, made by CONSULTANT for
9 work to be performed under a subcontract including procurement of materials or leases of equipment, each
10 potential subcontractor, supplier or lessor shall be notified by CONSULTANT of CONSULTANT'S obligation
11 under this AGREEMENT and the regulations relative to nondiscrimination on the grounds of race, religion,
12 color, sex, or national origin.

13 11. CONFLICT OF INTEREST

14 A. CONSULTANT covenants and represents that neither it, nor any officer or principal of
15 its firm, has, or shall acquire any interest, directly or indirectly, which would conflict in any manner with the
16 interests of CITY or which would in any way hinder CONSULTANT's performance of services under this
17 Agreement. CONSULTANT further covenants that in the performance of the Agreement, no person having
18 any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express
19 written consent of the CITY. CONSULTANT agrees to at all times avoid conflicts of interest, or the
20 appearance of any conflicts of interest, with the interests of the CITY in the performance of this Agreement.

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

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

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

28 12. INDEPENDENT CONTRACTOR

1 In assuming and performing the services, CONSULTANT is an independent contractor and
2 shall not be eligible for any benefits, which the CITY may provide its employees, except as expressly provided
3 for in the AGREEMENT. All persons, if any, hired by CONSULTANT shall be employees or subcontractors of
4 CONSULTANT and shall not be construed as employees or agents of the CITY in any respect.
5 CONSULTANT shall have responsibility for and control over the means of providing services under this
6 AGREEMENT.

7 13. COMPLIANCE WITH LAWS

8 CONSULTANT shall comply with all applicable federal, State of California, and local laws,
9 rules, and regulations and shall obtain all applicable licenses and permits for the conduct of its business and the
10 performance of the services.

11 14. CHOICE OF LAW

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

16 15. NON-WAIVER

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

21 16. ENFORCEABILITY; INTERPRETATION

22 In the event that any of the provisions or portions of application of any of the provisions of the
23 AGREEMENT are held to be illegal or invalid by a court of competent jurisdiction, CITY and CONSULTANT
24 shall negotiate an equitable adjustment in the provisions of the AGREEMENT with a view toward affecting the
25 purpose of the AGREEMENT. The illegality or invalidity of any of the provisions or portions of application of
26 any of the provisions of the AGREEMENT shall not affect the legality or enforceability of the remaining
27 provisions or portions of application of any of the provisions of the AGREEMENT. This Agreement shall be
28 interpreted as though it was a product of a joint drafting effort and no provisions shall be interpreted against a

1 party on the ground that said party was solely or primarily responsible for drafting the language to be
2 interpreted.

3 17. INTEGRATION

4 The AGREEMENT contains the entire AGREEMENT and understanding between the parties
5 as to the subject matter of this AGREEMENT. It merges and supersedes all prior or contemporaneous
6 agreements, commitments, representation, writings, and discussions between CONSULTANT and CITY,
7 whether oral or written.

8 18. SUCCESSORS AND ASSIGNS: NO THIRD PARTY BENEFICIARIES; NO JOINT
9 VENTURE

10 CITY and CONSULTANT respectively, bind themselves, their successors, assigns, and legal
11 representatives to the terms and obligations of this Agreement. CONSULTANT shall not assign or transfer any
12 interest in the Agreement without the CITY's prior written consent, which consent shall be in the CITY's sole
13 discretion. Any attempted assignment or transfer in breach of this provision shall be void. This Agreement is
14 not intended and shall not be construed to create any third party benefit. This Agreement is not intended and
15 shall not be construed to create a joint venture or partnership between the parties. CONSULTANT, its officers,
16 employees and agents shall not have any power to bind or commit the CITY to any decision.

17 19. FINANCIAL RECORDS

18 Records of CONSULTANT's direct labor costs, payroll costs, and reimbursable expenses
19 pertaining to this project covered by this AGREEMENT will be kept on a generally recognized accounting
20 basis and made available to CITY if and when required.

21 20. NOTICES

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

27 To CITY

Robert Ovadia, City Engineer
Community & Economic Development Department
City of Concord

1 1950 Parkside Drive, MS/40
2 Concord, CA 94519
3 Phone: (925) 671-3470
4 Fax: (925) 798-9692

5 To CONSULTANT

6 Philip Newsom
7 tBP Architecture, Inc.
8 1000 Burnett Avenue, Suite 320
9 Concord, CA 94520
10 Phone: (925) 246-6419
11 Fax: (925) 2466495

12 21. TERM

13 The term of this AGREEMENT shall be from the date executed above through **June 30th**,
14 **2017**, with the option of one one-year extension upon mutual agreement by both CITY and CONSULTANT.
15 The City Manager is authorized to approve the extension.

16 22. NON-LIABILITY

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

21 23. EXECUTION

22 Each individual or entity executing this Agreement on behalf of CONSULTANT represents
23 and warrants that he or she or it is duly authorized to execute and deliver this Agreement on behalf of
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25 This Agreement may be executed in several counterparts, each of which shall constitute one
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27 been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or
28 account for more than one such counterpart.

IN WITNESS WHEREOF, the parties have executed this AGREEMENT in three (3) copies as of the
date and year first written above.

CONSULTANT

CITY OF CONCORD

LBP/ARCHITECTURE


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By: _____
Name: Philip Newsom, ARCHITECT
Title: Principal / EXEC VP
Address: 1000 Burnett Avenue, Suite 320
Concord, CA 94520
Telephone: (925) 246-6419

By: _____
Name: Valerie Barone
Title: City Manager
Address: 1950 Parkside Drive, MS 01
Concord, CA 94519
Telephone: (925) 671-3175

APPROVED AS TO FORM:

ATTEST:

City Attorney

City Clerk

Date: _____, 2015

FINANCE DIRECTOR'S CERTIFICATION:

Concord, California

Date: _____, 2015

I HEREBY CERTIFY THAT ADEQUATE FUNDS EXIST OR WILL BE RECEIVED DURING THE CURRENT FISCAL YEARS 2015-16 AND 2016-17 TO PAY THE ANTICIPATED EXPENSES TO BE INCURRED PURSUANT TO THIS CONTRACT.

THE SUM OF **\$250,000**.

Finance Director's Signature

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

1 **THIS AGREEMENT** made and entered into on **July 1st, 2015** by and between the City of Concord
 2 (hereinafter "CITY"), located in the County of Contra Costa, State of California, and **SVA Architects, Inc.**,
 3 (hereinafter "CONSULTANT"), whose address is 444 17th Street, Suite 101, Oakland, CA 94612.

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

6 CITY desires to contract with CONSULTANT and CONSULTANT to contract with CITY for
 7 provision by CONSULTANT to CITY for professional services as further described herein, upon the terms and
 8 conditions hereinafter set forth.

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

11 1. SERVICES

12 CONSULTANT shall provide services for specific projects as may be requested by CITY;
 13 such services shall be defined, scheduled, and authorized in subsequent Task Orders. Services may include, but
 14 not be limited to:

- 15 ● Architectural services related to CIP Projects
- 16 ● Other as-needed services;

17 CONSULTANT shall be an independent contractor and shall have responsibility for and
 18 control over the details and means of providing its services under this AGREEMENT. CONSULTANT agrees
 19 that its services shall be performed with due diligence and in accordance with generally accepted engineering
 20 practices.

21 CONSULTANT shall use its best efforts to perform and coordinate all activities in a timely
 22 manner so that the projects will be completed according to the established project schedules.

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24 Authorized representatives shall represent CITY and CONSULTANT in all matters pertaining
 25 to the services to be ordered by CITY or rendered by CONSULTANT under this Agreement except where
 26 approval for the CITY is specifically required by the City Council. The CITY'S authorized representative shall
 27 be the City Engineer. Said City Engineer is authorized to execute Task Orders on behalf of CITY, including
 28

1 providing for CONSULTANT to be compensated not more than \$75,000 for each project. Task Orders
2 providing for more than \$75,000 compensation for one project shall be presented to the City Council for its
3 consideration.

4 CONSULTANT authorized representative shall be **Robert Simons, President**

5 3. COMPENSATION

6 CONSULTANT shall be compensated, not to exceed \$250,000 per fiscal year for basic
7 services rendered under Section 1, as more particularly described in authorized Task Orders, in accordance with
8 the terms and conditions included therein.

9 CONSULTANT may submit monthly statements for services rendered; all statements shall
10 include adequate documentation demonstrating work performed during the billing period and shall conform to
11 Federal Funding invoicing requirements, if applicable. It is intended that payments to CONSULTANT will be
12 made by CITY within thirty (30) days of receipt of invoice. Consultant's failure to secure CITY's written
13 authorization for additional compensation or changes to the Scope of Work shall constitute a waiver of any and
14 all right to adjustment in the price or time due, whether by way of compensation, restitution, quantum meruit,
15 or similar relief.

16 4. INDEMNIFICATION

17 CONSULTANT agrees to defend, indemnify and hold harmless the CITY, its officers,
18 officials, employees, agents and volunteers from and against any and all claims, demands, actions, losses,
19 damages, injuries, and liability (including all attorney's fees and other litigation expenses) arising out of the
20 CONSULTANT's performance under the terms of this Agreement. This indemnification obligation on
21 CONSULTANT'S part shall not apply to demands, actions, losses, damages, injuries, and liability arising out
22 of sole negligence or willful misconduct on the part of CITY.

23 5. OWNERSHIP AND MAINTENANCE OF DOCUMENTS

24 All documents furnished by CONSULTANT pursuant to this AGREEMENT are instruments
25 of CONSULTANT's services in respect to this project. They are not intended nor represented to be suitable for
26 reuse by others on extensions of this project or on any other project. Any reuse without specific written
27 verification and adoption by CONSULTANT for the specific purposes intended will be at user's sole risk and
28 without liability or legal exposure and expenses to CONSULTANT, including attorney's fees arising out of

1 such unauthorized reuse.

2 CONSULTANT's records, documents, calculations, and all other instruments of service pertaining to
3 actual project shall be given to CITY at the completion of the project. The CITY reserves the right to specify
4 the file format that electronic document deliverables are presented to the CITY. Title to all plans,
5 specifications, maps, estimates, reports, manuscripts, drawings, descriptions and other final work products
6 compiled by the CONSULTANT under the Agreement shall be vested in the CITY, none of which shall be
7 used in any manner whatsoever, by any person, firm, corporation, or agency without the expressed written
8 consent of the CITY. Basic survey notes and sketches, charts, computations, and other data prepared or
9 obtained under the Agreement shall be made available, upon request, to the CITY without restriction or
10 limitations on their use. CONSULTANT may retain copies of the above-described information but agrees not
11 to disclose or discuss any information gathered, discussed or generated in any way through this Agreement
12 without the written permission of CITY during the term of this Agreement, unless required by law.

13 6. STANDARD OF PERFORMANCE

14 CONSULTANT represents to CITY that the services shall be performed in an expeditious
15 manner, and with the degree of skill and care that is required by current, good, and sound procedures and
16 practices. CONSULTANT further agrees that the services shall be in conformance with generally accepted
17 professional standards prevailing at the time work is performed.

18 7. INSURANCE REQUIRED

19 CONSULTANT shall, at its own expense, procure and maintain in full force at all times during
20 the term of this AGREEMENT the following insurance:

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

25 **B. Automobile Liability Coverage.** CONSULTANT shall maintain automobile liability
26 insurance covering all vehicles used in the performance of this Agreement providing a one million dollar
27 (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage.

28 **C. Professional Liability Coverage (Errors and Omissions).** CONSULTANT shall

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

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

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

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

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

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

28 **(3) Reporting Provisions.** Any failure to comply with the reporting provisions of

1 the policy shall not affect the coverage provided to the CITY, its officers, officials, employees, or volunteers.

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

10 8. SUSPENSION OF WORK

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

17 9. TERMINATION

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

25 10. COMPLIANCE WITH CIVIL RIGHTS

26 During the performance of this contract, CONSULTANT agrees as follows:

27 A. **Equal Employment Opportunity.** In connection with the execution of this
28 AGREEMENT, CONSULTANT shall not discriminate against any employee or applicant for employment

1 because of race, religion, color, sex, or national origin. Such actions shall include, but not be limited to, the
2 following: employment, promotion, upgrading, demotion, or transfer; recruitment or recruitment advertising;
3 layoff or termination; rate of pay or other forms of compensation; and selection for training including
4 apprenticeship.

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

7 **C. Solicitations for Subcontractors including Procurement of Materials and**
8 **Equipment.** In all solicitation, either by competitive bidding or negotiations, made by CONSULTANT for
9 work to be performed under a subcontract including procurement of materials or leases of equipment, each
10 potential subcontractor, supplier or lessor shall be notified by CONSULTANT of CONSULTANT'S obligation
11 under this AGREEMENT and the regulations relative to nondiscrimination on the grounds of race, religion,
12 color, sex, or national origin.

13 11. CONFLICT OF INTEREST

14 A. CONSULTANT covenants and represents that neither it, nor any officer or principal of
15 its firm, has, or shall acquire any interest, directly or indirectly, which would conflict in any manner with the
16 interests of CITY or which would in any way hinder CONSULTANT's performance of services under this
17 Agreement. CONSULTANT further covenants that in the performance of the Agreement, no person having
18 any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express
19 written consent of the CITY. CONSULTANT agrees to at all times avoid conflicts of interest, or the
20 appearance of any conflicts of interest, with the interests of the CITY in the performance of this Agreement.

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

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

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

28 12. INDEPENDENT CONTRACTOR

1 In assuming and performing the services, CONSULTANT is an independent contractor and
2 shall not be eligible for any benefits, which the CITY may provide its employees, except as expressly provided
3 for in the AGREEMENT. All persons, if any, hired by CONSULTANT shall be employees or subcontractors of
4 CONSULTANT and shall not be construed as employees or agents of the CITY in any respect.
5 CONSULTANT shall have responsibility for and control over the means of providing services under this
6 AGREEMENT.

7 13. COMPLIANCE WITH LAWS

8 CONSULTANT shall comply with all applicable federal, State of California, and local laws,
9 rules, and regulations and shall obtain all applicable licenses and permits for the conduct of its business and the
10 performance of the services.

11 14. CHOICE OF LAW

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

16 15. NON-WAIVER

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

21 16. ENFORCEABILITY; INTERPRETATION

22 In the event that any of the provisions or portions of application of any of the provisions of the
23 AGREEMENT are held to be illegal or invalid by a court of competent jurisdiction, CITY and CONSULTANT
24 shall negotiate an equitable adjustment in the provisions of the AGREEMENT with a view toward affecting the
25 purpose of the AGREEMENT. The illegality or invalidity of any of the provisions or portions of application of
26 any of the provisions of the AGREEMENT shall not affect the legality or enforceability of the remaining
27 provisions or portions of application of any of the provisions of the AGREEMENT. This Agreement shall be
28 interpreted as though it was a product of a joint drafting effort and no provisions shall be interpreted against a

1 party on the ground that said party was solely or primarily responsible for drafting the language to be
2 interpreted.

3 17. INTEGRATION

4 The AGREEMENT contains the entire AGREEMENT and understanding between the parties
5 as to the subject matter of this AGREEMENT. It merges and supersedes all prior or contemporaneous
6 agreements, commitments, representation, writings, and discussions between CONSULTANT and CITY,
7 whether oral or written.

8 18. SUCCESSORS AND ASSIGNS: NO THIRD PARTY BENEFICIARIES; NO JOINT
9 VENTURE

10 CITY and CONSULTANT respectively, bind themselves, their successors, assigns, and legal
11 representatives to the terms and obligations of this Agreement. CONSULTANT shall not assign or transfer any
12 interest in the Agreement without the CITY's prior written consent, which consent shall be in the CITY's sole
13 discretion. Any attempted assignment or transfer in breach of this provision shall be void. This Agreement is
14 not intended and shall not be construed to create any third party benefit. This Agreement is not intended and
15 shall not be construed to create a joint venture or partnership between the parties. CONSULTANT, its officers,
16 employees and agents shall not have any power to bind or commit the CITY to any decision.

17 19. FINANCIAL RECORDS

18 Records of CONSULTANT's direct labor costs, payroll costs, and reimbursable expenses
19 pertaining to this project covered by this AGREEMENT will be kept on a generally recognized accounting
20 basis and made available to CITY if and when required.

21 20. NOTICES

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

27 To CITY

Robert Ovadia, City Engineer
Community & Economic Development Department
City of Concord

1 1950 Parkside Drive, MS/40
2 Concord, CA 94519
3 Phone: (925) 671-3470
4 Fax: (925) 798-9692

5 To CONSULTANT

6 Robert Simons, President
7 SVA Architects Inc.
8 444 17th Street, Suite 101
9 Oakland, CA 94612
10 Phone: (510) 267-3180
11 Fax: (949) 809-3381

12 21. TERM

13 The term of this AGREEMENT shall be from the date executed above through **June 30th,**
14 **2017,** with the option of one one-year extension upon mutual agreement by both CITY and CONSULTANT.
15 The City Manager is authorized to approve the extension.

16 22. NON-LIABILITY

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

21 23. EXECUTION

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

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

IN WITNESS WHEREOF, the parties have executed this AGREEMENT in three (3) copies as of the
date and year first written above.

CONSULTANT

CITY OF CONCORD

1 By: Robert Simons
2 Name: Robert Simons
3 Title: Partner & President
4 Address: 444 17th Street, Suite 101
5 Oakland, CA 94612
6 Telephone: (510) 267-3180

By: _____
Name: Valerie Barone
Title: City Manager
Address: 1950 Parkside Drive, MS 01
Concord, CA 94519
Telephone: (925) 671-3175

6 APPROVED AS TO FORM:
7
8 _____
9 City Attorney
10 Date: _____, 2015

ATTEST:
11
12 _____
13 City Clerk

12 FINANCE DIRECTOR'S CERTIFICATION:
13 Concord, California
14 Date: _____, 2015

15 I HEREBY CERTIFY THAT ADEQUATE FUNDS EXIST OR WILL BE RECEIVED
16 DURING THE CURRENT FISCAL YEARS 2015-16 AND 2016-17 TO PAY THE
17 ANTICIPATED EXPENSES TO BE INCURRED PURSUANT TO THIS CONTRACT.
18 THE SUM OF **\$250,000.**

19
20 _____
21 Finance Director's Signature

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

1 **THIS AGREEMENT** made and entered into on **July 1st, 2015** by and between the City of Concord
2 (hereinafter "CITY"), located in the County of Contra Costa, State of California, and **Interactive Resources**,
3 (hereinafter "CONSULTANT"), whose address is 117 Park Place, Richmond, CA 94801.

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

6 CITY desires to contract with CONSULTANT and CONSULTANT to contract with CITY for
7 provision by CONSULTANT to CITY for professional services as further described herein, upon the terms and
8 conditions hereinafter set forth.

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

11 1. SERVICES

12 CONSULTANT shall provide services for specific projects as may be requested by CITY;
13 such services shall be defined, scheduled, and authorized in subsequent Task Orders. Services may include, but
14 not be limited to:

- 15 ● Architectural services related to CIP Projects
- 16 ● Structural Design services related to CIP Projects
- 17 ● Other as-needed services;

18 CONSULTANT shall be an independent contractor and shall have responsibility for and
19 control over the details and means of providing its services under this AGREEMENT. CONSULTANT agrees
20 that its services shall be performed with due diligence and in accordance with generally accepted engineering
21 practices.

22 CONSULTANT shall use its best efforts to perform and coordinate all activities in a timely
23 manner so that the projects will be completed according to the established project schedules.

24 2. AUTHORIZED REPRESENTATIVES

25 Authorized representatives shall represent CITY and CONSULTANT in all matters pertaining
26 to the services to be ordered by CITY or rendered by CONSULTANT under this Agreement except where
27 approval for the CITY is specifically required by the City Council. The CITY'S authorized representative shall
28

1 be the City Engineer. Said City Engineer is authorized to execute Task Orders on behalf of CITY, including
2 providing for CONSULTANT to be compensated not more than **\$75,000** for each project. Task Orders
3 providing for more than **\$75,000** compensation for one project shall be presented to the City Council for its
4 consideration.

5 CONSULTANT authorized representative shall be **Thomas Butt, Principal in Charge**

6 3. COMPENSATION

7 CONSULTANT shall be compensated, not to exceed **\$250,000** per fiscal year for basic
8 services rendered under Section 1, as more particularly described in authorized Task Orders, in accordance with
9 the terms and conditions included therein.

10 CONSULTANT may submit monthly statements for services rendered; all statements shall
11 include adequate documentation demonstrating work performed during the billing period and shall conform to
12 Federal Funding invoicing requirements, if applicable. It is intended that payments to CONSULTANT will be
13 made by CITY within thirty (30) days of receipt of invoice. Consultant's failure to secure CITY's written
14 authorization for additional compensation or changes to the Scope of Work shall constitute a waiver of any and
15 all right to adjustment in the price or time due, whether by way of compensation, restitution, quantum meruit,
16 or similar relief.

17 4. INDEMNIFICATION

18 CONSULTANT agrees to defend, indemnify and hold harmless the CITY, its officers,
19 officials, employees, agents and volunteers from and against any and all claims, demands, actions, losses,
20 damages, injuries, and liability (including all attorney's fees and other litigation expenses) arising out of the
21 CONSULTANT's performance under the terms of this Agreement. This indemnification obligation on
22 CONSULTANT'S part shall not apply to demands, actions, losses, damages, injuries, and liability arising out
23 of sole negligence or willful misconduct on the part of CITY.

24 5. OWNERSHIP AND MAINTENANCE OF DOCUMENTS

25 All documents furnished by CONSULTANT pursuant to this AGREEMENT are instruments
26 of CONSULTANT's services in respect to this project. They are not intended nor represented to be suitable for
27 reuse by others on extensions of this project or on any other project. Any reuse without specific written
28 verification and adoption by CONSULTANT for the specific purposes intended will be at user's sole risk and

1 without liability or legal exposure and expenses to CONSULTANT, including attorney's fees arising out of
2 such unauthorized reuse.

3 CONSULTANT's records, documents, calculations, and all other instruments of service pertaining to
4 actual project shall be given to CITY at the completion of the project. The CITY reserves the right to specify
5 the file format that electronic document deliverables are presented to the CITY. Title to all plans,
6 specifications, maps, estimates, reports, manuscripts, drawings, descriptions and other final work products
7 compiled by the CONSULTANT under the Agreement shall be vested in the CITY, none of which shall be
8 used in any manner whatsoever, by any person, firm, corporation, or agency without the expressed written
9 consent of the CITY. Basic survey notes and sketches, charts, computations, and other data prepared or
10 obtained under the Agreement shall be made available, upon request, to the CITY without restriction or
11 limitations on their use. CONSULTANT may retain copies of the above-described information but agrees not
12 to disclose or discuss any information gathered, discussed or generated in any way through this Agreement
13 without the written permission of CITY during the term of this Agreement, unless required by law.

14 6. STANDARD OF PERFORMANCE

15 CONSULTANT represents to CITY that the services shall be performed in an expeditious
16 manner, and with the degree of skill and care that is required by current, good, and sound procedures and
17 practices. CONSULTANT further agrees that the services shall be in conformance with generally accepted
18 professional standards prevailing at the time work is performed.

19 7. INSURANCE REQUIRED

20 CONSULTANT shall, at its own expense, procure and maintain in full force at all times during
21 the term of this AGREEMENT the following insurance:

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

26 **B. Automobile Liability Coverage.** CONSULTANT shall maintain automobile liability
27 insurance covering all vehicles used in the performance of this Agreement providing a one million dollar
28 (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage.

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

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

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

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

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

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

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

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

11 8. SUSPENSION OF WORK

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

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

26 10. COMPLIANCE WITH CIVIL RIGHTS

27 During the performance of this contract, CONSULTANT agrees as follows:

28 A. **Equal Employment Opportunity.** In connection with the execution of this

1 AGREEMENT, CONSULTANT shall not discriminate against any employee or applicant for employment
2 because of race, religion, color, sex, or national origin. Such actions shall include, but not be limited to, the
3 following: employment, promotion, upgrading, demotion, or transfer; recruitment or recruitment advertising;
4 layoff or termination; rate of pay or other forms of compensation; and selection for training including
5 apprenticeship.

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

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

14 11. CONFLICT OF INTEREST

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

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

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

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

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2 In assuming and performing the services, CONSULTANT is an independent contractor and
3 shall not be eligible for any benefits, which the CITY may provide its employees, except as expressly provided
4 for in the AGREEMENT. All persons, if any, hired by CONSULTANT shall be employees or subcontractors of
5 CONSULTANT and shall not be construed as employees or agents of the CITY in any respect.
6 CONSULTANT shall have responsibility for and control over the means of providing services under this
7 AGREEMENT.

8 13. COMPLIANCE WITH LAWS

9 CONSULTANT shall comply with all applicable federal, State of California, and local laws,
10 rules, and regulations and shall obtain all applicable licenses and permits for the conduct of its business and the
11 performance of the services.

12 14. CHOICE OF LAW

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

17 15. NON-WAIVER

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

22 16. ENFORCEABILITY; INTERPRETATION

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

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

4 17. INTEGRATION

5 The AGREEMENT contains the entire AGREEMENT and understanding between the parties
6 as to the subject matter of this AGREEMENT. It merges and supersedes all prior or contemporaneous
7 agreements, commitments, representation, writings, and discussions between CONSULTANT and CITY,
8 whether oral or written.

9 18. SUCCESSORS AND ASSIGNS: NO THIRD PARTY BENEFICIARIES; NO JOINT
10 VENTURE

11 CITY and CONSULTANT respectively, bind themselves, their successors, assigns, and legal
12 representatives to the terms and obligations of this Agreement. CONSULTANT shall not assign or transfer any
13 interest in the Agreement without the CITY's prior written consent, which consent shall be in the CITY's sole
14 discretion. Any attempted assignment or transfer in breach of this provision shall be void. This Agreement is
15 not intended and shall not be construed to create any third party benefit. This Agreement is not intended and
16 shall not be construed to create a joint venture or partnership between the parties. CONSULTANT, its officers,
17 employees and agents shall not have any power to bind or commit the CITY to any decision.

18 19. FINANCIAL RECORDS

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

22 20. NOTICES

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

28 To CITY

Robert Ovadia, City Engineer

1 **Community & Economic Development Department**
2 **City of Concord**
3 **1950 Parkside Drive, MS/40**
4 **Concord, CA 94519**
5 **Phone: (925) 671-3470**
6 **Fax: (925) 798-9692**

7 To CONSULTANT

8 **Thomas Butt, Principal in Charge**
9 **Interactive Resources**
10 **117 Park Place**
11 **Richmond, CA 94801**
12 **Phone: (510) 236-7435**

13 21. TERM

14 The term of this AGREEMENT shall be from the date executed above through **June 30th, 2017**, with the option of one one-year extension upon mutual agreement by both CITY and CONSULTANT.
15 The City Manager is authorized to approve the extension.

16 22. NON-LIABILITY

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

18 23. EXECUTION

19 Each individual or entity executing this Agreement on behalf of CONSULTANT represents and warrants that he or she or it is duly authorized to execute and deliver this Agreement on behalf of CONSULTANT and that such execution is binding upon CONSULTANT.

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

21 **IN WITNESS WHEREOF**, the parties have executed this AGREEMENT in three (3) copies as of the date and year first written above.

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28 **CONSULTANT**

CITY OF CONCORD

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By: 

Name: Thomas Butt
Title: Principal in Charge
Address: 117 Park Place
Richmond, CA 94801
Telephone: (510) 236-7435

By: _____

Name: Valerie Barone
Title: City Manager
Address: 1950 Parkside Drive, MS 01
Concord, CA 94519
Telephone: (925) 671-3175

APPROVED AS TO FORM:

ATTEST:

City Attorney

City Clerk

Date: _____, 2015

FINANCE DIRECTOR'S CERTIFICATION:

Concord, California

Date: _____, 2015

I HEREBY CERTIFY THAT ADEQUATE FUNDS EXIST OR WILL BE RECEIVED DURING THE CURRENT FISCAL YEARS 2015-16 AND 2016-17 TO PAY THE ANTICIPATED EXPENSES TO BE INCURRED PURSUANT TO THIS CONTRACT.

THE SUM OF **\$250,000.**

Finance Director's Signature

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

1 **THIS AGREEMENT** made and entered into on **July 1st, 2015** by and between the City of Concord
2 (hereinafter "CITY"), located in the County of Contra Costa, State of California, and **JMEC Engineering, Inc.**,
3 (hereinafter "CONSULTANT"), whose address is 165 Lennon Lane, Suite 106, Walnut Creek, CA 94598.

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

6 CITY desires to contract with CONSULTANT and CONSULTANT to contract with CITY for
7 provision by CONSULTANT to CITY for professional services as further described herein, upon the terms and
8 conditions hereinafter set forth.

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

11 1. SERVICES

12 CONSULTANT shall provide services for specific projects as may be requested by CITY;
13 such services shall be defined, scheduled, and authorized in subsequent Task Orders. Services may include, but
14 not be limited to:

- 15 ● Structural Design services related to CIP Projects
- 16 ● Other as-needed services;

17 CONSULTANT shall be an independent contractor and shall have responsibility for and
18 control over the details and means of providing its services under this AGREEMENT. CONSULTANT agrees
19 that its services shall be performed with due diligence and in accordance with generally accepted engineering
20 practices.

21 CONSULTANT shall use its best efforts to perform and coordinate all activities in a timely
22 manner so that the projects will be completed according to the established project schedules.

23 2. AUTHORIZED REPRESENTATIVES

24 Authorized representatives shall represent CITY and CONSULTANT in all matters pertaining
25 to the services to be ordered by CITY or rendered by CONSULTANT under this Agreement except where
26 approval for the CITY is specifically required by the City Council. The CITY'S authorized representative shall
27 be the City Engineer. Said City Engineer is authorized to execute Task Orders on behalf of CITY, including
28

1 providing for CONSULTANT to be compensated not more than \$75,000 for each project. Task Orders
2 providing for more than \$75,000 compensation for one project shall be presented to the City Council for its
3 consideration.

4 CONSULTANT authorized representative shall be **Esmond C. Chan, President**

5 3. COMPENSATION

6 CONSULTANT shall be compensated, not to exceed \$250,000 per fiscal year for basic
7 services rendered under Section 1, as more particularly described in authorized Task Orders, in accordance with
8 the terms and conditions included therein.

9 CONSULTANT may submit monthly statements for services rendered; all statements shall
10 include adequate documentation demonstrating work performed during the billing period and shall conform to
11 Federal Funding invoicing requirements, if applicable. It is intended that payments to CONSULTANT will be
12 made by CITY within thirty (30) days of receipt of invoice. Consultant's failure to secure CITY's written
13 authorization for additional compensation or changes to the Scope of Work shall constitute a waiver of any and
14 all right to adjustment in the price or time due, whether by way of compensation, restitution, quantum meruit,
15 or similar relief.

16 4. INDEMNIFICATION

17 CONSULTANT agrees to defend, indemnify and hold harmless the CITY, its officers,
18 officials, employees, agents and volunteers from and against any and all claims, demands, actions, losses,
19 damages, injuries, and liability (including all attorney's fees and other litigation expenses) arising out of the
20 CONSULTANT's performance under the terms of this Agreement. This indemnification obligation on
21 CONSULTANT'S part shall not apply to demands, actions, losses, damages, injuries, and liability arising out
22 of sole negligence or willful misconduct on the part of CITY.

23 5. OWNERSHIP AND MAINTENANCE OF DOCUMENTS

24 All documents furnished by CONSULTANT pursuant to this AGREEMENT are instruments
25 of CONSULTANT's services in respect to this project. They are not intended nor represented to be suitable for
26 reuse by others on extensions of this project or on any other project. Any reuse without specific written
27 verification and adoption by CONSULTANT for the specific purposes intended will be at user's sole risk and
28 without liability or legal exposure and expenses to CONSULTANT, including attorney's fees arising out of

1 such unauthorized reuse.

2 CONSULTANT's records, documents, calculations, and all other instruments of service pertaining to
3 actual project shall be given to CITY at the completion of the project. The CITY reserves the right to specify
4 the file format that electronic document deliverables are presented to the CITY. Title to all plans,
5 specifications, maps, estimates, reports, manuscripts, drawings, descriptions and other final work products
6 compiled by the CONSULTANT under the Agreement shall be vested in the CITY, none of which shall be
7 used in any manner whatsoever, by any person, firm, corporation, or agency without the expressed written
8 consent of the CITY. Basic survey notes and sketches, charts, computations, and other data prepared or
9 obtained under the Agreement shall be made available, upon request, to the CITY without restriction or
10 limitations on their use. CONSULTANT may retain copies of the above-described information but agrees not
11 to disclose or discuss any information gathered, discussed or generated in any way through this Agreement
12 without the written permission of CITY during the term of this Agreement, unless required by law.

13 6. STANDARD OF PERFORMANCE

14 CONSULTANT represents to CITY that the services shall be performed in an expeditious
15 manner, and with the degree of skill and care that is required by current, good, and sound procedures and
16 practices. CONSULTANT further agrees that the services shall be in conformance with generally accepted
17 professional standards prevailing at the time work is performed.

18 7. INSURANCE REQUIRED

19 CONSULTANT shall, at its own expense, procure and maintain in full force at all times during
20 the term of this AGREEMENT the following insurance:

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

25 **B. Automobile Liability Coverage.** CONSULTANT shall maintain automobile liability
26 insurance covering all vehicles used in the performance of this Agreement providing a one million dollar
27 (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage.

28 **C. Professional Liability Coverage (Errors and Omissions).** CONSULTANT shall

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

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

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

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

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

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

28 **(3) Reporting Provisions.** Any failure to comply with the reporting provisions of

1 the policy shall not affect the coverage provided to the CITY, its officers, officials, employees, or volunteers.

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

10 8. SUSPENSION OF WORK

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

17 9. TERMINATION

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

25 10. COMPLIANCE WITH CIVIL RIGHTS

26 During the performance of this contract, CONSULTANT agrees as follows:

27 **A. Equal Employment Opportunity.** In connection with the execution of this
28 AGREEMENT, CONSULTANT shall not discriminate against any employee or applicant for employment

1 because of race, religion, color, sex, or national origin. Such actions shall include, but not be limited to, the
2 following: employment, promotion, upgrading, demotion, or transfer; recruitment or recruitment advertising;
3 layoff or termination; rate of pay or other forms of compensation; and selection for training including
4 apprenticeship.

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

7 **C. Solicitations for Subcontractors including Procurement of Materials and**
8 **Equipment.** In all solicitation, either by competitive bidding or negotiations, made by CONSULTANT for
9 work to be performed under a subcontract including procurement of materials or leases of equipment, each
10 potential subcontractor, supplier or lessor shall be notified by CONSULTANT of CONSULTANT'S obligation
11 under this AGREEMENT and the regulations relative to nondiscrimination on the grounds of race, religion,
12 color, sex, or national origin.

13 11. CONFLICT OF INTEREST

14 A. CONSULTANT covenants and represents that neither it, nor any officer or principal of
15 its firm, has, or shall acquire any interest, directly or indirectly, which would conflict in any manner with the
16 interests of CITY or which would in any way hinder CONSULTANT's performance of services under this
17 Agreement. CONSULTANT further covenants that in the performance of the Agreement, no person having
18 any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express
19 written consent of the CITY. CONSULTANT agrees to at all times avoid conflicts of interest, or the
20 appearance of any conflicts of interest, with the interests of the CITY in the performance of this Agreement.

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

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

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

28 12. INDEPENDENT CONTRACTOR

1 In assuming and performing the services, CONSULTANT is an independent contractor and
2 shall not be eligible for any benefits, which the CITY may provide its employees, except as expressly provided
3 for in the AGREEMENT. All persons, if any, hired by CONSULTANT shall be employees or subcontractors of
4 CONSULTANT and shall not be construed as employees or agents of the CITY in any respect.
5 CONSULTANT shall have responsibility for and control over the means of providing services under this
6 AGREEMENT.

7 13. COMPLIANCE WITH LAWS

8 CONSULTANT shall comply with all applicable federal, State of California, and local laws,
9 rules, and regulations and shall obtain all applicable licenses and permits for the conduct of its business and the
10 performance of the services.

11 14. CHOICE OF LAW

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

16 15. NON-WAIVER

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

21 16. ENFORCEABILITY; INTERPRETATION

22 In the event that any of the provisions or portions of application of any of the provisions of the
23 AGREEMENT are held to be illegal or invalid by a court of competent jurisdiction, CITY and CONSULTANT
24 shall negotiate an equitable adjustment in the provisions of the AGREEMENT with a view toward affecting the
25 purpose of the AGREEMENT. The illegality or invalidity of any of the provisions or portions of application of
26 any of the provisions of the AGREEMENT shall not affect the legality or enforceability of the remaining
27 provisions or portions of application of any of the provisions of the AGREEMENT. This Agreement shall be
28 interpreted as though it was a product of a joint drafting effort and no provisions shall be interpreted against a

1 party on the ground that said party was solely or primarily responsible for drafting the language to be
2 interpreted.

3 17. INTEGRATION

4 The AGREEMENT contains the entire AGREEMENT and understanding between the parties
5 as to the subject matter of this AGREEMENT. It merges and supersedes all prior or contemporaneous
6 agreements, commitments, representation, writings, and discussions between CONSULTANT and CITY,
7 whether oral or written.

8 18. SUCCESSORS AND ASSIGNS: NO THIRD PARTY BENEFICIARIES; NO JOINT
9 VENTURE

10 CITY and CONSULTANT respectively, bind themselves, their successors, assigns, and legal
11 representatives to the terms and obligations of this Agreement. CONSULTANT shall not assign or transfer any
12 interest in the Agreement without the CITY's prior written consent, which consent shall be in the CITY's sole
13 discretion. Any attempted assignment or transfer in breach of this provision shall be void. This Agreement is
14 not intended and shall not be construed to create any third party benefit. This Agreement is not intended and
15 shall not be construed to create a joint venture or partnership between the parties. CONSULTANT, its officers,
16 employees and agents shall not have any power to bind or commit the CITY to any decision.

17 19. FINANCIAL RECORDS

18 Records of CONSULTANT's direct labor costs, payroll costs, and reimbursable expenses
19 pertaining to this project covered by this AGREEMENT will be kept on a generally recognized accounting
20 basis and made available to CITY if and when required.

21 20. NOTICES

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

27 To CITY

Robert Ovadia, City Engineer
Community & Economic Development Department
City of Concord

1 1950 Parkside Drive, MS/40
2 Concord, CA 94519
3 Phone: (925) 671-3470
4 Fax: (925) 798-9692

5 To CONSULTANT

6 Esmond C. Chan, President
7 JMEC Engineering, Inc.
8 165 Lennon Lane, Suite 106
9 Walnut Creek, CA 94598
10 Phone: (925) 944-8999
11 Fax: (925) 944-9998

12 21. TERM

13 The term of this AGREEMENT shall be from the date executed above through **June 30th**,
14 **2017**, with the option of one one-year extension upon mutual agreement by both CITY and CONSULTANT.
15 The City Manager is authorized to approve the extension.

16 22. NON-LIABILITY

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

21 23. EXECUTION

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

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

IN WITNESS WHEREOF, the parties have executed this AGREEMENT in three (3) copies as of the
date and year first written above.

CONSULTANT

CITY OF CONCORD

1 By: Esmond C. Chan

By: _____

2 Name: Esmond C. Chan
3 Title: President
4 Address: 165 Lennon Lane, Suite 106
Walnut Creek, CA 94598
5 Telephone: (925) 944-8999

Name: Valerie Barone
Title: City Manager
Address: 1950 Parkside Drive, MS 01
Concord, CA 94519
Telephone: (925) 671-3175

6 APPROVED AS TO FORM:

ATTEST:

7
8 _____
City Attorney

9
10 Date: _____, 2015

11
12 FINANCE DIRECTOR'S CERTIFICATION:

13 Concord, California

14 Date: _____, 2015

15 I HEREBY CERTIFY THAT ADEQUATE FUNDS EXIST OR WILL BE RECEIVED
16 DURING THE CURRENT FISCAL YEARS 2015-16 AND 2016-17 TO PAY THE
17 ANTICIPATED EXPENSES TO BE INCURRED PURSUANT TO THIS CONTRACT.

18 THE SUM OF **\$250,000**.

19
20 _____
Finance Director's Signature

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

1 **THIS AGREEMENT** made and entered into on **July 1st, 2015** by and between the City of Concord
 2 (hereinafter "CITY"), located in the County of Contra Costa, State of California, and **Associated Right of Way**
 3 **Services, Inc.**,(hereinafter "CONSULTANT"), whose address is 2300 Contra Costa Blvd., Suite 525, Pleasant
 4 Hill, CA 94523

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

7 CITY desires to contract with CONSULTANT and CONSULTANT to contract with CITY for
 8 provision by CONSULTANT to CITY for professional services as further described herein, upon the terms and
 9 conditions hereinafter set forth.

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

12 1. SERVICES

13 CONSULTANT shall provide services for specific projects as may be requested by CITY;
 14 such services shall be defined, scheduled, and authorized in subsequent Task Orders. Services may include, but
 15 not be limited to:

- 16 ● Right of Way Services related to CIP Projects
- 17 ● Other as-needed services;

18 CONSULTANT shall be an independent contractor and shall have responsibility for and
 19 control over the details and means of providing its services under this AGREEMENT. CONSULTANT agrees
 20 that its services shall be performed with due diligence and in accordance with generally accepted engineering
 21 practices.

22 CONSULTANT shall use its best efforts to perform and coordinate all activities in a timely
 23 manner so that the projects will be completed according to the established project schedules.

24 2. AUTHORIZED REPRESENTATIVES

25 Authorized representatives shall represent CITY and CONSULTANT in all matters pertaining
 26 to the services to be ordered by CITY or rendered by CONSULTANT under this Agreement except where
 27 approval for the CITY is specifically required by the City Council. The CITY'S authorized representative shall
 28

1 be the City Engineer. Said City Engineer is authorized to execute Task Orders on behalf of CITY, including
2 providing for CONSULTANT to be compensated not more than **\$75,000** for each project. Task Orders
3 providing for more than **\$75,000** compensation for one project shall be presented to the City Council for its
4 consideration.

5 CONSULTANT authorized representative shall be Larry Castellanos, President

6 3. COMPENSATION

7 CONSULTANT shall be compensated, not to exceed **\$250,000** per fiscal year for basic
8 services rendered under Section 1, as more particularly described in authorized Task Orders, in accordance with
9 the terms and conditions included therein.

10 CONSULTANT may submit monthly statements for services rendered; all statements shall
11 include adequate documentation demonstrating work performed during the billing period and shall conform to
12 Federal Funding invoicing requirements, if applicable. It is intended that payments to CONSULTANT will be
13 made by CITY within thirty (30) days of receipt of invoice. Consultant's failure to secure CITY's written
14 authorization for additional compensation or changes to the Scope of Work shall constitute a waiver of any and
15 all right to adjustment in the price or time due, whether by way of compensation, restitution, quantum meruit,
16 or similar relief.

17 4. INDEMNIFICATION

18 CONSULTANT agrees to defend, indemnify and hold harmless the CITY, its officers,
19 officials, employees, agents and volunteers from and against any and all claims, demands, actions, losses,
20 damages, injuries, and liability (including all attorney's fees and other litigation expenses) arising out of the
21 CONSULTANT's performance under the terms of this Agreement. This indemnification obligation on
22 CONSULTANT'S part shall not apply to demands, actions, losses, damages, injuries, and liability arising out
23 of sole negligence or willful misconduct on the part of CITY.

24 5. OWNERSHIP AND MAINTENANCE OF DOCUMENTS

25 All documents furnished by CONSULTANT pursuant to this AGREEMENT are instruments
26 of CONSULTANT's services in respect to this project. They are not intended nor represented to be suitable for
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28 verification and adoption by CONSULTANT for the specific purposes intended will be at user's sole risk and

1 without liability or legal exposure and expenses to CONSULTANT, including attorney's fees arising out of
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13 without the written permission of CITY during the term of this Agreement, unless required by law.

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15 CONSULTANT represents to CITY that the services shall be performed in an expeditious
16 manner, and with the degree of skill and care that is required by current, good, and sound procedures and
17 practices. CONSULTANT further agrees that the services shall be in conformance with generally accepted
18 professional standards prevailing at the time work is performed.

19 7. INSURANCE REQUIRED

20 CONSULTANT shall, at its own expense, procure and maintain in full force at all times during
21 the term of this AGREEMENT the following insurance:

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

26 **B. Automobile Liability Coverage.** CONSULTANT shall maintain automobile liability
27 insurance covering all vehicles used in the performance of this Agreement providing a one million dollar
28 (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage.

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

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

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

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

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

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

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

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

11 8. SUSPENSION OF WORK

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

18 9. TERMINATION

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

26 10. COMPLIANCE WITH CIVIL RIGHTS

27 During the performance of this contract, CONSULTANT agrees as follows:

28 **A. Equal Employment Opportunity.** In connection with the execution of this

1 AGREEMENT, CONSULTANT shall not discriminate against any employee or applicant for employment
2 because of race, religion, color, sex, or national origin. Such actions shall include, but not be limited to, the
3 following: employment, promotion, upgrading, demotion, or transfer; recruitment or recruitment advertising;
4 layoff or termination; rate of pay or other forms of compensation; and selection for training including
5 apprenticeship.

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

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

14 11. CONFLICT OF INTEREST

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

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

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

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

1 12. INDEPENDENT CONTRACTOR

2 In assuming and performing the services, CONSULTANT is an independent contractor and
3 shall not be eligible for any benefits, which the CITY may provide its employees, except as expressly provided
4 for in the AGREEMENT. All persons, if any, hired by CONSULTANT shall be employees or subcontractors of
5 CONSULTANT and shall not be construed as employees or agents of the CITY in any respect.
6 CONSULTANT shall have responsibility for and control over the means of providing services under this
7 AGREEMENT.

8 13. COMPLIANCE WITH LAWS

9 CONSULTANT shall comply with all applicable federal, State of California, and local laws,
10 rules, and regulations and shall obtain all applicable licenses and permits for the conduct of its business and the
11 performance of the services.

12 14. CHOICE OF LAW

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

17 15. NON-WAIVER

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

22 16. ENFORCEABILITY; INTERPRETATION

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

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

4 17. INTEGRATION

5 The AGREEMENT contains the entire AGREEMENT and understanding between the parties
6 as to the subject matter of this AGREEMENT. It merges and supersedes all prior or contemporaneous
7 agreements, commitments, representation, writings, and discussions between CONSULTANT and CITY,
8 whether oral or written.

9 18. SUCCESSORS AND ASSIGNS: NO THIRD PARTY BENEFICIARIES; NO JOINT
10 VENTURE

11 CITY and CONSULTANT respectively, bind themselves, their successors, assigns, and legal
12 representatives to the terms and obligations of this Agreement. CONSULTANT shall not assign or transfer any
13 interest in the Agreement without the CITY's prior written consent, which consent shall be in the CITY's sole
14 discretion. Any attempted assignment or transfer in breach of this provision shall be void. This Agreement is
15 not intended and shall not be construed to create any third party benefit. This Agreement is not intended and
16 shall not be construed to create a joint venture or partnership between the parties. CONSULTANT, its officers,
17 employees and agents shall not have any power to bind or commit the CITY to any decision.

18 19. FINANCIAL RECORDS

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

22 20. NOTICES

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

28 To CITY

Robert Ovadia, City Engineer

1 **Community & Economic Development Department**
2 **City of Concord**
3 **1950 Parkside Drive, MS/40**
4 **Concord, CA 94519**
5 **Phone: (925) 671-3470**
6 **Fax: (925) 798-9692**

7 To CONSULTANT

8 **Larry Castellanos**
9 **Associated Right of Way Services, Inc.**
10 **2300 Contra Costa Blvd., Suite 525**
11 **Pleasant Hill, CA 94523**
12 **Phone: (925) 691-8500**
13 **Fax: (925) 691-6505**

14 21. TERM

15 The term of this AGREEMENT shall be from the date executed above through **June 30th**,
16 **2017**, with the option of one one-year extension upon mutual agreement by both CITY and CONSULTANT.
17 The City Manager is authorized to approve the extension.

18 22. NON-LIABILITY

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

23 23. EXECUTION

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

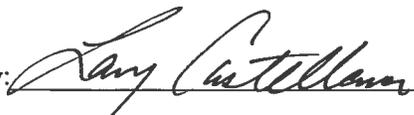
27 This Agreement may be executed in several counterparts, each of which shall constitute one
28 and the same instrument and shall become binding upon the parties when at least one copy hereof shall have
been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce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

IN WITNESS WHEREOF, the parties have executed this AGREEMENT in three (3) copies as of the
date and year first written above.

CONSULTANT

CITY OF CONCORD

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By: 

Name: Larry Castellanos
Title: Vice President
Address: 2300 Contra Costa Blvd., Suite 525
Pleasant Hill, CA 94523
Telephone: (925) 691-8500

By: _____

Name: Valerie Barone
Title: City Manager
Address: 1950 Parkside Drive, MS 01
Concord, CA 94519
Telephone: (925) 671-3175

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

Date: _____, 2015

FINANCE DIRECTOR'S CERTIFICATION:

Concord, California

Date: _____, 2015

I HEREBY CERTIFY THAT ADEQUATE FUNDS EXIST OR WILL BE RECEIVED
DURING THE CURRENT FISCAL YEARS 2015-16 AND 2016-17 TO PAY THE
ANTICIPATED EXPENSES TO BE INCURRED PURSUANT TO THIS CONTRACT.

THE SUM OF **\$250,000.**

Finance Director's Signature

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

1 **THIS AGREEMENT** made and entered into on **July 1st, 2015** by and between the City of Concord
2 (hereinafter "CITY"), located in the County of Contra Costa, State of California, and **Paragon Partners Ltd.**,
3 (hereinafter "CONSULTANT"), whose address is 5762 Bolsa Avenue, Huntington Beach, CA 92649.

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

6 CITY desires to contract with CONSULTANT and CONSULTANT to contract with CITY for
7 provision by CONSULTANT to CITY for professional services as further described herein, upon the terms and
8 conditions hereinafter set forth.

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

11 1. SERVICES

12 CONSULTANT shall provide services for specific projects as may be requested by CITY;
13 such services shall be defined, scheduled, and authorized in subsequent Task Orders. Services may include, but
14 not be limited to:

- 15 ● Right of Way Services related to CIP Projects
- 16 ● Other as-needed services;

17 CONSULTANT shall be an independent contractor and shall have responsibility for and
18 control over the details and means of providing its services under this AGREEMENT. CONSULTANT agrees
19 that its services shall be performed with due diligence and in accordance with generally accepted engineering
20 practices.

21 CONSULTANT shall use its best efforts to perform and coordinate all activities in a timely
22 manner so that the projects will be completed according to the established project schedules.

23 2. AUTHORIZED REPRESENTATIVES

24 Authorized representatives shall represent CITY and CONSULTANT in all matters pertaining
25 to the services to be ordered by CITY or rendered by CONSULTANT under this Agreement except where
26 approval for the CITY is specifically required by the City Council. The CITY'S authorized representative shall
27 be the City Engineer. Said City Engineer is authorized to execute Task Orders on behalf of CITY, including
28

1 providing for CONSULTANT to be compensated not more than **\$75,000** for each project. Task Orders
2 providing for more than **\$75,000** compensation for one project shall be presented to the City Council for its
3 consideration.

4 CONSULTANT authorized representative shall be **Neilia LaValle, President.**

5 3. COMPENSATION

6 CONSULTANT shall be compensated, not to exceed **\$250,000** per fiscal year for basic
7 services rendered under Section 1, as more particularly described in authorized Task Orders, in accordance with
8 the terms and conditions included therein.

9 CONSULTANT may submit monthly statements for services rendered; all statements shall
10 include adequate documentation demonstrating work performed during the billing period and shall conform to
11 Federal Funding invoicing requirements, if applicable. It is intended that payments to CONSULTANT will be
12 made by CITY within thirty (30) days of receipt of invoice. Consultant's failure to secure CITY's written
13 authorization for additional compensation or changes to the Scope of Work shall constitute a waiver of any and
14 all right to adjustment in the price or time due, whether by way of compensation, restitution, quantum meruit,
15 or similar relief.

16 4. INDEMNIFICATION

17 CONSULTANT agrees to defend, indemnify and hold harmless the CITY, its officers,
18 officials, employees, agents and volunteers from and against any and all claims, demands, actions, losses,
19 damages, injuries, and liability (including all attorney's fees and other litigation expenses) arising out of the
20 CONSULTANT's performance under the terms of this Agreement. This indemnification obligation on
21 CONSULTANT'S part shall not apply to demands, actions, losses, damages, injuries, and liability arising out
22 of sole negligence or willful misconduct on the part of CITY.

23 5. OWNERSHIP AND MAINTENANCE OF DOCUMENTS

24 All documents furnished by CONSULTANT pursuant to this AGREEMENT are instruments
25 of CONSULTANT's services in respect to this project. They are not intended nor represented to be suitable for
26 reuse by others on extensions of this project or on any other project. Any reuse without specific written
27 verification and adoption by CONSULTANT for the specific purposes intended will be at user's sole risk and
28 without liability or legal exposure and expenses to CONSULTANT, including attorney's fees arising out of

1 such unauthorized reuse.

2 CONSULTANT's records, documents, calculations, and all other instruments of service pertaining to
3 actual project shall be given to CITY at the completion of the project. The CITY reserves the right to specify
4 the file format that electronic document deliverables are presented to the CITY. Title to all plans,
5 specifications, maps, estimates, reports, manuscripts, drawings, descriptions and other final work products
6 compiled by the CONSULTANT under the Agreement shall be vested in the CITY, none of which shall be
7 used in any manner whatsoever, by any person, firm, corporation, or agency without the expressed written
8 consent of the CITY. Basic survey notes and sketches, charts, computations, and other data prepared or
9 obtained under the Agreement shall be made available, upon request, to the CITY without restriction or
10 limitations on their use. CONSULTANT may retain copies of the above-described information but agrees not
11 to disclose or discuss any information gathered, discussed or generated in any way through this Agreement
12 without the written permission of CITY during the term of this Agreement, unless required by law.

13 6. STANDARD OF PERFORMANCE

14 CONSULTANT represents to CITY that the services shall be performed in an expeditious
15 manner, and with the degree of skill and care that is required by current, good, and sound procedures and
16 practices. CONSULTANT further agrees that the services shall be in conformance with generally accepted
17 professional standards prevailing at the time work is performed.

18 7. INSURANCE REQUIRED

19 CONSULTANT shall, at its own expense, procure and maintain in full force at all times during
20 the term of this AGREEMENT the following insurance:

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22 commercial general liability insurance with limits of no less than one million dollars (\$1,000,000) combined
23 single limit per occurrence or two million dollars (\$2,000,000) aggregate limit for bodily injury, personal
24 injury, and property damage.

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26 insurance covering all vehicles used in the performance of this Agreement providing a one million dollar
27 (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage.

28 **C. Professional Liability Coverage (Errors and Omissions).** CONSULTANT shall

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

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

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

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

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

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

28 (3) **Reporting Provisions.** Any failure to comply with the reporting provisions of

1 the policy shall not affect the coverage provided to the CITY, its officers, officials, employees, or volunteers.

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

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12 CONSULTANT. All suspensions shall extend the time schedule for performance in a mutually satisfactory
13 manner, and CONSULTANT shall be paid for services performed and reimbursable expenses incurred prior to
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15 services, or expenses, except for reasonable administration expenses, incurred by CONSULTANT by reason of
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18 CITY may terminate this Agreement for any reason upon ten (10) days written notice to the
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20 this Agreement. In the event of any termination, CONSULTANT shall promptly deliver to the CITY any and
21 all finished and unfinished reports or other written, recorded, photographic, or visual materials, documents,
22 data, and other deliverables ("Work Materials") prepared for the CITY prior to the effective date of such
23 termination, all of which shall become CITY's sole property. After receipt of the Work Materials, CITY will
24 pay CONSULTANT for the services performed as of the effective date of the termination.

25 10. COMPLIANCE WITH CIVIL RIGHTS

26 During the performance of this contract, CONSULTANT agrees as follows:

27 **A. Equal Employment Opportunity.** In connection with the execution of this
28 AGREEMENT, CONSULTANT shall not discriminate against any employee or applicant for employment

1 because of race, religion, color, sex, or national origin. Such actions shall include, but not be limited to, the
2 following: employment, promotion, upgrading, demotion, or transfer; recruitment or recruitment advertising;
3 layoff or termination; rate of pay or other forms of compensation; and selection for training including
4 apprenticeship.

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

7 **C. Solicitations for Subcontractors including Procurement of Materials and**
8 **Equipment.** In all solicitation, either by competitive bidding or negotiations, made by CONSULTANT for
9 work to be performed under a subcontract including procurement of materials or leases of equipment, each
10 potential subcontractor, supplier or lessor shall be notified by CONSULTANT of CONSULTANT'S obligation
11 under this AGREEMENT and the regulations relative to nondiscrimination on the grounds of race, religion,
12 color, sex, or national origin.

13 11. CONFLICT OF INTEREST

14 A. CONSULTANT covenants and represents that neither it, nor any officer or principal of
15 its firm, has, or shall acquire any interest, directly or indirectly, which would conflict in any manner with the
16 interests of CITY or which would in any way hinder CONSULTANT's performance of services under this
17 Agreement. CONSULTANT further covenants that in the performance of the Agreement, no person having
18 any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express
19 written consent of the CITY. CONSULTANT agrees to at all times avoid conflicts of interest, or the
20 appearance of any conflicts of interest, with the interests of the CITY in the performance of this Agreement.

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

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

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

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1 In assuming and performing the services, CONSULTANT is an independent contractor and
2 shall not be eligible for any benefits, which the CITY may provide its employees, except as expressly provided
3 for in the AGREEMENT. All persons, if any, hired by CONSULTANT shall be employees or subcontractors of
4 CONSULTANT and shall not be construed as employees or agents of the CITY in any respect.
5 CONSULTANT shall have responsibility for and control over the means of providing services under this
6 AGREEMENT.

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8 CONSULTANT shall comply with all applicable federal, State of California, and local laws,
9 rules, and regulations and shall obtain all applicable licenses and permits for the conduct of its business and the
10 performance of the services.

11 14. CHOICE OF LAW

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

16 15. NON-WAIVER

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

21 16. ENFORCEABILITY; INTERPRETATION

22 In the event that any of the provisions or portions of application of any of the provisions of the
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25 purpose of the AGREEMENT. The illegality or invalidity of any of the provisions or portions of application of
26 any of the provisions of the AGREEMENT shall not affect the legality or enforceability of the remaining
27 provisions or portions of application of any of the provisions of the AGREEMENT. This Agreement shall be
28 interpreted as though it was a product of a joint drafting effort and no provisions shall be interpreted against a

1 party on the ground that said party was solely or primarily responsible for drafting the language to be
2 interpreted.

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4 The AGREEMENT contains the entire AGREEMENT and understanding between the parties
5 as to the subject matter of this AGREEMENT. It merges and supersedes all prior or contemporaneous
6 agreements, commitments, representation, writings, and discussions between CONSULTANT and CITY,
7 whether oral or written.

8 18. SUCCESSORS AND ASSIGNS: NO THIRD PARTY BENEFICIARIES; NO JOINT
9 VENTURE

10 CITY and CONSULTANT respectively, bind themselves, their successors, assigns, and legal
11 representatives to the terms and obligations of this Agreement. CONSULTANT shall not assign or transfer any
12 interest in the Agreement without the CITY's prior written consent, which consent shall be in the CITY's sole
13 discretion. Any attempted assignment or transfer in breach of this provision shall be void. This Agreement is
14 not intended and shall not be construed to create any third party benefit. This Agreement is not intended and
15 shall not be construed to create a joint venture or partnership between the parties. CONSULTANT, its officers,
16 employees and agents shall not have any power to bind or commit the CITY to any decision.

17 19. FINANCIAL RECORDS

18 Records of CONSULTANT's direct labor costs, payroll costs, and reimbursable expenses
19 pertaining to this project covered by this AGREEMENT will be kept on a generally recognized accounting
20 basis and made available to CITY if and when required.

21 20. NOTICES

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

27 To CITY

Robert Ovadia, PE
City Engineer
City of Concord

1 1950 Parkside Drive, MS/40
2 Concord, CA 94519
3 Phone: (925) 671-3470
4 Fax: (925) 798-9692

5 To CONSULTANT

6 Neilia LaValle, President
7 Paragon Partners LTD.
8 5762 Bolsa Avenue
9 Huntington Beach, CA 92649
10 Phone: (714) 379-3376
11 Fax: (714) 373-1234

12 21. TERM

13 The term of this AGREEMENT shall be from the date executed above through June 30th,
14 2017, with the option of one one-year extension upon mutual agreement by both CITY and CONSULTANT.
15 The City Manager is authorized to approve the extension.

16 22. NON-LIABILITY

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

21 23. EXECUTION

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

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

IN WITNESS WHEREOF, the parties have executed this AGREEMENT in three (3) copies as of the
date and year first written above.

CONSULTANT

CITY OF CONCORD

1 By: 

By: _____

2 Name: Neilia LaValle
3 Title: President
4 Address: 5762 Bolsa Avenue
5 Huntington Beach, CA 92649
6 Telephone: (714) 379-3376

Name: Valerie Barone
Title: City Manager
Address: 1950 Parkside Drive, MS 01
Concord, CA 94519
Telephone: (925) 671-3175

7 APPROVED AS TO FORM:

ATTEST:

8 _____
City Attorney

_____ City Clerk

9
10 Date: _____, 2015

11
12 FINANCE DIRECTOR'S CERTIFICATION:

13 Concord, California

14 Date: _____, 2015

15 I HEREBY CERTIFY THAT ADEQUATE FUNDS EXIST OR WILL BE RECEIVED
16 DURING THE CURRENT FISCAL YEARS 2015-16 AND 2016-17 TO PAY THE
17 ANTICIPATED EXPENSES TO BE INCURRED PURSUANT TO THIS CONTRACT.

18 THE SUM OF **\$250,000**.

19
20 _____
Finance Director's Signature

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

1 **THIS AGREEMENT** made and entered into on **July 1st, 2015** by and between the City of Concord
2 (hereinafter "CITY"), located in the County of Contra Costa, State of California, and **Balance Hydrologics,**
3 **Inc.** (hereinafter "CONSULTANT"), whose address is 800 Bancroft Way, Suite 101, Berkeley, CA 94710.

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

6 CITY desires to contract with CONSULTANT and CONSULTANT to contract with CITY for
7 provision by CONSULTANT to CITY for professional services as further described herein, upon the terms and
8 conditions hereinafter set forth.

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

11 1. SERVICES

12 CONSULTANT shall provide services for specific projects as may be requested by CITY;
13 such services shall be defined, scheduled, and authorized in subsequent Task Orders. Services may include, but
14 not be limited to:

- 15 ● Hydraulics/Hydrologic services related to CIP Projects
- 16 ● Other as-needed services;

17 CONSULTANT shall be an independent contractor and shall have responsibility for and
18 control over the details and means of providing its services under this AGREEMENT. CONSULTANT agrees
19 that its services shall be performed with due diligence and in accordance with generally accepted engineering
20 practices.

21 CONSULTANT shall use its best efforts to perform and coordinate all activities in a timely
22 manner so that the projects will be completed according to the established project schedules.

23 2. AUTHORIZED REPRESENTATIVES

24 Authorized representatives shall represent CITY and CONSULTANT in all matters pertaining
25 to the services to be ordered by CITY or rendered by CONSULTANT under this Agreement except where
26 approval for the CITY is specifically required by the City Council. The CITY'S authorized representative shall
27 be the City Engineer. Said City Engineer is authorized to execute Task Orders on behalf of CITY, including
28

1 providing for CONSULTANT to be compensated not more than **\$75,000** for each project. Task Orders
2 providing for more than **\$75,000** compensation for one project shall be presented to the City Council for its
3 consideration.

4 CONSULTANT authorized representative shall be **Edward Ballman, Principal**

5 3. COMPENSATION

6 CONSULTANT shall be compensated, not to exceed **\$250,000** per fiscal year for basic
7 services rendered under Section 1, as more particularly described in authorized Task Orders, in accordance with
8 the terms and conditions included therein.

9 CONSULTANT may submit monthly statements for services rendered; all statements shall
10 include adequate documentation demonstrating work performed during the billing period and shall conform to
11 Federal Funding invoicing requirements, if applicable. It is intended that payments to CONSULTANT will be
12 made by CITY within thirty (30) days of receipt of invoice. Consultant's failure to secure CITY's written
13 authorization for additional compensation or changes to the Scope of Work shall constitute a waiver of any and
14 all right to adjustment in the price or time due, whether by way of compensation, restitution, quantum meruit,
15 or similar relief.

16 4. INDEMNIFICATION

17 CONSULTANT agrees to defend, indemnify and hold harmless the CITY, its officers,
18 officials, employees, agents and volunteers from and against any and all claims, demands, actions, losses,
19 damages, injuries, and liability (including all attorney's fees and other litigation expenses) arising out of the
20 CONSULTANT's performance under the terms of this Agreement. This indemnification obligation on
21 CONSULTANT'S part shall not apply to demands, actions, losses, damages, injuries, and liability arising out
22 of sole negligence or willful misconduct on the part of CITY.

23 5. OWNERSHIP AND MAINTENANCE OF DOCUMENTS

24 All documents furnished by CONSULTANT pursuant to this AGREEMENT are instruments
25 of CONSULTANT's services in respect to this project. They are not intended nor represented to be suitable for
26 reuse by others on extensions of this project or on any other project. Any reuse without specific written
27 verification and adoption by CONSULTANT for the specific purposes intended will be at user's sole risk and
28 without liability or legal exposure and expenses to CONSULTANT, including attorney's fees arising out of

1 such unauthorized reuse.

2 CONSULTANT's records, documents, calculations, and all other instruments of service pertaining to
3 actual project shall be given to CITY at the completion of the project. The CITY reserves the right to specify
4 the file format that electronic document deliverables are presented to the CITY. Title to all plans,
5 specifications, maps, estimates, reports, manuscripts, drawings, descriptions and other final work products
6 compiled by the CONSULTANT under the Agreement shall be vested in the CITY, none of which shall be
7 used in any manner whatsoever, by any person, firm, corporation, or agency without the expressed written
8 consent of the CITY. Basic survey notes and sketches, charts, computations, and other data prepared or
9 obtained under the Agreement shall be made available, upon request, to the CITY without restriction or
10 limitations on their use. CONSULTANT may retain copies of the above-described information but agrees not
11 to disclose or discuss any information gathered, discussed or generated in any way through this Agreement
12 without the written permission of CITY during the term of this Agreement, unless required by law.

13 6. STANDARD OF PERFORMANCE

14 CONSULTANT represents to CITY that the services shall be performed in an expeditious
15 manner, and with the degree of skill and care that is required by current, good, and sound procedures and
16 practices. CONSULTANT further agrees that the services shall be in conformance with generally accepted
17 professional standards prevailing at the time work is performed.

18 7. INSURANCE REQUIRED

19 CONSULTANT shall, at its own expense, procure and maintain in full force at all times during
20 the term of this AGREEMENT the following insurance:

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

25 **B. Automobile Liability Coverage.** CONSULTANT shall maintain automobile liability
26 insurance covering all vehicles used in the performance of this Agreement providing a one million dollar
27 (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage.

28 **C. Professional Liability Coverage (Errors and Omissions).** CONSULTANT shall

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

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

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

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

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

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

28 **(3) Reporting Provisions.** Any failure to comply with the reporting provisions of

1 the policy shall not affect the coverage provided to the CITY, its officers, officials, employees, or volunteers.

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

10 8. SUSPENSION OF WORK

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

17 9. TERMINATION

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

25 10. COMPLIANCE WITH CIVIL RIGHTS

26 During the performance of this contract, CONSULTANT agrees as follows:

27 **A. Equal Employment Opportunity.** In connection with the execution of this
28 AGREEMENT, CONSULTANT shall not discriminate against any employee or applicant for employment

1 because of race, religion, color, sex, or national origin. Such actions shall include, but not be limited to, the
2 following: employment, promotion, upgrading, demotion, or transfer; recruitment or recruitment advertising;
3 layoff or termination; rate of pay or other forms of compensation; and selection for training including
4 apprenticeship.

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

7 **C. Solicitations for Subcontractors including Procurement of Materials and**
8 **Equipment.** In all solicitation, either by competitive bidding or negotiations, made by CONSULTANT for
9 work to be performed under a subcontract including procurement of materials or leases of equipment, each
10 potential subcontractor, supplier or lessor shall be notified by CONSULTANT of CONSULTANT'S obligation
11 under this AGREEMENT and the regulations relative to nondiscrimination on the grounds of race, religion,
12 color, sex, or national origin.

13 11. CONFLICT OF INTEREST

14 A. CONSULTANT covenants and represents that neither it, nor any officer or principal of
15 its firm, has, or shall acquire any interest, directly or indirectly, which would conflict in any manner with the
16 interests of CITY or which would in any way hinder CONSULTANT's performance of services under this
17 Agreement. CONSULTANT further covenants that in the performance of the Agreement, no person having
18 any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express
19 written consent of the CITY. CONSULTANT agrees to at all times avoid conflicts of interest, or the
20 appearance of any conflicts of interest, with the interests of the CITY in the performance of this Agreement.

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

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

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

28 12. INDEPENDENT CONTRACTOR

1 In assuming and performing the services, CONSULTANT is an independent contractor and
2 shall not be eligible for any benefits, which the CITY may provide its employees, except as expressly provided
3 for in the AGREEMENT. All persons, if any, hired by CONSULTANT shall be employees or subcontractors of
4 CONSULTANT and shall not be construed as employees or agents of the CITY in any respect.
5 CONSULTANT shall have responsibility for and control over the means of providing services under this
6 AGREEMENT.

7 13. COMPLIANCE WITH LAWS

8 CONSULTANT shall comply with all applicable federal, State of California, and local laws,
9 rules, and regulations and shall obtain all applicable licenses and permits for the conduct of its business and the
10 performance of the services.

11 14. CHOICE OF LAW

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

16 15. NON-WAIVER

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

21 16. ENFORCEABILITY; INTERPRETATION

22 In the event that any of the provisions or portions of application of any of the provisions of the
23 AGREEMENT are held to be illegal or invalid by a court of competent jurisdiction, CITY and CONSULTANT
24 shall negotiate an equitable adjustment in the provisions of the AGREEMENT with a view toward affecting the
25 purpose of the AGREEMENT. The illegality or invalidity of any of the provisions or portions of application of
26 any of the provisions of the AGREEMENT shall not affect the legality or enforceability of the remaining
27 provisions or portions of application of any of the provisions of the AGREEMENT. This Agreement shall be
28 interpreted as though it was a product of a joint drafting effort and no provisions shall be interpreted against a

1 party on the ground that said party was solely or primarily responsible for drafting the language to be
2 interpreted.

3 17. INTEGRATION

4 The AGREEMENT contains the entire AGREEMENT and understanding between the parties
5 as to the subject matter of this AGREEMENT. It merges and supersedes all prior or contemporaneous
6 agreements, commitments, representation, writings, and discussions between CONSULTANT and CITY,
7 whether oral or written.

8 18. SUCCESSORS AND ASSIGNS; NO THIRD PARTY BENEFICIARIES; NO JOINT
9 VENTURE

10 CITY and CONSULTANT respectively, bind themselves, their successors, assigns, and legal
11 representatives to the terms and obligations of this Agreement. CONSULTANT shall not assign or transfer any
12 interest in the Agreement without the CITY's prior written consent, which consent shall be in the CITY's sole
13 discretion. Any attempted assignment or transfer in breach of this provision shall be void. This Agreement is
14 not intended and shall not be construed to create any third party benefit. This Agreement is not intended and
15 shall not be construed to create a joint venture or partnership between the parties. CONSULTANT, its officers,
16 employees and agents shall not have any power to bind or commit the CITY to any decision.

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20 basis and made available to CITY if and when required.

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23 Registered mail, return receipt requested, or by personal delivery to the CITY's address as shown below, or
24 such other places as CITY or CONSULTANT may, from time to time, respectively, designate in a written
25 notice given to the other. Notice shall be deemed received three (3) days after the date of the mailing thereof or
26 upon personal delivery.

27 To CITY

Robert Ovadia, City Engineer
Community & Economic Development Department
City of Concord

1 1950 Parkside Drive, MS/40
2 Concord, CA 94519
3 Phone: (925) 671-3470
4 Fax: (925) 798-9692

5 To CONSULTANT

6 Edward Ballman, Principal
7 Balance Hydrologics, Inc
8 800 Bancroft Way, Suite 101
9 Berkeley, CA 94710
10 Phone: (510) 704-1000
11 Fax: (510) 704-1001

12 21. TERM

13 The term of this AGREEMENT shall be from the date executed above through **June 30th, 2017**, with the option of one one-year extension upon mutual agreement by both CITY and CONSULTANT.
14 The City Manager is authorized to approve the extension.

15 22. NON-LIABILITY

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17 personally liable to CONSULTANT or otherwise in the event of any default or breach of the CITY, or for any
18 amount which may become due to CONSULTANT or any successor in interest, or for any obligations directly
19 or indirectly incurred under the terms of this Agreement.

20 23. EXECUTION

21 Each individual or entity executing this Agreement on behalf of CONSULTANT represents
22 and warrants that he or she or it is duly authorized to execute and deliver this Agreement on behalf of
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27 account for more than one such counterpart.

28 **IN WITNESS WHEREOF**, the parties have executed this AGREEMENT in three (3) copies as of the
date and year first written above.

CONSULTANT

CITY OF CONCORD

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By: Edward Ballman

By: _____

Name: Edward Ballman
Title: Principal
Address: 800 Bancroft Way, Suite 101
Berkeley, CA 94710
Telephone: (510) 704-1000

Name: Valerie Barone
Title: City Manager
Address: 1950 Parkside Drive, MS 01
Concord, CA 94519
Telephone: (925) 671-3175

APPROVED AS TO FORM:

ATTEST:

City Attorney

City Clerk

Date: _____, 2015

FINANCE DIRECTOR'S CERTIFICATION:

Concord, California

Date: _____, 2015

I HEREBY CERTIFY THAT ADEQUATE FUNDS EXIST OR WILL BE RECEIVED
DURING THE CURRENT FISCAL YEARS 2015-16 AND 2016-17 TO PAY THE
ANTICIPATED EXPENSES TO BE INCURRED PURSUANT TO THIS CONTRACT.

THE SUM OF **\$250,000**.

Finance Director's Signature

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

1 **THIS AGREEMENT** made and entered into on **July 1st, 2015** by and between the City of Concord
2 (hereinafter "CITY"), located in the County of Contra Costa, State of California, and **WRECO** (hereinafter
3 "CONSULTANT"), whose address is 1243 Alpine Road, Suite 108, Walnut Creek, CA 94596.

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

6 CITY desires to contract with CONSULTANT and CONSULTANT to contract with CITY for
7 provision by CONSULTANT to CITY for professional services as further described herein, upon the terms and
8 conditions hereinafter set forth.

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

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12 CONSULTANT shall provide services for specific projects as may be requested by CITY;
13 such services shall be defined, scheduled, and authorized in subsequent Task Orders. Services may include, but
14 not be limited to:

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- 16 ● Other as-needed services;

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18 control over the details and means of providing its services under this AGREEMENT. CONSULTANT agrees
19 that its services shall be performed with due diligence and in accordance with generally accepted engineering
20 practices.

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22 manner so that the projects will be completed according to the established project schedules.

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24 Authorized representatives shall represent CITY and CONSULTANT in all matters pertaining
25 to the services to be ordered by CITY or rendered by CONSULTANT under this Agreement except where
26 approval for the CITY is specifically required by the City Council. The CITY'S authorized representative shall
27 be the City Engineer. Said City Engineer is authorized to execute Task Orders on behalf of CITY, including
28

1 providing for CONSULTANT to be compensated not more than **\$75,000** for each project. Task Orders
2 providing for more than **\$75,000** compensation for one project shall be presented to the City Council for its
3 consideration.

4 CONSULTANT authorized representative shall be **Han-Bin Liang, President**

5 3. COMPENSATION

6 CONSULTANT shall be compensated, not to exceed **\$250,000** per fiscal year for basic
7 services rendered under Section 1, as more particularly described in authorized Task Orders, in accordance with
8 the terms and conditions included therein.

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11 Federal Funding invoicing requirements, if applicable. It is intended that payments to CONSULTANT will be
12 made by CITY within thirty (30) days of receipt of invoice. Consultant's failure to secure CITY's written
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14 all right to adjustment in the price or time due, whether by way of compensation, restitution, quantum meruit,
15 or similar relief.

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19 damages, injuries, and liability (including all attorney's fees and other litigation expenses) arising out of the
20 CONSULTANT's performance under the terms of this Agreement. This indemnification obligation on
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22 of sole negligence or willful misconduct on the part of CITY.

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25 of CONSULTANT's services in respect to this project. They are not intended nor represented to be suitable for
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4 the file format that electronic document deliverables are presented to the CITY. Title to all plans,
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8 consent of the CITY. Basic survey notes and sketches, charts, computations, and other data prepared or
9 obtained under the Agreement shall be made available, upon request, to the CITY without restriction or
10 limitations on their use. CONSULTANT may retain copies of the above-described information but agrees not
11 to disclose or discuss any information gathered, discussed or generated in any way through this Agreement
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15 manner, and with the degree of skill and care that is required by current, good, and sound procedures and
16 practices. CONSULTANT further agrees that the services shall be in conformance with generally accepted
17 professional standards prevailing at the time work is performed.

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19 CONSULTANT shall, at its own expense, procure and maintain in full force at all times during
20 the term of this AGREEMENT the following insurance:

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22 commercial general liability insurance with limits of no less than one million dollars (\$1,000,000) combined
23 single limit per occurrence or two million dollars (\$2,000,000) aggregate limit for bodily injury, personal
24 injury, and property damage.

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4 single limit per occurrence basis.

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

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

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

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

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

28 **(3) Reporting Provisions.** Any failure to comply with the reporting provisions of

1 the policy shall not affect the coverage provided to the CITY, its officers, officials, employees, or volunteers.

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

10 8. SUSPENSION OF WORK

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

17 9. TERMINATION

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

25 10. COMPLIANCE WITH CIVIL RIGHTS

26 During the performance of this contract, CONSULTANT agrees as follows:

27 **A. Equal Employment Opportunity.** In connection with the execution of this
28 AGREEMENT, CONSULTANT shall not discriminate against any employee or applicant for employment

1 because of race, religion, color, sex, or national origin. Such actions shall include, but not be limited to, the
2 following: employment, promotion, upgrading, demotion, or transfer; recruitment or recruitment advertising;
3 layoff or termination; rate of pay or other forms of compensation; and selection for training including
4 apprenticeship.

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

7 **C. Solicitations for Subcontractors including Procurement of Materials and**
8 **Equipment.** In all solicitation, either by competitive bidding or negotiations, made by CONSULTANT for
9 work to be performed under a subcontract including procurement of materials or leases of equipment, each
10 potential subcontractor, supplier or lessor shall be notified by CONSULTANT of CONSULTANT'S obligation
11 under this AGREEMENT and the regulations relative to nondiscrimination on the grounds of race, religion,
12 color, sex, or national origin.

13 11. CONFLICT OF INTEREST

14 A. CONSULTANT covenants and represents that neither it, nor any officer or principal of
15 its firm, has, or shall acquire any interest, directly or indirectly, which would conflict in any manner with the
16 interests of CITY or which would in any way hinder CONSULTANT's performance of services under this
17 Agreement. CONSULTANT further covenants that in the performance of the Agreement, no person having
18 any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express
19 written consent of the CITY. CONSULTANT agrees to at all times avoid conflicts of interest, or the
20 appearance of any conflicts of interest, with the interests of the CITY in the performance of this Agreement.

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

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

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

28 12. INDEPENDENT CONTRACTOR

1 In assuming and performing the services, CONSULTANT is an independent contractor and
2 shall not be eligible for any benefits, which the CITY may provide its employees, except as expressly provided
3 for in the AGREEMENT. All persons, if any, hired by CONSULTANT shall be employees or subcontractors of
4 CONSULTANT and shall not be construed as employees or agents of the CITY in any respect.
5 CONSULTANT shall have responsibility for and control over the means of providing services under this
6 AGREEMENT.

7 13. COMPLIANCE WITH LAWS

8 CONSULTANT shall comply with all applicable federal, State of California, and local laws,
9 rules, and regulations and shall obtain all applicable licenses and permits for the conduct of its business and the
10 performance of the services.

11 14. CHOICE OF LAW

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

16 15. NON-WAIVER

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

21 16. ENFORCEABILITY; INTERPRETATION

22 In the event that any of the provisions or portions of application of any of the provisions of the
23 AGREEMENT are held to be illegal or invalid by a court of competent jurisdiction, CITY and CONSULTANT
24 shall negotiate an equitable adjustment in the provisions of the AGREEMENT with a view toward affecting the
25 purpose of the AGREEMENT. The illegality or invalidity of any of the provisions or portions of application of
26 any of the provisions of the AGREEMENT shall not affect the legality or enforceability of the remaining
27 provisions or portions of application of any of the provisions of the AGREEMENT. This Agreement shall be
28 interpreted as though it was a product of a joint drafting effort and no provisions shall be interpreted against a

1 party on the ground that said party was solely or primarily responsible for drafting the language to be
2 interpreted.

3 17. INTEGRATION

4 The AGREEMENT contains the entire AGREEMENT and understanding between the parties
5 as to the subject matter of this AGREEMENT. It merges and supersedes all prior or contemporaneous
6 agreements, commitments, representation, writings, and discussions between CONSULTANT and CITY,
7 whether oral or written.

8 18. SUCCESSORS AND ASSIGNS: NO THIRD PARTY BENEFICIARIES; NO JOINT
9 VENTURE

10 CITY and CONSULTANT respectively, bind themselves, their successors, assigns, and legal
11 representatives to the terms and obligations of this Agreement. CONSULTANT shall not assign or transfer any
12 interest in the Agreement without the CITY's prior written consent, which consent shall be in the CITY's sole
13 discretion. Any attempted assignment or transfer in breach of this provision shall be void. This Agreement is
14 not intended and shall not be construed to create any third party benefit. This Agreement is not intended and
15 shall not be construed to create a joint venture or partnership between the parties. CONSULTANT, its officers,
16 employees and agents shall not have any power to bind or commit the CITY to any decision.

17 19. FINANCIAL RECORDS

18 Records of CONSULTANT's direct labor costs, payroll costs, and reimbursable expenses
19 pertaining to this project covered by this AGREEMENT will be kept on a generally recognized accounting
20 basis and made available to CITY if and when required.

21 20. NOTICES

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

27 To CITY

Robert Ovadia, City Engineer
Community & Economic Development Department
City of Concord

1 1950 Parkside Drive, MS/40
2 Concord, CA 94519
3 Phone: (925) 671-3470
4 Fax: (925) 798-9692

5 To CONSULTANT

6 Han-Bin Liang, President
7 WRECO
8 1243 Alpine Road, Suite 108
9 Walnut Creek, CA 94596
10 Phone: (925) 941-0017
11 Fax: (925) 941-0018

12 21. TERM

13 The term of this AGREEMENT shall be from the date executed above through **June 30th**,
14 **2017**, with the option of one one-year extension upon mutual agreement by both CITY and CONSULTANT.
15 The City Manager is authorized to approve the extension.

16 22. NON-LIABILITY

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

21 23. EXECUTION

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

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

IN WITNESS WHEREOF, the parties have executed this AGREEMENT in three (3) copies as of the
date and year first written above.

CONSULTANT

CITY OF CONCORD

1 By: Han-Bin Liang

By: _____

2 Name: Han-Bin Liang
3 Title: President
4 Address: 1243 Alpine Road, Suite 108
Walnut Creek, CA 94596
5 Telephone: (925) 941-0017

Name: Valerie Barone
Title: City Manager
Address: 1950 Parkside Drive, MS 01
Concord, CA 94519
Telephone: (925) 671-3175

6 APPROVED AS TO FORM:

ATTEST:

7
8 _____
9 City Attorney

_____ City Clerk

10 Date: _____, 2015

11
12 FINANCE DIRECTOR'S CERTIFICATION:

13 Concord, California

14 Date: _____, 2015

15 I HEREBY CERTIFY THAT ADEQUATE FUNDS EXIST OR WILL BE RECEIVED
16 DURING THE CURRENT FISCAL YEARS 2015-16 AND 2016-17 TO PAY THE
17 ANTICIPATED EXPENSES TO BE INCURRED PURSUANT TO THIS CONTRACT.

18 THE SUM OF **\$250,000**.

19
20 _____
Finance Director's Signature

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

1 **THIS AGREEMENT** made and entered into on **July 1st, 2015** by and between the City of Concord
2 (hereinafter "CITY"), located in the County of Contra Costa, State of California, and **TJKM Transportation**
3 **Consultants** (hereinafter "CONSULTANT"), whose address is 4305 Hacienda Drive, Suite 550, Pleasanton,
4 CA 94588.

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

7 CITY desires to contract with CONSULTANT and CONSULTANT to contract with CITY for
8 provision by CONSULTANT to CITY for professional services as further described herein, upon the terms and
9 conditions hereinafter set forth.

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

12 1. SERVICES

13 CONSULTANT shall provide services for specific projects as may be requested by CITY;
14 such services shall be defined, scheduled, and authorized in subsequent Task Orders. Services may include, but
15 not be limited to:

- 16 ● Transportation solutions services related to CIP Projects
- 17 ● Other as-needed services;

18 CONSULTANT shall be an independent contractor and shall have responsibility for and
19 control over the details and means of providing its services under this AGREEMENT. CONSULTANT agrees
20 that its services shall be performed with due diligence and in accordance with generally accepted engineering
21 practices.

22 CONSULTANT shall use its best efforts to perform and coordinate all activities in a timely
23 manner so that the projects will be completed according to the established project schedules.

24 2. AUTHORIZED REPRESENTATIVES

25 Authorized representatives shall represent CITY and CONSULTANT in all matters pertaining
26 to the services to be ordered by CITY or rendered by CONSULTANT under this Agreement except where
27 approval for the CITY is specifically required by the City Council. The CITY'S authorized representative shall
28

1 be the City Engineer. Said City Engineer is authorized to execute Task Orders on behalf of CITY, including
2 providing for CONSULTANT to be compensated not more than **\$75,000** for each project. Task Orders
3 providing for more than **\$75,000** compensation for one project shall be presented to the City Council for its
4 consideration.

5 CONSULTANT authorized representative shall be **Nayan Amin, President**

6 3. COMPENSATION

7 CONSULTANT shall be compensated, not to exceed **\$250,000** per fiscal year for basic
8 services rendered under Section 1, as more particularly described in authorized Task Orders, in accordance with
9 the terms and conditions included therein.

10 CONSULTANT may submit monthly statements for services rendered; all statements shall
11 include adequate documentation demonstrating work performed during the billing period and shall conform to
12 Federal Funding invoicing requirements, if applicable. It is intended that payments to CONSULTANT will be
13 made by CITY within thirty (30) days of receipt of invoice. Consultant's failure to secure CITY's written
14 authorization for additional compensation or changes to the Scope of Work shall constitute a waiver of any and
15 all right to adjustment in the price or time due, whether by way of compensation, restitution, quantum meruit,
16 or similar relief.

17 4. INDEMNIFICATION

18 CONSULTANT agrees to defend, indemnify and hold harmless the CITY, its officers,
19 officials, employees, agents and volunteers from and against any and all claims, demands, actions, losses,
20 damages, injuries, and liability (including all attorney's fees and other litigation expenses) arising out of the
21 CONSULTANT's performance under the terms of this Agreement. This indemnification obligation on
22 CONSULTANT'S part shall not apply to demands, actions, losses, damages, injuries, and liability arising out
23 of sole negligence or willful misconduct on the part of CITY.

24 5. OWNERSHIP AND MAINTENANCE OF DOCUMENTS

25 All documents furnished by CONSULTANT pursuant to this AGREEMENT are instruments
26 of CONSULTANT's services in respect to this project. They are not intended nor represented to be suitable for
27 reuse by others on extensions of this project or on any other project. Any reuse without specific written
28 verification and adoption by CONSULTANT for the specific purposes intended will be at user's sole risk and

1 without liability or legal exposure and expenses to CONSULTANT, including attorney's fees arising out of
2 such unauthorized reuse.

3 CONSULTANT's records, documents, calculations, and all other instruments of service pertaining to
4 actual project shall be given to CITY at the completion of the project. The CITY reserves the right to specify
5 the file format that electronic document deliverables are presented to the CITY. Title to all plans,
6 specifications, maps, estimates, reports, manuscripts, drawings, descriptions and other final work products
7 compiled by the CONSULTANT under the Agreement shall be vested in the CITY, none of which shall be
8 used in any manner whatsoever, by any person, firm, corporation, or agency without the expressed written
9 consent of the CITY. Basic survey notes and sketches, charts, computations, and other data prepared or
10 obtained under the Agreement shall be made available, upon request, to the CITY without restriction or
11 limitations on their use. CONSULTANT may retain copies of the above-described information but agrees not
12 to disclose or discuss any information gathered, discussed or generated in any way through this Agreement
13 without the written permission of CITY during the term of this Agreement, unless required by law.

14 6. STANDARD OF PERFORMANCE

15 CONSULTANT represents to CITY that the services shall be performed in an expeditious
16 manner, and with the degree of skill and care that is required by current, good, and sound procedures and
17 practices. CONSULTANT further agrees that the services shall be in conformance with generally accepted
18 professional standards prevailing at the time work is performed.

19 7. INSURANCE REQUIRED

20 CONSULTANT shall, at its own expense, procure and maintain in full force at all times during
21 the term of this AGREEMENT the following insurance:

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

26 **B. Automobile Liability Coverage.** CONSULTANT shall maintain automobile liability
27 insurance covering all vehicles used in the performance of this Agreement providing a one million dollar
28 (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage.

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

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

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

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

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

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

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

3 (4) **Verification of Coverage.** CONSULTANT shall furnish CITY with
4 certificates of insurance and the original endorsements effecting coverage required by this Agreement. The
5 certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer
6 to bind coverage on its behalf. The aforementioned policies shall be issued by an insurance carrier having a
7 rating of Best A-7 or better which is satisfactory to the City Attorney and shall be delivered to CITY at the time
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12 CITY may, at any time, by ten (10) days' written notice, suspend further performance by
13 CONSULTANT. All suspensions shall extend the time schedule for performance in a mutually satisfactory
14 manner, and CONSULTANT shall be paid for services performed and reimbursable expenses incurred prior to
15 the suspension date. During the period of suspension, CONSULTANT shall not receive any payment for
16 services, or expenses, except for reasonable administration expenses, incurred by CONSULTANT by reason of
17 such suspension.

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21 this Agreement. In the event of any termination, CONSULTANT shall promptly deliver to the CITY any and
22 all finished and unfinished reports or other written, recorded, photographic, or visual materials, documents,
23 data, and other deliverables ("Work Materials") prepared for the CITY prior to the effective date of such
24 termination, all of which shall become CITY's sole property. After receipt of the Work Materials, CITY will
25 pay CONSULTANT for the services performed as of the effective date of the termination.

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27 During the performance of this contract, CONSULTANT agrees as follows:

28 A. **Equal Employment Opportunity.** In connection with the execution of this

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2 because of race, religion, color, sex, or national origin. Such actions shall include, but not be limited to, the
3 following: employment, promotion, upgrading, demotion, or transfer; recruitment or recruitment advertising;
4 layoff or termination; rate of pay or other forms of compensation; and selection for training including
5 apprenticeship.

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

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

14 11. CONFLICT OF INTEREST

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

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

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

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28 information, advice, recommendation or counsel. (2 Cal. Code Regs. § 18700(a)(2).)

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5 CONSULTANT and shall not be construed as employees or agents of the CITY in any respect.
6 CONSULTANT shall have responsibility for and control over the means of providing services under this
7 AGREEMENT.

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9 CONSULTANT shall comply with all applicable federal, State of California, and local laws,
10 rules, and regulations and shall obtain all applicable licenses and permits for the conduct of its business and the
11 performance of the services.

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14 California, excluding any choice of law rules which may direct the application of the laws of another
15 jurisdiction. In the event that suit shall be brought by either party hereunder, the parties agree that trial of such
16 action shall be held exclusively in a state court in the County of Contra Costa, California.

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

22 16. ENFORCEABILITY; INTERPRETATION

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

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

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5 The AGREEMENT contains the entire AGREEMENT and understanding between the parties
6 as to the subject matter of this AGREEMENT. It merges and supersedes all prior or contemporaneous
7 agreements, commitments, representation, writings, and discussions between CONSULTANT and CITY,
8 whether oral or written.

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11 CITY and CONSULTANT respectively, bind themselves, their successors, assigns, and legal
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13 interest in the Agreement without the CITY's prior written consent, which consent shall be in the CITY's sole
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21 basis and made available to CITY if and when required.

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

28 To CITY

Robert Ovadia, City Engineer

1 **Community & Economic Development Department**
2 **City of Concord**
3 **1950 Parkside Drive, MS/40**
4 **Concord, CA 94519**
5 **Phone: (925) 671-3470**
6 **Fax: (925) 798-9692**

7 To CONSULTANT

8 **Nayan Amin, President**
9 **TJKM Transportation Consultants**
10 **4305 Hacienda Drive, Suite 550**
11 **Pleasanton, CA 94588**
12 **Phone: (925) 463-0611**
13 **Fax: (925) 463-3690**

14 21. TERM

15 The term of this AGREEMENT shall be from the date executed above through **June 30th, 2017**, with the option of one one-year extension upon mutual agreement by both CITY and CONSULTANT.
16 The City Manager is authorized to approve the extension.

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19 personally liable to CONSULTANT or otherwise in the event of any default or breach of the CITY, or for any
20 amount which may become due to CONSULTANT or any successor in interest, or for any obligations directly
21 or indirectly incurred under the terms of this Agreement.

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23 Each individual or entity executing this Agreement on behalf of CONSULTANT represents
24 and warrants that he or she or it is duly authorized to execute and deliver this Agreement on behalf of
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26 This Agreement may be executed in several counterparts, each of which shall constitute one
27 and the same instrument and shall become binding upon the parties when at least one copy hereof shall have
28 been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or
account for more than one such counterpart.

IN WITNESS WHEREOF, the parties have executed this AGREEMENT in three (3) copies as of the
date and year first written above.

CONSULTANT

CITY OF CONCORD

N Amin

By: _____

By: _____

Name: Nayan Amin
Title: President
Address: 4305 Hacienda Drive, Suite 550
Pleasanton, CA 94588
Telephone: (925) 463-0611

Name: Valerie Barone
Title: City Manager
Address: 1950 Parkside Drive, MS 01
Concord, CA 94519
Telephone: (925) 671-3175

APPROVED AS TO FORM:

ATTEST:

City Attorney

City Clerk

Date: _____, 2015

FINANCE DIRECTOR'S CERTIFICATION:

Concord, California

Date: _____, 2015

I HEREBY CERTIFY THAT ADEQUATE FUNDS EXIST OR WILL BE RECEIVED DURING THE CURRENT FISCAL YEARS 2015-16 AND 2016-17 TO PAY THE ANTICIPATED EXPENSES TO BE INCURRED PURSUANT TO THIS CONTRACT.

THE SUM OF **\$250,000.**

Finance Director's Signature

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

1 **THIS AGREEMENT** made and entered into on **July 1st, 2015** by and between the City of Concord
2 (hereinafter "CITY"), located in the County of Contra Costa, State of California, and **DKS Associates,**
3 (hereinafter "CONSULTANT"), whose address is 1970 Broadway, Suite 740, Oakland, CA 94612.

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

6 CITY desires to contract with CONSULTANT and CONSULTANT to contract with CITY for
7 provision by CONSULTANT to CITY for professional services as further described herein, upon the terms and
8 conditions hereinafter set forth.

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

11 1. SERVICES

12 CONSULTANT shall provide services for specific projects as may be requested by CITY;
13 such services shall be defined, scheduled, and authorized in subsequent Task Orders. Services may include, but
14 not be limited to:

- 15 ● Transportation solution services related to CIP Projects
- 16 ● Other as-needed services;

17 CONSULTANT shall be an independent contractor and shall have responsibility for and
18 control over the details and means of providing its services under this AGREEMENT. CONSULTANT agrees
19 that its services shall be performed with due diligence and in accordance with generally accepted engineering
20 practices.

21 CONSULTANT shall use its best efforts to perform and coordinate all activities in a timely
22 manner so that the projects will be completed according to the established project schedules.

23 2. AUTHORIZED REPRESENTATIVES

24 Authorized representatives shall represent CITY and CONSULTANT in all matters pertaining
25 to the services to be ordered by CITY or rendered by CONSULTANT under this Agreement except where
26 approval for the CITY is specifically required by the City Council. The CITY'S authorized representative shall
27 be the City Engineer. Said City Engineer is authorized to execute Task Orders on behalf of CITY, including
28

1 providing for CONSULTANT to be compensated not more than **\$75,000** for each project. Task Orders
2 providing for more than **\$75,000** compensation for one project shall be presented to the City Council for its
3 consideration.

4 CONSULTANT authorized representative shall be **Kevin Fehon, Principal in Charge**

5 3. COMPENSATION

6 CONSULTANT shall be compensated, not to exceed **\$250,000** per fiscal year for basic
7 services rendered under Section 1, as more particularly described in authorized Task Orders, in accordance with
8 the terms and conditions included therein.

9 CONSULTANT may submit monthly statements for services rendered; all statements shall
10 include adequate documentation demonstrating work performed during the billing period and shall conform to
11 Federal Funding invoicing requirements, if applicable. It is intended that payments to CONSULTANT will be
12 made by CITY within thirty (30) days of receipt of invoice. Consultant's failure to secure CITY's written
13 authorization for additional compensation or changes to the Scope of Work shall constitute a waiver of any and
14 all right to adjustment in the price or time due, whether by way of compensation, restitution, quantum meruit,
15 or similar relief.

16 4. INDEMNIFICATION

17 CONSULTANT agrees to defend, indemnify and hold harmless the CITY, its officers,
18 officials, employees, agents and volunteers from and against any and all claims, demands, actions, losses,
19 damages, injuries, and liability (including all attorney's fees and other litigation expenses) arising out of the
20 CONSULTANT's performance under the terms of this Agreement. This indemnification obligation on
21 CONSULTANT'S part shall not apply to demands, actions, losses, damages, injuries, and liability arising out
22 of sole negligence or willful misconduct on the part of CITY.

23 5. OWNERSHIP AND MAINTENANCE OF DOCUMENTS

24 All documents furnished by CONSULTANT pursuant to this AGREEMENT are instruments
25 of CONSULTANT's services in respect to this project. They are not intended nor represented to be suitable for
26 reuse by others on extensions of this project or on any other project. Any reuse without specific written
27 verification and adoption by CONSULTANT for the specific purposes intended will be at user's sole risk and
28 without liability or legal exposure and expenses to CONSULTANT, including attorney's fees arising out of

1 such unauthorized reuse.

2 CONSULTANT's records, documents, calculations, and all other instruments of service pertaining to
3 actual project shall be given to CITY at the completion of the project. The CITY reserves the right to specify
4 the file format that electronic document deliverables are presented to the CITY. Title to all plans,
5 specifications, maps, estimates, reports, manuscripts, drawings, descriptions and other final work products
6 compiled by the CONSULTANT under the Agreement shall be vested in the CITY, none of which shall be
7 used in any manner whatsoever, by any person, firm, corporation, or agency without the expressed written
8 consent of the CITY. Basic survey notes and sketches, charts, computations, and other data prepared or
9 obtained under the Agreement shall be made available, upon request, to the CITY without restriction or
10 limitations on their use. CONSULTANT may retain copies of the above-described information but agrees not
11 to disclose or discuss any information gathered, discussed or generated in any way through this Agreement
12 without the written permission of CITY during the term of this Agreement, unless required by law.

13 6. STANDARD OF PERFORMANCE

14 CONSULTANT represents to CITY that the services shall be performed in an expeditious
15 manner, and with the degree of skill and care that is required by current, good, and sound procedures and
16 practices. CONSULTANT further agrees that the services shall be in conformance with generally accepted
17 professional standards prevailing at the time work is performed.

18 7. INSURANCE REQUIRED

19 CONSULTANT shall, at its own expense, procure and maintain in full force at all times during
20 the term of this AGREEMENT the following insurance:

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

25 **B. Automobile Liability Coverage.** CONSULTANT shall maintain automobile liability
26 insurance covering all vehicles used in the performance of this Agreement providing a one million dollar
27 (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage.

28 **C. Professional Liability Coverage (Errors and Omissions).** CONSULTANT shall

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

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

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

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

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

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

28 **(3) Reporting Provisions.** Any failure to comply with the reporting provisions of

1 the policy shall not affect the coverage provided to the CITY, its officers, officials, employees, or volunteers.

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

10 8. SUSPENSION OF WORK

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

17 9. TERMINATION

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

25 10. COMPLIANCE WITH CIVIL RIGHTS

26 During the performance of this contract, CONSULTANT agrees as follows:

27 **A. Equal Employment Opportunity.** In connection with the execution of this
28 AGREEMENT, CONSULTANT shall not discriminate against any employee or applicant for employment

1 because of race, religion, color, sex, or national origin. Such actions shall include, but not be limited to, the
2 following: employment, promotion, upgrading, demotion, or transfer; recruitment or recruitment advertising;
3 layoff or termination; rate of pay or other forms of compensation; and selection for training including
4 apprenticeship.

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

7 **C. Solicitations for Subcontractors including Procurement of Materials and**
8 **Equipment.** In all solicitation, either by competitive bidding or negotiations, made by CONSULTANT for
9 work to be performed under a subcontract including procurement of materials or leases of equipment, each
10 potential subcontractor, supplier or lessor shall be notified by CONSULTANT of CONSULTANT'S obligation
11 under this AGREEMENT and the regulations relative to nondiscrimination on the grounds of race, religion,
12 color, sex, or national origin.

13 11. CONFLICT OF INTEREST

14 A. CONSULTANT covenants and represents that neither it, nor any officer or principal of
15 its firm, has, or shall acquire any interest, directly or indirectly, which would conflict in any manner with the
16 interests of CITY or which would in any way hinder CONSULTANT's performance of services under this
17 Agreement. CONSULTANT further covenants that in the performance of the Agreement, no person having
18 any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express
19 written consent of the CITY. CONSULTANT agrees to at all times avoid conflicts of interest, or the
20 appearance of any conflicts of interest, with the interests of the CITY in the performance of this Agreement.

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

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

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

28 12. INDEPENDENT CONTRACTOR

1 In assuming and performing the services, CONSULTANT is an independent contractor and
2 shall not be eligible for any benefits, which the CITY may provide its employees, except as expressly provided
3 for in the AGREEMENT. All persons, if any, hired by CONSULTANT shall be employees or subcontractors of
4 CONSULTANT and shall not be construed as employees or agents of the CITY in any respect.
5 CONSULTANT shall have responsibility for and control over the means of providing services under this
6 AGREEMENT.

7 13. COMPLIANCE WITH LAWS

8 CONSULTANT shall comply with all applicable federal, State of California, and local laws,
9 rules, and regulations and shall obtain all applicable licenses and permits for the conduct of its business and the
10 performance of the services.

11 14. CHOICE OF LAW

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

16 15. NON-WAIVER

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

21 16. ENFORCEABILITY; INTERPRETATION

22 In the event that any of the provisions or portions of application of any of the provisions of the
23 AGREEMENT are held to be illegal or invalid by a court of competent jurisdiction, CITY and CONSULTANT
24 shall negotiate an equitable adjustment in the provisions of the AGREEMENT with a view toward affecting the
25 purpose of the AGREEMENT. The illegality or invalidity of any of the provisions or portions of application of
26 any of the provisions of the AGREEMENT shall not affect the legality or enforceability of the remaining
27 provisions or portions of application of any of the provisions of the AGREEMENT. This Agreement shall be
28 interpreted as though it was a product of a joint drafting effort and no provisions shall be interpreted against a

1 party on the ground that said party was solely or primarily responsible for drafting the language to be
2 interpreted.

3 17. INTEGRATION

4 The AGREEMENT contains the entire AGREEMENT and understanding between the parties
5 as to the subject matter of this AGREEMENT. It merges and supersedes all prior or contemporaneous
6 agreements, commitments, representation, writings, and discussions between CONSULTANT and CITY,
7 whether oral or written.

8 18. SUCCESSORS AND ASSIGNS: NO THIRD PARTY BENEFICIARIES: NO JOINT
9 VENTURE

10 CITY and CONSULTANT respectively, bind themselves, their successors, assigns, and legal
11 representatives to the terms and obligations of this Agreement. CONSULTANT shall not assign or transfer any
12 interest in the Agreement without the CITY's prior written consent, which consent shall be in the CITY's sole
13 discretion. Any attempted assignment or transfer in breach of this provision shall be void. This Agreement is
14 not intended and shall not be construed to create any third party benefit. This Agreement is not intended and
15 shall not be construed to create a joint venture or partnership between the parties. CONSULTANT, its officers,
16 employees and agents shall not have any power to bind or commit the CITY to any decision.

17 19. FINANCIAL RECORDS

18 Records of CONSULTANT's direct labor costs, payroll costs, and reimbursable expenses
19 pertaining to this project covered by this AGREEMENT will be kept on a generally recognized accounting
20 basis and made available to CITY if and when required.

21 20. NOTICES

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

27 To CITY

Robert Ovadia, City Engineer
Community & Economic Development Department
City of Concord

1 1950 Parkside Drive, MS/40
2 Concord, CA 94519
3 Phone: (925) 671-3470
4 Fax: (925) 798-9692

5 To CONSULTANT

6 Kevin Fehon, Principal in Charge
7 DKS Associates
8 1970 Broadway, Suite 740
9 Oakland, CA 94612
10 Phone: (510) 763-2061
11 Fax: (510) 268-1739

12 21. TERM

13 The term of this AGREEMENT shall be from the date executed above through **June 30th, 2017**, with the option of one one-year extension upon mutual agreement by both CITY and CONSULTANT.

14 The City Manager is authorized to approve the extension.

15 22. NON-LIABILITY

16 No member of the CITY and no other officer, employee or agent of the CITY shall be personally liable to CONSULTANT or otherwise in the event of any default or breach of the CITY, or for any amount which may become due to CONSULTANT or any successor in interest, or for any obligations directly or indirectly incurred under the terms of this Agreement.

17 23. EXECUTION

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

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

20 **IN WITNESS WHEREOF**, the parties have executed this AGREEMENT in three (3) copies as of the date and year first written above.

21 **CONSULTANT**

22 **CITY OF CONCORD**

1 By: Kevin Fehon

By: _____

2 Name: Kevin Fehon
3 Title: Principal in Charge
4 Address: 1970 Broadway, Suite 740
Oakland, CA 94612
5 Telephone: (510) 763-2061

Name: Valerie Barone
Title: City Manager
Address: 1950 Parkside Drive, MS 01
Concord, CA 94519
Telephone: (925) 671-3175

6 APPROVED AS TO FORM:
7
8 _____
City Attorney

ATTEST:
9
10 _____
City Clerk

11 Date: _____, 2015

12 FINANCE DIRECTOR'S CERTIFICATION:

13 Concord, California

14 Date: _____, 2015

15 I HEREBY CERTIFY THAT ADEQUATE FUNDS EXIST OR WILL BE RECEIVED
16 DURING THE CURRENT FISCAL YEARS 2015-16 AND 2016-17 TO PAY THE
17 ANTICIPATED EXPENSES TO BE INCURRED PURSUANT TO THIS CONTRACT.

18 THE SUM OF **\$250,000**.

19
20 _____
Finance Director's Signature

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

1 **THIS AGREEMENT** made and entered into on **July 1st, 2015** by and between the City of Concord
2 (hereinafter "CITY"), located in the County of Contra Costa, State of California, and **McArdle Design**
3 (hereinafter "CONSULTANT"), whose address is 3400 Mt. Diablo Blvd., Suite 207, Lafayette, CA 94549.

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

6 CITY desires to contract with CONSULTANT and CONSULTANT to contract with CITY for
7 provision by CONSULTANT to CITY for professional services as further described herein, upon the terms and
8 conditions hereinafter set forth.

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

11 1. SERVICES

12 CONSULTANT shall provide services for specific projects as may be requested by CITY;
13 such services shall be defined, scheduled, and authorized in subsequent Task Orders. Services may include, but
14 not be limited to:

- 15 ● Landscape Architectural services related to CIP Projects
- 16 ● Other as-needed services;

17 CONSULTANT shall be an independent contractor and shall have responsibility for and
18 control over the details and means of providing its services under this AGREEMENT. CONSULTANT agrees
19 that its services shall be performed with due diligence and in accordance with generally accepted engineering
20 practices.

21 CONSULTANT shall use its best efforts to perform and coordinate all activities in a timely
22 manner so that the projects will be completed according to the established project schedules.

23 2. AUTHORIZED REPRESENTATIVES

24 Authorized representatives shall represent CITY and CONSULTANT in all matters pertaining
25 to the services to be ordered by CITY or rendered by CONSULTANT under this Agreement except where
26 approval for the CITY is specifically required by the City Council. The CITY'S authorized representative shall
27 be the City Engineer. Said City Engineer is authorized to execute Task Orders on behalf of CITY, including
28

1 providing for CONSULTANT to be compensated not more than **\$75,000** for each project. Task Orders
2 providing for more than **\$75,000** compensation for one project shall be presented to the City Council for its
3 consideration.

4 CONSULTANT authorized representative shall be **Karen McArdle, Principal**

5 3. COMPENSATION

6 CONSULTANT shall be compensated, not to exceed **\$250,000** per fiscal year for basic
7 services rendered under Section 1, as more particularly described in authorized Task Orders, in accordance with
8 the terms and conditions included therein.

9 CONSULTANT may submit monthly statements for services rendered; all statements shall
10 include adequate documentation demonstrating work performed during the billing period and shall conform to
11 Federal Funding invoicing requirements, if applicable. It is intended that payments to CONSULTANT will be
12 made by CITY within thirty (30) days of receipt of invoice. Consultant's failure to secure CITY's written
13 authorization for additional compensation or changes to the Scope of Work shall constitute a waiver of any and
14 all right to adjustment in the price or time due, whether by way of compensation, restitution, quantum meruit,
15 or similar relief.

16 4. INDEMNIFICATION

17 CONSULTANT agrees to defend, indemnify and hold harmless the CITY, its officers,
18 officials, employees, agents and volunteers from and against any and all claims, demands, actions, losses,
19 damages, injuries, and liability (including all attorney's fees and other litigation expenses) arising out of the
20 CONSULTANT's performance under the terms of this Agreement. This indemnification obligation on
21 CONSULTANT'S part shall not apply to demands, actions, losses, damages, injuries, and liability arising out
22 of sole negligence or willful misconduct on the part of CITY.

23 5. OWNERSHIP AND MAINTENANCE OF DOCUMENTS

24 All documents furnished by CONSULTANT pursuant to this AGREEMENT are instruments
25 of CONSULTANT's services in respect to this project. They are not intended nor represented to be suitable for
26 reuse by others on extensions of this project or on any other project. Any reuse without specific written
27 verification and adoption by CONSULTANT for the specific purposes intended will be at user's sole risk and
28 without liability or legal exposure and expenses to CONSULTANT, including attorney's fees arising out of

1 such unauthorized reuse.

2 CONSULTANT's records, documents, calculations, and all other instruments of service pertaining to
3 actual project shall be given to CITY at the completion of the project. The CITY reserves the right to specify
4 the file format that electronic document deliverables are presented to the CITY. Title to all plans,
5 specifications, maps, estimates, reports, manuscripts, drawings, descriptions and other final work products
6 compiled by the CONSULTANT under the Agreement shall be vested in the CITY, none of which shall be
7 used in any manner whatsoever, by any person, firm, corporation, or agency without the expressed written
8 consent of the CITY. Basic survey notes and sketches, charts, computations, and other data prepared or
9 obtained under the Agreement shall be made available, upon request, to the CITY without restriction or
10 limitations on their use. CONSULTANT may retain copies of the above-described information but agrees not
11 to disclose or discuss any information gathered, discussed or generated in any way through this Agreement
12 without the written permission of CITY during the term of this Agreement, unless required by law.

13 6. STANDARD OF PERFORMANCE

14 CONSULTANT represents to CITY that the services shall be performed in an expeditious
15 manner, and with the degree of skill and care that is required by current, good, and sound procedures and
16 practices. CONSULTANT further agrees that the services shall be in conformance with generally accepted
17 professional standards prevailing at the time work is performed.

18 7. INSURANCE REQUIRED

19 CONSULTANT shall, at its own expense, procure and maintain in full force at all times during
20 the term of this AGREEMENT the following insurance:

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

25 **B. Automobile Liability Coverage.** CONSULTANT shall maintain automobile liability
26 insurance covering all vehicles used in the performance of this Agreement providing a one million dollar
27 (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage.

28 **C. Professional Liability Coverage (Errors and Omissions).** CONSULTANT shall

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

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

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

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

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

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

28 (3) **Reporting Provisions.** Any failure to comply with the reporting provisions of

1 the policy shall not affect the coverage provided to the CITY, its officers, officials, employees, or volunteers.

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

10 8. SUSPENSION OF WORK

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

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

25 10. COMPLIANCE WITH CIVIL RIGHTS

26 During the performance of this contract, CONSULTANT agrees as follows:

27 A. **Equal Employment Opportunity.** In connection with the execution of this
28 AGREEMENT, CONSULTANT shall not discriminate against any employee or applicant for employment

1 because of race, religion, color, sex, or national origin. Such actions shall include, but not be limited to, the
2 following: employment, promotion, upgrading, demotion, or transfer; recruitment or recruitment advertising;
3 layoff or termination; rate of pay or other forms of compensation; and selection for training including
4 apprenticeship.

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

7 **C. Solicitations for Subcontractors including Procurement of Materials and**
8 **Equipment.** In all solicitation, either by competitive bidding or negotiations, made by CONSULTANT for
9 work to be performed under a subcontract including procurement of materials or leases of equipment, each
10 potential subcontractor, supplier or lessor shall be notified by CONSULTANT of CONSULTANT'S obligation
11 under this AGREEMENT and the regulations relative to nondiscrimination on the grounds of race, religion,
12 color, sex, or national origin.

13 11. CONFLICT OF INTEREST

14 A. CONSULTANT covenants and represents that neither it, nor any officer or principal of
15 its firm, has, or shall acquire any interest, directly or indirectly, which would conflict in any manner with the
16 interests of CITY or which would in any way hinder CONSULTANT's performance of services under this
17 Agreement. CONSULTANT further covenants that in the performance of the Agreement, no person having
18 any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express
19 written consent of the CITY. CONSULTANT agrees to at all times avoid conflicts of interest, or the
20 appearance of any conflicts of interest, with the interests of the CITY in the performance of this Agreement.

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

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

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

28 12. INDEPENDENT CONTRACTOR

1 In assuming and performing the services, CONSULTANT is an independent contractor and
2 shall not be eligible for any benefits, which the CITY may provide its employees, except as expressly provided
3 for in the AGREEMENT. All persons, if any, hired by CONSULTANT shall be employees or subcontractors of
4 CONSULTANT and shall not be construed as employees or agents of the CITY in any respect.
5 CONSULTANT shall have responsibility for and control over the means of providing services under this
6 AGREEMENT.

7 13. COMPLIANCE WITH LAWS

8 CONSULTANT shall comply with all applicable federal, State of California, and local laws,
9 rules, and regulations and shall obtain all applicable licenses and permits for the conduct of its business and the
10 performance of the services.

11 14. CHOICE OF LAW

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

16 15. NON-WAIVER

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

21 16. ENFORCEABILITY; INTERPRETATION

22 In the event that any of the provisions or portions of application of any of the provisions of the
23 AGREEMENT are held to be illegal or invalid by a court of competent jurisdiction, CITY and CONSULTANT
24 shall negotiate an equitable adjustment in the provisions of the AGREEMENT with a view toward affecting the
25 purpose of the AGREEMENT. The illegality or invalidity of any of the provisions or portions of application of
26 any of the provisions of the AGREEMENT shall not affect the legality or enforceability of the remaining
27 provisions or portions of application of any of the provisions of the AGREEMENT. This Agreement shall be
28 interpreted as though it was a product of a joint drafting effort and no provisions shall be interpreted against a

1 party on the ground that said party was solely or primarily responsible for drafting the language to be
2 interpreted.

3 17. INTEGRATION

4 The AGREEMENT contains the entire AGREEMENT and understanding between the parties
5 as to the subject matter of this AGREEMENT. It merges and supersedes all prior or contemporaneous
6 agreements, commitments, representation, writings, and discussions between CONSULTANT and CITY,
7 whether oral or written.

8 18. SUCCESSORS AND ASSIGNS: NO THIRD PARTY BENEFICIARIES; NO JOINT
9 VENTURE

10 CITY and CONSULTANT respectively, bind themselves, their successors, assigns, and legal
11 representatives to the terms and obligations of this Agreement. CONSULTANT shall not assign or transfer any
12 interest in the Agreement without the CITY's prior written consent, which consent shall be in the CITY's sole
13 discretion. Any attempted assignment or transfer in breach of this provision shall be void. This Agreement is
14 not intended and shall not be construed to create any third party benefit. This Agreement is not intended and
15 shall not be construed to create a joint venture or partnership between the parties. CONSULTANT, its officers,
16 employees and agents shall not have any power to bind or commit the CITY to any decision.

17 19. FINANCIAL RECORDS

18 Records of CONSULTANT's direct labor costs, payroll costs, and reimbursable expenses
19 pertaining to this project covered by this AGREEMENT will be kept on a generally recognized accounting
20 basis and made available to CITY if and when required.

21 20. NOTICES

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

27 To CITY

Robert Ovadia, City Engineer
Community & Economic Development Department
City of Concord

1 1950 Parkside Drive, MS/40
2 Concord, CA 94519
3 Phone: (925) 671-3470
4 Fax: (925) 798-9692

5 To CONSULTANT

6 Karen McArdle, Principal
7 McArdle Design
8 3400 Mt. Diablo Blvd., Suite 207
9 Lafayette, CA 94549
10 Phone: (925) 283-5520
11 Fax: (925) 283-9476

12 21. TERM

13 The term of this AGREEMENT shall be from the date executed above through **June 30th, 2017**, with the option of one one-year extension upon mutual agreement by both CITY and CONSULTANT.

14 The City Manager is authorized to approve the extension.

15 22. NON-LIABILITY

16 No member of the CITY and no other officer, employee or agent of the CITY shall be personally liable to CONSULTANT or otherwise in the event of any default or breach of the CITY, or for any amount which may become due to CONSULTANT or any successor in interest, or for any obligations directly or indirectly incurred under the terms of this Agreement.

17 23. EXECUTION

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

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

20 **IN WITNESS WHEREOF**, the parties have executed this AGREEMENT in three (3) copies as of the date and year first written above.

21 **CONSULTANT**

22 **CITY OF CONCORD**

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By: 

Name: Karen McArdle
Title: Principal
Address: 3400 Mt. Diablo Blvd., Suite 207
Lafayette, CA 94549
Telephone: (925) 283-5520

By: _____

Name: Valerie Barone
Title: City Manager
Address: 1950 Parkside Drive, MS 01
Concord, CA 94519
Telephone: (925) 671-3175

APPROVED AS TO FORM:

ATTEST:

City Attorney

City Clerk

Date: _____, 2015

FINANCE DIRECTOR'S CERTIFICATION:

Concord, California

Date: _____, 2015

I HEREBY CERTIFY THAT ADEQUATE FUNDS EXIST OR WILL BE RECEIVED DURING THE CURRENT FISCAL YEARS 2015-16 AND 2016-17 TO PAY THE ANTICIPATED EXPENSES TO BE INCURRED PURSUANT TO THIS CONTRACT.

THE SUM OF **\$250,000.**

Finance Director's Signature

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

1 **THIS AGREEMENT** made and entered into on **July 1st, 2015** by and between the City of Concord
2 (hereinafter "CITY"), located in the County of Contra Costa, State of California, and Golden Associates
3 (hereinafter "CONSULTANT"), whose address is 4400 Market Street, Oakland, CA 94608.

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

6 CITY desires to contract with CONSULTANT and CONSULTANT to contract with CITY for
7 provision by CONSULTANT to CITY for professional services as further described herein, upon the terms and
8 conditions hereinafter set forth.

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

11 1. SERVICES

12 CONSULTANT shall provide services for specific projects as may be requested by CITY;
13 such services shall be defined, scheduled, and authorized in subsequent Task Orders. Services may include, but
14 not be limited to:

- 15 ● Landscape Architecture services related to CIP Projects
- 16 ● Other as-needed services;

17 CONSULTANT shall be an independent contractor and shall have responsibility for and
18 control over the details and means of providing its services under this AGREEMENT. CONSULTANT agrees
19 that its services shall be performed with due diligence and in accordance with generally accepted engineering
20 practices.

21 CONSULTANT shall use its best efforts to perform and coordinate all activities in a timely
22 manner so that the projects will be completed according to the established project schedules.

23 2. AUTHORIZED REPRESENTATIVES

24 Authorized representatives shall represent CITY and CONSULTANT in all matters pertaining
25 to the services to be ordered by CITY or rendered by CONSULTANT under this Agreement except where
26 approval for the CITY is specifically required by the City Council. The CITY'S authorized representative shall
27 be the City Engineer. Said City Engineer is authorized to execute Task Orders on behalf of CITY, including
28

1 providing for CONSULTANT to be compensated not more than **\$75,000** for each project. Task Orders
2 providing for more than **\$75,000** compensation for one project shall be presented to the City Council for its
3 consideration.

4 CONSULTANT authorized representative shall be **Leslie Golden, Principal**

5 3. COMPENSATION

6 CONSULTANT shall be compensated, not to exceed **\$250,000** per fiscal year for basic
7 services rendered under Section 1, as more particularly described in authorized Task Orders, in accordance with
8 the terms and conditions included therein.

9 CONSULTANT may submit monthly statements for services rendered; all statements shall
10 include adequate documentation demonstrating work performed during the billing period and shall conform to
11 Federal Funding invoicing requirements, if applicable. It is intended that payments to CONSULTANT will be
12 made by CITY within thirty (30) days of receipt of invoice. Consultant's failure to secure CITY's written
13 authorization for additional compensation or changes to the Scope of Work shall constitute a waiver of any and
14 all right to adjustment in the price or time due, whether by way of compensation, restitution, quantum meruit,
15 or similar relief.

16 4. INDEMNIFICATION

17 CONSULTANT agrees to defend, indemnify and hold harmless the CITY, its officers,
18 officials, employees, agents and volunteers from and against any and all claims, demands, actions, losses,
19 damages, injuries, and liability (including all attorney's fees and other litigation expenses) arising out of the
20 CONSULTANT's performance under the terms of this Agreement. This indemnification obligation on
21 CONSULTANT'S part shall not apply to demands, actions, losses, damages, injuries, and liability arising out
22 of sole negligence or willful misconduct on the part of CITY.

23 5. OWNERSHIP AND MAINTENANCE OF DOCUMENTS

24 All documents furnished by CONSULTANT pursuant to this AGREEMENT are instruments
25 of CONSULTANT's services in respect to this project. They are not intended nor represented to be suitable for
26 reuse by others on extensions of this project or on any other project. Any reuse without specific written
27 verification and adoption by CONSULTANT for the specific purposes intended will be at user's sole risk and
28 without liability or legal exposure and expenses to CONSULTANT, including attorney's fees arising out of

1 such unauthorized reuse.

2 CONSULTANT's records, documents, calculations, and all other instruments of service pertaining to
3 actual project shall be given to CITY at the completion of the project. The CITY reserves the right to specify
4 the file format that electronic document deliverables are presented to the CITY. Title to all plans,
5 specifications, maps, estimates, reports, manuscripts, drawings, descriptions and other final work products
6 compiled by the CONSULTANT under the Agreement shall be vested in the CITY, none of which shall be
7 used in any manner whatsoever, by any person, firm, corporation, or agency without the expressed written
8 consent of the CITY. Basic survey notes and sketches, charts, computations, and other data prepared or
9 obtained under the Agreement shall be made available, upon request, to the CITY without restriction or
10 limitations on their use. CONSULTANT may retain copies of the above-described information but agrees not
11 to disclose or discuss any information gathered, discussed or generated in any way through this Agreement
12 without the written permission of CITY during the term of this Agreement, unless required by law.

13 6. STANDARD OF PERFORMANCE

14 CONSULTANT represents to CITY that the services shall be performed in an expeditious
15 manner, and with the degree of skill and care that is required by current, good, and sound procedures and
16 practices. CONSULTANT further agrees that the services shall be in conformance with generally accepted
17 professional standards prevailing at the time work is performed.

18 7. INSURANCE REQUIRED

19 CONSULTANT shall, at its own expense, procure and maintain in full force at all times during
20 the term of this AGREEMENT the following insurance:

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

25 B. **Automobile Liability Coverage.** CONSULTANT shall maintain automobile liability
26 insurance covering all vehicles used in the performance of this Agreement providing a one million dollar
27 (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage.

28 C. **Professional Liability Coverage (Errors and Omissions).** CONSULTANT shall

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

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

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

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

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

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

28 **(3) Reporting Provisions.** Any failure to comply with the reporting provisions of

1 the policy shall not affect the coverage provided to the CITY, its officers, officials, employees, or volunteers.

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

10 8. SUSPENSION OF WORK

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

17 9. TERMINATION

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

25 10. COMPLIANCE WITH CIVIL RIGHTS

26 During the performance of this contract, CONSULTANT agrees as follows:

27 A. **Equal Employment Opportunity.** In connection with the execution of this
28 AGREEMENT, CONSULTANT shall not discriminate against any employee or applicant for employment

1 because of race, religion, color, sex, or national origin. Such actions shall include, but not be limited to, the
2 following: employment, promotion, upgrading, demotion, or transfer; recruitment or recruitment advertising;
3 layoff or termination; rate of pay or other forms of compensation; and selection for training including
4 apprenticeship.

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

7 **C. Solicitations for Subcontractors including Procurement of Materials and**
8 **Equipment.** In all solicitation, either by competitive bidding or negotiations, made by CONSULTANT for
9 work to be performed under a subcontract including procurement of materials or leases of equipment, each
10 potential subcontractor, supplier or lessor shall be notified by CONSULTANT of CONSULTANT'S obligation
11 under this AGREEMENT and the regulations relative to nondiscrimination on the grounds of race, religion,
12 color, sex, or national origin.

13 11. CONFLICT OF INTEREST

14 A. CONSULTANT covenants and represents that neither it, nor any officer or principal of
15 its firm, has, or shall acquire any interest, directly or indirectly, which would conflict in any manner with the
16 interests of CITY or which would in any way hinder CONSULTANT's performance of services under this
17 Agreement. CONSULTANT further covenants that in the performance of the Agreement, no person having
18 any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express
19 written consent of the CITY. CONSULTANT agrees to at all times avoid conflicts of interest, or the
20 appearance of any conflicts of interest, with the interests of the CITY in the performance of this Agreement.

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

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

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

28 12. INDEPENDENT CONTRACTOR

1 In assuming and performing the services, CONSULTANT is an independent contractor and
2 shall not be eligible for any benefits, which the CITY may provide its employees, except as expressly provided
3 for in the AGREEMENT. All persons, if any, hired by CONSULTANT shall be employees or subcontractors of
4 CONSULTANT and shall not be construed as employees or agents of the CITY in any respect.
5 CONSULTANT shall have responsibility for and control over the means of providing services under this
6 AGREEMENT.

7 13. COMPLIANCE WITH LAWS

8 CONSULTANT shall comply with all applicable federal, State of California, and local laws,
9 rules, and regulations and shall obtain all applicable licenses and permits for the conduct of its business and the
10 performance of the services.

11 14. CHOICE OF LAW

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

16 15. NON-WAIVER

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

21 16. ENFORCEABILITY; INTERPRETATION

22 In the event that any of the provisions or portions of application of any of the provisions of the
23 AGREEMENT are held to be illegal or invalid by a court of competent jurisdiction, CITY and CONSULTANT
24 shall negotiate an equitable adjustment in the provisions of the AGREEMENT with a view toward affecting the
25 purpose of the AGREEMENT. The illegality or invalidity of any of the provisions or portions of application of
26 any of the provisions of the AGREEMENT shall not affect the legality or enforceability of the remaining
27 provisions or portions of application of any of the provisions of the AGREEMENT. This Agreement shall be
28 interpreted as though it was a product of a joint drafting effort and no provisions shall be interpreted against a

1 party on the ground that said party was solely or primarily responsible for drafting the language to be
2 interpreted.

3 17. INTEGRATION

4 The AGREEMENT contains the entire AGREEMENT and understanding between the parties
5 as to the subject matter of this AGREEMENT. It merges and supersedes all prior or contemporaneous
6 agreements, commitments, representation, writings, and discussions between CONSULTANT and CITY,
7 whether oral or written.

8 18. SUCCESSORS AND ASSIGNS; NO THIRD PARTY BENEFICIARIES; NO JOINT
9 VENTURE

10 CITY and CONSULTANT respectively, bind themselves, their successors, assigns, and legal
11 representatives to the terms and obligations of this Agreement. CONSULTANT shall not assign or transfer any
12 interest in the Agreement without the CITY's prior written consent, which consent shall be in the CITY's sole
13 discretion. Any attempted assignment or transfer in breach of this provision shall be void. This Agreement is
14 not intended and shall not be construed to create any third party benefit. This Agreement is not intended and
15 shall not be construed to create a joint venture or partnership between the parties. CONSULTANT, its officers,
16 employees and agents shall not have any power to bind or commit the CITY to any decision.

17 19. FINANCIAL RECORDS

18 Records of CONSULTANT's direct labor costs, payroll costs, and reimbursable expenses
19 pertaining to this project covered by this AGREEMENT will be kept on a generally recognized accounting
20 basis and made available to CITY if and when required.

21 20. NOTICES

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

27 To CITY

Robert Ovadia, City Engineer
Community & Economic Development Department
City of Concord

1 1950 Parkside Drive, MS/40
2 Concord, CA 94519
3 Phone: (925) 671-3470
4 Fax: (925) 798-9692

5 To CONSULTANT

6 Leslie Golden, Principal
7 Golden Associates
8 4400 Market Street
9 Oakland, CA 94608
10 Phone: (510) 465-4030

11 21. TERM

12 The term of this AGREEMENT shall be from the date executed above through June 30th,
13 2017, with the option of one one-year extension upon mutual agreement by both CITY and CONSULTANT.
14 The City Manager is authorized to approve the extension.

15 22. NON-LIABILITY

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

20 23. EXECUTION

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

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

28 **IN WITNESS WHEREOF**, the parties have executed this AGREEMENT in three (3) copies as of the
date and year first written above.

CONSULTANT

CITY OF CONCORD

1 By: Leslie B. Golden

2 Name: Leslie Golden
3 Title: Principal
4 Address: 4400 Market Street
Oakland, CA 94608
5 Telephone: (510) 465-4030

By: _____

Name: Valerie Barone
Title: City Manager
Address: 1950 Parkside Drive, MS 01
Concord, CA 94519
Telephone: (925) 671-3175

6 APPROVED AS TO FORM:

ATTEST:

7
8 _____
City Attorney

9
10 Date: _____, 2015

11
12 FINANCE DIRECTOR'S CERTIFICATION:

13 Concord, California

14 Date: _____, 2015

15 I HEREBY CERTIFY THAT ADEQUATE FUNDS EXIST OR WILL BE RECEIVED
16 DURING THE CURRENT FISCAL YEARS 2015-16 AND 2016-17 TO PAY THE
17 ANTICIPATED EXPENSES TO BE INCURRED PURSUANT TO THIS CONTRACT.

18 THE SUM OF **\$250,000**.

19
20 _____
Finance Director's Signature

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

1 **THIS AGREEMENT** made and entered into on **July 1st, 2015** by and between the City of Concord
2 (hereinafter "CITY"), located in the County of Contra Costa, State of California, and **LCC, Inc.**, (hereinafter
3 "CONSULTANT"), whose address is 930 Estudillo Street, Martinez, CA 94553-1620.

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

6 CITY desires to contract with CONSULTANT and CONSULTANT to contract with CITY for
7 provision by CONSULTANT to CITY for professional services as further described herein, upon the terms and
8 conditions hereinafter set forth.

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

11 1. SERVICES

12 CONSULTANT shall provide services for specific projects as may be requested by CITY;
13 such services shall be defined, scheduled, and authorized in subsequent Task Orders. Services may include, but
14 not be limited to:

- 15 ● Land survey services related to CIP Projects
- 16 ● Other as-needed services;

17 CONSULTANT shall be an independent contractor and shall have responsibility for and
18 control over the details and means of providing its services under this AGREEMENT. CONSULTANT agrees
19 that its services shall be performed with due diligence and in accordance with generally accepted engineering
20 practices.

21 CONSULTANT shall use its best efforts to perform and coordinate all activities in a timely
22 manner so that the projects will be completed according to the established project schedules.

23 2. AUTHORIZED REPRESENTATIVES

24 Authorized representatives shall represent CITY and CONSULTANT in all matters pertaining
25 to the services to be ordered by CITY or rendered by CONSULTANT under this Agreement except where
26 approval for the CITY is specifically required by the City Council. The CITY'S authorized representative shall
27 be the City Engineer. Said City Engineer is authorized to execute Task Orders on behalf of CITY, including
28

1 providing for CONSULTANT to be compensated not more than **\$75,000** for each project. Task Orders
2 providing for more than **\$75,000** compensation for one project shall be presented to the City Council for its
3 consideration.

4 CONSULTANT authorized representative shall be **Christine Leptien-Parks, Principal**.

5 3. COMPENSATION

6 CONSULTANT shall be compensated, not to exceed **\$250,000** per fiscal year for basic
7 services rendered under Section 1, as more particularly described in authorized Task Orders, in accordance with
8 the terms and conditions included therein.

9 CONSULTANT may submit monthly statements for services rendered; all statements shall
10 include adequate documentation demonstrating work performed during the billing period and shall conform to
11 Federal Funding invoicing requirements, if applicable. It is intended that payments to CONSULTANT will be
12 made by CITY within thirty (30) days of receipt of invoice. Consultant's failure to secure CITY's written
13 authorization for additional compensation or changes to the Scope of Work shall constitute a waiver of any and
14 all right to adjustment in the price or time due, whether by way of compensation, restitution, quantum meruit,
15 or similar relief.

16 4. INDEMNIFICATION

17 CONSULTANT agrees to defend, indemnify and hold harmless the CITY, its officers,
18 officials, employees, agents and volunteers from and against any and all claims, demands, actions, losses,
19 damages, injuries, and liability (including all attorney's fees and other litigation expenses) arising out of the
20 CONSULTANT's performance under the terms of this Agreement. This indemnification obligation on
21 CONSULTANT'S part shall not apply to demands, actions, losses, damages, injuries, and liability arising out
22 of sole negligence or willful misconduct on the part of CITY.

23 5. OWNERSHIP AND MAINTENANCE OF DOCUMENTS

24 All documents furnished by CONSULTANT pursuant to this AGREEMENT are instruments
25 of CONSULTANT's services in respect to this project. They are not intended nor represented to be suitable for
26 reuse by others on extensions of this project or on any other project. Any reuse without specific written
27 verification and adoption by CONSULTANT for the specific purposes intended will be at user's sole risk and
28 without liability or legal exposure and expenses to CONSULTANT, including attorney's fees arising out of

1 such unauthorized reuse.

2 CONSULTANT's records, documents, calculations, and all other instruments of service pertaining to
3 actual project shall be given to CITY at the completion of the project. The CITY reserves the right to specify
4 the file format that electronic document deliverables are presented to the CITY. Title to all plans,
5 specifications, maps, estimates, reports, manuscripts, drawings, descriptions and other final work products
6 compiled by the CONSULTANT under the Agreement shall be vested in the CITY, none of which shall be
7 used in any manner whatsoever, by any person, firm, corporation, or agency without the expressed written
8 consent of the CITY. Basic survey notes and sketches, charts, computations, and other data prepared or
9 obtained under the Agreement shall be made available, upon request, to the CITY without restriction or
10 limitations on their use. CONSULTANT may retain copies of the above-described information but agrees not
11 to disclose or discuss any information gathered, discussed or generated in any way through this Agreement
12 without the written permission of CITY during the term of this Agreement, unless required by law.

13 6. STANDARD OF PERFORMANCE

14 CONSULTANT represents to CITY that the services shall be performed in an expeditious
15 manner, and with the degree of skill and care that is required by current, good, and sound procedures and
16 practices. CONSULTANT further agrees that the services shall be in conformance with generally accepted
17 professional standards prevailing at the time work is performed.

18 7. INSURANCE REQUIRED

19 CONSULTANT shall, at its own expense, procure and maintain in full force at all times during
20 the term of this AGREEMENT the following insurance:

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

25 **B. Automobile Liability Coverage.** CONSULTANT shall maintain automobile liability
26 insurance covering all vehicles used in the performance of this Agreement providing a one million dollar
27 (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage.

28 **C. Professional Liability Coverage (Errors and Omissions).** CONSULTANT shall

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

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

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

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

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

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

28 **(3) Reporting Provisions.** Any failure to comply with the reporting provisions of

1 the policy shall not affect the coverage provided to the CITY, its officers, officials, employees, or volunteers.

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

10 8. SUSPENSION OF WORK

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

17 9. TERMINATION

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

25 10. COMPLIANCE WITH CIVIL RIGHTS

26 During the performance of this contract, CONSULTANT agrees as follows:

27 **A. Equal Employment Opportunity.** In connection with the execution of this
28 AGREEMENT, CONSULTANT shall not discriminate against any employee or applicant for employment

1 because of race, religion, color, sex, or national origin. Such actions shall include, but not be limited to, the
2 following: employment, promotion, upgrading, demotion, or transfer; recruitment or recruitment advertising;
3 layoff or termination; rate of pay or other forms of compensation; and selection for training including
4 apprenticeship.

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

7 **C. Solicitations for Subcontractors including Procurement of Materials and**
8 **Equipment.** In all solicitation, either by competitive bidding or negotiations, made by CONSULTANT for
9 work to be performed under a subcontract including procurement of materials or leases of equipment, each
10 potential subcontractor, supplier or lessor shall be notified by CONSULTANT of CONSULTANT'S obligation
11 under this AGREEMENT and the regulations relative to nondiscrimination on the grounds of race, religion,
12 color, sex, or national origin.

13 11. CONFLICT OF INTEREST

14 A. CONSULTANT covenants and represents that neither it, nor any officer or principal of
15 its firm, has, or shall acquire any interest, directly or indirectly, which would conflict in any manner with the
16 interests of CITY or which would in any way hinder CONSULTANT's performance of services under this
17 Agreement. CONSULTANT further covenants that in the performance of the Agreement, no person having
18 any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express
19 written consent of the CITY. CONSULTANT agrees to at all times avoid conflicts of interest, or the
20 appearance of any conflicts of interest, with the interests of the CITY in the performance of this Agreement.

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

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

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

28 12. INDEPENDENT CONTRACTOR

1 In assuming and performing the services, CONSULTANT is an independent contractor and
2 shall not be eligible for any benefits, which the CITY may provide its employees, except as expressly provided
3 for in the AGREEMENT. All persons, if any, hired by CONSULTANT shall be employees or subcontractors of
4 CONSULTANT and shall not be construed as employees or agents of the CITY in any respect.
5 CONSULTANT shall have responsibility for and control over the means of providing services under this
6 AGREEMENT.

7 13. COMPLIANCE WITH LAWS

8 CONSULTANT shall comply with all applicable federal, State of California, and local laws,
9 rules, and regulations and shall obtain all applicable licenses and permits for the conduct of its business and the
10 performance of the services.

11 14. CHOICE OF LAW

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

16 15. NON-WAIVER

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

21 16. ENFORCEABILITY; INTERPRETATION

22 In the event that any of the provisions or portions of application of any of the provisions of the
23 AGREEMENT are held to be illegal or invalid by a court of competent jurisdiction, CITY and CONSULTANT
24 shall negotiate an equitable adjustment in the provisions of the AGREEMENT with a view toward affecting the
25 purpose of the AGREEMENT. The illegality or invalidity of any of the provisions or portions of application of
26 any of the provisions of the AGREEMENT shall not affect the legality or enforceability of the remaining
27 provisions or portions of application of any of the provisions of the AGREEMENT. This Agreement shall be
28 interpreted as though it was a product of a joint drafting effort and no provisions shall be interpreted against a

1 party on the ground that said party was solely or primarily responsible for drafting the language to be
2 interpreted.

3 17. INTEGRATION

4 The AGREEMENT contains the entire AGREEMENT and understanding between the parties
5 as to the subject matter of this AGREEMENT. It merges and supersedes all prior or contemporaneous
6 agreements, commitments, representation, writings, and discussions between CONSULTANT and CITY,
7 whether oral or written.

8 18. SUCCESSORS AND ASSIGNS: NO THIRD PARTY BENEFICIARIES; NO JOINT
9 VENTURE

10 CITY and CONSULTANT respectively, bind themselves, their successors, assigns, and legal
11 representatives to the terms and obligations of this Agreement. CONSULTANT shall not assign or transfer any
12 interest in the Agreement without the CITY's prior written consent, which consent shall be in the CITY's sole
13 discretion. Any attempted assignment or transfer in breach of this provision shall be void. This Agreement is
14 not intended and shall not be construed to create any third party benefit. This Agreement is not intended and
15 shall not be construed to create a joint venture or partnership between the parties. CONSULTANT, its officers,
16 employees and agents shall not have any power to bind or commit the CITY to any decision.

17 19. FINANCIAL RECORDS

18 Records of CONSULTANT's direct labor costs, payroll costs, and reimbursable expenses
19 pertaining to this project covered by this AGREEMENT will be kept on a generally recognized accounting
20 basis and made available to CITY if and when required.

21 20. NOTICES

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

27 To CITY

Robert Ovadia, PE
City Engineer
City of Concord

1 1950 Parkside Drive, MS/40
2 Concord, CA 94519
3 Phone: (925) 671-3470
4 Fax: (925) 798-9692

5 To CONSULTANT

6 Christine Leptien-Parks
7 LCC, Inc.
8 930 Estudillo Street
9 Martinez, CA 94553-1620
10 Phone: (925) 228-4218
11 Fax: (925) 228-4638

12 21. TERM

13 The term of this AGREEMENT shall be from the date executed above through **June 30th**,
14 **2017**, with the option of one one-year extension upon mutual agreement by both CITY and CONSULTANT.
15 The City Manager is authorized to approve the extension.

16 22. NON-LIABILITY

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

21 23. EXECUTION

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

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

IN WITNESS WHEREOF, the parties have executed this AGREEMENT in three (3) copies as of the
date and year first written above.

CONSULTANT

CITY OF CONCORD

1 By: 

By: _____

2 Name: Christien Leptien-Parks
3 Title: Principal
4 Address: 930 Estudillo Street
5 Martinez, CA 94553-1620
6 Telephone: (925) 228-4218

Name: Valerie Barone
Title: City Manager
Address: 1950 Parkside Drive, MS 01
Concord, CA 94519
Telephone: (925) 671-3175

7 APPROVED AS TO FORM:

ATTEST:

8 _____
City Attorney

_____ City Clerk

9
10 Date: _____, 2015

11
12 FINANCE DIRECTOR'S CERTIFICATION:

13 Concord, California

14 Date: _____, 2015

15 I HEREBY CERTIFY THAT ADEQUATE FUNDS EXIST OR WILL BE RECEIVED
16 DURING THE CURRENT FISCAL YEARS 2015-16 AND 2016-17 TO PAY THE
17 ANTICIPATED EXPENSES TO BE INCURRED PURSUANT TO THIS CONTRACT.

18 THE SUM OF **\$250,000**.

19
20 _____
Finance Director's Signature

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

1 **THIS AGREEMENT** made and entered into on **July 1st, 2015** by and between the City of Concord
2 (hereinafter "CITY"), located in the County of Contra Costa, State of California, and **Mark Thomas &**
3 **Company** (hereinafter "CONSULTANT"), whose address is 3000 Oak Road, Suite 650, Walnut Creek, Ca
4 94597.

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

7 CITY desires to contract with CONSULTANT and CONSULTANT to contract with CITY for
8 provision by CONSULTANT to CITY for professional services as further described herein, upon the terms and
9 conditions hereinafter set forth.

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

12 1. SERVICES

13 CONSULTANT shall provide services for specific projects as may be requested by CITY;
14 such services shall be defined, scheduled, and authorized in subsequent Task Orders. Services may include, but
15 not be limited to:

- 16 ● Land survey services as related to CIP Projects
- 17 ● Other as-needed services;

18 CONSULTANT shall be an independent contractor and shall have responsibility for and
19 control over the details and means of providing its services under this AGREEMENT. CONSULTANT agrees
20 that its services shall be performed with due diligence and in accordance with generally accepted engineering
21 practices.

22 CONSULTANT shall use its best efforts to perform and coordinate all activities in a timely
23 manner so that the projects will be completed according to the established project schedules.

24 2. AUTHORIZED REPRESENTATIVES

25 Authorized representatives shall represent CITY and CONSULTANT in all matters pertaining
26 to the services to be ordered by CITY or rendered by CONSULTANT under this Agreement except where
27 approval for the CITY is specifically required by the City Council. The CITY'S authorized representative shall
28

1 be the City Engineer. Said City Engineer is authorized to execute Task Orders on behalf of CITY, including
2 providing for CONSULTANT to be compensated not more than \$75,000 for each project. Task Orders
3 providing for more than \$75,000 compensation for one project shall be presented to the City Council for its
4 consideration.

5 CONSULTANT authorized representative shall be **Sasha Dansky, Principal/Vice President.**

6 3. COMPENSATION

7 CONSULTANT shall be compensated, not to exceed \$250,000 per fiscal year for basic
8 services rendered under Section 1, as more particularly described in authorized Task Orders, in accordance with
9 the terms and conditions included therein.

10 CONSULTANT may submit monthly statements for services rendered; all statements shall
11 include adequate documentation demonstrating work performed during the billing period and shall conform to
12 Federal Funding invoicing requirements, if applicable. It is intended that payments to CONSULTANT will be
13 made by CITY within thirty (30) days of receipt of invoice. Consultant's failure to secure CITY's written
14 authorization for additional compensation or changes to the Scope of Work shall constitute a waiver of any and
15 all right to adjustment in the price or time due, whether by way of compensation, restitution, quantum meruit,
16 or similar relief.

17 4. INDEMNIFICATION

18 CONSULTANT agrees to defend, indemnify and hold harmless the CITY, its officers,
19 officials, employees, agents and volunteers from and against any and all claims, demands, actions, losses,
20 damages, injuries, and liability (including all attorney's fees and other litigation expenses) arising out of the
21 CONSULTANT's performance under the terms of this Agreement. This indemnification obligation on
22 CONSULTANT'S part shall not apply to demands, actions, losses, damages, injuries, and liability arising out
23 of sole negligence or willful misconduct on the part of CITY.

24 5. OWNERSHIP AND MAINTENANCE OF DOCUMENTS

25 All documents furnished by CONSULTANT pursuant to this AGREEMENT are instruments
26 of CONSULTANT's services in respect to this project. They are not intended nor represented to be suitable for
27 reuse by others on extensions of this project or on any other project. Any reuse without specific written
28 verification and adoption by CONSULTANT for the specific purposes intended will be at user's sole risk and

1 without liability or legal exposure and expenses to CONSULTANT, including attorney's fees arising out of
2 such unauthorized reuse.

3 CONSULTANT's records, documents, calculations, and all other instruments of service pertaining to
4 actual project shall be given to CITY at the completion of the project. The CITY reserves the right to specify
5 the file format that electronic document deliverables are presented to the CITY. Title to all plans,
6 specifications, maps, estimates, reports, manuscripts, drawings, descriptions and other final work products
7 compiled by the CONSULTANT under the Agreement shall be vested in the CITY, none of which shall be
8 used in any manner whatsoever, by any person, firm, corporation, or agency without the expressed written
9 consent of the CITY. Basic survey notes and sketches, charts, computations, and other data prepared or
10 obtained under the Agreement shall be made available, upon request, to the CITY without restriction or
11 limitations on their use. CONSULTANT may retain copies of the above-described information but agrees not
12 to disclose or discuss any information gathered, discussed or generated in any way through this Agreement
13 without the written permission of CITY during the term of this Agreement, unless required by law.

14 6. STANDARD OF PERFORMANCE

15 CONSULTANT represents to CITY that the services shall be performed in an expeditious
16 manner, and with the degree of skill and care that is required by current, good, and sound procedures and
17 practices. CONSULTANT further agrees that the services shall be in conformance with generally accepted
18 professional standards prevailing at the time work is performed.

19 7. INSURANCE REQUIRED

20 CONSULTANT shall, at its own expense, procure and maintain in full force at all times during
21 the term of this AGREEMENT the following insurance:

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

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27 insurance covering all vehicles used in the performance of this Agreement providing a one million dollar
28 (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage.

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

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

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18 of CONSULTANT and operations of CONSULTANT, premises owned, occupied, or used by CONSULTANT.
19 The coverage shall contain no special limitations on the scope or protection afforded to CITY, its officers,
20 officials, employees, or volunteers.

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22 mentioned in this subsection shall name CITY as an additional insured and provide for notice of cancellation to
23 CITY. CONSULTANT shall also provide timely and prompt notice to CITY if CONSULTANT receives any
24 notice of cancellation or nonrenewal from its insurer.

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27 arrangement, or self-insurance maintained by CITY, its officers, officials, employees, or volunteers shall be in
28 excess of CONSULTANT'S insurance and shall not contribute with it.

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7 rating of Best A-7 or better which is satisfactory to the City Attorney and shall be delivered to CITY at the time
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13 CONSULTANT. All suspensions shall extend the time schedule for performance in a mutually satisfactory
14 manner, and CONSULTANT shall be paid for services performed and reimbursable expenses incurred prior to
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22 all finished and unfinished reports or other written, recorded, photographic, or visual materials, documents,
23 data, and other deliverables ("Work Materials") prepared for the CITY prior to the effective date of such
24 termination, all of which shall become CITY's sole property. After receipt of the Work Materials, CITY will
25 pay CONSULTANT for the services performed as of the effective date of the termination.

26 10. COMPLIANCE WITH CIVIL RIGHTS

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28 A. **Equal Employment Opportunity.** In connection with the execution of this

1 AGREEMENT, CONSULTANT shall not discriminate against any employee or applicant for employment
2 because of race, religion, color, sex, or national origin. Such actions shall include, but not be limited to, the
3 following: employment, promotion, upgrading, demotion, or transfer; recruitment or recruitment advertising;
4 layoff or termination; rate of pay or other forms of compensation; and selection for training including
5 apprenticeship.

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

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

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

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23 Reform Act because CONSULTANT:

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

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28 information, advice, recommendation or counsel. (2 Cal. Code Regs. § 18700(a)(2).)

1 12. INDEPENDENT CONTRACTOR

2 In assuming and performing the services, CONSULTANT is an independent contractor and
3 shall not be eligible for any benefits, which the CITY may provide its employees, except as expressly provided
4 for in the AGREEMENT. All persons, if any, hired by CONSULTANT shall be employees or subcontractors of
5 CONSULTANT and shall not be construed as employees or agents of the CITY in any respect.
6 CONSULTANT shall have responsibility for and control over the means of providing services under this
7 AGREEMENT.

8 13. COMPLIANCE WITH LAWS

9 CONSULTANT shall comply with all applicable federal, State of California, and local laws,
10 rules, and regulations and shall obtain all applicable licenses and permits for the conduct of its business and the
11 performance of the services.

12 14. CHOICE OF LAW

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

17 15. NON-WAIVER

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

22 16. ENFORCEABILITY; INTERPRETATION

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

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

4 17. INTEGRATION

5 The AGREEMENT contains the entire AGREEMENT and understanding between the parties
6 as to the subject matter of this AGREEMENT. It merges and supersedes all prior or contemporaneous
7 agreements, commitments, representation, writings, and discussions between CONSULTANT and CITY,
8 whether oral or written.

9 18. SUCCESSORS AND ASSIGNS: NO THIRD PARTY BENEFICIARIES; NO JOINT
10 VENTURE

11 CITY and CONSULTANT respectively, bind themselves, their successors, assigns, and legal
12 representatives to the terms and obligations of this Agreement. CONSULTANT shall not assign or transfer any
13 interest in the Agreement without the CITY's prior written consent, which consent shall be in the CITY's sole
14 discretion. Any attempted assignment or transfer in breach of this provision shall be void. This Agreement is
15 not intended and shall not be construed to create any third party benefit. This Agreement is not intended and
16 shall not be construed to create a joint venture or partnership between the parties. CONSULTANT, its officers,
17 employees and agents shall not have any power to bind or commit the CITY to any decision.

18 19. FINANCIAL RECORDS

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

22 20. NOTICES

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

1 To CITY

Robert Ovadia, PE
City Engineer
City of Concord
1950 Parkside Drive, MS/40
Concord, CA 94519
Phone: (925) 671-3470
Fax: (925) 798-9692

2
3
4
5 To CONSULTANT

Sasha Dansky, Principal/Vice President
Mark Thomas & Company
3000 Oak Road, Suite 650,
Walnut Creek, CA 94597
Phone: (925) 938-0383
Fax: (925) 938-0389

6
7
8
9
10 21. TERM

11 The term of this AGREEMENT shall be from the date executed above through **June 30th**,
12 **2017**, with the option of one one-year extension upon mutual agreement by both CITY and CONSULTANT.
13 The City Manager is authorized to approve the extension.

14 22. NON-LIABILITY

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

19 23. EXECUTION

20 Each individual or entity executing this Agreement on behalf of CONSULTANT represents
21 and warrants that he or she or it is duly authorized to execute and deliver this Agreement on behalf of
22 CONSULTANT and that such execution is binding upon CONSULTANT.

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

27 **IN WITNESS WHEREOF**, the parties have executed this AGREEMENT in three (3) copies as of the
28 date and year first written above.

1 **CONSULTANT**

CITY OF CONCORD

2 By:  _____

By: _____

3 Name: Sasha Dansky
4 Title: Principal/Vice President
5 Address: 3000 Oak Road, Suite 650
6 Walnut Creek, CA 94597
7 Telephone: (925) 938-0383

Name: Valerie Barone
Title: City Manager
Address: 1950 Parkside Drive, MS 01
Concord, CA 94519
Telephone: (925) 671-3175

7 APPROVED AS TO FORM:

ATTEST:

10 _____
City Attorney

City Clerk

11 Date: _____, 2015

13 **FINANCE DIRECTOR'S CERTIFICATION:**

14 Concord, California

15 Date: _____, 2015

17 I HEREBY CERTIFY THAT ADEQUATE FUNDS EXIST OR WILL BE RECEIVED
18 DURING THE CURRENT FISCAL YEARS 2015-16 AND 2016-17 TO PAY THE
ANTICIPATED EXPENSES TO BE INCURRED PURSUANT TO THIS CONTRACT.

19 THE SUM OF **\$250,000**.

21 _____
Finance Director's Signature

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

1 **THIS AGREEMENT** made and entered into on **July 1st, 2015** by and between the City of Concord
2 (hereinafter "CITY"), located in the County of Contra Costa, State of California, and **Analytical**
3 **Environmental Services** (hereinafter "CONSULTANT"), whose address is 1801 7th Street, Suite 100,
4 Sacramento, CA 95811.

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

7 CITY desires to contract with CONSULTANT and CONSULTANT to contract with CITY for
8 provision by CONSULTANT to CITY for professional services as further described herein, upon the terms and
9 conditions hereinafter set forth.

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

12 1. SERVICES

13 CONSULTANT shall provide services for specific projects as may be requested by CITY;
14 such services shall be defined, scheduled, and authorized in subsequent Task Orders. Services may include, but
15 not be limited to:

- 16 ● CEQA/NEPA services related to CIP Services
- 17 ● Other as-needed services;

18 CONSULTANT shall be an independent contractor and shall have responsibility for and
19 control over the details and means of providing its services under this AGREEMENT. CONSULTANT agrees
20 that its services shall be performed with due diligence and in accordance with generally accepted engineering
21 practices.

22 CONSULTANT shall use its best efforts to perform and coordinate all activities in a timely
23 manner so that the projects will be completed according to the established project schedules.

24 2. AUTHORIZED REPRESENTATIVES

25 Authorized representatives shall represent CITY and CONSULTANT in all matters pertaining
26 to the services to be ordered by CITY or rendered by CONSULTANT under this Agreement except where
27 approval for the CITY is specifically required by the City Council. The CITY'S authorized representative shall
28

1 be the City Engineer. Said City Engineer is authorized to execute Task Orders on behalf of CITY, including
2 providing for CONSULTANT to be compensated not more than **\$75,000** for each project. Task Orders
3 providing for more than **\$75,000** compensation for one project shall be presented to the City Council for its
4 consideration.

5 CONSULTANT authorized representative shall be **David Zweig, President.**

6 3. COMPENSATION

7 CONSULTANT shall be compensated, not to exceed **\$250,000** per fiscal year for basic
8 services rendered under Section 1, as more particularly described in authorized Task Orders, in accordance with
9 the terms and conditions included therein.

10 CONSULTANT may submit monthly statements for services rendered; all statements shall
11 include adequate documentation demonstrating work performed during the billing period and shall conform to
12 Federal Funding invoicing requirements, if applicable. It is intended that payments to CONSULTANT will be
13 made by CITY within thirty (30) days of receipt of invoice. Consultant's failure to secure CITY's written
14 authorization for additional compensation or changes to the Scope of Work shall constitute a waiver of any and
15 all right to adjustment in the price or time due, whether by way of compensation, restitution, quantum meruit,
16 or similar relief.

17 4. INDEMNIFICATION

18 CONSULTANT agrees to defend, indemnify and hold harmless the CITY, its officers,
19 officials, employees, agents and volunteers from and against any and all claims, demands, actions, losses,
20 damages, injuries, and liability (including all attorney's fees and other litigation expenses) arising out of the
21 CONSULTANT's performance under the terms of this Agreement. This indemnification obligation on
22 CONSULTANT'S part shall not apply to demands, actions, losses, damages, injuries, and liability arising out
23 of sole negligence or willful misconduct on the part of CITY.

24 5. OWNERSHIP AND MAINTENANCE OF DOCUMENTS

25 All documents furnished by CONSULTANT pursuant to this AGREEMENT are instruments
26 of CONSULTANT's services in respect to this project. They are not intended nor represented to be suitable for
27 reuse by others on extensions of this project or on any other project. Any reuse without specific written
28 verification and adoption by CONSULTANT for the specific purposes intended will be at user's sole risk and

1 without liability or legal exposure and expenses to CONSULTANT, including attorney's fees arising out of
2 such unauthorized reuse.

3 CONSULTANT's records, documents, calculations, and all other instruments of service pertaining to
4 actual project shall be given to CITY at the completion of the project. The CITY reserves the right to specify
5 the file format that electronic document deliverables are presented to the CITY. Title to all plans,
6 specifications, maps, estimates, reports, manuscripts, drawings, descriptions and other final work products
7 compiled by the CONSULTANT under the Agreement shall be vested in the CITY, none of which shall be
8 used in any manner whatsoever, by any person, firm, corporation, or agency without the expressed written
9 consent of the CITY. Basic survey notes and sketches, charts, computations, and other data prepared or
10 obtained under the Agreement shall be made available, upon request, to the CITY without restriction or
11 limitations on their use. CONSULTANT may retain copies of the above-described information but agrees not
12 to disclose or discuss any information gathered, discussed or generated in any way through this Agreement
13 without the written permission of CITY during the term of this Agreement, unless required by law.

14 6. STANDARD OF PERFORMANCE

15 CONSULTANT represents to CITY that the services shall be performed in an expeditious
16 manner, and with the degree of skill and care that is required by current, good, and sound procedures and
17 practices. CONSULTANT further agrees that the services shall be in conformance with generally accepted
18 professional standards prevailing at the time work is performed.

19 7. INSURANCE REQUIRED

20 CONSULTANT shall, at its own expense, procure and maintain in full force at all times during
21 the term of this AGREEMENT the following insurance:

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

26 **B. Automobile Liability Coverage.** CONSULTANT shall maintain automobile liability
27 insurance covering all vehicles used in the performance of this Agreement providing a one million dollar
28 (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage.

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

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

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

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

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

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

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

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

11 8. SUSPENSION OF WORK

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

18 9. TERMINATION

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

26 10. COMPLIANCE WITH CIVIL RIGHTS

27 During the performance of this contract, CONSULTANT agrees as follows:

28 A. **Equal Employment Opportunity.** In connection with the execution of this

1 AGREEMENT, CONSULTANT shall not discriminate against any employee or applicant for employment
2 because of race, religion, color, sex, or national origin. Such actions shall include, but not be limited to, the
3 following: employment, promotion, upgrading, demotion, or transfer; recruitment or recruitment advertising;
4 layoff or termination; rate of pay or other forms of compensation; and selection for training including
5 apprenticeship.

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

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

14 11. CONFLICT OF INTEREST

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

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

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

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

1 12. INDEPENDENT CONTRACTOR

2 In assuming and performing the services, CONSULTANT is an independent contractor and
3 shall not be eligible for any benefits, which the CITY may provide its employees, except as expressly provided
4 for in the AGREEMENT. All persons, if any, hired by CONSULTANT shall be employees or subcontractors of
5 CONSULTANT and shall not be construed as employees or agents of the CITY in any respect.
6 CONSULTANT shall have responsibility for and control over the means of providing services under this
7 AGREEMENT.

8 13. COMPLIANCE WITH LAWS

9 CONSULTANT shall comply with all applicable federal, State of California, and local laws,
10 rules, and regulations and shall obtain all applicable licenses and permits for the conduct of its business and the
11 performance of the services.

12 14. CHOICE OF LAW

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

17 15. NON-WAIVER

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

22 16. ENFORCEABILITY; INTERPRETATION

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

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

4 17. INTEGRATION

5 The AGREEMENT contains the entire AGREEMENT and understanding between the parties
6 as to the subject matter of this AGREEMENT. It merges and supersedes all prior or contemporaneous
7 agreements, commitments, representation, writings, and discussions between CONSULTANT and CITY,
8 whether oral or written.

9 18. SUCCESSORS AND ASSIGNS: NO THIRD PARTY BENEFICIARIES; NO JOINT
10 VENTURE

11 CITY and CONSULTANT respectively, bind themselves, their successors, assigns, and legal
12 representatives to the terms and obligations of this Agreement. CONSULTANT shall not assign or transfer any
13 interest in the Agreement without the CITY's prior written consent, which consent shall be in the CITY's sole
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15 not intended and shall not be construed to create any third party benefit. This Agreement is not intended and
16 shall not be construed to create a joint venture or partnership between the parties. CONSULTANT, its officers,
17 employees and agents shall not have any power to bind or commit the CITY to any decision.

18 19. FINANCIAL RECORDS

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

22 20. NOTICES

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

28 To CITY

Robert Ovadia, City Engineer

1 **Community & Economic Development Department**
2 **City of Concord**
3 **1950 Parkside Drive, MS/40**
4 **Concord, CA 94519**
5 **Phone: (925) 671-3470**
6 **Fax: (925) 798-9692**

7 To CONSULTANT

8 **David Zweig, President**
9 **Analytical Environmental Services**
10 **1801 7th Street, Suite 100**
11 **Sacramento, CA 95811**
12 **Phone: (916) 447-3479**
13 **Fax: (916) 447-1665**

14 21. TERM

15 The term of this AGREEMENT shall be from the date executed above through **June 30th, 2017**, with the option of one one-year extension upon mutual agreement by both CITY and CONSULTANT.
16 The City Manager is authorized to approve the extension.

17 22. NON-LIABILITY

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

22 23. EXECUTION

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

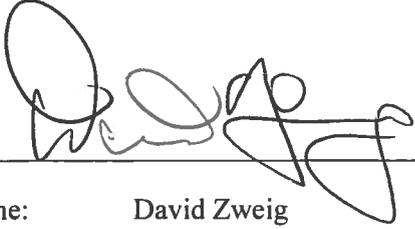
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27 and the same instrument and shall become binding upon the parties when at least one copy hereof shall have
28 been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or
account for more than one such counterpart.

IN WITNESS WHEREOF, the parties have executed this AGREEMENT in three (3) copies as of the
date and year first written above.

CONSULTANT

CITY OF CONCORD

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By: _____

Name: David Zweig
Title: President
Address: 1801 7th Street, Suite 100
Sacramento, CA 95811
Telephone: (916) 447-3479

By: _____

Name: Valerie Barone
Title: City Manager
Address: 1950 Parkside Drive, MS 01
Concord, CA 94519
Telephone: (925) 671-3175

APPROVED AS TO FORM:

ATTEST:

City Attorney

City Clerk

Date: _____, 2015

FINANCE DIRECTOR'S CERTIFICATION:

Concord, California

Date: _____, 2015

I HEREBY CERTIFY THAT ADEQUATE FUNDS EXIST OR WILL BE RECEIVED DURING THE CURRENT FISCAL YEARS 2015-16 AND 2016-17 TO PAY THE ANTICIPATED EXPENSES TO BE INCURRED PURSUANT TO THIS CONTRACT.

THE SUM OF **\$250,000**.

Finance Director's Signature

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

1 **THIS AGREEMENT** made and entered into on **July 1st, 2015** by and between the City of Concord
2 (hereinafter "CITY"), located in the County of Contra Costa, State of California, and **Rincon Consultants, Inc.**
3 (hereinafter "CONSULTANT"), whose address is 180 Grand Avenue, Suite 400, Oakland, CA 94612.

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

6 CITY desires to contract with CONSULTANT and CONSULTANT to contract with CITY for
7 provision by CONSULTANT to CITY for professional services as further described herein, upon the terms and
8 conditions hereinafter set forth.

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

11 1. SERVICES

12 CONSULTANT shall provide services for specific projects as may be requested by CITY;
13 such services shall be defined, scheduled, and authorized in subsequent Task Orders. Services may include, but
14 not be limited to:

- 15 ● CEQA/NEPA services related to CIP Projects
- 16 ● Other as-needed services;

17 CONSULTANT shall be an independent contractor and shall have responsibility for and
18 control over the details and means of providing its services under this AGREEMENT. CONSULTANT agrees
19 that its services shall be performed with due diligence and in accordance with generally accepted engineering
20 practices.

21 CONSULTANT shall use its best efforts to perform and coordinate all activities in a timely
22 manner so that the projects will be completed according to the established project schedules.

23 2. AUTHORIZED REPRESENTATIVES

24 Authorized representatives shall represent CITY and CONSULTANT in all matters pertaining
25 to the services to be ordered by CITY or rendered by CONSULTANT under this Agreement except where
26 approval for the CITY is specifically required by the City Council. The CITY'S authorized representative shall
27 be the City Engineer. Said City Engineer is authorized to execute Task Orders on behalf of CITY, including
28

1 providing for CONSULTANT to be compensated not more than **\$75,000** for each project. Task Orders
2 providing for more than **\$75,000** compensation for one project shall be presented to the City Council for its
3 consideration.

4 CONSULTANT authorized representative shall be **Abe Leider, Senior Project Manager**

5 3. COMPENSATION

6 CONSULTANT shall be compensated, not to exceed **\$250,000** per fiscal year for basic
7 services rendered under Section 1, as more particularly described in authorized Task Orders, in accordance with
8 the terms and conditions included therein.

9 CONSULTANT may submit monthly statements for services rendered; all statements shall
10 include adequate documentation demonstrating work performed during the billing period and shall conform to
11 Federal Funding invoicing requirements, if applicable. It is intended that payments to CONSULTANT will be
12 made by CITY within thirty (30) days of receipt of invoice. Consultant's failure to secure CITY's written
13 authorization for additional compensation or changes to the Scope of Work shall constitute a waiver of any and
14 all right to adjustment in the price or time due, whether by way of compensation, restitution, quantum meruit,
15 or similar relief.

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17 CONSULTANT agrees to defend, indemnify and hold harmless the CITY, its officers,
18 officials, employees, agents and volunteers from and against any and all claims, demands, actions, losses,
19 damages, injuries, and liability (including all attorney's fees and other litigation expenses) arising out of the
20 CONSULTANT's performance under the terms of this Agreement. This indemnification obligation on
21 CONSULTANT'S part shall not apply to demands, actions, losses, damages, injuries, and liability arising out
22 of sole negligence or willful misconduct on the part of CITY.

23 5. OWNERSHIP AND MAINTENANCE OF DOCUMENTS

24 All documents furnished by CONSULTANT pursuant to this AGREEMENT are instruments
25 of CONSULTANT's services in respect to this project. They are not intended nor represented to be suitable for
26 reuse by others on extensions of this project or on any other project. Any reuse without specific written
27 verification and adoption by CONSULTANT for the specific purposes intended will be at user's sole risk and
28 without liability or legal exposure and expenses to CONSULTANT, including attorney's fees arising out of

1 such unauthorized reuse.

2 CONSULTANT's records, documents, calculations, and all other instruments of service pertaining to
3 actual project shall be given to CITY at the completion of the project. The CITY reserves the right to specify
4 the file format that electronic document deliverables are presented to the CITY. Title to all plans,
5 specifications, maps, estimates, reports, manuscripts, drawings, descriptions and other final work products
6 compiled by the CONSULTANT under the Agreement shall be vested in the CITY, none of which shall be
7 used in any manner whatsoever, by any person, firm, corporation, or agency without the expressed written
8 consent of the CITY. Basic survey notes and sketches, charts, computations, and other data prepared or
9 obtained under the Agreement shall be made available, upon request, to the CITY without restriction or
10 limitations on their use. CONSULTANT may retain copies of the above-described information but agrees not
11 to disclose or discuss any information gathered, discussed or generated in any way through this Agreement
12 without the written permission of CITY during the term of this Agreement, unless required by law.

13 6. STANDARD OF PERFORMANCE

14 CONSULTANT represents to CITY that the services shall be performed in an expeditious
15 manner, and with the degree of skill and care that is required by current, good, and sound procedures and
16 practices. CONSULTANT further agrees that the services shall be in conformance with generally accepted
17 professional standards prevailing at the time work is performed.

18 7. INSURANCE REQUIRED

19 CONSULTANT shall, at its own expense, procure and maintain in full force at all times during
20 the term of this AGREEMENT the following insurance:

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

25 **B. Automobile Liability Coverage.** CONSULTANT shall maintain automobile liability
26 insurance covering all vehicles used in the performance of this Agreement providing a one million dollar
27 (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage.

28 **C. Professional Liability Coverage (Errors and Omissions).** CONSULTANT shall

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

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

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

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

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

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

28 (3) **Reporting Provisions.** Any failure to comply with the reporting provisions of

1 the policy shall not affect the coverage provided to the CITY, its officers, officials, employees, or volunteers.

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

10 8. SUSPENSION OF WORK

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

17 9. TERMINATION

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

25 10. COMPLIANCE WITH CIVIL RIGHTS

26 During the performance of this contract, CONSULTANT agrees as follows:

27 A. **Equal Employment Opportunity.** In connection with the execution of this
28 AGREEMENT, CONSULTANT shall not discriminate against any employee or applicant for employment

1 because of race, religion, color, sex, or national origin. Such actions shall include, but not be limited to, the
2 following: employment, promotion, upgrading, demotion, or transfer; recruitment or recruitment advertising;
3 layoff or termination; rate of pay or other forms of compensation; and selection for training including
4 apprenticeship.

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

7 **C. Solicitations for Subcontractors including Procurement of Materials and**
8 **Equipment.** In all solicitation, either by competitive bidding or negotiations, made by CONSULTANT for
9 work to be performed under a subcontract including procurement of materials or leases of equipment, each
10 potential subcontractor, supplier or lessor shall be notified by CONSULTANT of CONSULTANT'S obligation
11 under this AGREEMENT and the regulations relative to nondiscrimination on the grounds of race, religion,
12 color, sex, or national origin.

13 11. CONFLICT OF INTEREST

14 A. CONSULTANT covenants and represents that neither it, nor any officer or principal of
15 its firm, has, or shall acquire any interest, directly or indirectly, which would conflict in any manner with the
16 interests of CITY or which would in any way hinder CONSULTANT's performance of services under this
17 Agreement. CONSULTANT further covenants that in the performance of the Agreement, no person having
18 any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express
19 written consent of the CITY. CONSULTANT agrees to at all times avoid conflicts of interest, or the
20 appearance of any conflicts of interest, with the interests of the CITY in the performance of this Agreement.

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

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

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

28 12. INDEPENDENT CONTRACTOR

1 In assuming and performing the services, CONSULTANT is an independent contractor and
2 shall not be eligible for any benefits, which the CITY may provide its employees, except as expressly provided
3 for in the AGREEMENT. All persons, if any, hired by CONSULTANT shall be employees or subcontractors of
4 CONSULTANT and shall not be construed as employees or agents of the CITY in any respect.
5 CONSULTANT shall have responsibility for and control over the means of providing services under this
6 AGREEMENT.

7 13. COMPLIANCE WITH LAWS

8 CONSULTANT shall comply with all applicable federal, State of California, and local laws,
9 rules, and regulations and shall obtain all applicable licenses and permits for the conduct of its business and the
10 performance of the services.

11 14. CHOICE OF LAW

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

16 15. NON-WAIVER

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

21 16. ENFORCEABILITY; INTERPRETATION

22 In the event that any of the provisions or portions of application of any of the provisions of the
23 AGREEMENT are held to be illegal or invalid by a court of competent jurisdiction, CITY and CONSULTANT
24 shall negotiate an equitable adjustment in the provisions of the AGREEMENT with a view toward affecting the
25 purpose of the AGREEMENT. The illegality or invalidity of any of the provisions or portions of application of
26 any of the provisions of the AGREEMENT shall not affect the legality or enforceability of the remaining
27 provisions or portions of application of any of the provisions of the AGREEMENT. This Agreement shall be
28 interpreted as though it was a product of a joint drafting effort and no provisions shall be interpreted against a

1 party on the ground that said party was solely or primarily responsible for drafting the language to be
2 interpreted.

3 17. INTEGRATION

4 The AGREEMENT contains the entire AGREEMENT and understanding between the parties
5 as to the subject matter of this AGREEMENT. It merges and supersedes all prior or contemporaneous
6 agreements, commitments, representation, writings, and discussions between CONSULTANT and CITY,
7 whether oral or written.

8 18. SUCCESSORS AND ASSIGNS: NO THIRD PARTY BENEFICIARIES; NO JOINT
9 VENTURE

10 CITY and CONSULTANT respectively, bind themselves, their successors, assigns, and legal
11 representatives to the terms and obligations of this Agreement. CONSULTANT shall not assign or transfer any
12 interest in the Agreement without the CITY's prior written consent, which consent shall be in the CITY's sole
13 discretion. Any attempted assignment or transfer in breach of this provision shall be void. This Agreement is
14 not intended and shall not be construed to create any third party benefit. This Agreement is not intended and
15 shall not be construed to create a joint venture or partnership between the parties. CONSULTANT, its officers,
16 employees and agents shall not have any power to bind or commit the CITY to any decision.

17 19. FINANCIAL RECORDS

18 Records of CONSULTANT's direct labor costs, payroll costs, and reimbursable expenses
19 pertaining to this project covered by this AGREEMENT will be kept on a generally recognized accounting
20 basis and made available to CITY if and when required.

21 20. NOTICES

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

27 To CITY

Robert Ovadia, City Engineer
Community & Economic Development Department
City of Concord

1 1950 Parkside Drive, MS/40
2 Concord, CA 94519
3 Phone: (925) 671-3470
4 Fax: (925) 798-9692

5 To CONSULTANT

6 Abe Leider, Senior Project Manager
7 Rincon Consultants, Inc.
8 180 Grand Avenue, Suite 400
9 Oakland, CA 94612
10 Phone: (510) 834-4455
11 Fax: (510) 834-4433

12 21. TERM

13 The term of this AGREEMENT shall be from the date executed above through **June 30th**,
14 **2017**, with the option of one one-year extension upon mutual agreement by both CITY and CONSULTANT.
15 The City Manager is authorized to approve the extension.

16 22. NON-LIABILITY

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

21 23. EXECUTION

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

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

IN WITNESS WHEREOF, the parties have executed this AGREEMENT in three (3) copies as of the
date and year first written above.

CONSULTANT

CITY OF CONCORD

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By: 

Name: Stephen Svete, AICP, LEED AP ND
Title: Vice President
Address: 180 North Ashwood Avenue
Ventura, CA 93003
Telephone: (805) 644-4455

By: _____

Name: Valerie Barone
Title: City Manager
Address: 1950 Parkside Drive, MS 01
Concord, CA 94519
Telephone: (925) 671-3175

APPROVED AS TO FORM:

ATTEST:

City Attorney

City Clerk

Date: _____, 2015

FINANCE DIRECTOR'S CERTIFICATION:

Concord, California

Date: _____, 2015

I HEREBY CERTIFY THAT ADEQUATE FUNDS EXIST OR WILL BE RECEIVED
DURING THE CURRENT FISCAL YEARS 2015-16 AND 2016-17 TO PAY THE
ANTICIPATED EXPENSES TO BE INCURRED PURSUANT TO THIS CONTRACT.

THE SUM OF **\$250,000**.

Finance Director's Signature

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

1 **THIS AGREEMENT** made and entered into on **July 1st, 2015** by and between the City of Concord
2 (hereinafter "CITY"), located in the County of Contra Costa, State of California, and **LSA Associates, Inc.**
3 (hereinafter "CONSULTANT"), whose address is 157 Park Place, Pt. Richmond, CA 94801.

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

6 CITY desires to contract with CONSULTANT and CONSULTANT to contract with CITY for
7 provision by CONSULTANT to CITY for professional services as further described herein, upon the terms and
8 conditions hereinafter set forth.

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

11 1. SERVICES

12 CONSULTANT shall provide services for specific projects as may be requested by CITY;
13 such services shall be defined, scheduled, and authorized in subsequent Task Orders. Services may include, but
14 not be limited to:

- 15 ● CEQA/NEPA services related to CIP Projects
- 16 ● Other as-needed services;

17 CONSULTANT shall be an independent contractor and shall have responsibility for and
18 control over the details and means of providing its services under this AGREEMENT. CONSULTANT agrees
19 that its services shall be performed with due diligence and in accordance with generally accepted engineering
20 practices.

21 CONSULTANT shall use its best efforts to perform and coordinate all activities in a timely
22 manner so that the projects will be completed according to the established project schedules.

23 2. AUTHORIZED REPRESENTATIVES

24 Authorized representatives shall represent CITY and CONSULTANT in all matters pertaining
25 to the services to be ordered by CITY or rendered by CONSULTANT under this Agreement except where
26 approval for the CITY is specifically required by the City Council. The CITY'S authorized representative shall
27 be the City Engineer. Said City Engineer is authorized to execute Task Orders on behalf of CITY, including
28

1 providing for CONSULTANT to be compensated not more than **\$75,000** for each project. Task Orders
2 providing for more than **\$75,000** compensation for one project shall be presented to the City Council for its
3 consideration.

4 CONSULTANT authorized representative shall be **Laura Lafler, Principal.**

5 3. COMPENSATION

6 CONSULTANT shall be compensated, not to exceed **\$250,000** per fiscal year for basic
7 services rendered under Section 1, as more particularly described in authorized Task Orders, in accordance with
8 the terms and conditions included therein.

9 CONSULTANT may submit monthly statements for services rendered; all statements shall
10 include adequate documentation demonstrating work performed during the billing period and shall conform to
11 Federal Funding invoicing requirements, if applicable. It is intended that payments to CONSULTANT will be
12 made by CITY within thirty (30) days of receipt of invoice. Consultant's failure to secure CITY's written
13 authorization for additional compensation or changes to the Scope of Work shall constitute a waiver of any and
14 all right to adjustment in the price or time due, whether by way of compensation, restitution, quantum meruit,
15 or similar relief.

16 4. INDEMNIFICATION

17 CONSULTANT agrees to defend, indemnify and hold harmless the CITY, its officers,
18 officials, employees, agents and volunteers from and against any and all claims, demands, actions, losses,
19 damages, injuries, and liability (including all attorney's fees and other litigation expenses) arising out of the
20 CONSULTANT's performance under the terms of this Agreement. This indemnification obligation on
21 CONSULTANT'S part shall not apply to demands, actions, losses, damages, injuries, and liability arising out
22 of sole negligence or willful misconduct on the part of CITY.

23 5. OWNERSHIP AND MAINTENANCE OF DOCUMENTS

24 All documents furnished by CONSULTANT pursuant to this AGREEMENT are instruments
25 of CONSULTANT's services in respect to this project. They are not intended nor represented to be suitable for
26 reuse by others on extensions of this project or on any other project. Any reuse without specific written
27 verification and adoption by CONSULTANT for the specific purposes intended will be at user's sole risk and
28 without liability or legal exposure and expenses to CONSULTANT, including attorney's fees arising out of

1 such unauthorized reuse.

2 CONSULTANT's records, documents, calculations, and all other instruments of service pertaining to
3 actual project shall be given to CITY at the completion of the project. The CITY reserves the right to specify
4 the file format that electronic document deliverables are presented to the CITY. Title to all plans,
5 specifications, maps, estimates, reports, manuscripts, drawings, descriptions and other final work products
6 compiled by the CONSULTANT under the Agreement shall be vested in the CITY, none of which shall be
7 used in any manner whatsoever, by any person, firm, corporation, or agency without the expressed written
8 consent of the CITY. Basic survey notes and sketches, charts, computations, and other data prepared or
9 obtained under the Agreement shall be made available, upon request, to the CITY without restriction or
10 limitations on their use. CONSULTANT may retain copies of the above-described information but agrees not
11 to disclose or discuss any information gathered, discussed or generated in any way through this Agreement
12 without the written permission of CITY during the term of this Agreement, unless required by law.

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14 CONSULTANT represents to CITY that the services shall be performed in an expeditious
15 manner, and with the degree of skill and care that is required by current, good, and sound procedures and
16 practices. CONSULTANT further agrees that the services shall be in conformance with generally accepted
17 professional standards prevailing at the time work is performed.

18 7. INSURANCE REQUIRED

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20 the term of this AGREEMENT the following insurance:

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22 commercial general liability insurance with limits of no less than one million dollars (\$1,000,000) combined
23 single limit per occurrence or two million dollars (\$2,000,000) aggregate limit for bodily injury, personal
24 injury, and property damage.

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26 insurance covering all vehicles used in the performance of this Agreement providing a one million dollar
27 (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage.

28 **C. Professional Liability Coverage (Errors and Omissions).** CONSULTANT shall

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

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

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16 to be covered as an additional insured as respects: Liability arising out of activities performed by or on behalf
17 of CONSULTANT and operations of CONSULTANT, premises owned, occupied, or used by CONSULTANT.
18 The coverage shall contain no special limitations on the scope or protection afforded to CITY, its officers,
19 officials, employees, or volunteers.

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

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25 insurance with respect to CITY, its officers, officials, employees, and volunteers. Any insurance, risk pooling
26 arrangement, or self-insurance maintained by CITY, its officers, officials, employees, or volunteers shall be in
27 excess of CONSULTANT'S insurance and shall not contribute with it.

28 **(3) Reporting Provisions.** Any failure to comply with the reporting provisions of

1 the policy shall not affect the coverage provided to the CITY, its officers, officials, employees, or volunteers.

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

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

17 **9. TERMINATION**

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

25 **10. COMPLIANCE WITH CIVIL RIGHTS**

26 During the performance of this contract, CONSULTANT agrees as follows:

27 **A. Equal Employment Opportunity.** In connection with the execution of this
28 AGREEMENT, CONSULTANT shall not discriminate against any employee or applicant for employment

1 because of race, religion, color, sex, or national origin. Such actions shall include, but not be limited to, the
2 following: employment, promotion, upgrading, demotion, or transfer; recruitment or recruitment advertising;
3 layoff or termination; rate of pay or other forms of compensation; and selection for training including
4 apprenticeship.

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

7 **C. Solicitations for Subcontractors including Procurement of Materials and**
8 **Equipment.** In all solicitation, either by competitive bidding or negotiations, made by CONSULTANT for
9 work to be performed under a subcontract including procurement of materials or leases of equipment, each
10 potential subcontractor, supplier or lessor shall be notified by CONSULTANT of CONSULTANT'S obligation
11 under this AGREEMENT and the regulations relative to nondiscrimination on the grounds of race, religion,
12 color, sex, or national origin.

13 11. CONFLICT OF INTEREST

14 A. CONSULTANT covenants and represents that neither it, nor any officer or principal of
15 its firm, has, or shall acquire any interest, directly or indirectly, which would conflict in any manner with the
16 interests of CITY or which would in any way hinder CONSULTANT's performance of services under this
17 Agreement. CONSULTANT further covenants that in the performance of the Agreement, no person having
18 any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express
19 written consent of the CITY. CONSULTANT agrees to at all times avoid conflicts of interest, or the
20 appearance of any conflicts of interest, with the interests of the CITY in the performance of this Agreement.

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

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

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

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1 In assuming and performing the services, CONSULTANT is an independent contractor and
2 shall not be eligible for any benefits, which the CITY may provide its employees, except as expressly provided
3 for in the AGREEMENT. All persons, if any, hired by CONSULTANT shall be employees or subcontractors of
4 CONSULTANT and shall not be construed as employees or agents of the CITY in any respect.
5 CONSULTANT shall have responsibility for and control over the means of providing services under this
6 AGREEMENT.

7 13. COMPLIANCE WITH LAWS

8 CONSULTANT shall comply with all applicable federal, State of California, and local laws,
9 rules, and regulations and shall obtain all applicable licenses and permits for the conduct of its business and the
10 performance of the services.

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13 California, excluding any choice of law rules which may direct the application of the laws of another
14 jurisdiction. In the event that suit shall be brought by either party hereunder, the parties agree that trial of such
15 action shall be held exclusively in a state court in the County of Contra Costa, California.

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

21 16. ENFORCEABILITY; INTERPRETATION

22 In the event that any of the provisions or portions of application of any of the provisions of the
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25 purpose of the AGREEMENT. The illegality or invalidity of any of the provisions or portions of application of
26 any of the provisions of the AGREEMENT shall not affect the legality or enforceability of the remaining
27 provisions or portions of application of any of the provisions of the AGREEMENT. This Agreement shall be
28 interpreted as though it was a product of a joint drafting effort and no provisions shall be interpreted against a

1 party on the ground that said party was solely or primarily responsible for drafting the language to be
2 interpreted.

3 17. INTEGRATION

4 The AGREEMENT contains the entire AGREEMENT and understanding between the parties
5 as to the subject matter of this AGREEMENT. It merges and supersedes all prior or contemporaneous
6 agreements, commitments, representation, writings, and discussions between CONSULTANT and CITY,
7 whether oral or written.

8 18. SUCCESSORS AND ASSIGNS; NO THIRD PARTY BENEFICIARIES; NO JOINT
9 VENTURE

10 CITY and CONSULTANT respectively, bind themselves, their successors, assigns, and legal
11 representatives to the terms and obligations of this Agreement. CONSULTANT shall not assign or transfer any
12 interest in the Agreement without the CITY's prior written consent, which consent shall be in the CITY's sole
13 discretion. Any attempted assignment or transfer in breach of this provision shall be void. This Agreement is
14 not intended and shall not be construed to create any third party benefit. This Agreement is not intended and
15 shall not be construed to create a joint venture or partnership between the parties. CONSULTANT, its officers,
16 employees and agents shall not have any power to bind or commit the CITY to any decision.

17 19. FINANCIAL RECORDS

18 Records of CONSULTANT's direct labor costs, payroll costs, and reimbursable expenses
19 pertaining to this project covered by this AGREEMENT will be kept on a generally recognized accounting
20 basis and made available to CITY if and when required.

21 20. NOTICES

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

27 To CITY

Robert Ovadia, City Engineer
Community & Economic Development Department
City of Concord

1 1950 Parkside Drive, MS/40
2 Concord, CA 94519
3 Phone: (925) 671-3470
4 Fax: (925) 798-9692

5 To CONSULTANT

6 **Laura Lafler, Principal**
7 **LSA Associates Inc.**
8 **157 Park Place**
9 **Pt. Richmond, CA 94801**
10 **Phone: (510) 236-6810**
11 **Fax: (510) 236-3480**

12 21. TERM

13 The term of this AGREEMENT shall be from the date executed above through **June 30th**,
14 **2017**, with the option of one one-year extension upon mutual agreement by both CITY and CONSULTANT.

15 The City Manager is authorized to approve the extension.

16 22. NON-LIABILITY

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

21 23. EXECUTION

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

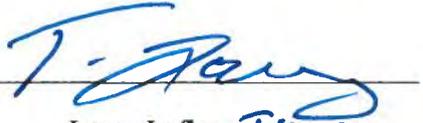
25 This Agreement may be executed in several counterparts, each of which shall constitute one
26 and the same instrument and shall become binding upon the parties when at least one copy hereof shall have
27 been signed by both parties hereto. In approving this Agreement, it shall not be necessary to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

IN WITNESS WHEREOF, the parties have executed this AGREEMENT in three (3) copies as of the
date and year first written above.

CONSULTANT

CITY OF CONCORD

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By: 
Name: ~~Laura Lafler~~ Tim Lacey
Title: Principal
Address: 157 Park Place
Pt. Richmond, CA 94801
Telephone: (510) 236-6810

By: _____
Name: Valerie Barone
Title: City Manager
Address: 1950 Parkside Drive, MS 01
Concord, CA 94519
Telephone: (925) 671-3175

APPROVED AS TO FORM:

ATTEST:

City Attorney

City Clerk

Date: _____, 2015

FINANCE DIRECTOR'S CERTIFICATION:

Concord, California

Date: _____, 2015

I HEREBY CERTIFY THAT ADEQUATE FUNDS EXIST OR WILL BE RECEIVED DURING THE CURRENT FISCAL YEARS 2015-16 AND 2016-17 TO PAY THE ANTICIPATED EXPENSES TO BE INCURRED PURSUANT TO THIS CONTRACT.

THE SUM OF **\$250,000.**

Finance Director's Signature

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

1 **THIS AGREEMENT** made and entered into on **July 1st, 2015** by and between the City of Concord
2 (hereinafter "CITY"), located in the County of Contra Costa, State of California, and **Kimley-Horn and**
3 **Associates, Inc.**, (hereinafter "CONSULTANT"), whose address 2720 Gateway Oaks Dr., Suite 310,
4 Sacramento, CA 95833.

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

7 CITY desires to contract with CONSULTANT and CONSULTANT to contract with CITY for
8 provision by CONSULTANT to CITY for professional services as further described herein, upon the terms and
9 conditions hereinafter set forth.

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

12 1. SERVICES

13 CONSULTANT shall provide services for specific projects as may be requested by CITY;
14 such services shall be defined, scheduled, and authorized in subsequent Task Orders. Services may include, but
15 not be limited to:

- 16 ● CEQA/NEPA services related to CIP Projects
- 17 ● Other as-needed services;

18 CONSULTANT shall be an independent contractor and shall have responsibility for and
19 control over the details and means of providing its services under this AGREEMENT. CONSULTANT agrees
20 that its services shall be performed with due diligence and in accordance with generally accepted engineering
21 practices.

22 CONSULTANT shall use its best efforts to perform and coordinate all activities in a timely
23 manner so that the projects will be completed according to the established project schedules.

24 2. AUTHORIZED REPRESENTATIVES

25 Authorized representatives shall represent CITY and CONSULTANT in all matters pertaining
26 to the services to be ordered by CITY or rendered by CONSULTANT under this Agreement except where
27 approval for the CITY is specifically required by the City Council. The CITY'S authorized representative shall
28

1 be the City Engineer. Said City Engineer is authorized to execute Task Orders on behalf of CITY, including
2 providing for CONSULTANT to be compensated not more than \$75,000 for each project. Task Orders
3 providing for more than \$75,000 compensation for one project shall be presented to the City Council for its
4 consideration.

5 CONSULTANT authorized representative shall be **Alex Jewell, Project Manager**

6 3. COMPENSATION

7 CONSULTANT shall be compensated, not to exceed \$250,000 per fiscal year for basic
8 services rendered under Section 1, as more particularly described in authorized Task Orders, in accordance with
9 the terms and conditions included therein.

10 CONSULTANT may submit monthly statements for services rendered; all statements shall
11 include adequate documentation demonstrating work performed during the billing period and shall conform to
12 Federal Funding invoicing requirements, if applicable. It is intended that payments to CONSULTANT will be
13 made by CITY within thirty (30) days of receipt of invoice. Consultant's failure to secure CITY's written
14 authorization for additional compensation or changes to the Scope of Work shall constitute a waiver of any and
15 all right to adjustment in the price or time due, whether by way of compensation, restitution, quantum meruit,
16 or similar relief.

17 4. INDEMNIFICATION

18 CONSULTANT agrees to defend, indemnify and hold harmless the CITY, its officers,
19 officials, employees, agents and volunteers from and against any and all claims, demands, actions, losses,
20 damages, injuries, and liability (including all attorney's fees and other litigation expenses) arising out of the
21 CONSULTANT's performance under the terms of this Agreement. This indemnification obligation on
22 CONSULTANT'S part shall not apply to demands, actions, losses, damages, injuries, and liability arising out
23 of sole negligence or willful misconduct on the part of CITY.

24 5. OWNERSHIP AND MAINTENANCE OF DOCUMENTS

25 All documents furnished by CONSULTANT pursuant to this AGREEMENT are instruments
26 of CONSULTANT's services in respect to this project. They are not intended nor represented to be suitable for
27 reuse by others on extensions of this project or on any other project. Any reuse without specific written
28 verification and adoption by CONSULTANT for the specific purposes intended will be at user's sole risk and

1 without liability or legal exposure and expenses to CONSULTANT, including attorney's fees arising out of
2 such unauthorized reuse.

3 CONSULTANT's records, documents, calculations, and all other instruments of service pertaining to
4 actual project shall be given to CITY at the completion of the project. The CITY reserves the right to specify
5 the file format that electronic document deliverables are presented to the CITY. Title to all plans,
6 specifications, maps, estimates, reports, manuscripts, drawings, descriptions and other final work products
7 compiled by the CONSULTANT under the Agreement shall be vested in the CITY, none of which shall be
8 used in any manner whatsoever, by any person, firm, corporation, or agency without the expressed written
9 consent of the CITY. Basic survey notes and sketches, charts, computations, and other data prepared or
10 obtained under the Agreement shall be made available, upon request, to the CITY without restriction or
11 limitations on their use. CONSULTANT may retain copies of the above-described information but agrees not
12 to disclose or discuss any information gathered, discussed or generated in any way through this Agreement
13 without the written permission of CITY during the term of this Agreement, unless required by law.

14 6. STANDARD OF PERFORMANCE

15 CONSULTANT represents to CITY that the services shall be performed in an expeditious
16 manner, and with the degree of skill and care that is required by current, good, and sound procedures and
17 practices. CONSULTANT further agrees that the services shall be in conformance with generally accepted
18 professional standards prevailing at the time work is performed.

19 7. INSURANCE REQUIRED

20 CONSULTANT shall, at its own expense, procure and maintain in full force at all times during
21 the term of this AGREEMENT the following insurance:

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

26 **B. Automobile Liability Coverage.** CONSULTANT shall maintain automobile liability
27 insurance covering all vehicles used in the performance of this Agreement providing a one million dollar
28 (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage.

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

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

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

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

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

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

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

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

11 8. SUSPENSION OF WORK

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

18 9. TERMINATION

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

26 10. COMPLIANCE WITH CIVIL RIGHTS

27 During the performance of this contract, CONSULTANT agrees as follows:

28 A. **Equal Employment Opportunity.** In connection with the execution of this

1 AGREEMENT, CONSULTANT shall not discriminate against any employee or applicant for employment
2 because of race, religion, color, sex, or national origin. Such actions shall include, but not be limited to, the
3 following: employment, promotion, upgrading, demotion, or transfer; recruitment or recruitment advertising;
4 layoff or termination; rate of pay or other forms of compensation; and selection for training including
5 apprenticeship.

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

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

14 11. CONFLICT OF INTEREST

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

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

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

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

1 12. INDEPENDENT CONTRACTOR

2 In assuming and performing the services, CONSULTANT is an independent contractor and
3 shall not be eligible for any benefits, which the CITY may provide its employees, except as expressly provided
4 for in the AGREEMENT. All persons, if any, hired by CONSULTANT shall be employees or subcontractors of
5 CONSULTANT and shall not be construed as employees or agents of the CITY in any respect.
6 CONSULTANT shall have responsibility for and control over the means of providing services under this
7 AGREEMENT.

8 13. COMPLIANCE WITH LAWS

9 CONSULTANT shall comply with all applicable federal, State of California, and local laws,
10 rules, and regulations and shall obtain all applicable licenses and permits for the conduct of its business and the
11 performance of the services.

12 14. CHOICE OF LAW

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

17 15. NON-WAIVER

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

22 16. ENFORCEABILITY; INTERPRETATION

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

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

4 17. INTEGRATION

5 The AGREEMENT contains the entire AGREEMENT and understanding between the parties
6 as to the subject matter of this AGREEMENT. It merges and supersedes all prior or contemporaneous
7 agreements, commitments, representation, writings, and discussions between CONSULTANT and CITY,
8 whether oral or written.

9 18. SUCCESSORS AND ASSIGNS: NO THIRD PARTY BENEFICIARIES; NO JOINT
10 VENTURE

11 CITY and CONSULTANT respectively, bind themselves, their successors, assigns, and legal
12 representatives to the terms and obligations of this Agreement. CONSULTANT shall not assign or transfer any
13 interest in the Agreement without the CITY's prior written consent, which consent shall be in the CITY's sole
14 discretion. Any attempted assignment or transfer in breach of this provision shall be void. This Agreement is
15 not intended and shall not be construed to create any third party benefit. This Agreement is not intended and
16 shall not be construed to create a joint venture or partnership between the parties. CONSULTANT, its officers,
17 employees and agents shall not have any power to bind or commit the CITY to any decision.

18 19. FINANCIAL RECORDS

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

22 20. NOTICES

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

28 To CITY

Robert Ovadia, City Engineer

1 **Community & Economic Development Department**
2 **City of Concord**
3 **1950 Parkside Drive, MS/40**
4 **Concord, CA 94519**
5 **Phone: (925) 671-3470**
6 **Fax: (925) 798-9692**

7 To CONSULTANT

8 **Alex Jewell, Project Manager**
9 **Kimley-Horn and Associates, Inc.**
10 **2720 Gateway Oaks Dr., Suite 310**
11 **Sacramento, CA 95833**
12 **Phone: (916) 859-3625**

13 21. TERM

14 The term of this AGREEMENT shall be from the date executed above through **June 30th**,
15 **2017**, with the option of one one-year extension upon mutual agreement by both CITY and CONSULTANT.
16 The City Manager is authorized to approve the extension.

17 22. NON-LIABILITY

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

22 23. EXECUTION

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

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

IN WITNESS WHEREOF, the parties have executed this AGREEMENT in three (3) copies as of the
date and year first written above.

CONSULTANT

CITY OF CONCORD

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By: Ernie Helvin
CA PE 49422
Name: for Alex Jewell
Title: Project Manager
Address: 2720 Gateway Oaks Dr., Suite 310
Sacramento, CA 95833
Telephone: (916)859-3625

By: _____
Name: Valerie Barone
Title: City Manager
Address: 1950 Parkside Drive, MS 01
Concord, CA 94519
Telephone: (925) 671-3175

APPROVED AS TO FORM:

ATTEST:

City Attorney

City Clerk

Date: _____, 2015

FINANCE DIRECTOR'S CERTIFICATION:

Concord, California

Date: _____, 2015

I HEREBY CERTIFY THAT ADEQUATE FUNDS EXIST OR WILL BE RECEIVED DURING THE CURRENT FISCAL YEARS 2015-16 AND 2016-17 TO PAY THE ANTICIPATED EXPENSES TO BE INCURRED PURSUANT TO THIS CONTRACT.

THE SUM OF **\$250,000**.

Finance Director's Signature

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

1 **THIS AGREEMENT** made and entered into on **July 1st, 2015** by and between the City of Concord
2 (hereinafter "CITY"), located in the County of Contra Costa, State of California, and **Kleinfelder West,**
3 **Inc.**, (hereinafter "CONSULTANT"), whose address is 981 Garcia Avenue, Suite A, Pittsburg, CA 94565.

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

6 CITY desires to contract with CONSULTANT and CONSULTANT to contract with CITY for
7 provision by CONSULTANT to CITY for professional services as further described herein, upon the terms and
8 conditions hereinafter set forth.

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

11 1. SERVICES

12 CONSULTANT shall provide services for specific projects as may be requested by CITY;
13 such services shall be defined, scheduled, and authorized in subsequent Task Orders. Services may include, but
14 not be limited to:

- 15 ● Geotechnical services related to CIP Projects
- 16 ● Materials Testing services related to CIP Projects
- 17 ● Other as-needed services;

18 CONSULTANT shall be an independent contractor and shall have responsibility for and
19 control over the details and means of providing its services under this AGREEMENT. CONSULTANT agrees
20 that its services shall be performed with due diligence and in accordance with generally accepted engineering
21 practices.

22 CONSULTANT shall use its best efforts to perform and coordinate all activities in a timely
23 manner so that the projects will be completed according to the established project schedules.

24 2. AUTHORIZED REPRESENTATIVES

25 Authorized representatives shall represent CITY and CONSULTANT in all matters pertaining
26 to the services to be ordered by CITY or rendered by CONSULTANT under this Agreement except where
27 approval for the CITY is specifically required by the City Council. The CITY'S authorized representative shall
28

1 be the City Engineer. Said City Engineer is authorized to execute Task Orders on behalf of CITY, including
2 providing for CONSULTANT to be compensated not more than \$75,000 for each project. Task Orders
3 providing for more than \$75,000 compensation for one project shall be presented to the City Council for its
4 consideration.

5 CONSULTANT authorized representative shall be **Fernando Silva, Area Manager**

6 3. COMPENSATION

7 CONSULTANT shall be compensated, not to exceed \$250,000 per fiscal year for basic
8 services rendered under Section 1, as more particularly described in authorized Task Orders, in accordance with
9 the terms and conditions included therein.

10 CONSULTANT may submit monthly statements for services rendered; all statements shall
11 include adequate documentation demonstrating work performed during the billing period and shall conform to
12 Federal Funding invoicing requirements, if applicable. It is intended that payments to CONSULTANT will be
13 made by CITY within thirty (30) days of receipt of invoice. Consultant's failure to secure CITY's written
14 authorization for additional compensation or changes to the Scope of Work shall constitute a waiver of any and
15 all right to adjustment in the price or time due, whether by way of compensation, restitution, quantum meruit,
16 or similar relief.

17 4. INDEMNIFICATION

18 CONSULTANT agrees to defend, indemnify and hold harmless the CITY, its officers,
19 officials, employees, agents and volunteers from and against any and all claims, demands, actions, losses,
20 damages, injuries, and liability (including all attorney's fees and other litigation expenses) arising out of the
21 CONSULTANT's performance under the terms of this Agreement. This indemnification obligation on
22 CONSULTANT'S part shall not apply to demands, actions, losses, damages, injuries, and liability arising out
23 of sole negligence or willful misconduct on the part of CITY.

24 5. OWNERSHIP AND MAINTENANCE OF DOCUMENTS

25 All documents furnished by CONSULTANT pursuant to this AGREEMENT are instruments
26 of CONSULTANT's services in respect to this project. They are not intended nor represented to be suitable for
27 reuse by others on extensions of this project or on any other project. Any reuse without specific written
28 verification and adoption by CONSULTANT for the specific purposes intended will be at user's sole risk and

1 without liability or legal exposure and expenses to CONSULTANT, including attorney's fees arising out of
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4 actual project shall be given to CITY at the completion of the project. The CITY reserves the right to specify
5 the file format that electronic document deliverables are presented to the CITY. Title to all plans,
6 specifications, maps, estimates, reports, manuscripts, drawings, descriptions and other final work products
7 compiled by the CONSULTANT under the Agreement shall be vested in the CITY, none of which shall be
8 used in any manner whatsoever, by any person, firm, corporation, or agency without the expressed written
9 consent of the CITY. Basic survey notes and sketches, charts, computations, and other data prepared or
10 obtained under the Agreement shall be made available, upon request, to the CITY without restriction or
11 limitations on their use. CONSULTANT may retain copies of the above-described information but agrees not
12 to disclose or discuss any information gathered, discussed or generated in any way through this Agreement
13 without the written permission of CITY during the term of this Agreement, unless required by law.

14 6. STANDARD OF PERFORMANCE

15 CONSULTANT represents to CITY that the services shall be performed in an expeditious
16 manner, and with the degree of skill and care that is required by current, good, and sound procedures and
17 practices. CONSULTANT further agrees that the services shall be in conformance with generally accepted
18 professional standards prevailing at the time work is performed.

19 7. INSURANCE REQUIRED

20 CONSULTANT shall, at its own expense, procure and maintain in full force at all times during
21 the term of this AGREEMENT the following insurance:

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

26 **B. Automobile Liability Coverage.** CONSULTANT shall maintain automobile liability
27 insurance covering all vehicles used in the performance of this Agreement providing a one million dollar
28 (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage.

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

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

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

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

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

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

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

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

11 8. SUSPENSION OF WORK

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

18 9. TERMINATION

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

26 10. COMPLIANCE WITH CIVIL RIGHTS

27 During the performance of this contract, CONSULTANT agrees as follows:

28 A. **Equal Employment Opportunity.** In connection with the execution of this

1 AGREEMENT, CONSULTANT shall not discriminate against any employee or applicant for employment
2 because of race, religion, color, sex, or national origin. Such actions shall include, but not be limited to, the
3 following: employment, promotion, upgrading, demotion, or transfer; recruitment or recruitment advertising;
4 layoff or termination; rate of pay or other forms of compensation; and selection for training including
5 apprenticeship.

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

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

14 11. CONFLICT OF INTEREST

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

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

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

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

1 12. INDEPENDENT CONTRACTOR

2 In assuming and performing the services, CONSULTANT is an independent contractor and
3 shall not be eligible for any benefits, which the CITY may provide its employees, except as expressly provided
4 for in the AGREEMENT. All persons, if any, hired by CONSULTANT shall be employees or subcontractors of
5 CONSULTANT and shall not be construed as employees or agents of the CITY in any respect.
6 CONSULTANT shall have responsibility for and control over the means of providing services under this
7 AGREEMENT.

8 13. COMPLIANCE WITH LAWS

9 CONSULTANT shall comply with all applicable federal, State of California, and local laws,
10 rules, and regulations and shall obtain all applicable licenses and permits for the conduct of its business and the
11 performance of the services.

12 14. CHOICE OF LAW

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

17 15. NON-WAIVER

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

22 16. ENFORCEABILITY; INTERPRETATION

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

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

4 17. INTEGRATION

5 The AGREEMENT contains the entire AGREEMENT and understanding between the parties
6 as to the subject matter of this AGREEMENT. It merges and supersedes all prior or contemporaneous
7 agreements, commitments, representation, writings, and discussions between CONSULTANT and CITY,
8 whether oral or written.

9 18. SUCCESSORS AND ASSIGNS: NO THIRD PARTY BENEFICIARIES; NO JOINT
10 VENTURE

11 CITY and CONSULTANT respectively, bind themselves, their successors, assigns, and legal
12 representatives to the terms and obligations of this Agreement. CONSULTANT shall not assign or transfer any
13 interest in the Agreement without the CITY's prior written consent, which consent shall be in the CITY's sole
14 discretion. Any attempted assignment or transfer in breach of this provision shall be void. This Agreement is
15 not intended and shall not be construed to create any third party benefit. This Agreement is not intended and
16 shall not be construed to create a joint venture or partnership between the parties. CONSULTANT, its officers,
17 employees and agents shall not have any power to bind or commit the CITY to any decision.

18 19. FINANCIAL RECORDS

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

22 20. NOTICES

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

28 To CITY

Robert Ovadia, City Engineer

1 Community & Economic Development Department
2 City of Concord
3 1950 Parkside Drive, MS/40
4 Concord, CA 94519
5 Phone: (925) 671-3470
6 Fax: (925) 798-9692

7 To CONSULTANT

8 Fernando Silva, Area Manager
9 Kleinfelder West, Inc.
10 981 Garcia Avenue, Suite A
11 Pittsburg, CA 94565
12 Phone: (925) 427-6477
13 Fax: (925) 427-6478

14 21. TERM

15 The term of this AGREEMENT shall be from the date executed above through **June 30th**,
16 **2017**, with the option of one one-year extension upon mutual agreement by both CITY and CONSULTANT.
17 The City Manager is authorized to approve the extension.

18 22. NON-LIABILITY

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

23 23. EXECUTION

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

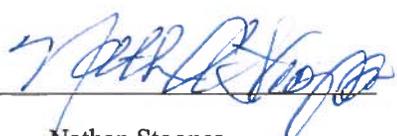
27 This Agreement may be executed in several counterparts, each of which shall constitute one
28 and the same instrument and shall become binding upon the parties when at least one copy hereof shall have
been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce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

IN WITNESS WHEREOF, the parties have executed this AGREEMENT in three (3) copies as of the
date and year first written above.

CONSULTANT

CITY OF CONCORD

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By: _____
Name: Nathan Stoopes
Title: Regional Delivery Manager/ Principal
Address: 981 Garcia Avenue, Suite A
Pittsburg, CA 94565
Telephone: (925) 427-6477

By: _____
Name: Valerie Barone
Title: City Manager
Address: 1950 Parkside Drive, MS 01
Concord, CA 94519
Telephone: (925) 671-3175

APPROVED AS TO FORM:

ATTEST:

City Attorney

City Clerk

Date: _____, 2015

FINANCE DIRECTOR'S CERTIFICATION:

Concord, California

Date: _____, 2015

I HEREBY CERTIFY THAT ADEQUATE FUNDS EXIST OR WILL BE RECEIVED
DURING THE CURRENT FISCAL YEARS 2015-16 AND 2016-17 TO PAY THE
ANTICIPATED EXPENSES TO BE INCURRED PURSUANT TO THIS CONTRACT.

THE SUM OF **\$250,000**.

Finance Director's Signature

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

1 **THIS AGREEMENT** made and entered into on **July 1st, 2015** by and between the City of Concord
2 (hereinafter "CITY"), located in the County of Contra Costa, State of California, and **Neil O. Anderson &**
3 **Associates, A Terracon Company,** (hereinafter "CONSULTANT"), whose address is 5075 Commercial
4 Circle, Suite E, Concord, CA 94520.

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

7 CITY desires to contract with CONSULTANT and CONSULTANT to contract with CITY for
8 provision by CONSULTANT to CITY for professional services as further described herein, upon the terms and
9 conditions hereinafter set forth.

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

12 1. SERVICES

13 CONSULTANT shall provide services for specific projects as may be requested by CITY;
14 such services shall be defined, scheduled, and authorized in subsequent Task Orders. Services may include, but
15 not be limited to:

- 16 ● Geotechnical services related to CIP Projects
- 17 ● Materials Testing services related to CIP Projects
- 18 ● Other as-needed services;

19 CONSULTANT shall be an independent contractor and shall have responsibility for and
20 control over the details and means of providing its services under this AGREEMENT. CONSULTANT agrees
21 that its services shall be performed with due diligence and in accordance with generally accepted engineering
22 practices.

23 CONSULTANT shall use its best efforts to perform and coordinate all activities in a timely
24 manner so that the projects will be completed according to the established project schedules.

25 2. AUTHORIZED REPRESENTATIVES

26 Authorized representatives shall represent CITY and CONSULTANT in all matters pertaining
27 to the services to be ordered by CITY or rendered by CONSULTANT under this Agreement except where
28

1 approval for the CITY is specifically required by the City Council. The CITY'S authorized representative shall
2 be the City Engineer. Said City Engineer is authorized to execute Task Orders on behalf of CITY, including
3 providing for CONSULTANT to be compensated not more than **\$75,000** for each project. Task Orders
4 providing for more than **\$75,000** compensation for one project shall be presented to the City Council for its
5 consideration.

6 CONSULTANT authorized representative shall be **Noah T. Smith, Senior Associate.**

7 3. COMPENSATION

8 CONSULTANT shall be compensated, not to exceed **\$250,000** per fiscal year for basic
9 services rendered under Section 1, as more particularly described in authorized Task Orders, in accordance with
10 the terms and conditions included therein.

11 CONSULTANT may submit monthly statements for services rendered; all statements shall
12 include adequate documentation demonstrating work performed during the billing period and shall conform to
13 Federal Funding invoicing requirements, if applicable. It is intended that payments to CONSULTANT will be
14 made by CITY within thirty (30) days of receipt of invoice. Consultant's failure to secure CITY's written
15 authorization for additional compensation or changes to the Scope of Work shall constitute a waiver of any and
16 all right to adjustment in the price or time due, whether by way of compensation, restitution, quantum meruit,
17 or similar relief.

18 4. INDEMNIFICATION

19 CONSULTANT agrees to defend, indemnify and hold harmless the CITY, its officers,
20 officials, employees, agents and volunteers from and against any and all claims, demands, actions, losses,
21 damages, injuries, and liability (including all attorney's fees and other litigation expenses) arising out of the
22 CONSULTANT's performance under the terms of this Agreement. This indemnification obligation on
23 CONSULTANT'S part shall not apply to demands, actions, losses, damages, injuries, and liability arising out
24 of sole negligence or willful misconduct on the part of CITY.

25 5. OWNERSHIP AND MAINTENANCE OF DOCUMENTS

26 All documents furnished by CONSULTANT pursuant to this AGREEMENT are instruments
27 of CONSULTANT's services in respect to this project. They are not intended nor represented to be suitable for
28 reuse by others on extensions of this project or on any other project. Any reuse without specific written

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

4 CONSULTANT's records, documents, calculations, and all other instruments of service pertaining to
5 actual project shall be given to CITY at the completion of the project. The CITY reserves the right to specify
6 the file format that electronic document deliverables are presented to the CITY. Title to all plans,
7 specifications, maps, estimates, reports, manuscripts, drawings, descriptions and other final work products
8 compiled by the CONSULTANT under the Agreement shall be vested in the CITY, none of which shall be
9 used in any manner whatsoever, by any person, firm, corporation, or agency without the expressed written
10 consent of the CITY. Basic survey notes and sketches, charts, computations, and other data prepared or
11 obtained under the Agreement shall be made available, upon request, to the CITY without restriction or
12 limitations on their use. CONSULTANT may retain copies of the above-described information but agrees not
13 to disclose or discuss any information gathered, discussed or generated in any way through this Agreement
14 without the written permission of CITY during the term of this Agreement, unless required by law.

15 6. STANDARD OF PERFORMANCE

16 CONSULTANT represents to CITY that the services shall be performed in an expeditious
17 manner, and with the degree of skill and care that is required by current, good, and sound procedures and
18 practices. CONSULTANT further agrees that the services shall be in conformance with generally accepted
19 professional standards prevailing at the time work is performed.

20 7. INSURANCE REQUIRED

21 CONSULTANT shall, at its own expense, procure and maintain in full force at all times during
22 the term of this AGREEMENT the following insurance:

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24 commercial general liability insurance with limits of no less than one million dollars (\$1,000,000) combined
25 single limit per occurrence or two million dollars (\$2,000,000) aggregate limit for bodily injury, personal
26 injury, and property damage.

27 **B. Automobile Liability Coverage.** CONSULTANT shall maintain automobile liability
28 insurance covering all vehicles used in the performance of this Agreement providing a one million dollar

1 (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage.

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

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

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

17 (1) **Additional Insured.** CITY, its officers, agents, employees, and volunteers are
18 to be covered as an additional insured as respects: Liability arising out of activities performed by or on behalf
19 of CONSULTANT and operations of CONSULTANT, premises owned, occupied, or used by CONSULTANT.
20 The coverage shall contain no special limitations on the scope or protection afforded to CITY, its officers,
21 officials, employees, or volunteers.

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

26 (2) **Primary Coverage.** CONSULTANT'S insurance coverage shall be primary
27 insurance with respect to CITY, its officers, officials, employees, and volunteers. Any insurance, risk pooling
28 arrangement, or self-insurance maintained by CITY, its officers, officials, employees, or volunteers shall be in

1 excess of CONSULTANT'S insurance and shall not contribute with it.

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

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

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14 CONSULTANT. All suspensions shall extend the time schedule for performance in a mutually satisfactory
15 manner, and CONSULTANT shall be paid for services performed and reimbursable expenses incurred prior to
16 the suspension date. During the period of suspension, CONSULTANT shall not receive any payment for
17 services, or expenses, except for reasonable administration expenses, incurred by CONSULTANT by reason of
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20 CITY may terminate this Agreement for any reason upon ten (10) days written notice to the
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22 this Agreement. In the event of any termination, CONSULTANT shall promptly deliver to the CITY any and
23 all finished and unfinished reports or other written, recorded, photographic, or visual materials, documents,
24 data, and other deliverables ("Work Materials") prepared for the CITY prior to the effective date of such
25 termination, all of which shall become CITY's sole property. After receipt of the Work Materials, CITY will
26 pay CONSULTANT for the services performed as of the effective date of the termination.

27 10. COMPLIANCE WITH CIVIL RIGHTS

28 During the performance of this contract, CONSULTANT agrees as follows:

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

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

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

15 11. CONFLICT OF INTEREST

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

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

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

28 (2) Possesses no authority with respect to any CITY decision beyond the rendition of

1 information, advice, recommendation or counsel. (2 Cal. Code Regs. § 18700(a)(2).)

2 12. INDEPENDENT CONTRACTOR

3 In assuming and performing the services, CONSULTANT is an independent contractor and
4 shall not be eligible for any benefits, which the CITY may provide its employees, except as expressly provided
5 for in the AGREEMENT. All persons, if any, hired by CONSULTANT shall be employees or subcontractors of
6 CONSULTANT and shall not be construed as employees or agents of the CITY in any respect.
7 CONSULTANT shall have responsibility for and control over the means of providing services under this
8 AGREEMENT.

9 13. COMPLIANCE WITH LAWS

10 CONSULTANT shall comply with all applicable federal, State of California, and local laws,
11 rules, and regulations and shall obtain all applicable licenses and permits for the conduct of its business and the
12 performance of the services.

13 14. CHOICE OF LAW

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

18 15. NON-WAIVER

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

23 16. ENFORCEABILITY; INTERPRETATION

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

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

5 17. INTEGRATION

6 The AGREEMENT contains the entire AGREEMENT and understanding between the parties
7 as to the subject matter of this AGREEMENT. It merges and supersedes all prior or contemporaneous
8 agreements, commitments, representation, writings, and discussions between CONSULTANT and CITY,
9 whether oral or written.

10 18. SUCCESSORS AND ASSIGNS: NO THIRD PARTY BENEFICIARIES; NO JOINT
11 VENTURE

12 CITY and CONSULTANT respectively, bind themselves, their successors, assigns, and legal
13 representatives to the terms and obligations of this Agreement. CONSULTANT shall not assign or transfer any
14 interest in the Agreement without the CITY's prior written consent, which consent shall be in the CITY's sole
15 discretion. Any attempted assignment or transfer in breach of this provision shall be void. This Agreement is
16 not intended and shall not be construed to create any third party benefit. This Agreement is not intended and
17 shall not be construed to create a joint venture or partnership between the parties. CONSULTANT, its officers,
18 employees and agents shall not have any power to bind or commit the CITY to any decision.

19 19. FINANCIAL RECORDS

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

23 20. NOTICES

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

1 To CITY

Robert Ovadia, City Engineer
Community & Economic Development Department
City of Concord
1950 Parkside Drive, MS/40
Concord, CA 94519
Phone: (925) 671-3470
Fax: (925) 798-9692

2
3
4
5 To CONSULTANT

Noah T. Smith, Senior Associate
Neil O. Anderson & Associates
5075 Commercial Circle, Suite E
Concord, CA 94520
Phone: (925) 609-7224

6
7
8
9
10 21. TERM

11 The term of this AGREEMENT shall be from the date executed above through **June 30th**,
12 **2017**, with the option of one one-year extension upon mutual agreement by both CITY and CONSULTANT.
13 The City Manager is authorized to approve the extension.

14 22. NON-LIABILITY

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

19 23. EXECUTION

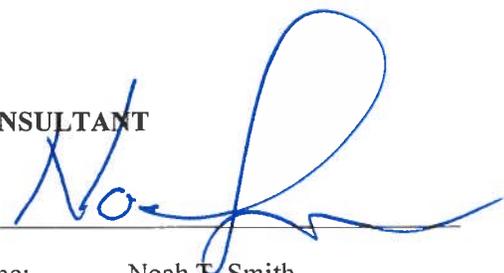
20 Each individual or entity executing this Agreement on behalf of CONSULTANT represents
21 and warrants that he or she or it is duly authorized to execute and deliver this Agreement on behalf of
22 CONSULTANT and that such execution is binding upon CONSULTANT.

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

27 **IN WITNESS WHEREOF**, the parties have executed this AGREEMENT in three (3) copies as of the
28 date and year first written above.

1 **CONSULTANT**

CITY OF CONCORD

2 By: 

By: _____

3 Name: Noah T. Smith
4 Title: Senior Associate
5 Address: 5075 Commercial Circle, Suite E
6 Concord, CA 94520
Telephone: (925) 609-7224

Name: Valerie Barone
Title: City Manager
Address: 1950 Parkside Drive, MS 01
Concord, CA 94519
Telephone: (925) 671-3175

7 APPROVED AS TO FORM:

ATTEST:

8
9
10 _____
City Attorney

10 _____
City Clerk

11 Date: _____, 2015

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

14 Concord, California

15 Date: _____, 2015

16
17 I HEREBY CERTIFY THAT ADEQUATE FUNDS EXIST OR WILL BE RECEIVED
18 DURING THE CURRENT FISCAL YEARS 2015-16 AND 2016-17 TO PAY THE
ANTICIPATED EXPENSES TO BE INCURRED PURSUANT TO THIS CONTRACT.

19 THE SUM OF **\$250,000**.

20
21 _____
Finance Director's Signature

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

1 **THIS AGREEMENT** made and entered into on **July 1st, 2015** by and between the City of Concord
2 (hereinafter "CITY"), located in the County of Contra Costa, State of California, and **Geocon Consultants,**
3 **Inc.**, (hereinafter "CONSULTANT"), whose address is 6671 Brisa Street, Livermore, CA 94550.

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

6 CITY desires to contract with CONSULTANT and CONSULTANT to contract with CITY for
7 provision by CONSULTANT to CITY for professional services as further described herein, upon the terms and
8 conditions hereinafter set forth.

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

11 1. SERVICES

12 CONSULTANT shall provide services for specific projects as may be requested by CITY;
13 such services shall be defined, scheduled, and authorized in subsequent Task Orders. Services may include, but
14 not be limited to:

- 15 ● Geotechnical services related to CIP Projects
- 16 ● Materials Testing services related to CIP Projects
- 17 ● Environmental services related to CIP Projects
- 18 ● Other as-needed services;

19 CONSULTANT shall be an independent contractor and shall have responsibility for and
20 control over the details and means of providing its services under this AGREEMENT. CONSULTANT agrees
21 that its services shall be performed with due diligence and in accordance with generally accepted engineering
22 practices.

23 CONSULTANT shall use its best efforts to perform and coordinate all activities in a timely
24 manner so that the projects will be completed according to the established project schedules.

25 2. AUTHORIZED REPRESENTATIVES

26 Authorized representatives shall represent CITY and CONSULTANT in all matters pertaining
27 to the services to be ordered by CITY or rendered by CONSULTANT under this Agreement except where
28

1 approval for the CITY is specifically required by the City Council. The CITY'S authorized representative shall
2 be the City Engineer. Said City Engineer is authorized to execute Task Orders on behalf of CITY, including
3 providing for CONSULTANT to be compensated not more than **\$75,000** for each project. Task Orders
4 providing for more than **\$75,000** compensation for one project shall be presented to the City Council for its
5 consideration.

6 CONSULTANT authorized representative shall be **Shane Rodacker, Vice President.**

7 3. COMPENSATION

8 CONSULTANT shall be compensated, not to exceed **\$250,000** per fiscal year for basic
9 services rendered under Section 1, as more particularly described in authorized Task Orders, in accordance with
10 the terms and conditions included therein.

11 CONSULTANT may submit monthly statements for services rendered; all statements shall
12 include adequate documentation demonstrating work performed during the billing period and shall conform to
13 Federal Funding invoicing requirements, if applicable. It is intended that payments to CONSULTANT will be
14 made by CITY within thirty (30) days of receipt of invoice. Consultant's failure to secure CITY's written
15 authorization for additional compensation or changes to the Scope of Work shall constitute a waiver of any and
16 all right to adjustment in the price or time due, whether by way of compensation, restitution, quantum meruit,
17 or similar relief.

18 4. INDEMNIFICATION

19 CONSULTANT agrees to defend, indemnify and hold harmless the CITY, its officers,
20 officials, employees, agents and volunteers from and against any and all claims, demands, actions, losses,
21 damages, injuries, and liability (including all attorney's fees and other litigation expenses) arising out of the
22 CONSULTANT's performance under the terms of this Agreement. This indemnification obligation on
23 CONSULTANT'S part shall not apply to demands, actions, losses, damages, injuries, and liability arising out
24 of sole negligence or willful misconduct on the part of CITY.

25 5. OWNERSHIP AND MAINTENANCE OF DOCUMENTS

26 All documents furnished by CONSULTANT pursuant to this AGREEMENT are instruments
27 of CONSULTANT's services in respect to this project. They are not intended nor represented to be suitable for
28 reuse by others on extensions of this project or on any other project. Any reuse without specific written

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

4 CONSULTANT's records, documents, calculations, and all other instruments of service pertaining to
5 actual project shall be given to CITY at the completion of the project. The CITY reserves the right to specify
6 the file format that electronic document deliverables are presented to the CITY. Title to all plans,
7 specifications, maps, estimates, reports, manuscripts, drawings, descriptions and other final work products
8 compiled by the CONSULTANT under the Agreement shall be vested in the CITY, none of which shall be
9 used in any manner whatsoever, by any person, firm, corporation, or agency without the expressed written
10 consent of the CITY. Basic survey notes and sketches, charts, computations, and other data prepared or
11 obtained under the Agreement shall be made available, upon request, to the CITY without restriction or
12 limitations on their use. CONSULTANT may retain copies of the above-described information but agrees not
13 to disclose or discuss any information gathered, discussed or generated in any way through this Agreement
14 without the written permission of CITY during the term of this Agreement, unless required by law.

15 6. STANDARD OF PERFORMANCE

16 CONSULTANT represents to CITY that the services shall be performed in an expeditious
17 manner, and with the degree of skill and care that is required by current, good, and sound procedures and
18 practices. CONSULTANT further agrees that the services shall be in conformance with generally accepted
19 professional standards prevailing at the time work is performed.

20 7. INSURANCE REQUIRED

21 CONSULTANT shall, at its own expense, procure and maintain in full force at all times during
22 the term of this AGREEMENT the following insurance:

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

27 **B. Automobile Liability Coverage.** CONSULTANT shall maintain automobile liability
28 insurance covering all vehicles used in the performance of this Agreement providing a one million dollar

1 (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage.

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

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

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

17 **(1) Additional Insured.** CITY, its officers, agents, employees, and volunteers are
18 to be covered as an additional insured as respects: Liability arising out of activities performed by or on behalf
19 of CONSULTANT and operations of CONSULTANT, premises owned, occupied, or used by CONSULTANT.
20 The coverage shall contain no special limitations on the scope or protection afforded to CITY, its officers,
21 officials, employees, or volunteers.

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

26 **(2) Primary Coverage.** CONSULTANT'S insurance coverage shall be primary
27 insurance with respect to CITY, its officers, officials, employees, and volunteers. Any insurance, risk pooling
28 arrangement, or self-insurance maintained by CITY, its officers, officials, employees, or volunteers shall be in

1 excess of CONSULTANT'S insurance and shall not contribute with it.

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

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

12 8. SUSPENSION OF WORK

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

19 9. TERMINATION

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

27 10. COMPLIANCE WITH CIVIL RIGHTS

28 During the performance of this contract, CONSULTANT agrees as follows:

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

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

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

15 11. CONFLICT OF INTEREST

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

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

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

28 (2) Possesses no authority with respect to any CITY decision beyond the rendition of

1 information, advice, recommendation or counsel. (2 Cal. Code Regs. § 18700(a)(2).)

2 12. INDEPENDENT CONTRACTOR

3 In assuming and performing the services, CONSULTANT is an independent contractor and
4 shall not be eligible for any benefits, which the CITY may provide its employees, except as expressly provided
5 for in the AGREEMENT. All persons, if any, hired by CONSULTANT shall be employees or subcontractors of
6 CONSULTANT and shall not be construed as employees or agents of the CITY in any respect.
7 CONSULTANT shall have responsibility for and control over the means of providing services under this
8 AGREEMENT.

9 13. COMPLIANCE WITH LAWS

10 CONSULTANT shall comply with all applicable federal, State of California, and local laws,
11 rules, and regulations and shall obtain all applicable licenses and permits for the conduct of its business and the
12 performance of the services.

13 14. CHOICE OF LAW

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

18 15. NON-WAIVER

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

23 16. ENFORCEABILITY: INTERPRETATION

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

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

5 17. INTEGRATION

6 The AGREEMENT contains the entire AGREEMENT and understanding between the parties
7 as to the subject matter of this AGREEMENT. It merges and supersedes all prior or contemporaneous
8 agreements, commitments, representation, writings, and discussions between CONSULTANT and CITY,
9 whether oral or written.

10 18. SUCCESSORS AND ASSIGNS: NO THIRD PARTY BENEFICIARIES; NO JOINT
11 VENTURE

12 CITY and CONSULTANT respectively, bind themselves, their successors, assigns, and legal
13 representatives to the terms and obligations of this Agreement. CONSULTANT shall not assign or transfer any
14 interest in the Agreement without the CITY's prior written consent, which consent shall be in the CITY's sole
15 discretion. Any attempted assignment or transfer in breach of this provision shall be void. This Agreement is
16 not intended and shall not be construed to create any third party benefit. This Agreement is not intended and
17 shall not be construed to create a joint venture or partnership between the parties. CONSULTANT, its officers,
18 employees and agents shall not have any power to bind or commit the CITY to any decision.

19 19. FINANCIAL RECORDS

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

23 20. NOTICES

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

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To CITY

Robert Ovadia, City Engineer
Community & Economic Development Department
City of Concord
1950 Parkside Drive, MS/40
Concord, CA 94519
Phone: (925) 671-3470
Fax: (925) 798-9692

To CONSULTANT

Shane Rodacker, Vice President
Geocon Consultants, Inc.
6671 Brisa Street
Livermore, CA 94550
Phone: (925) 371-5900
Fax: (925) 371-5915

21. TERM

The term of this AGREEMENT shall be from the date executed above through **June 30th, 2017**, with the option of one one-year extension upon mutual agreement by both CITY and CONSULTANT. The City Manager is authorized to approve the extension.

22. NON-LIABILITY

No member of the CITY and no other officer, employee or agent of the CITY shall be personally liable to CONSULTANT or otherwise in the event of any default or breach of the CITY, or for any amount which may become due to CONSULTANT or any successor in interest, or for any obligations directly or indirectly incurred under the terms of this Agreement.

23. EXECUTION

Each individual or entity executing this Agreement on behalf of CONSULTANT represents and warrants that he or she or it is duly authorized to execute and deliver this Agreement on behalf of CONSULTANT and that such execution is binding upon CONSULTANT.

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

IN WITNESS WHEREOF, the parties have executed this AGREEMENT in three (3) copies as of the date and year first written above.

1 **CONSULTANT**

CITY OF CONCORD

2
3 By: 

By: _____

4 Name: Shane Rodacker
5 Title: Vice President
6 Address: 6671 Brisa Street
Livermore, CA 94550
7 Telephone: (925) 371-5900

Name: Valerie Barone
Title: City Manager
Address: 1950 Parkside Drive, MS 01
Concord, CA 94519
Telephone: (925) 671-3175

8 APPROVED AS TO FORM:

ATTEST:

9
10 _____
City Attorney

11 Date: _____, 2015

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

14 Concord, California

15 Date: _____, 2015

16
17 I HEREBY CERTIFY THAT ADEQUATE FUNDS EXIST OR WILL BE RECEIVED
18 DURING THE CURRENT FISCAL YEARS 2015-16 AND 2016-17 TO PAY THE
ANTICIPATED EXPENSES TO BE INCURRED PURSUANT TO THIS CONTRACT.

19 THE SUM OF **\$250,000**.

20
21 _____
Finance Director's Signature

**SECOND AMENDMENT TO
MASTER SERVICES AGREEMENT**

This Second Amendment to Agreement is entered into on June 24, 2015 (“EFFECTIVE DATE”) by and between the CITY OF CONCORD, a municipal corporation, (“CITY”) and **Associated Right of Way Services Inc.** (“CONSULTANT”) and is the second amendment to the Master Services Agreement dated **July 1, 2012**, referenced as the City’s document No. **5210**.

WHEREAS, the CITY and CONSULTANT entered into an agreement dated July 1, 2012 for Right of Way services related to CIP Projects; and

WHEREAS, the parties hereto desire to amend the agreement to extend the term.

NOW, THEREFORE, in consideration of the promises and conditions set forth herein, the parties mutually agree as follows:

Section 1. Section 21, TERM, is amended to read as follows:

SECTION 21 - TERM

6. **TERM**

The term of this Agreement, as amended, shall be from July 1, 2012 to June 30, 2016 unless earlier terminated in accordance with the terms of the Agreement.

Except as expressly amended herein all terms and conditions of the Agreement dated July 1, 2012 shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment to Agreement the day and year written above.

CONSULTANT

Dated

By: _____
Larry Castellanos
Vice President of Operation

CITY OF CONCORD

Dated

By: _____
Valerie J. Barone
City Manager

APPROVED AS TO FORM:

ATTEST:

City Attorney

City Clerk

This signature page is part of this Second Amendment to the Master Agreement for Professional Services entered into on July 1, 2012 by and between the City of Concord, a municipal corporation, (hereinafter "City") and Associated Right of Way Services Inc. (the "Consultant").

**SECOND AMENDMENT TO
MASTER SERVICES AGREEMENT**

This Second Amendment to Agreement is entered into on June 24, 2015 (“EFFECTIVE DATE”) by and between the CITY OF CONCORD, a municipal corporation, (“CITY”) and **JMEC Engineering, Inc.** (“CONSULTANT”) and is the second amendment to the Master Services Agreement dated **July 1, 2012**, referenced as the City’s document No. 5209.

WHEREAS, the CITY and CONSULTANT entered into an agreement dated July 1, 2012 for structural design services related to CIP Projects; and

WHEREAS, the parties hereto desire to amend the agreement to extend the term.

NOW, THEREFORE, in consideration of the promises and conditions set forth herein, the parties mutually agree as follows:

Section 1. Section 21, TERM, is amended to read as follows:

SECTION 21 - TERM

6. **TERM**

The term of this Agreement, as amended, shall be from July 1, 2012 to June 30, 2016 unless earlier terminated in accordance with the terms of the Agreement.

Except as expressly amended herein all terms and conditions of the Agreement dated July 1, 2012 shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment to Agreement the day and year written above.

CONSULTANT

Dated

By: _____
Esmond C. Chan
President

CITY OF CONCORD

Dated

By: _____
Valerie J. Barone
City Manager

APPROVED AS TO FORM:

ATTEST:

City Attorney

City Clerk

This signature page is part of this Second Amendment to the Master Agreement for Professional Services entered into on July 1, 2012 by and between the City of Concord, a municipal corporation, (hereinafter "City") and JMEC Engineering, Inc. (the "Consultant").

**SECOND AMENDMENT TO
MASTER SERVICES AGREEMENT**

This Second Amendment to Agreement is entered into on June 24, 2015 (“EFFECTIVE DATE”) by and between the CITY OF CONCORD, a municipal corporation, (“CITY”) and **Hansen McArdle, Inc.** (“CONSULTANT”) and is the second amendment to the Master Services Agreement dated **July 1, 2012**, referenced as the City’s document No. 5228.

WHEREAS, the CITY and CONSULTANT entered into an agreement dated July 1, 2012 for landscape architectural services related to CIP Projects; and

WHEREAS, the parties hereto desire to amend the agreement to extend the term.

NOW, THEREFORE, in consideration of the promises and conditions set forth herein, the parties mutually agree as follows:

Section 1. Section 21, TERM, is amended to read as follows:

SECTION 21 - TERM

6. **TERM**

The term of this Agreement, as amended, shall be from July 1, 2012 to June 30, 2016 unless earlier terminated in accordance with the terms of the Agreement.

Except as expressly amended herein all terms and conditions of the Agreement dated July 1, 2012 shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment to Agreement the day and year written above.

CONSULTANT

Dated

By: _____
Kenneth A. Hansen
Principal Architect

CITY OF CONCORD

Dated

By: _____
Valerie J. Barone
City Manager

APPROVED AS TO FORM:

ATTEST:

City Attorney

City Clerk

This signature page is part of this Second Amendment to the Master Agreement for Professional Services entered into on July 1, 2012 by and between the City of Concord, a municipal corporation, (hereinafter "City") and Hansen McArdle, Inc. (the "Consultant").

**SECOND AMENDMENT TO
MASTER SERVICES AGREEMENT**

This Second Amendment to Agreement is entered into on June 24, 2015 (“EFFECTIVE DATE”) by and between the CITY OF CONCORD, a municipal corporation, (“CITY”) and **Kimley-Horn and Associates, Inc.** (“CONSULTANT”) and is the second amendment to the Master Services Agreement dated **July 1, 2012**, referenced as the City’s document No. 5226.

WHEREAS, the CITY and CONSULTANT entered into an agreement dated July 1, 2012 for transportation services related to CIP projects and traffic services related to CIP projects; and

WHEREAS, the parties hereto desire to amend the agreement to extend the term.

NOW, THEREFORE, in consideration of the promises and conditions set forth herein, the parties mutually agree as follows:

Section 1. Section 21, TERM, is amended to read as follows:

SECTION 21 - TERM

6. **TERM**

The term of this Agreement, as amended, shall be from July 1, 2012 to June 30, 2016 unless earlier terminated in accordance with the terms of the Agreement.

Except as expressly amended herein all terms and conditions of the Agreement dated July 1, 2012 shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment to Agreement the day and year written above.

CONSULTANT

Dated

By: _____
Brian Sowers, PE
Vice President

CITY OF CONCORD

Dated

By: _____
Valerie J. Barone
City Manager

APPROVED AS TO FORM:

ATTEST:

City Attorney

City Clerk

This signature page is part of this Second Amendment to the Master Agreement for Professional Services entered into on July 1, 2012 by and between the City of Concord, a municipal corporation, (hereinafter "City") and Kimley-Horn and Associates, Inc. (the "Consultant").

**SECOND AMENDMENT TO
MASTER SERVICES AGREEMENT**

This Second Amendment to Agreement is entered into on June 24, 2015 (“EFFECTIVE DATE”) by and between the CITY OF CONCORD, a municipal corporation, (“CITY”) and **RBF Consulting** (“CONSULTANT”) and is the second amendment to the Master Services Agreement dated **July 1, 2012**, referenced as the City’s document No. 5238.

WHEREAS, the CITY and CONSULTANT entered into an agreement dated July 1, 2012 for civil design services related to CIP projects and land survey services related to CIP projects; and

WHEREAS, the parties hereto desire to amend the agreement to extend the term.

NOW, THEREFORE, in consideration of the promises and conditions set forth herein, the parties mutually agree as follows:

Section 1. Section 21, TERM, is amended to read as follows:

SECTION 21 - TERM

6. **TERM**

The term of this Agreement, as amended, shall be from July 1, 2012 to June 30, 2016 unless earlier terminated in accordance with the terms of the Agreement.

Except as expressly amended herein all terms and conditions of the Agreement dated July 1, 2012 shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment to Agreement the day and year written above.

CONSULTANT

Dated

By: _____
Garrett Gritz
Senior Vice President

CITY OF CONCORD

Dated

By: _____
Valerie J. Barone
City Manager

APPROVED AS TO FORM:

ATTEST:

City Attorney

City Clerk

This signature page is part of this Second Amendment to the Master Agreement for Professional Services entered into on July 1, 2012 by and between the City of Concord, a municipal corporation, (hereinafter "City") and RBF Consulting (the "Consultant").

**SECOND AMENDMENT TO
MASTER SERVICES AGREEMENT**

This Second Amendment to Agreement is entered into on June 24, 2015 (“EFFECTIVE DATE”) by and between the CITY OF CONCORD, a municipal corporation, (“CITY”) and **Swinerton Management & Consulting** (“CONSULTANT”) and is the second amendment to the Master Services Agreement dated **July 1, 2012**, referenced as the City’s document No. 5217.

WHEREAS, the CITY and CONSULTANT entered into an agreement dated July 1, 2012 for construction management services related to CIP Projects; and

WHEREAS, the parties hereto desire to amend the agreement to extend the term.

NOW, THEREFORE, in consideration of the promises and conditions set forth herein, the parties mutually agree as follows:

Section 1. Section 21, TERM, is amended to read as follows:

SECTION 21 - TERM

6. **TERM**

The term of this Agreement, as amended, shall be from July 1, 2012 to June 30, 2016 unless earlier terminated in accordance with the terms of the Agreement.

Except as expressly amended herein all terms and conditions of the Agreement dated July 1, 2012 shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment to Agreement the day and year written above.

CONSULTANT

Dated

By: _____
Jeffrey S. Gee
Vice President

CITY OF CONCORD

Dated

By: _____
Valerie J. Barone
City Manager

APPROVED AS TO FORM:

ATTEST:

City Attorney

City Clerk

This signature page is part of this Second Amendment to the Master Agreement for Professional Services entered into on July 1, 2012 by and between the City of Concord, a municipal corporation, (hereinafter "City") and Swinerton Management & Consulting (the "Consultant").

**SECOND AMENDMENT TO
MASTER SERVICES AGREEMENT**

This Second Amendment to Agreement is entered into on June 24, 2015 (“EFFECTIVE DATE”) by and between the CITY OF CONCORD, a municipal corporation, (“CITY”) and **tBP Architecture, Inc.** (“CONSULTANT”) and is the second amendment to the Master Services Agreement dated **July 1, 2012**, referenced as the City’s document No. 5221.

WHEREAS, the CITY and CONSULTANT entered into an agreement dated July 1, 2012 for architectural services related to CIP projects; and

WHEREAS, the parties hereto desire to amend the agreement to extend the term.

NOW, THEREFORE, in consideration of the promises and conditions set forth herein, the parties mutually agree as follows:

Section 1. Section 21, TERM, is amended to read as follows:

SECTION 21 - TERM

6. **TERM**

The term of this Agreement, as amended, shall be from July 1, 2012 to June 30, 2016 unless earlier terminated in accordance with the terms of the Agreement.

Except as expressly amended herein all terms and conditions of the Agreement dated July 1, 2012 shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment to Agreement the day and year written above.

CONSULTANT

Dated

By: _____
Philip Newsom
Principal

CITY OF CONCORD

Dated

By: _____
Valerie J. Barone
City Manager

APPROVED AS TO FORM:

ATTEST:

City Attorney

City Clerk

This signature page is part of this Second Amendment to the Master Agreement for Professional Services entered into on July 1, 2012 by and between the City of Concord, a municipal corporation, (hereinafter "City") and tBP Architecture, Inc. (the "Consultant").

**SECOND AMENDMENT TO
MASTER SERVICES AGREEMENT**

This Second Amendment to Agreement is entered into on June 24, 2015 (“EFFECTIVE DATE”) by and between the CITY OF CONCORD, a municipal corporation, (“CITY”) and **Nichols Consulting Engineers, Chtd., (NCE)** (“CONSULTANT”) and is the second amendment to the Master Services Agreement dated **July 1, 2012**, referenced as the City’s document No. 5215.

WHEREAS, the CITY and CONSULTANT entered into an agreement dated July 1, 2012 for environmental services related to CIP projects; and

WHEREAS, the parties hereto desire to amend the agreement to extend the term.

NOW, THEREFORE, in consideration of the promises and conditions set forth herein, the parties mutually agree as follows:

Section 1. Section 21, TERM, is amended to read as follows:

SECTION 21 - TERM

6. **TERM**

The term of this Agreement, as amended, shall be from July 1, 2012 to June 30, 2016 unless earlier terminated in accordance with the terms of the Agreement.

Except as expressly amended herein all terms and conditions of the Agreement dated July 1, 2012 shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment to Agreement the day and year written above.

CONSULTANT

Dated

By: _____
Gregory L. Fasiano
Principal

CITY OF CONCORD

Dated

By: _____
Valerie J. Barone
City Manager

APPROVED AS TO FORM:

ATTEST:

City Attorney

City Clerk

This signature page is part of this Second Amendment to the Master Agreement for Professional Services entered into on July 1, 2012 by and between the City of Concord, a municipal corporation, (hereinafter "City") and Nichols Consulting Engineers, Chtd. (NCE) (the "Consultant").

**SECOND AMENDMENT TO
MASTER SERVICES AGREEMENT**

This Second Amendment to Agreement is entered into on June 24, 2015 (“EFFECTIVE DATE”) by and between the CITY OF CONCORD, a municipal corporation, (“CITY”) and **Kleinfelder West, Inc.** (“CONSULTANT”) and is the second amendment to the Master Services Agreement dated **July 1, 2012**, referenced as the City’s document No. 5227.

WHEREAS, the CITY and CONSULTANT entered into an agreement dated July 1, 2012 for geotechnical services related to CIP projects and material testing services related to CIP projects; and

WHEREAS, the parties hereto desire to amend the agreement to extend the term.

NOW, THEREFORE, in consideration of the promises and conditions set forth herein, the parties mutually agree as follows:

Section 1. Section 21, TERM, is amended to read as follows:

SECTION 21 - TERM

6. **TERM**

The term of this Agreement, as amended, shall be from July 1, 2012 to June 30, 2016 unless earlier terminated in accordance with the terms of the Agreement.

Except as expressly amended herein all terms and conditions of the Agreement dated July 1, 2012 shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment to Agreement the day and year written above.

CONSULTANT

Dated

By: _____
Nathan Stoopes
Regional Delivery Manager/Principal

CITY OF CONCORD

Dated

By: _____
Valerie J. Barone
City Manager

APPROVED AS TO FORM:

ATTEST:

City Attorney

City Clerk

This signature page is part of this Second Amendment to the Master Agreement for Professional Services entered into on July 1, 2012 by and between the City of Concord, a municipal corporation, (hereinafter "City") and Kleinfelder West, Inc. (the "Consultant").

**SECOND AMENDMENT TO
MASTER SERVICES AGREEMENT**

This Second Amendment to Agreement is entered into on June 24, 2015 (“EFFECTIVE DATE”) by and between the CITY OF CONCORD, a municipal corporation, (“CITY”) and **RMA Group** (“CONSULTANT”) and is the second amendment to the Master Services Agreement dated **July 1, 2012**, referenced as the City’s document No. 5214.

WHEREAS, the CITY and CONSULTANT entered into an agreement dated July 1, 2012 for materials testing services related to CIP projects and geotechnical services related to CIP projects; and

WHEREAS, the parties hereto desire to amend the agreement to extend the term.

NOW, THEREFORE, in consideration of the promises and conditions set forth herein, the parties mutually agree as follows:

Section 1. Section 21, TERM, is amended to read as follows:

SECTION 21 - TERM

6. **TERM**

The term of this Agreement, as amended, shall be from July 1, 2012 to June 30, 2016 unless earlier terminated in accordance with the terms of the Agreement.

Except as expressly amended herein all terms and conditions of the Agreement dated July 1, 2012 shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment to Agreement the day and year written above.

CONSULTANT

Dated

By: _____
Ed Lyon
President/CEO

CITY OF CONCORD

Dated

By: _____
Valerie J. Barone
City Manager

APPROVED AS TO FORM:

ATTEST:

City Attorney

City Clerk

This signature page is part of this Second Amendment to the Master Agreement for Professional Services entered into on July 1, 2012 by and between the City of Concord, a municipal corporation, (hereinafter "City") and RMA Group (the "Consultant").

**SECOND AMENDMENT TO
MASTER SERVICES AGREEMENT**

This Second Amendment to Agreement is entered into on June 24, 2015 (“EFFECTIVE DATE”) by and between the CITY OF CONCORD, a municipal corporation, (“CITY”) and **Harris & Associates, Inc.** (“CONSULTANT”) and is the second amendment to the Master Services Agreement dated **July 1, 2012**, referenced as the City’s document No. 5233.

WHEREAS, the CITY and CONSULTANT entered into an agreement dated July 1, 2012 for civil engineering services related to CIP projects and construction management services related to CIP projects; and

WHEREAS, the parties hereto desire to amend the agreement to extend the term.

NOW, THEREFORE, in consideration of the promises and conditions set forth herein, the parties mutually agree as follows:

Section 1. Section 21, TERM, is amended to read as follows:

SECTION 21 - TERM

6. **TERM**

The term of this Agreement, as amended, shall be from July 1, 2012 to June 30, 2016 unless earlier terminated in accordance with the terms of the Agreement.

Except as expressly amended herein all terms and conditions of the Agreement dated July 1, 2012 shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment to Agreement the day and year written above.

CONSULTANT

Dated

By: _____
Russell A. Moore
Vice President

CITY OF CONCORD

Dated

By: _____
Valerie J. Barone
City Manager

APPROVED AS TO FORM:

ATTEST:

City Attorney

City Clerk

This signature page is part of this Second Amendment to the Master Agreement for Professional Services entered into on July 1, 2012 by and between the City of Concord, a municipal corporation, (hereinafter "City") and Harris & Associates, Inc. (the "Consultant").

**SECOND AMENDMENT TO
MASTER SERVICES AGREEMENT**

This Second Amendment to Agreement is entered into on June 24, 2015 (“EFFECTIVE DATE”) by and between the CITY OF CONCORD, a municipal corporation, (“CITY”) and **Engco Incorporated** (“CONSULTANT”) and is the second amendment to the Master Services Agreement dated **July 1, 2012**, referenced as the City’s document No. 5232.

WHEREAS, the CITY and CONSULTANT entered into an agreement dated July 1, 2012 for materials testing services related to CIP projects and geotechnical and environmental services related to CIP projects; and

WHEREAS, the parties hereto desire to amend the agreement to extend the term.

NOW, THEREFORE, in consideration of the promises and conditions set forth herein, the parties mutually agree as follows:

Section 1. Section 21, TERM, is amended to read as follows:

SECTION 21 - TERM

6. **TERM**

The term of this Agreement, as amended, shall be from July 1, 2012 to June 30, 2016 unless earlier terminated in accordance with the terms of the Agreement.

Except as expressly amended herein all terms and conditions of the Agreement dated July 1, 2012 shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment to Agreement the day and year written above.

CONSULTANT

Dated

By: _____
James E. Moore Jr.
Principal

CITY OF CONCORD

Dated

By: _____
Valerie J. Barone
City Manager

APPROVED AS TO FORM:

ATTEST:

City Attorney

City Clerk

This signature page is part of this Second Amendment to the Master Agreement for Professional Services entered into on July 1, 2012 by and between the City of Concord, a municipal corporation, (hereinafter "City") and Engeo Incorporated (the "Consultant").

**SECOND AMENDMENT TO
MASTER SERVICES AGREEMENT**

This Second Amendment to Agreement is entered into on June 24, 2015 (“EFFECTIVE DATE”) by and between the CITY OF CONCORD, a municipal corporation, (“CITY”) and **Pavement Engineering, Inc. (PEI)** (“CONSULTANT”) and is the second amendment to the Master Services Agreement dated **July 1, 2012**, referenced as the City’s document No. 5213.

WHEREAS, the CITY and CONSULTANT entered into an agreement dated July 1, 2012 for civil engineering services related to CIP projects and materials testing services related to CIP projects; and

WHEREAS, the parties hereto desire to amend the agreement to extend the term.

NOW, THEREFORE, in consideration of the promises and conditions set forth herein, the parties mutually agree as follows:

Section 1. Section 21, TERM, is amended to read as follows:

SECTION 21 - TERM

6. **TERM**

The term of this Agreement, as amended, shall be from July 1, 2012 to June 30, 2016 unless earlier terminated in accordance with the terms of the Agreement.

Except as expressly amended herein all terms and conditions of the Agreement dated July 1, 2012 shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment to Agreement the day and year written above.

CONSULTANT

Dated

By: _____
Paul R. Curren, PE
President and Sr. Principal Engineer

CITY OF CONCORD

Dated

By: _____
Valerie J. Barone
City Manager

APPROVED AS TO FORM:

ATTEST:

City Attorney

City Clerk

This signature page is part of this Second Amendment to the Master Agreement for Professional Services entered into on July 1, 2012 by and between the City of Concord, a municipal corporation, (hereinafter "City") and Pavement Engineering, Inc. (PEI) (the "Consultant").