



TO THE HONORABLE MAYOR AND COUNCIL:

DATE: February 23, 2016

SUBJECT: APPROVE EIGHTEEN (18) MASTER SERVICES AGREEMENTS FOR VARIOUS PRODUCTS AND CONSULTANT SERVICES FOR INFORMATION TECHNOLOGY SUPPORT; AND AUTHORIZE THE CITY MANAGER TO EXECUTE THE AGREEMENTS (NO EXPENDITURES ARE AUTHORIZED BY THESE AGREEMENTS)

Report in Brief

The Information Technology (IT) Department is responsible for ensuring the secure operation of the City's technological infrastructure as well as strategic planning for all technology projects identified in the Capital Improvement Program and managing the City's computer replacement fund. The Department fulfills its responsibilities by relying on both internal staff and professional consultant resources.

Master Services Agreements will allow the IT Department to utilize pre-qualified and pre-approved vendors for technology related capital projects and provide additional capacity or expertise when needed to maintain the City's technological infrastructure. In addition, the Master Service Agreement process provides a pre-qualified list of vendors for routine computer and network equipment purchases. Having a list of pre-qualified vendors saves time on project delivery and reduces staff workloads. The Engineering Department has successfully used the Master Services Agreement process for more than 7 years. Citywide, it is estimated that the use of Master Services Agreements will save the City over \$30,000 this year in staff time that would otherwise be spent requesting, and evaluating multiple proposals and issuing and processing contracts for each small project or need.

Master Service Agreements do not authorize or assign work to firms. Assigning work under a Master Service Agreement is done through a project-specific "Task Order." Task Orders must follow the Council's approved procurement Resolution (15-44) (Attachment 1) and have a clearly defined scope of work, project cost, and delivery schedule. Task Orders can only be issued for funded capital projects or tasks that can be completed within a department's existing budget and spending limits. With the Council's approval and City Manager's execution of the Master Services Agreements, the Director of Information Technology would be authorized to issue Task Orders up to \$50,000 per project to a single vendor. The Master Service Agreement also limits the maximum annual cumulative value of work performed through all assigned Task Orders to \$250,000 per vendor per fiscal year. The proposed Master Services Agreements are for 3 years (expiring on June 30, 2019), with an option for a mutually agreed upon one-year extension.

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The City Attorney's office has reviewed the 18 proposed Master Services Agreements attached to this report. Firms contracted under the Master Services Agreement understand that the agreement does not guarantee any future work with the City.

Background

Each year, the City Council allocates and authorizes funding for technology projects. The IT Department is responsible for managing these projects. Based on the *2014-2015 City of Concord Information Technology Strategic Plan* project list (See Attachment 2), FY 2015-16 calls for the IT Department to design and/or implement approximately 49 existing and proposed projects which range in value from \$10,000 to \$1,175,000.

The purpose of the MSA process is to simplify and accelerate the delivery of projects by pre-qualifying consultants/vendors and establishing a contractual relationship between the City and consulting firms. The use of contractors and consultant firms provides the city with specialized expertise and/or professional experience that is required for technology related capital projects and provides additional capacity or expertise when needed to maintain the City's technological infrastructure that is not available from existing City staff. Pre-qualifying consultants through a competitive process accelerates project schedules and provides a more efficient means to authorize work.

The Master Services Agreement (MSA) process compliments the traditional Request for Proposal (RFP) process, which will continue to be used as needed. Examples of the use of the RFP process for larger projects includes the recent Multi-Function Printer replacement as well as the IT Help Desk Services contract.

The Council's approval of an MSA authorizes City staff to assign work related on approved projects to pre-qualified consultants through the issuance of a Task Order, which defines the scope of work, project cost, and delivery schedule. The Task Order is processed consistent with the City's purchasing regulations. For each project, staff will select a consultant based on their qualifications, schedule and/or product availability, and the specific needs of the project.

On November 5, 2015, the Council's Ad Hoc Committee on Contracts (Councilmembers Helix and Leone) met with staff and discussed the use of MSAs in the Information Technology Department as well as the RFP process for the IT MSAs. The Committee provided their support to conclude the RFP process and bring the MSAs before the full Council for review and approval.

Discussion

Under the proposed Master Service Agreements, the IT Director would be authorized to approve up to \$50,000 for a Task Order. Pursuant to the City's purchasing policies, any single Task Order over \$50,000 or a combination of Task Orders and equipment purchases over \$50,000 to one vendor for a single project during a fiscal year must be submitted to the City Council for review and approval. Each Task Order under \$50,000 requires review and clearance by the City Attorney and the Finance Director, along with approval by the IT Director. The proposed MSAs are for 3 years (expiring on June 30, 2019), with an option for a mutually agreed upon one-year extension. None of the proposed MSAs will be active longer than a 4-year period.

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Under the Master Service Agreements, the total cumulative annual value of products and services a vendor may provide to the City is \$250,000 per fiscal year. It is clear to all of the proposed firms that entering into an MSA pre-qualifies them for work on behalf of the City but does not guarantee work.

To identify firms that desired to pre-qualify for work through a Master Service Agreement, city staff issued a Request for Proposal #2327 for IT support services for eighteen (18) technical service specialties. It was published on the City's website via Public Purchase System (which includes over hundreds of registered vendors), posted at the Civic Center, and sent to the Concord Chamber of Commerce on June 29, 2015. A total of twenty-four (24) companies submitted proposals by the deadline of 4:00 P.M. on August 6, 2015, most companies submitted proposals for multiple technical service specialties. This resulted in the City receiving one hundred and fifty-two (152) Statements of Qualifications (SOQs). The table below identifies the eighteen specialties for which qualifications were submitted.

	Specialties (Alphabetical Order)	# of Proposals Received (Out of 24 firms)
1	Accela Systems Support	3
2	Business Intelligence Systems	4
3	Cisco Network System	13
4	Cisco VoIP Telecom Systems	10
5	Citrix Systems	11
6	General Project Management	7
7	GIS Technologies	6
8	HP Server Systems	11
9	Lawson ERP Support	5
10	Microsoft System Applications	13
11	Microsoft Windows Systems	18
12	NetApp Storage System	6
13	Network Cabling (fiber and Copper)	5
14	Palo Alto Networks	9
15	Public Safety Technologies	0
16	Vmware Systems	13
17	Web Systems	4
18	Wireless Technologies	14

Internal IT staff as well as an outside consultant reviewed the SOQs for each of the eighteen (18) disciplines. This team selected the firms best suited to providing products and services for the City's technology projects and anticipated needs. Staff is recommending award of eighteen (18) Master Service Agreements. The firms recommended were rated above average with the RFP's evaluation criteria including qualifications in the disciplines responded to (Attachment 21), experience in public sector environments, satisfaction with previous clients, and pricing.

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The proposed MSAs with eighteen (18) consultants (Attachments 3 through 20) include consulting firms selected to provide products, professional and specialized services in the eighteen disciplines described earlier in this report. Staff reviewed each firm's qualifications, past experience, past performance, proposed pricing and availability and is recommending the Council pre-qualify the following eighteen (18) firms by approving a MSA with each:

The following vendors provide both Professional Services and Technology Software/Equipment:

- AMS.NET Inc.
- Axiom Technologies LLC
- Botts Strategic Solutions
- Entisys Solutions Inc.
- Geographic Technologies Group
- Quest Systems (Questsys)
- Quorum Technologies
- Precision IT Consulting

The following vendors are focused on providing Professional Services:

- Apex Technology Management, Inc.
- Interwest Consulting Group
- Kimley-Horn & Associates Inc.
- NetXperts, Inc.
- Nexus Connected GovEd
- RPI Consultants LLC
- Spatial Focus LLC
- THOR Inc.
- TruePoint Solutions
- VIVA USA Inc.

Fiscal Impact

The approval of the Master Services Agreements pre-qualifies firms to work for the City and does not appropriate or expend funds. **Consequently, the MSAs do not have a fiscal impact. However, they do create work efficiencies for staff by establishing a contractual relationship with pre-qualified firms making it simpler and faster to enter into contracts with the firms in the future.**

Public Contact

The City Council Agenda was posted.

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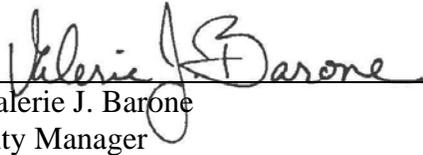
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Recommendation for Action

Staff recommends that the City Council approve eighteen (18) Master Services Agreements for various services related to the IT Department; and authorize the City Manager to execute the Agreements.

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

Reviewed by: Jovan Grogan
Deputy City Manager
jovan.grogan@cityofconcord.org

- Attachment 1 – Procurement Resolution (15-44)
- Attachment 2 – FY 2014-2015 Information Technology Strategic Plan
- Attachment 3 – AMS.NET Inc.
- Attachment 4 – Apex Technology Management, Inc.
- Attachment 5 – Axiom Technologies LLC
- Attachment 6 – Botts Strategic Solutions
- Attachment 7 – Entisys Solutions Inc.
- Attachment 8 – Geographic Technologies Group
- Attachment 9 – Interwest Consulting Group
- Attachment 10 – Kimley-Horn & Associates Inc.
- Attachment 11 – NetXperts, Inc.
- Attachment 13 – Dimension Data
- Attachment 13 – Precision IT Consulting
- Attachment 14 – Quest Systems (Questsys)
- Attachment 15 – Quorum Technologies
- Attachment 16 – RPI Consultants LLC
- Attachment 17 – Spatial Focus LLC
- Attachment 18 – THOR Inc.
- Attachment 19 – TruePoint Solutions
- Attachment 20 – VIVA USA Inc.
- Attachment 21 – Vendors Rated Above Average by Discipline

ORIGINAL

BEFORE THE CITY COUNCIL OF THE CITY OF CONCORD
COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA

A Resolution Establishing the Minimum Threshold
over Which City Council Approval is Required in
Accordance with Concord Municipal Code Title III,
Sec. 3.10.040(a), for Fiscal Year 2015-16

Resolution No. 15-44

WHEREAS, the City Council approves a number of purchasing agreements during the course of each Fiscal Year; and

WHEREAS, in accordance with Concord Municipal Code Section 3.10.040(a), the City Council is required to establish the threshold over which a purchase requires City Council approval prior to said purchase; and

WHEREAS, the City Council seeks to establish the minimum threshold over which City Council approval is required for Fiscal Year 2015-16.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CONCORD DOES
RESOLVE AS FOLLOWS:

Section 1. That purchases and contracts in excess of \$50,000 are subject to City Council approval before the execution of said purchase or contract.

Section 2. The purchasing threshold confirmed by this resolution shall become effective on July 1, 2015.

Section 3. This resolution shall become effective immediately upon its passage and adoption.

PASSED AND ADOPTED by the City Council of the City of Concord on June 23, 2015, by the following vote:

AYES: Councilmembers - E. Birsan, D. Helix, L. Hoffmeister, R. Leone, T. Grayson

NOES: Councilmembers - None

ABSTAIN: Councilmembers - None

ABSENT: Councilmembers - None

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1 **I HEREBY CERTIFY** that the foregoing Resolution No. 15-44 was duly and regularly
2 adopted at a regular meeting of the City Council of the City of Concord on June 23, 2015.
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6 _____
Joelle Fockler, CMC
City Clerk

7 **APPROVED AS TO FORM:**

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Mark S. Coon
City Attorney
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FY15-16 Q1	FY15-16 Q2	FY15-16 Q3	FY15-16 Q4
<p>A3 - Accela Asset Management - Sewer Truck - OHES</p> <p>T17 - Network Backups Replacement - IM</p> <p>T35 - PD Patrol Cars Security Upgrade - Netmotion - PS</p> <p>T37 - Telephone System Upgrade - IM</p> <p>T39 - PD Fiber Connection to Sheriffs Department - PS</p> <p>T40 - Upgrade Remote Access - ASA Replacement - IM</p>			<p>* Mid year projects added</p> <p>** Project delayed due to mid year project</p> <p>Carry Over Project from Previous Fiscal Year</p>
<p>A1 - NEOGOV integration - OHES</p> <p>A5 - PD computer aided dispatch upgrade to 5.7 - IM</p> <p>S2 - Network Device Maint. Standard - OHES</p> <p>T4 - Upgrade Police Network Storage - IM</p> <p>T48 - Replace AV in Sr Center - IM</p>			
	<p>A9 - Document Management - OnBase - IM</p>		
	<p>A8 - Lawson stabilization project - virtualize - IM</p> <p>A10 - Council Agenda Automation - OHES</p> <p>C1 - Civic Hero Replacement - CS</p> <p>T6 - Mobile Device Management - CS</p> <p>T11 - Remote access security upgrade - Citrix, remove 2013 - IM</p> <p>T12 - Email upgrade - IM</p>		
	<p>A14 - PD Records Management System (RMS) replacement - PS</p> <p>D47 - Desktop Services Automation - CS</p>		
	<p>T7 - Video Cameras - Downtown Garage - PS</p> <p>T13 - Core network replacement - IM</p> <p>T15 - Web Filter replacement - IM</p> <p>T16 - Server security update - 2003 - 2008 - IM</p> <p>T51 - Traffic Light and Video Management - QOL</p> <p>T53 - Desktop Replacement - IM</p>		
	<p>D1 - City-wide conduit/fiber master plan development - LTFS</p> <p>D2 - IT Disaster Plan - expand support for critical applications - Ends FY16-17 Q1 - OHES</p> <p>T19 - Network Security Audit and Remediation - IM</p>		
	<p>A20 - Improve security of iConcord - 2003 - IM</p> <p>D21 - Standardize network device configurations - IM</p>		
	<p>A23 - CLASS software replacement ends FY16-17 Q2 - CS</p> <p>A24 - Update Lawson - ends FY16-17 Q2 - IM</p> <p>A25 - Migrate Internet servers - IM</p> <p>T22 - PD power upgrade - UPS system - IM</p> <p>T26 - Replace Wing A network cabinet - IM</p> <p>T27 - Replace Centre Concord network cabinet - IM</p> <p>T52 - Upgrade Network Software - NetApp - IM</p>		
	<p>A29 - Improve website security - encryption - CS</p> <p>A49 - Accela Phase II - Public Works Asset Management - OHES</p> <p>D31 - Develop QoS architecture - IM</p> <p>T28 - Wireless security upgrade - IM</p> <p>T30 - Identity Services Engine (ISE) - Ends FY16-17 Q1 - IM</p> <p>T50 - Traffic Light Grant Project - PS</p>		
<p>LTFS - Long Term Financial Stability</p> <p>IM - Infrastructure Maintenance</p> <p>PS - Public Safety</p> <p>OHES - Organizational Health and Employee Success</p> <p>QOL - Quality of Life</p> <p>CS - Customer Service</p>	<p>A34 - Replace Golf Mgmt System - ends FY16-17 Q2 - IM</p> <p>T32 - Fax Server - ends FY16-17 Q1 - IM</p>		

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

1 **THIS AGREEMENT** made and entered into on February 3, 2016 by and between the City of Concord
2 (hereinafter "CITY"), located in the County of Contra Costa, State of California, and *AMS.NET, INC.*
3 (hereinafter "CONSULTANT"), whose address is [*Consultant address*] *502 Commerce Way*
Livermore CA 94551

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 ● Cisco Network System
- 16 ● HP Server Systems
- 17 ● Microsoft Windows System
- 18 ● Cisco VOIP
- 19 ● Wireless Technologies
- 20 ● Vmware
- 21 ● Other as-needed services;

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

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

1 2. AUTHORIZED REPRESENTATIVES

2 Authorized representatives shall represent CITY and CONSULTANT in all matters pertaining
3 to the services to be ordered by CITY or rendered by CONSULTANT under this Agreement except where
4 approval for the CITY is specifically required by the City Council. The CITY'S authorized representative shall
5 be the City IT Director. Said City IT Director is authorized to execute Task Orders on behalf of CITY,
6 including providing for CONSULTANT to be compensated not more than \$50,000 for each project. Task
7 Orders providing for more than \$50,000 compensation for one project shall be presented to the City Council for
8 its consideration and approval.

9 CONSULTANT authorized representative shall be *[name and title]*

*ANIS.NET, Inc - Joseph Marmora
Vice President
Robert Tacci
President*

10 3. COMPENSATION

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

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

21 4. INDEMNIFICATION

22 A. **For Design Professional Services Only.** Pursuant to California Civil Code Section
23 2782.8, CONSULTANT agrees to indemnify the CITY (including its officers, agents, employees and
24 volunteers) against liability for claims against the CITY that arise out of, pertain to, or relate to the negligence,
25 recklessness, or willful misconduct of CONSULTANT in the performance of this Agreement. The
26 CONSULTANT will reimburse the CITY for any expenditures, including reasonable attorney fees, incurred by
27 the CITY in defending against claims ultimately determined to arise out of, pertain to, or relate to the
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1 negligence, recklessness, or willful misconduct of the CONSULTANT.

2 **B. For All Other Services.** CONSULTANT agrees to defend, indemnify and hold
3 harmless the CITY (including its officers, officials, employees, agents and volunteers) from and against any
4 and all claims, demands, actions, losses, damages, injuries, and liability (including all attorney's fees and other
5 litigation expenses) arising out of the CONSULTANT's performance under the terms of this Agreement. This
6 indemnification obligation on CONSULTANT'S part shall not apply to demands, actions, losses, damages,
7 injuries, and liability arising out of sole negligence or willful misconduct on the part of CITY.

8 5. OWNERSHIP AND MAINTENANCE OF DOCUMENTS

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

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

26 6. STANDARD OF PERFORMANCE

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

4 7. INSURANCE REQUIRED

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

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

11 **B. Automobile Liability Coverage.** CONSULTANT shall maintain automobile liability
12 insurance covering all vehicles used in the performance of this Agreement providing a one million dollar
13 (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage.

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

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

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

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

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

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

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

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

24 8. SUSPENSION OF WORK

25 CITY may, at any time, by ten (10) days' written notice, suspend further performance by
26 CONSULTANT. All suspensions shall extend the time schedule for performance in a mutually satisfactory
27 manner, and CONSULTANT shall be paid for services performed and reimbursable expenses incurred prior to
28 the suspension date. During the period of suspension, CONSULTANT shall not receive any payment for

1 services, or expenses, except for reasonable administration expenses, incurred by CONSULTANT by reason of
2 such suspension.

3 9. TERMINATION

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

11 10. COMPLIANCE WITH CIVIL RIGHTS

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

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

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

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

27 11. CONFLICT OF INTEREST

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

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

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

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

15 12. INDEPENDENT CONTRACTOR

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

22 13. COMPLIANCE WITH LAWS

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

26 14. CHOICE OF LAW

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

4 15. NON-WAIVER

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

9 16. ENFORCEABILITY; INTERPRETATION

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

19 17. INTEGRATION

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

24 18. SUCCESSORS AND ASSIGNS: NO THIRD PARTY BENEFICIARIES; NO JOINT
25 VENTURE

26 CITY and CONSULTANT respectively, bind themselves, their successors, assigns, and legal
27 representatives to the terms and obligations of this Agreement. CONSULTANT shall not assign or transfer any
28

1 interest in the Agreement without the CITY's prior written consent, which consent shall be in the CITY's sole
2 discretion. Any attempted assignment or transfer in breach of this provision shall be void. This Agreement is
3 not intended and shall not be construed to create any third party benefit. This Agreement is not intended and
4 shall not be construed to create a joint venture or partnership between the parties. CONSULTANT, its officers,
5 employees and agents shall not have any power to bind or commit the CITY to any decision.

6 19. FINANCIAL RECORDS

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

10 20. NOTICES

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

16 To CITY

Jeff Lewis, IT Director
Information Technology
City of Concord
1950 Parkside Drive
Concord, CA 94519
Phone: 925-671-3380
Fax: 925-671-3198

20 To CONSULTANT

[authorized representative & title] Diana Monaghan
[consultant name] ATUS.NET, Inc Vice President
[city, state, zip code] 802 Commerce Way
Phone: *Livermore, CA 94551*
Fax: *ph 925.245.6100*
f 925.245.6150

24 21. TERM

25 The term of this AGREEMENT shall be from the date executed above through June 30, 2019,
26 with the option of one one-year extension upon mutual agreement by both CITY and CONSULTANT. The
27 City Manager is authorized to approve the extension.

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

3
4 **CONSULTANT** AMS.NET, INC

CITY OF CONCORD

5
6 By: [Signature]
7 Name: **[authorized principal]** Joseph Noonan
8 Title: Vice President
9 Address: 502 Commerce Way
Wormore, CA 94551
10 Telephone: 925.245.6100

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

11 **APPROVED AS TO FORM:**

ATTEST:

12 _____
13 City Attorney

City Clerk

14 Date: _____, 2016

16 **FINANCE DIRECTOR'S CERTIFICATION:**

17 Concord, California

18 Date: _____, 2016

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

22 THE SUM NOT TO EXCEED **\$250,000.** Account Code: various .

23
24 _____
25 Finance Director's Signature

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

1 **THIS AGREEMENT** made and entered into on February 3, 2016 by and between the City of Concord
2 (hereinafter "CITY"), located in the County of Contra Costa, State of California, and **APEX TECHNOLOGY**
3 **MANAGEMENT, INC.** (hereinafter "CONSULTANT"), whose address is **1020 Market St, Redding, CA,**
4 **96001.**

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 provision
8 by CONSULTANT to CITY for professional services as further described herein, upon the terms and conditions
9 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; such
14 services shall be defined, scheduled, and authorized in subsequent Task Orders. Services may include, but not be
15 limited to:

- 16 ● Cisco Network System
- 17 ● Microsoft Windows Systems
- 18 ● Other as-needed services;

19 CONSULTANT shall be an independent contractor and shall have responsibility for and control
20 over the details and means of providing its services under this AGREEMENT. CONSULTANT agrees that its
21 services shall be performed with due diligence and in accordance with generally accepted engineering 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 IT Director. Said City IT Director is authorized to execute Task Orders on behalf of CITY, including
2 providing for CONSULTANT to be compensated not more than \$50,000 for each project. Task Orders providing
3 for more than \$50,000 compensation for one project shall be presented to the City Council for its consideration
4 and approval.

5 CONSULTANT authorized representative shall be *Richard Scott Putnam, CEO and President*

6 3. COMPENSATION

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

17 4. INDEMNIFICATION

18 A. **For Design Professional Services Only.** Pursuant to California Civil Code Section
19 2782.8, CONSULTANT agrees to indemnify the CITY (including its officers, agents, employees and volunteers)
20 against liability for claims against the CITY that arise out of, pertain to, or relate to the negligence, recklessness,
21 or willful misconduct of CONSULTANT in the performance of this Agreement. The CONSULTANT will
22 reimburse the CITY for any expenditures, including reasonable attorney fees, incurred by the CITY in defending
23 against claims ultimately determined to arise out of, pertain to, or relate to the negligence, recklessness, or willful
24 misconduct of the CONSULTANT.

25 B. **For All Other Services.** CONSULTANT agrees to defend, indemnify and hold harmless
26 the CITY (including its officers, officials, employees, agents and volunteers) from and against any and all claims,
27 demands, actions, losses, damages, injuries, and liability (including all attorney's fees and other litigation
28

1 expenses) arising out of the CONSULTANT's performance under the terms of this Agreement. This
2 indemnification obligation on CONSULTANT'S part shall not apply to demands, actions, losses, damages,
3 injuries, and liability arising out of sole negligence or willful misconduct on the part of CITY.

4 5. OWNERSHIP AND MAINTENANCE OF DOCUMENTS

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

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

22 6. STANDARD OF PERFORMANCE

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

27 7. INSURANCE REQUIRED

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

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

7 **B. Automobile Liability Coverage.** CONSULTANT shall maintain automobile liability
8 insurance covering all vehicles used in the performance of this Agreement providing a one million dollar
9 (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage.

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

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

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

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

1 officials, employees, or volunteers.

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

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

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

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

20 8. SUSPENSION OF WORK

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

27 9. TERMINATION

28 CITY may terminate this Agreement for any reason upon ten (10) days written notice to the other

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

7 10. COMPLIANCE WITH CIVIL RIGHTS

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

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

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

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

23 11. CONFLICT OF INTEREST

24 A. CONSULTANT covenants and represents that neither it, nor any officer or principal of
25 its firm, has, or shall acquire any interest, directly or indirectly, which would conflict in any manner with the
26 interests of CITY or which would in any way hinder CONSULTANT's performance of services under this
27 Agreement. CONSULTANT further covenants that in the performance of the Agreement, no person having any
28

1 such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written
2 consent of the CITY. CONSULTANT agrees to at all times avoid conflicts of interest, or the appearance of any
3 conflicts of interest, with the interests of the CITY in the performance of this Agreement.

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

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

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

11 12. INDEPENDENT CONTRACTOR

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

17 13. COMPLIANCE WITH LAWS

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

21 14. CHOICE OF LAW

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

26 15. NON-WAIVER

27 The waiver by either party of any breach of any term, covenant, or condition contained in the
28

1 AGREEMENT, or any default in their performance of any obligations under the AGREEMENT shall not be
2 deemed to be a waiver of any other breach or default of the same or any other term, covenant, condition, or
3 obligation, nor shall any waiver of any incident of breach of default constitute a continuing waiver of same.

4 16. ENFORCEABILITY; INTERPRETATION

5 In the event that any of the provisions or portions of application of any of the provisions of the
6 AGREEMENT are held to be illegal or invalid by a court of competent jurisdiction, CITY and CONSULTANT
7 shall negotiate an equitable adjustment in the provisions of the AGREEMENT with a view toward affecting the
8 purpose of the AGREEMENT. The illegality or invalidity of any of the provisions or portions of application of
9 any of the provisions of the AGREEMENT shall not affect the legality or enforceability of the remaining
10 provisions or portions of application of any of the provisions of the AGREEMENT. This Agreement shall be
11 interpreted as though it was a product of a joint drafting effort and no provisions shall be interpreted against a
12 party on the ground that said party was solely or primarily responsible for drafting the language to be interpreted.

13 17. INTEGRATION

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

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

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

27 19. FINANCIAL RECORDS
28

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

4 20. NOTICES

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

10 To CITY

Jeff Lewis, IT Director
Information Technology
City of Concord
1950 Parkside Drive
Concord, CA 94519
Phone: 925-671-3380
Fax: 925-671-3198

14 To CONSULTANT

Richard Scott Putnam, President and CEO
Apex Technology Management,
Inc.
Redding, California, 96001
Phone: 530-248-1000
Fax: 530-243-9184

18 21. TERM

19 The term of this AGREEMENT shall be from the date executed above through June 30, 2019,
20 with the option of one one-year extension upon mutual agreement by both CITY and CONSULTANT. The City
21 Manager is authorized to approve the extension.

22 22. NON-LIABILITY

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

27 23. EXECUTION

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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.

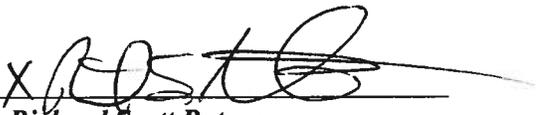
///

[Signatures follow on next page]

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

3
4 **CONSULTANT**

CITY OF CONCORD

5 By: 
6 Name: **Richard Scott Putnam**
7 Title: President and CEO
8 Address: 1020 Market St, Redding, CA, 96001
9 MS 01
10 Telephone: 530-248-1000

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

11 APPROVED AS TO FORM:

ATTEST:

12
13 _____
City Attorney

City Clerk

14
15 Date: _____, 2016

16
17 FINANCE DIRECTOR'S CERTIFICATION:

18 Concord, California

19 Date: _____, 2016

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

22 THE SUM NOT TO EXCEED **\$250,000**. Account Code: various.

23
24 _____
25 Finance Director's Signature
26
27
28

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

1 **THIS AGREEMENT** made and entered into on February 3, 2016 by and between the City of Concord
2 (hereinafter "CITY"), located in the County of Contra Costa, State of California, and **AXIOM**
3 **TECHNOLOGIES LLC** (hereinafter "CONSULTANT"), whose address is **527 Crownpointe Cr. Vacaville**
4 **CA 95687**.

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 ● NetApp Storage Systems
- 17 ● HP Server Systems
- 18 ● Microsoft Windows System
- 19 ● Microsoft Windows Applications
- 20 ● Citrix Systems
- 21 ● VMware
- 22 ● Other as-needed services;

23 CONSULTANT shall be an independent contractor and shall have responsibility for and
24 control over the details and means of providing its services under this AGREEMENT. CONSULTANT agrees
25 that its services shall be performed with due diligence and in accordance with generally accepted engineering
26 practices.
27
28

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

3 2. AUTHORIZED REPRESENTATIVES

4 Authorized representatives shall represent CITY and CONSULTANT in all matters pertaining
5 to the services to be ordered by CITY or rendered by CONSULTANT under this Agreement except where
6 approval for the CITY is specifically required by the City Council. The CITY'S authorized representative shall
7 be the City IT Director. Said City IT Director is authorized to execute Task Orders on behalf of CITY,
8 including providing for CONSULTANT to be compensated not more than **\$50,000** for each project. Task
9 Orders providing for more than **\$50,000** compensation for one project shall be presented to the City Council for
10 its consideration and approval.

11 CONSULTANT authorized representative shall be *Matthew Bowley, Managing Member*

12 3. COMPENSATION

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

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

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24 A. **For Design Professional Services Only.** Pursuant to California Civil Code Section
25 2782.8, CONSULTANT agrees to indemnify the CITY (including its officers, agents, employees and
26 volunteers) against liability for claims against the CITY that arise out of, pertain to, or relate to the negligence,
27 recklessness, or willful misconduct of CONSULTANT in the performance of this Agreement. The
28

1 CONSULTANT will reimburse the CITY for any expenditures, including reasonable attorney fees, incurred by
2 the CITY in defending against claims ultimately determined to arise out of, pertain to, or relate to the
3 negligence, recklessness, or willful misconduct of the CONSULTANT.

4 **B. For All Other Services.** CONSULTANT agrees to defend, indemnify and hold
5 harmless the CITY (including its officers, officials, employees, agents and volunteers) from and against any
6 and all claims, demands, actions, losses, damages, injuries, and liability (including all attorney's fees and other
7 litigation expenses) arising out of the CONSULTANT's performance under the terms of this Agreement. This
8 indemnification obligation on CONSULTANT'S part shall not apply to demands, actions, losses, damages,
9 injuries, and liability arising out of sole negligence or willful misconduct on the part of CITY.

10 5. OWNERSHIP AND MAINTENANCE OF DOCUMENTS

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

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

1 6. STANDARD OF PERFORMANCE

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

6 7. INSURANCE REQUIRED

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

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

13 **B. Automobile Liability Coverage.** CONSULTANT shall maintain automobile liability
14 insurance covering all vehicles used in the performance of this Agreement providing a one million dollar
15 (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage.

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

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

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

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

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

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

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

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

26 8. SUSPENSION OF WORK

27 CITY may, at any time, by ten (10) days' written notice, suspend further performance by
28 CONSULTANT. All suspensions shall extend the time schedule for performance in a mutually satisfactory

1 manner, and CONSULTANT shall be paid for services performed and reimbursable expenses incurred prior to
2 the suspension date. During the period of suspension, CONSULTANT shall not receive any payment for
3 services, or expenses, except for reasonable administration expenses, incurred by CONSULTANT by reason of
4 such suspension.

5 9. TERMINATION

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

13 10. COMPLIANCE WITH CIVIL RIGHTS

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

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

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

23 **C. Solicitations for Subcontractors including Procurement of Materials and**
24 **Equipment.** In all solicitation, either by competitive bidding or negotiations, made by CONSULTANT for
25 work to be performed under a subcontract including procurement of materials or leases of equipment, each
26 potential subcontractor, supplier or lessor shall be notified by CONSULTANT of CONSULTANT'S obligation
27 under this AGREEMENT and the regulations relative to nondiscrimination on the grounds of race, religion,
28

1 color, sex, or national origin.

2 11. CONFLICT OF INTEREST

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

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

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

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

17 12. INDEPENDENT CONTRACTOR

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

24 13. COMPLIANCE WITH LAWS

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

1 14. CHOICE OF LAW

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

6 15. NON-WAIVER

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

11 16. ENFORCEABILITY; INTERPRETATION

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

21 17. INTEGRATION

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

26 18. SUCCESSORS AND ASSIGNS: NO THIRD PARTY BENEFICIARIES; NO JOINT
27 VENTURE

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

8 19. FINANCIAL RECORDS

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

12 20. NOTICES

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

18 To CITY

Jeff Lewis, IT Director
Information Technology
City of Concord
1950 Parkside Drive
Concord, CA 94519
Phone: 925-671-3380
Fax: 925-671-3198

22 To CONSULTANT

Matthew Bowley, Managing Member
Axiom Technologies LLC
527 Crownpointe Cr. Vacaville CA 95687
Phone: (707)452-9408
Fax:

26 21. TERM

27 The term of this AGREEMENT shall be from the date executed above through June 30, 2019,
28

1 with the option of one one-year extension upon mutual agreement by both CITY and CONSULTANT. The
2 City Manager is authorized to approve the extension.

3 22. NON-LIABILITY

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

8 23. EXECUTION

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

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

16 ///

17 *[Signatures follow on next page]*

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

3
4 **CONSULTANT**

CITY OF CONCORD

5 By: Matthew A Bowley
6 Name: *Matthew Bowley*
7 Title: Managing Member
8 Address: 527 Crownpointe Cir
 Vacaville CA 95687
9 Telephone: (707)452-9408

By: _____
Name: Valerie Barone
 Title City Manager

Address: 1950 Parkside Drive, MS 01
 Concord, CA 94519
 Telephone: (925) 671-3175

10
11 APPROVED AS TO FORM:

ATTEST:

12
13 _____
City Attorney

City Clerk

14
15 Date: _____, 2016

16
17 **FINANCE DIRECTOR'S CERTIFICATION:**

18 Concord, California

19 Date: _____, 2016

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

22 THE SUM NOT TO EXCEED **\$250,000**. Account Code: various.

23
24 _____
25 Finance Director's Signature

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

1 **THIS AGREEMENT** made and entered into on February 3, 2016 by and between the City of Concord
2 (hereinafter "CITY"), located in the County of Contra Costa, State of California, and **BOTTS STRATEGIC**
3 **SOLUTIONS** (hereinafter "CONSULTANT"), whose address is **7405 Greenback Lane, Suite 168, Citrus**
4 **Heights, CA 95610.**

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 ● Cisco Network System
- 17 ● Palo Alto Networks
- 18 ● Cisco VOIP
- 19 ● Wireless Technologies
- 20 ● Other as-needed services;

21 CONSULTANT shall be an independent contractor and shall have responsibility for and
22 control over the details and means of providing its services under this AGREEMENT. CONSULTANT agrees
23 that its services shall be performed with due diligence and in accordance with generally accepted engineering
24 practices.
25

26 CONSULTANT shall use its best efforts to perform and coordinate all activities in a timely
27 manner so that the projects will be completed according to the established project schedules.
28

1 2. AUTHORIZED REPRESENTATIVES

2 Authorized representatives shall represent CITY and CONSULTANT in all matters pertaining
3 to the services to be ordered by CITY or rendered by CONSULTANT under this Agreement except where
4 approval for the CITY is specifically required by the City Council. The CITY'S authorized representative shall
5 be the City IT Director. Said City IT Director is authorized to execute Task Orders on behalf of CITY,
6 including providing for CONSULTANT to be compensated not more than \$50,000 for each project. Task
7 Orders providing for more than \$50,000 compensation for one project shall be presented to the City Council for
8 its consideration and approval.

9 CONSULTANT authorized representative shall be *Garrison Botts, President*.

10 3. COMPENSATION

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

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

21 4. INDEMNIFICATION

22 A. **For Design Professional Services Only.** Pursuant to California Civil Code Section
23 2782.8, CONSULTANT agrees to indemnify the CITY (including its officers, agents, employees and
24 volunteers) against liability for claims against the CITY that arise out of, pertain to, or relate to the negligence,
25 recklessness, or willful misconduct of CONSULTANT in the performance of this Agreement. The
26 CONSULTANT will reimburse the CITY for any expenditures, including reasonable attorney fees, incurred by
27 the CITY in defending against claims ultimately determined to arise out of, pertain to, or relate to the
28

1 negligence, recklessness, or willful misconduct of the CONSULTANT.

2 **B. For All Other Services.** CONSULTANT agrees to defend, indemnify and hold
3 harmless the CITY (including its officers, officials, employees, agents and volunteers) from and against any
4 and all claims, demands, actions, losses, damages, injuries, and liability (including all attorney's fees and other
5 litigation expenses) arising out of the CONSULTANT's performance under the terms of this Agreement. This
6 indemnification obligation on CONSULTANT'S part shall not apply to demands, actions, losses, damages,
7 injuries, and liability arising out of sole negligence or willful misconduct on the part of CITY.

8 5. OWNERSHIP AND MAINTENANCE OF DOCUMENTS

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

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

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1 manner, and with the degree of skill and care that is required by current, good, and sound procedures and
2 practices. CONSULTANT further agrees that the services shall be in conformance with generally accepted
3 professional standards prevailing at the time work is performed.

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6 the term of this AGREEMENT the following insurance:

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9 single limit per occurrence or two million dollars (\$2,000,000) aggregate limit for bodily injury, personal
10 injury, and property damage.

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18 single limit per occurrence basis.

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21 California Labor Code §3700, et seq. CONSULTANT shall, at all times, upon demand of the City, furnish
22 proof that Workers' Compensation Insurance is being maintained by it in force and effect in accordance with
23 the California Labor Code. The insurer shall also agree to waive all rights of subrogation against the CITY, its
24 officers, officials, employees and volunteers for losses arising from work performed by CONSULTANT for
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26 no employees.

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2 to be covered as an additional insured as respects: Liability arising out of activities performed by or on behalf
3 of CONSULTANT and operations of CONSULTANT, premises owned, occupied, or used by CONSULTANT.
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28 the suspension date. During the period of suspension, CONSULTANT shall not receive any payment for

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9 termination, all of which shall become CITY's sole property. After receipt of the Work Materials, CITY will
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15 because of race, religion, color, sex, or national origin. Such actions shall include, but not be limited to, the
16 following: employment, promotion, upgrading, demotion, or transfer; recruitment or recruitment advertising;
17 layoff or termination; rate of pay or other forms of compensation; and selection for training including
18 apprenticeship.

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

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

27 11. CONFLICT OF INTEREST

1 A. CONSULTANT covenants and represents that neither it, nor any officer or principal of
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3 interests of CITY or which would in any way hinder CONSULTANT's performance of services under this
4 Agreement. CONSULTANT further covenants that in the performance of the Agreement, no person having
5 any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express
6 written consent of the CITY. CONSULTANT agrees to at all times avoid conflicts of interest, or the
7 appearance of any conflicts of interest, with the interests of the CITY in the performance of this Agreement.

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

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

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

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16 In assuming and performing the services, CONSULTANT is an independent contractor and
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19 CONSULTANT and shall not be construed as employees or agents of the CITY in any respect.
20 CONSULTANT shall have responsibility for and control over the means of providing services under this
21 AGREEMENT.

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

26 14. CHOICE OF LAW

27 This Agreement shall be construed and interpreted in accordance with the laws of the State of
28

1 California, excluding any choice of law rules which may direct the application of the laws of another
2 jurisdiction. In the event that suit shall be brought by either party hereunder, the parties agree that trial of such
3 action shall be held exclusively in a state court in the County of Contra Costa, California.

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

9 16. ENFORCEABILITY; INTERPRETATION

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

19 17. INTEGRATION

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

24 18. SUCCESSORS AND ASSIGNS: NO THIRD PARTY BENEFICIARIES; NO JOINT
25 VENTURE

26 CITY and CONSULTANT respectively, bind themselves, their successors, assigns, and legal
27 representatives to the terms and obligations of this Agreement. CONSULTANT shall not assign or transfer any
28

1 interest in the Agreement without the CITY's prior written consent, which consent shall be in the CITY's sole
2 discretion. Any attempted assignment or transfer in breach of this provision shall be void. This Agreement is
3 not intended and shall not be construed to create any third party benefit. This Agreement is not intended and
4 shall not be construed to create a joint venture or partnership between the parties. CONSULTANT, its officers,
5 employees and agents shall not have any power to bind or commit the CITY to any decision.

6 19. FINANCIAL RECORDS

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

10 20. NOTICES

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

16 To CITY

Jeff Lewis, IT Director
Information Technology
City of Concord
1950 Parkside Drive
Concord, CA 94519
Phone: 925-671-3380
Fax: 925-671-3198

20 To CONSULTANT

Garrison Botts, President
Botts Strategic Solutions
7405 Greenback Lane #168,
Citrus Heights, CA 95610
Phone: 916-716-2362
Fax:

24 21. TERM

25 The term of this AGREEMENT shall be from the date executed above through June 30, 2019,
26 with the option of one one-year extension upon mutual agreement by both CITY and CONSULTANT. The
27 City Manager is authorized to approve the extension.
28

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

3
4 **CONSULTANT**

CITY OF CONCORD

5 By: _____

5 By: _____

6 Name: **Garrison Botts**

6 Name: Valerie Barone

7 Title: President

7 Title City Manager

8 Address: 7405 Greenback Lane #168
Citrus Heights CA 95610

8 Address: 1950 Parkside Drive,
MS 01

9 Concord, CA 94519

9 Telephone: 916-716-2362

9 Telephone: (925) 671-3175

10
11 APPROVED AS TO FORM:

11 ATTEST:

12
13 _____
14 City Attorney

12
13 _____
14 City Clerk

15
16 Date: _____, 2016

17
18 **FINANCE DIRECTOR'S CERTIFICATION:**

19 Concord, California

20 Date: _____, 2016

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

24 THE SUM NOT TO EXCEED **\$250,000**. Account Code: various.

25 _____
26 Finance Director's Signature
27
28

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

1 **THIS AGREEMENT** made and entered into on February 3, 2016 by and between the City of Concord
2 (hereinafter "CITY"), located in the County of Contra Costa, State of California, and **ENTISYS SOLUTIONS**
3 **INC.** (hereinafter "CONSULTANT"), whose address is **1855 Gateway Blvd # 730, 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 ● NetApp Storage Systems
- 16 ● HP Server Systems
- 17 ● Microsoft Windows System
- 18 ● Microsoft Windows Applications
- 19 ● Citrix Systems
- 20 ● Vmware
- 21 ● Other as-needed services;

22 CONSULTANT shall be an independent contractor and shall have responsibility for and
23 control over the details and means of providing its services under this AGREEMENT. CONSULTANT agrees
24 that its services shall be performed with due diligence and in accordance with generally accepted engineering
25 practices.
26
27

28 CONSULTANT shall use its best efforts to perform and coordinate all activities in a timely

1 manner so that the projects will be completed according to the established project schedules.

2 2. AUTHORIZED REPRESENTATIVES

3 Authorized representatives shall represent CITY and CONSULTANT in all matters pertaining
4 to the services to be ordered by CITY or rendered by CONSULTANT under this Agreement except where
5 approval for the CITY is specifically required by the City Council. The CITY'S authorized representative shall
6 be the City IT Director. Said City IT Director is authorized to execute Task Orders on behalf of CITY,
7 including providing for CONSULTANT to be compensated not more than \$50,000 for each project. Task
8 Orders providing for more than \$50,000 compensation for one project shall be presented to the City Council for
9 its consideration and approval.

10 CONSULTANT authorized representative shall be *Lisa Hughes, Account Manager*

11 3. COMPENSATION

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

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

22 4. INDEMNIFICATION

23 A. **For Design Professional Services Only.** Pursuant to California Civil Code Section
24 2782.8, CONSULTANT agrees to indemnify the CITY (including its officers, agents, employees and
25 volunteers) against liability for claims against the CITY that arise out of, pertain to, or relate to the negligence,
26 recklessness, or willful misconduct of CONSULTANT in the performance of this Agreement. The
27 CONSULTANT will reimburse the CITY for any expenditures, including reasonable attorney fees, incurred by
28

1 the CITY in defending against claims ultimately determined to arise out of, pertain to, or relate to the
2 negligence, recklessness, or willful misconduct of the CONSULTANT.

3 **B. For All Other Services.** CONSULTANT agrees to defend, indemnify and hold
4 harmless the CITY (including its officers, officials, employees, agents and volunteers) from and against any
5 and all claims, demands, actions, losses, damages, injuries, and liability (including all attorney's fees and other
6 litigation expenses) arising out of the CONSULTANT's performance under the terms of this Agreement. This
7 indemnification obligation on CONSULTANT'S part shall not apply to demands, actions, losses, damages,
8 injuries, and liability arising out of sole negligence or willful misconduct on the part of CITY.

9 5. OWNERSHIP AND MAINTENANCE OF DOCUMENTS

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

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

27 6. STANDARD OF PERFORMANCE

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

5 7. INSURANCE REQUIRED

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

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

12 **B. Automobile Liability Coverage.** CONSULTANT shall maintain automobile liability
13 insurance covering all vehicles used in the performance of this Agreement providing a one million dollar
14 (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage.

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

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

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

1 the following provisions:

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

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

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

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

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

25 8. SUSPENSION OF WORK

26 CITY may, at any time, by ten (10) days' written notice, suspend further performance by
27 CONSULTANT. All suspensions shall extend the time schedule for performance in a mutually satisfactory
28 manner, and CONSULTANT shall be paid for services performed and reimbursable expenses incurred prior to

1 the suspension date. During the period of suspension, CONSULTANT shall not receive any payment for
2 services, or expenses, except for reasonable administration expenses, incurred by CONSULTANT by reason of
3 such suspension.

4 9. TERMINATION

5 CITY may terminate this Agreement for any reason upon ten (10) days written notice to the
6 other party. CITY may terminate the Agreement upon five (5) days written notice if CONSULTANT breaches
7 this Agreement. In the event of any termination, CONSULTANT shall promptly deliver to the CITY any and
8 all finished and unfinished reports or other written, recorded, photographic, or visual materials, documents,
9 data, and other deliverables (“Work Materials”) prepared for the CITY prior to the effective date of such
10 termination, all of which shall become CITY’s sole property. After receipt of the Work Materials, CITY will
11 pay CONSULTANT for the services performed as of the effective date of the termination.

12 10. COMPLIANCE WITH CIVIL RIGHTS

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

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

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

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

1 11. CONFLICT OF INTEREST

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

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

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

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

16 12. INDEPENDENT CONTRACTOR

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

23 13. COMPLIANCE WITH LAWS

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

27 14. CHOICE OF LAW

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

5 15. NON-WAIVER

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

10 16. ENFORCEABILITY; INTERPRETATION

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

20 17. INTEGRATION

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

25 18. SUCCESSORS AND ASSIGNS; NO THIRD PARTY BENEFICIARIES; NO JOINT
26 VENTURE

27 CITY and CONSULTANT respectively, bind themselves, their successors, assigns, and legal
28

1 representatives to the terms and obligations of this Agreement. CONSULTANT shall not assign or transfer any
2 interest in the Agreement without the CITY's prior written consent, which consent shall be in the CITY's sole
3 discretion. Any attempted assignment or transfer in breach of this provision shall be void. This Agreement is
4 not intended and shall not be construed to create any third party benefit. This Agreement is not intended and
5 shall not be construed to create a joint venture or partnership between the parties. CONSULTANT, its officers,
6 employees and agents shall not have any power to bind or commit the CITY to any decision.

7 19. FINANCIAL RECORDS

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

11 20. NOTICES

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

17 To CITY

**Jeff Lewis, IT Director
Information Technology
City of Concord
1950 Parkside Drive
Concord, CA 94519
Phone: 925-671-3380
Fax: 925-671-3198**

21 To CONSULTANT

***Entisys Legal
Elizabeth Strohl
1855 Gateway Blvd #730, Concord CA 94520
Phone: 925-688-8989
Fax: 925-688-8995***

25 21. TERM

26 The term of this AGREEMENT shall be from the date executed above through June 30, 2019,
27 with the option of one one-year extension upon mutual agreement by both CITY and CONSULTANT. The
28

1 City Manager is authorized to approve the extension.

2 22. NON-LIABILITY

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

7 23. EXECUTION

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

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

15 ///

16 *[Signatures follow on next page]*

17
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1 **IN WITNESS WHEREOF**, the parties have executed this AGREEMENT in three (3) copies as of the
2 date and year first written above.

3 **CONSULTANT**

CITY OF CONCORD

4
5 By: 
6 Name: **Matt General**
7 Title: CTO/Principal
8 Address: 1855 Gateway Blvd #730 Concord CA
9 MS 01
10 Telephone: 925-688-8989

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

11 APPROVED AS TO FORM:

ATTEST:

12 _____
13 City Attorney

City Clerk

14
15 Date: _____, 2016

16
17 FINANCE DIRECTOR'S CERTIFICATION:

18 Concord, California

19 Date: _____, 2016

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

22 THE SUM NOT TO EXCEED **\$250,000**. Account Code: various .

23
24 _____
25 Finance Director's Signature

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

1 **THIS AGREEMENT** made and entered into on February 3, 2016 by and between the City of Concord
2 (hereinafter "CITY"), located in the County of Contra Costa, State of California, and **GEOGRAPHIC**
3 **TECHNOLOGIES GROUP** (hereinafter "CONSULTANT"), whose address is **1202 Parkway Drive,**
4 **Goldsboro, NC 27534**

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 provision
8 by CONSULTANT to CITY for professional services as further described herein, upon the terms and conditions
9 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; such
14 services shall be defined, scheduled, and authorized in subsequent Task Orders. Services may include, but not be
15 limited to:

- 16 ● GIS Technologies
- 17 ● Other as-needed services;

18 CONSULTANT shall be an independent contractor and shall have responsibility for and control
19 over the details and means of providing its services under this AGREEMENT. CONSULTANT agrees that its
20 services shall be performed with due diligence and in accordance with generally accepted engineering 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 IT Director. Said City IT Director is authorized to execute Task Orders on behalf of CITY, including
28

1 providing for CONSULTANT to be compensated not more than **\$50,000** for each project. Task Orders providing
2 for more than **\$50,000** compensation for one project shall be presented to the City Council for its consideration
3 and approval.

4 CONSULTANT authorized representative shall be ***Curtis A. Hinton, Jr., President***

5 3. COMPENSATION

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

16 4. INDEMNIFICATION

17 A. **For Design Professional Services Only.** Pursuant to California Civil Code Section
18 2782.8, CONSULTANT agrees to indemnify the CITY (including its officers, agents, employees and volunteers)
19 against liability for claims against the CITY that arise out of, pertain to, or relate to the negligence, recklessness,
20 or willful misconduct of CONSULTANT in the performance of this Agreement. The CONSULTANT will
21 reimburse the CITY for any expenditures, including reasonable attorney fees, incurred by the CITY in defending
22 against claims ultimately determined to arise out of, pertain to, or relate to the negligence, recklessness, or willful
23 misconduct of the CONSULTANT.

24 B. **For All Other Services.** CONSULTANT agrees to defend, indemnify and hold harmless
25 the CITY (including its officers, officials, employees, agents and volunteers) from and against any and all claims,
26 demands, actions, losses, damages, injuries, and liability (including all attorney's fees and other litigation
27 expenses) arising out of the CONSULTANT's performance under the terms of this Agreement. This
28

1 indemnification obligation on CONSULTANT'S part shall not apply to demands, actions, losses, damages,
2 injuries, and liability arising out of sole negligence or willful misconduct on the part of CITY.

3 5. OWNERSHIP AND MAINTENANCE OF DOCUMENTS

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

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

21 6. STANDARD OF PERFORMANCE

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

26 7. INSURANCE REQUIRED

27 CONSULTANT shall, at its own expense, procure and maintain in full force at all times during
28

1 the term of this AGREEMENT the following insurance:

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

6 **B. Automobile Liability Coverage.** CONSULTANT shall maintain automobile liability
7 insurance covering all vehicles used in the performance of this Agreement providing a one million dollar
8 (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage.

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

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

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

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

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

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

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

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

19 8. SUSPENSION OF WORK

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

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27 CITY may terminate this Agreement for any reason upon ten (10) days written notice to the other
28 party. CITY may terminate the Agreement upon five (5) days written notice if CONSULTANT breaches this

1 Agreement. In the event of any termination, CONSULTANT shall promptly deliver to the CITY any and all
2 finished and unfinished reports or other written, recorded, photographic, or visual materials, documents, data,
3 and other deliverables (“Work Materials”) prepared for the CITY prior to the effective date of such termination,
4 all of which shall become CITY’s sole property. After receipt of the Work Materials, CITY will pay
5 CONSULTANT for the services performed as of the effective date of the termination.

6 10. COMPLIANCE WITH CIVIL RIGHTS

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

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

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

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

22 11. CONFLICT OF INTEREST

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

1 consent of the CITY. CONSULTANT agrees to at all times avoid conflicts of interest, or the appearance of any
2 conflicts of interest, with the interests of the CITY in the performance of this Agreement.

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

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

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

10 12. INDEPENDENT CONTRACTOR

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

16 13. COMPLIANCE WITH LAWS

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

20 14. CHOICE OF LAW

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

25 15. NON-WAIVER

26 The waiver by either party of any breach of any term, covenant, or condition contained in the
27 AGREEMENT, or any default in their performance of any obligations under the AGREEMENT shall not be
28

1 deemed to be a waiver of any other breach or default of the same or any other term, covenant, condition, or
2 obligation, nor shall any waiver of any incident of breach of default constitute a continuing waiver of same.

3 16. ENFORCEABILITY; INTERPRETATION

4 In the event that any of the provisions or portions of application of any of the provisions of the
5 AGREEMENT are held to be illegal or invalid by a court of competent jurisdiction, CITY and CONSULTANT
6 shall negotiate an equitable adjustment in the provisions of the AGREEMENT with a view toward affecting the
7 purpose of the AGREEMENT. The illegality or invalidity of any of the provisions or portions of application of
8 any of the provisions of the AGREEMENT shall not affect the legality or enforceability of the remaining
9 provisions or portions of application of any of the provisions of the AGREEMENT. This Agreement shall be
10 interpreted as though it was a product of a joint drafting effort and no provisions shall be interpreted against a
11 party on the ground that said party was solely or primarily responsible for drafting the language to be interpreted.

12 17. INTEGRATION

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

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

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

26 19. FINANCIAL RECORDS

27 Records of CONSULTANT's direct labor costs, payroll costs, and reimbursable expenses
28

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

3 20. NOTICES

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

9 To CITY

**Jeff Lewis, IT Director
Information Technology
City of Concord
1950 Parkside Drive
Concord, CA 94519
Phone: 925-671-3380
Fax: 925-671-3198**

13 To CONSULTANT

***Curtis A. Hinton, Jr.
Geographic Technologies Group,
Inc.
Goldsboro, NC 27534
Phone: 919-759-9214
Fax: 919-759-0410***

18 21. TERM

19 The term of this AGREEMENT shall be from the date executed above through June 30, 2019,
20 with the option of one one-year extension upon mutual agreement by both CITY and CONSULTANT. The City
21 Manager is authorized to approve the extension.

22 22. NON-LIABILITY

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

27 23. EXECUTION

28 Each individual or entity executing this Agreement on behalf of CONSULTANT represents and

1 warrants that he or she or it is duly authorized to execute and deliver this Agreement on behalf of CONSULTANT
2 and that such execution is binding upon CONSULTANT.

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

7 ///

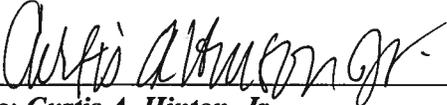
8 *[Signatures follow on next page]*

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

3
4 **CONSULTANT**

CITY OF CONCORD

5 By: 
6 Name: **Curtis A. Hinton, Jr.**
7 Title: President
8 Address: 1202 Parkway Drive
9 Goldsboro, NC 27534
10 MS 01
11 Telephone: 919-759-9214

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

11 APPROVED AS TO FORM:

ATTEST:

12 _____
13 City Attorney

_____ City Clerk

14
15 Date: _____, 2016

16
17 **FINANCE DIRECTOR'S CERTIFICATION:**

18 Concord, California

19 Date: _____, 2016

20
21 I HEREBY CERTIFY THAT ADEQUATE FUNDS EXIST OR WILL BE RECEIVED
22 DURING THE CURRENT FISCAL YEARS 2015-16 AND 2016-17 TO PAY THE
23 ANTICIPATED EXPENSES TO BE INCURRED PURSUANT TO THIS CONTRACT.

24 THE SUM NOT TO EXCEED **\$250,000**. Account Code: various.

25 _____
26 Finance Director's Signature

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

1 **THIS AGREEMENT** made and entered into on February 3, 2016 by and between the City of Concord
2 (hereinafter "CITY"), located in the County of Contra Costa, State of California, and **INTERWEST**
3 **CONSULTING GROUP** (hereinafter "CONSULTANT"), whose address is **6280 W. Las Positas Blvd., Suite**
4 **200, Pleasanton, 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 ● Business Intelligence Systems
- 17 ● Accela System Support
- 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

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

26 2. AUTHORIZED REPRESENTATIVES

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

1 approval for the CITY is specifically required by the City Council. The CITY'S authorized representative shall
2 be the City IT Director. Said City IT Director is authorized to execute Task Orders on behalf of CITY,
3 including providing for CONSULTANT to be compensated not more than \$50,000 for each project. Task
4 Orders providing for more than \$50,000 compensation for one project shall be presented to the City Council for
5 its consideration and approval.

6 CONSULTANT authorized representative shall be *Michael Kashiwagi, Chief Operations*
7 *Officer*

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 A. **For Design Professional Services Only.** Pursuant to California Civil Code Section
21 2782.8, CONSULTANT agrees to indemnify the CITY (including its officers, agents, employees and
22 volunteers) against liability for claims against the CITY that arise out of, pertain to, or relate to the negligence,
23 recklessness, or willful misconduct of CONSULTANT in the performance of this Agreement. The
24 CONSULTANT will reimburse the CITY for any expenditures, including reasonable attorney fees, incurred by
25 the CITY in defending against claims ultimately determined to arise out of, pertain to, or relate to the
26 negligence, recklessness, or willful misconduct of the CONSULTANT.

27 B. **For All Other Services.** CONSULTANT agrees to defend, indemnify and hold
28

1 harmless the CITY (including its officers, officials, employees, agents and volunteers) from and against any
2 and all claims, demands, actions, losses, damages, injuries, and liability (including all attorney's fees and other
3 litigation expenses) arising out of the CONSULTANT's performance under the terms of this Agreement. This
4 indemnification obligation on CONSULTANT'S part shall not apply to demands, actions, losses, damages,
5 injuries, and liability arising out of sole negligence or willful misconduct on the part of CITY.

6 5. OWNERSHIP AND MAINTENANCE OF DOCUMENTS

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

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

24 6. STANDARD OF PERFORMANCE

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

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4 the term of this AGREEMENT the following insurance:

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

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19 California Labor Code §3700, et seq. CONSULTANT shall, at all times, upon demand of the City, furnish
20 proof that Workers' Compensation Insurance is being maintained by it in force and effect in accordance with
21 the California Labor Code. The insurer shall also agree to waive all rights of subrogation against the CITY, its
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23 CITY. This provision shall not apply upon written verification by CONSULTANT that CONSULTANT has
24 no employees.

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28 to be covered as an additional insured as respects: Liability arising out of activities performed by or on behalf

1 of CONSULTANT and operations of CONSULTANT, premises owned, occupied, or used by CONSULTANT.
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3 officials, employees, or volunteers.

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

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

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17 to bind coverage on its behalf. The aforementioned policies shall be issued by an insurance carrier having a
18 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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20 approved by the City Attorney. CITY reserves the right to require complete certified copies of all required
21 insurance policies at any time.

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24 CONSULTANT. All suspensions shall extend the time schedule for performance in a mutually satisfactory
25 manner, and CONSULTANT shall be paid for services performed and reimbursable expenses incurred prior to
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6 data, and other deliverables ("Work Materials") prepared for the CITY prior to the effective date of such
7 termination, all of which shall become CITY's sole property. After receipt of the Work Materials, CITY will
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10 During the performance of this contract, CONSULTANT agrees as follows:

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

17 **B. Nondiscrimination Civil Rights Act of 1964.** CONSULTANT will comply with all
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19 **C. Solicitations for Subcontractors including Procurement of Materials and**
20 **Equipment.** In all solicitation, either by competitive bidding or negotiations, made by CONSULTANT for
21 work to be performed under a subcontract including procurement of materials or leases of equipment, each
22 potential subcontractor, supplier or lessor shall be notified by CONSULTANT of CONSULTANT'S obligation
23 under this AGREEMENT and the regulations relative to nondiscrimination on the grounds of race, religion,
24 color, sex, or national origin.

25 11. CONFLICT OF INTEREST

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

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

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

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

13 12. INDEPENDENT CONTRACTOR

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

20 13. COMPLIANCE WITH LAWS

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

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26 California, excluding any choice of law rules which may direct the application of the laws of another
27 jurisdiction. In the event that suit shall be brought by either party hereunder, the parties agree that trial of such
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1 action shall be held exclusively in a state court in the County of Contra Costa, California.

2 15. NON-WAIVER

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

7 16. ENFORCEABILITY; INTERPRETATION

8 In the event that any of the provisions or portions of application of any of the provisions of the
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10 shall negotiate an equitable adjustment in the provisions of the AGREEMENT with a view toward affecting the
11 purpose of the AGREEMENT. The illegality or invalidity of any of the provisions or portions of application of
12 any of the provisions of the AGREEMENT shall not affect the legality or enforceability of the remaining
13 provisions or portions of application of any of the provisions of the AGREEMENT. This Agreement shall be
14 interpreted as though it was a product of a joint drafting effort and no provisions shall be interpreted against a
15 party on the ground that said party was solely or primarily responsible for drafting the language to be
16 interpreted.

17 17. INTEGRATION

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

22 18. SUCCESSORS AND ASSIGNS: NO THIRD PARTY BENEFICIARIES; NO JOINT
23 VENTURE

24 CITY and CONSULTANT respectively, bind themselves, their successors, assigns, and legal
25 representatives to the terms and obligations of this Agreement. CONSULTANT shall not assign or transfer any
26 interest in the Agreement without the CITY's prior written consent, which consent shall be in the CITY's sole
27 discretion. Any attempted assignment or transfer in breach of this provision shall be void. This Agreement is
28

1 not intended and shall not be construed to create any third party benefit. This Agreement is not intended and
2 shall not be construed to create a joint venture or partnership between the parties. CONSULTANT, its officers,
3 employees and agents shall not have any power to bind or commit the CITY to any decision.

4 19. FINANCIAL RECORDS

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

8 20. NOTICES

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

14 To CITY

Jeff Lewis, IT Director
Information Technology
City of Concord
1950 Parkside Drive
Concord, CA 94519
Phone: 925-671-3380
Fax: 925-671-3198

18 To CONSULTANT

Michael Kashiwagi PE, Chief Operations Officer
Interwest Consulting Group
6280 W. Las Positas Blvd. Suite 200
Pleasanton, CA 94588
Phone: 916.273.4685
Fax: 916.273.4685

22 21. TERM

23 The term of this AGREEMENT shall be from the date executed above through June 30, 2019,
24 with the option of one one-year extension upon mutual agreement by both CITY and CONSULTANT. The
25 City Manager is authorized to approve the extension.

26 22. NON-LIABILITY

27 No member of the CITY and no other officer, employee or agent of the CITY shall be
28

1 personally liable to CONSULTANT or otherwise in the event of any default or breach of the CITY, or for any
2 amount which may become due to CONSULTANT or any successor in interest, or for any obligations directly
3 or indirectly incurred under the terms of this Agreement.

4 23. EXECUTION

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

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

12 ///

13 *[Signatures follow on next page]*

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MASTER AGREEMENT FOR PROFESSIONAL SERVICES

1 **THIS AGREEMENT** made and entered into on February 3, 2016 by and between the City of Concord
2 (hereinafter "CITY"), located in the County of Contra Costa, State of California, and *KIMLEY-HORN &*
3 *ASSOCIATES, INC.* (hereinafter "CONSULTANT"), whose address is *1300 Clay Street, Ste. 325, 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 ● Network Cabling
- 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 IT Director. Said City IT Director is authorized to execute Task Orders on behalf of CITY,
28

1 including providing for CONSULTANT to be compensated not more than **\$50,000** for each project. Task
2 Orders providing for more than **\$50,000** compensation for one project shall be presented to the City Council for
3 its consideration and approval.

4 CONSULTANT authorized representative shall be *Kevin Aguigui, 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.

16 4. INDEMNIFICATION

17 A. **For Design Professional Services Only.** Pursuant to California Civil Code Section
18 2782.8, CONSULTANT agrees to indemnify the CITY (including its officers, agents, employees and
19 volunteers) against liability for claims against the CITY that arise out of, pertain to, or relate to the negligence,
20 recklessness, or willful misconduct of CONSULTANT in the performance of this Agreement. The
21 CONSULTANT will reimburse the CITY for any expenditures, including reasonable attorney fees, incurred by
22 the CITY in defending against claims ultimately determined to arise out of, pertain to, or relate to the
23 negligence, recklessness, or willful misconduct of the CONSULTANT.

24 B. **For All Other Services.** CONSULTANT agrees to defend, indemnify and hold
25 harmless the CITY (including its officers, officials, employees, agents and volunteers) from and against any
26 and all claims, demands, actions, losses, damages, injuries, and liability (including all attorney's fees and other
27 litigation expenses) arising out of the CONSULTANT's performance under the terms of this Agreement. This
28

1 indemnification obligation on CONSULTANT'S part shall not apply to demands, actions, losses, damages,
2 injuries, and liability arising out of sole negligence or willful misconduct on the part of CITY.

3 5. OWNERSHIP AND MAINTENANCE OF DOCUMENTS

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

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

21 6. STANDARD OF PERFORMANCE

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

26 7. INSURANCE REQUIRED

27 CONSULTANT shall, at its own expense, procure and maintain in full force at all times during
28

1 the term of this AGREEMENT the following insurance:

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

6 **B. Automobile Liability Coverage.** CONSULTANT shall maintain automobile liability
7 insurance covering all vehicles used in the performance of this Agreement providing a one million dollar
8 (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage.

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

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

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

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

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

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

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

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

19 8. SUSPENSION OF WORK

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

26 9. TERMINATION

27 CITY may terminate this Agreement for any reason upon ten (10) days written notice to the
28 other party. CITY may terminate the Agreement upon five (5) days written notice if CONSULTANT breaches

1 this Agreement. In the event of any termination, CONSULTANT shall promptly deliver to the CITY any and
2 all finished and unfinished reports or other written, recorded, photographic, or visual materials, documents,
3 data, and other deliverables ("Work Materials") prepared for the CITY prior to the effective date of such
4 termination, all of which shall become CITY's sole property. After receipt of the Work Materials, CITY will
5 pay CONSULTANT for the services performed as of the effective date of the termination.

6 10. COMPLIANCE WITH CIVIL RIGHTS

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

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

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

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

22 11. CONFLICT OF INTEREST

23 **A.** CONSULTANT covenants and represents that neither it, nor any officer or principal of
24 its firm, has, or shall acquire any interest, directly or indirectly, which would conflict in any manner with the
25 interests of CITY or which would in any way hinder CONSULTANT's performance of services under this
26 Agreement. CONSULTANT further covenants that in the performance of the Agreement, no person having
27 any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express
28

1 written consent of the CITY. CONSULTANT agrees to at all times avoid conflicts of interest, or the
2 appearance of any conflicts of interest, with the interests of the CITY in the performance of this Agreement.

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

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

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

10 12. INDEPENDENT CONTRACTOR

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

17 13. COMPLIANCE WITH LAWS

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

21 14. CHOICE OF LAW

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

26 15. NON-WAIVER

27 The waiver by either party of any breach of any term, covenant, or condition contained in the
28

1 AGREEMENT, or any default in their performance of any obligations under the AGREEMENT shall not be
2 deemed to be a waiver of any other breach or default of the same or any other term, covenant, condition, or
3 obligation, nor shall any waiver of any incident of breach of default constitute a continuing waiver of same.

4 16. ENFORCEABILITY; INTERPRETATION

5 In the event that any of the provisions or portions of application of any of the provisions of the
6 AGREEMENT are held to be illegal or invalid by a court of competent jurisdiction, CITY and CONSULTANT
7 shall negotiate an equitable adjustment in the provisions of the AGREEMENT with a view toward affecting the
8 purpose of the AGREEMENT. The illegality or invalidity of any of the provisions or portions of application of
9 any of the provisions of the AGREEMENT shall not affect the legality or enforceability of the remaining
10 provisions or portions of application of any of the provisions of the AGREEMENT. This Agreement shall be
11 interpreted as though it was a product of a joint drafting effort and no provisions shall be interpreted against a
12 party on the ground that said party was solely or primarily responsible for drafting the language to be
13 interpreted.

14 17. INTEGRATION

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

19 18. SUCCESSORS AND ASSIGNS: NO THIRD PARTY BENEFICIARIES; NO JOINT
20 VENTURE

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

1 19. FINANCIAL RECORDS

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

5 20. NOTICES

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

11 To CITY

Jeff Lewis, IT Director
Information Technology
City of Concord
1950 Parkside Drive
Concord, CA 94519
Phone: 925-671-3380
Fax: 925-671-3198

15 To CONSULTANT

Kevin Aguigui, Project Manager
Kimley-Horn and Associates, Inc.
1300 Clay Street, Ste. 325
Oakland, CA 94612
Phone: 510-625-0712
Fax: N/A

19 21. TERM

20 The term of this AGREEMENT shall be from the date executed above through June 30, 2019,
21 with the option of one one-year extension upon mutual agreement by both CITY and CONSULTANT. The
22 City Manager is authorized to approve the extension.

23 22. NON-LIABILITY

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

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

3
4 **CONSULTANT**

CITY OF CONCORD

5 By: 
6 Name: Randy Durrenberger
7 Title: Sr. Vice President
8 Address: 1300 Clay Street, Ste. 325
 Oakland, CA 94612
9 Telephone: 510-625-0712

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

10 APPROVED AS TO FORM:

ATTEST:

11
12 _____
13 City Attorney

City Clerk

14 Date: _____, 2016

16 **FINANCE DIRECTOR'S CERTIFICATION:**

17 Concord, California

18 Date: _____, 2016

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

22 THE SUM NOT TO EXCEED **\$250,000**. Account Code: various.

23
24 _____
25 Finance Director's Signature
26
27
28

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

1 **THIS AGREEMENT** made and entered into on February 3, 2016 by and between the City of Concord
2 (hereinafter "CITY"), located in the County of Contra Costa, State of California, and *NETXPERTS, INC.*
3 (hereinafter "CONSULTANT"), whose address is *1777 Botelho Drive, Suite 102 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:

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 ● Cisco Network Systems
- 16 ● Microsoft Windows System
- 17 ● Microsoft Windows Applications
- 18 ● Cisco VOIP
- 19 ● Wireless Technologies
- 20 ● VMware
- 21 ● Other as-needed services;

22 CONSULTANT shall be an independent contractor and shall have responsibility for and
23 control over the details and means of providing its services under this AGREEMENT. CONSULTANT agrees
24 that its services shall be performed with due diligence and in accordance with generally accepted engineering
25 practices.
26
27

28 CONSULTANT shall use its best efforts to perform and coordinate all activities in a timely

1 manner so that the projects will be completed according to the established project schedules.

2 2. AUTHORIZED REPRESENTATIVES

3 Authorized representatives shall represent CITY and CONSULTANT in all matters pertaining
4 to the services to be ordered by CITY or rendered by CONSULTANT under this Agreement except where
5 approval for the CITY is specifically required by the City Council. The CITY'S authorized representative shall
6 be the City IT Director. Said City IT Director is authorized to execute Task Orders on behalf of CITY,
7 including providing for CONSULTANT to be compensated not more than **\$50,000** for each project. Task
8 Orders providing for more than **\$50,000** compensation for one project shall be presented to the City Council for
9 its consideration and approval.

10 CONSULTANT authorized representative shall be *Carol Ann Nordine, VP Operations*

11 3. COMPENSATION

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

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

22 4. INDEMNIFICATION

23 A. **For Design Professional Services Only.** Pursuant to California Civil Code Section
24 2782.8, CONSULTANT agrees to indemnify the CITY (including its officers, agents, employees and
25 volunteers) against liability for claims against the CITY that arise out of, pertain to, or relate to the negligence,
26 recklessness, or willful misconduct of CONSULTANT in the performance of this Agreement. The
27 CONSULTANT will reimburse the CITY for any expenditures, including reasonable attorney fees, incurred by
28

1 the CITY in defending against claims ultimately determined to arise out of, pertain to, or relate to the
2 negligence, recklessness, or willful misconduct of the CONSULTANT.

3 **B. For All Other Services.** CONSULTANT agrees to defend, indemnify and hold
4 harmless the CITY (including its officers, officials, employees, agents and volunteers) from and against any
5 and all claims, demands, actions, losses, damages, injuries, and liability (including all attorney's fees and other
6 litigation expenses) arising out of the CONSULTANT's performance under the terms of this Agreement. This
7 indemnification obligation on CONSULTANT'S part shall not apply to demands, actions, losses, damages,
8 injuries, and liability arising out of sole negligence or willful misconduct on the part of CITY.

9 5. OWNERSHIP AND MAINTENANCE OF DOCUMENTS

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

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

27 6. STANDARD OF PERFORMANCE

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

5 7. INSURANCE REQUIRED

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

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

12 **B. Automobile Liability Coverage.** CONSULTANT shall maintain automobile liability
13 insurance covering all vehicles used in the performance of this Agreement providing a one million dollar
14 (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage.

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

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

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

1 the following provisions:

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

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

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

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

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

25 8. SUSPENSION OF WORK

26 CITY may, at any time, by ten (10) days' written notice, suspend further performance by
27 CONSULTANT. All suspensions shall extend the time schedule for performance in a mutually satisfactory
28 manner, and CONSULTANT shall be paid for services performed and reimbursable expenses incurred prior to

1 the suspension date. During the period of suspension, CONSULTANT shall not receive any payment for
2 services, or expenses, except for reasonable administration expenses, incurred by CONSULTANT by reason of
3 such suspension.

4 9. TERMINATION

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

12 10. COMPLIANCE WITH CIVIL RIGHTS

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

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

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

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

1 11. CONFLICT OF INTEREST

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

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

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

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

16 12. INDEPENDENT CONTRACTOR

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

23 13. COMPLIANCE WITH LAWS

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

27 14. CHOICE OF LAW

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

5 15. NON-WAIVER

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

10 16. ENFORCEABILITY; INTERPRETATION

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

20 17. INTEGRATION

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

25 18. SUCCESSORS AND ASSIGNS; NO THIRD PARTY BENEFICIARIES; NO JOINT
26 VENTURE

27 CITY and CONSULTANT respectively, bind themselves, their successors, assigns, and legal
28

1 representatives to the terms and obligations of this Agreement. CONSULTANT shall not assign or transfer any
2 interest in the Agreement without the CITY's prior written consent, which consent shall be in the CITY's sole
3 discretion. Any attempted assignment or transfer in breach of this provision shall be void. This Agreement is
4 not intended and shall not be construed to create any third party benefit. This Agreement is not intended and
5 shall not be construed to create a joint venture or partnership between the parties. CONSULTANT, its officers,
6 employees and agents shall not have any power to bind or commit the CITY to any decision.

7 19. FINANCIAL RECORDS

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

11 20. NOTICES

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

17 To CITY

**Jeff Lewis, IT Director
Information Technology
City of Concord
1950 Parkside Drive
Concord, CA 94519
Phone: 925-671-3380
Fax: 925-671-3198**

21 To CONSULTANT

***Carol Ann Nordine, VP Operations
NetXperts, Inc.
1777 Botelho Drive # 102
Walnut Creek, CA 94596
Phone: 925-806-0800 X 145
Fax: 925-806-0899***

26 21. TERM

27 The term of this AGREEMENT shall be from the date executed above through June 30, 2019,
28 with the option of one one-year extension upon mutual agreement by both CITY and CONSULTANT. The

1 City Manager is authorized to approve the extension.

2 22. NON-LIABILITY

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

7 23. EXECUTION

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

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

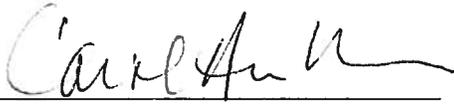
15 ///

16 *[Signatures follow on next page]*

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

3
4 **CONSULTANT**

CITY OF CONCORD

5 By: 

By: _____

6 Name: *Carol Ann Nordine*
7 Title: Vice President of Operations

Name: Valerie Barone

Title City Manager

8 Address: 1777 Botelho Dr. #102
9 Walnut Creek, CA 94596

Address: 1950 Parkside Drive, MS 01
Concord, CA 94519
Telephone: (925) 671-3175

10 Telephone: (925) 806-0800

11
12 APPROVED AS TO FORM:

ATTEST:

13
14 _____
City Attorney

15
16 Date: _____, 2016

17
18 **FINANCE DIRECTOR'S CERTIFICATION:**

19 Concord, California

20 Date: _____, 2016

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

24 THE SUM NOT TO EXCEED **\$250,000**. Account Code: various.

25
26 _____
Finance Director's Signature

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

1 **THIS AGREEMENT** made and entered into on February 3, 2016 by and between the City of Concord
2 (hereinafter "CITY"), located in the County of Contra Costa, State of California, and ***DIMENSION DATA***
3 ***NORTH AMERICA, INC.*** (hereinafter "CONSULTANT"), whose address is ***11006 Rushmore Drive, Suite***
4 ***300 Charlotte, NC 28277***

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 ● Cisco Network System
- 17 ● Palo Alto Networks
- 18 ● NetApp Storage Systems
- 19 ● HP Server Systems
- 20 ● Microsoft Windows System
- 21 ● Microsoft Windows Applications
- 22 ● General Project Management
- 23 ● VMware
- 24 ● Other as-needed services;
- 25
- 26
- 27
- 28

CONSULTANT shall be an independent contractor and shall have responsibility for and

1 control over the details and means of providing its services under this AGREEMENT. CONSULTANT agrees
2 that its services shall be performed with due diligence and in accordance with generally accepted engineering
3 practices.

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

6 2. AUTHORIZED REPRESENTATIVES

7 Authorized representatives shall represent CITY and CONSULTANT in all matters pertaining
8 to the services to be ordered by CITY or rendered by CONSULTANT under this Agreement except where
9 approval for the CITY is specifically required by the City Council. The CITY'S authorized representative shall
10 be the City IT Director. Said City IT Director is authorized to execute Task Orders on behalf of CITY,
11 including providing for CONSULTANT to be compensated not more than \$50,000 for each project. Task
12 Orders providing for more than \$50,000 compensation for one project shall be presented to the City Council for
13 its consideration and approval.

14 CONSULTANT authorized representative shall be *Adam Petrovsky, AVP, Sales*

15 3. COMPENSATION

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

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

26 4. INDEMNIFICATION

27 A. **For Design Professional Services Only.** Pursuant to California Civil Code Section
28

1 2782.8, CONSULTANT agrees to indemnify the CITY (including its officers, agents, employees and
2 volunteers) against liability for claims against the CITY that arise out of, pertain to, or relate to the negligence,
3 recklessness, or willful misconduct of CONSULTANT in the performance of this Agreement. The
4 CONSULTANT will reimburse the CITY for any expenditures, including reasonable attorney fees, incurred by
5 the CITY in defending against claims ultimately determined to arise out of, pertain to, or relate to the
6 negligence, recklessness, or willful misconduct of the CONSULTANT.

7 **B. For All Other Services.** CONSULTANT agrees to defend, indemnify and hold
8 harmless the CITY (including its officers, officials, employees, agents and volunteers) from and against any
9 and all claims, demands, actions, losses, damages, injuries, and liability (including all attorney's fees and other
10 litigation expenses) arising out of the CONSULTANT's performance under the terms of this Agreement. This
11 indemnification obligation on CONSULTANT'S part shall not apply to demands, actions, losses, damages,
12 injuries, and liability arising out of sole negligence or willful misconduct on the part of CITY.

13 5. OWNERSHIP AND MAINTENANCE OF DOCUMENTS

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

20 CONSULTANT's records, documents, calculations, and all other instruments of service pertaining to
21 actual project shall be given to CITY at the completion of the project. The CITY reserves the right to specify
22 the file format that electronic document deliverables are presented to the CITY. Title to all plans,
23 specifications, maps, estimates, reports, manuscripts, drawings, descriptions and other final work products
24 compiled by the CONSULTANT under the Agreement shall be vested in the CITY, none of which shall be
25 used in any manner whatsoever, by any person, firm, corporation, or agency without the expressed written
26 consent of the CITY. Basic survey notes and sketches, charts, computations, and other data prepared or
27 obtained under the Agreement shall be made available, upon request, to the CITY without restriction or
28

1 limitations on their use. CONSULTANT may retain copies of the above-described information but agrees not
2 to disclose or discuss any information gathered, discussed or generated in any way through this Agreement
3 without the written permission of CITY during the term of this Agreement, unless required by law.

4 6. STANDARD OF PERFORMANCE

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

9 7. INSURANCE REQUIRED

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

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

16 **B. Automobile Liability Coverage.** CONSULTANT shall maintain automobile liability
17 insurance covering all vehicles used in the performance of this Agreement providing a one million dollar
18 (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage.

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

24 **D. Compliance with State Workers' Compensation Requirements.** CONSULTANT
25 covenants that it will insure itself against liability for Workers' Compensation pursuant to the provisions of
26 California Labor Code §3700, et seq. CONSULTANT shall, at all times, upon demand of the City, furnish
27 proof that Workers' Compensation Insurance is being maintained by it in force and effect in accordance with
28 the California Labor Code. The insurer shall also agree to waive all rights of subrogation against the CITY, its

1 officers, officials, employees and volunteers for losses arising from work performed by CONSULTANT for
2 CITY. This provision shall not apply upon written verification by CONSULTANT that CONSULTANT has
3 no employees.

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

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

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

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

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

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

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

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

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

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

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

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

5 11. CONFLICT OF INTEREST

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

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

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

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

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

27 13. COMPLIANCE WITH LAWS

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

4 14. CHOICE OF LAW

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

9 15. NON-WAIVER

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

14 16. ENFORCEABILITY; INTERPRETATION

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

24 17. INTEGRATION

25 The AGREEMENT contains the entire AGREEMENT and understanding between the parties
26 as to the subject matter of this AGREEMENT. It merges and supersedes all prior or contemporaneous
27 agreements, commitments, representation, writings, and discussions between CONSULTANT and CITY,
28

1 whether oral or written.

2 18. SUCCESSORS AND ASSIGNS: NO THIRD PARTY BENEFICIARIES; NO JOINT
3 VENTURE

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

11 19. FINANCIAL RECORDS

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

15 20. NOTICES

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

21 To CITY

Jeff Lewis, IT Director
Information Technology
City of Concord
1950 Parkside Drive
Concord, CA 94519
Phone: 925-671-3380
Fax: 925-671-3198

25 To CONSULTANT

Adam Petrovsky, AVP, Sales
Dimension Data North America, Inc.
Charlotte, NC 28277
Phone:
Fax:

1
2 21. TERM

3 The term of this AGREEMENT shall be from the date executed above through June 30, 2019,
4 with the option of one one-year extension upon mutual agreement by both CITY and CONSULTANT. The
5 City Manager is authorized to approve the extension.

6 22. NON-LIABILITY

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

11 23. EXECUTION

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

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

19 ///

20 *[Signatures follow on next page]*

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

3
4 **CONSULTANT**

CITY OF CONCORD

5 By: 
6 Name: **Adam Petrovsky**
7 Title: AVP, Sales
8 Address: 11006 Rushmore Drive, Suite 300
 Charlotte, NC 28277
9 MS 01
10 Telephone: 661.775.2824

By: _____
Name: Valerie Barone
 Title City Manager

Address: 1950 Parkside Drive,

Concord, CA 94519
Telephone: (925) 671-3175

11 APPROVED AS TO FORM:

ATTEST:

12
13 _____
14 City Attorney

City Clerk

15 Date: _____, 2016

17
18 **FINANCE DIRECTOR'S CERTIFICATION:**

19 Concord, California

20 Date: _____, 2016

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

24 THE SUM NOT TO EXCEED **\$250,000**. Account Code: various.

25 _____
26 Finance Director's Signature
27
28

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

1 **THIS AGREEMENT** made and entered into on February 3, 2016 by and between the City of Concord
2 (hereinafter "CITY"), located in the County of Contra Costa, State of California, and *Precision IT Consulting*
3 (hereinafter "CONSULTANT"), whose address is *2450 Stanwell Drive, Suite 280, 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 provision
7 by CONSULTANT to CITY for professional services as further described herein, upon the terms and conditions
8 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; such
13 services shall be defined, scheduled, and authorized in subsequent Task Orders. Services may include, but not be
14 limited to:

- 15 ● Microsoft Windows System
- 16 ● Vmware
- 17 ● Other as-needed services;

18 CONSULTANT shall be an independent contractor and shall have responsibility for and control
19 over the details and means of providing its services under this AGREEMENT. CONSULTANT agrees that its
20 services shall be performed with due diligence and in accordance with generally accepted engineering 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 IT Director. Said City IT Director is authorized to execute Task Orders on behalf of CITY, including
28

1 providing for CONSULTANT to be compensated not more than *\$50,000* for each project. Task Orders providing
2 for more than *\$50,000* compensation for one project shall be presented to the City Council for its consideration
3 and approval.

4 CONSULTANT authorized representative shall be *Danny Crumpton*

5 3. COMPENSATION

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

16 4. INDEMNIFICATION

17 A. **For Design Professional Services Only.** Pursuant to California Civil Code Section
18 2782.8, CONSULTANT agrees to indemnify the CITY (including its officers, agents, employees and volunteers)
19 against liability for claims against the CITY that arise out of, pertain to, or relate to the negligence, recklessness,
20 or willful misconduct of CONSULTANT in the performance of this Agreement. The CONSULTANT will
21 reimburse the CITY for any expenditures, including reasonable attorney fees, incurred by the CITY in defending
22 against claims ultimately determined to arise out of, pertain to, or relate to the negligence, recklessness, or willful
23 misconduct of the CONSULTANT.

24 B. **For All Other Services.** CONSULTANT agrees to defend, indemnify and hold harmless
25 the CITY (including its officers, officials, employees, agents and volunteers) from and against any and all claims,
26 demands, actions, losses, damages, injuries, and liability (including all attorney's fees and other litigation
27 expenses) arising out of the CONSULTANT's performance under the terms of this Agreement. This
28

1 indemnification obligation on CONSULTANT'S part shall not apply to demands, actions, losses, damages,
2 injuries, and liability arising out of sole negligence or willful misconduct on the part of CITY.

3 5. OWNERSHIP AND MAINTENANCE OF DOCUMENTS

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

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

21 6. STANDARD OF PERFORMANCE

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

26 7. INSURANCE REQUIRED

27 CONSULTANT shall, at its own expense, procure and maintain in full force at all times during
28

1 the term of this AGREEMENT the following insurance:

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

6 **B. Automobile Liability Coverage.** CONSULTANT shall maintain automobile liability
7 insurance covering all vehicles used in the performance of this Agreement providing a one million dollar
8 (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage.

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

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

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

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

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

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

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

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

19 8. SUSPENSION OF WORK

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

26 9. TERMINATION

27 CITY may terminate this Agreement for any reason upon ten (10) days written notice to the other
28 party. CITY may terminate the Agreement upon five (5) days written notice if CONSULTANT breaches this

1 Agreement. In the event of any termination, CONSULTANT shall promptly deliver to the CITY any and all
2 finished and unfinished reports or other written, recorded, photographic, or visual materials, documents, data,
3 and other deliverables (“Work Materials”) prepared for the CITY prior to the effective date of such termination,
4 all of which shall become CITY’s sole property. After receipt of the Work Materials, CITY will pay
5 CONSULTANT for the services performed as of the effective date of the termination.

6 10. COMPLIANCE WITH CIVIL RIGHTS

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

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

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

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

22 11. CONFLICT OF INTEREST

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

1 consent of the CITY. CONSULTANT agrees to at all times avoid conflicts of interest, or the appearance of any
2 conflicts of interest, with the interests of the CITY in the performance of this Agreement.

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

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

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

10 12. INDEPENDENT CONTRACTOR

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

16 13. COMPLIANCE WITH LAWS

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

20 14. CHOICE OF LAW

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

25 15. NON-WAIVER

26 The waiver by either party of any breach of any term, covenant, or condition contained in the
27 AGREEMENT, or any default in their performance of any obligations under the AGREEMENT shall not be
28

1 deemed to be a waiver of any other breach or default of the same or any other term, covenant, condition, or
2 obligation, nor shall any waiver of any incident of breach of default constitute a continuing waiver of same.

3 16. ENFORCEABILITY; INTERPRETATION

4 In the event that any of the provisions or portions of application of any of the provisions of the
5 AGREEMENT are held to be illegal or invalid by a court of competent jurisdiction, CITY and CONSULTANT
6 shall negotiate an equitable adjustment in the provisions of the AGREEMENT with a view toward affecting the
7 purpose of the AGREEMENT. The illegality or invalidity of any of the provisions or portions of application of
8 any of the provisions of the AGREEMENT shall not affect the legality or enforceability of the remaining
9 provisions or portions of application of any of the provisions of the AGREEMENT. This Agreement shall be
10 interpreted as though it was a product of a joint drafting effort and no provisions shall be interpreted against a
11 party on the ground that said party was solely or primarily responsible for drafting the language to be interpreted.

12 17. INTEGRATION

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

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

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

26 19. FINANCIAL RECORDS

27 Records of CONSULTANT's direct labor costs, payroll costs, and reimbursable expenses
28

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

3 20. NOTICES

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

9 To CITY

Jeff Lewis, IT Director
Information Technology
City of Concord
1950 Parkside Drive
Concord, CA 94519
Phone: 925-671-3380
Fax: 925-671-3198

13 To CONSULTANT

Danny Crumpton, VP of Client Service
PrecisionITConsulting

Concord, CA 94520
Phone: 877-800-6710
Fax:

18 21. TERM

19 The term of this AGREEMENT shall be from the date executed above through June 30, 2019,
20 with the option of one one-year extension upon mutual agreement by both CITY and CONSULTANT. The City
21 Manager is authorized to approve the extension.

22 22. NON-LIABILITY

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

27 23. EXECUTION

28 Each individual or entity executing this Agreement on behalf of CONSULTANT represents and

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

3
4 **CONSULTANT**

CITY OF CONCORD

5 By: 
6 Name: **Kosta Paskos**
7 Title: CEO
8 Address: 2450 Stanwell Drive, Suite 280,
 Concord, CA 94520
9 MS 01
10 Telephone: 877-800-6710

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

11 APPROVED AS TO FORM:

ATTEST:

12
13 _____
14 City Attorney

City Clerk

15 Date: _____, 2016

16
17 **FINANCE DIRECTOR'S CERTIFICATION:**

18 Concord, California

19 Date: _____, 2016

20
21 I HEREBY CERTIFY THAT ADEQUATE FUNDS EXIST OR WILL BE RECEIVED
22 DURING THE CURRENT FISCAL YEARS 2015-16 AND 2016-17 TO PAY THE
23 ANTICIPATED EXPENSES TO BE INCURRED PURSUANT TO THIS CONTRACT.

24 THE SUM NOT TO EXCEED **\$250,000**. Account Code: various.

25 _____
26 Finance Director's Signature
27
28

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

1 **THIS AGREEMENT** made and entered into on February 3, 2016 by and between the City of Concord
2 (hereinafter "CITY"), located in the County of Contra Costa, State of California, and **QUEST MEDIA &**
3 **SUPPLIES INC. ("QUEST")** (hereinafter "CONSULTANT"), whose address is **5822 Roseville Rd.**
4 **Sacramento, CA 95842**

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 ● Cisco Network System
- 17 ● Palo Alto Networks
- 18 ● NetApp Storage Systems
- 19 ● HP Server Systems
- 20 ● Microsoft Windows System
- 21 ● Microsoft Windows Applications
- 22 ● Citrix Systems
- 23 ● Cisco VOIP
- 24 ● Wireless Technologies
- 25 ● Web Systems
- 26
- 27
- 28

- 1 ● Network Cabling
- 2 ● General Project Management
- 3 ● Vmware
- 4 ● Other as-needed services;

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

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

12 2. AUTHORIZED REPRESENTATIVES

13 Authorized representatives shall represent CITY and CONSULTANT in all matters pertaining
14 to the services to be ordered by CITY or rendered by CONSULTANT under this Agreement except where
15 approval for the CITY is specifically required by the City Council. The CITY'S authorized representative shall
16 be the City IT Director. Said City IT Director is authorized to execute Task Orders on behalf of CITY,
17 including providing for CONSULTANT to be compensated not more than **\$50,000** for each project. Task
18 Orders providing for more than **\$50,000** compensation for one project shall be presented to the City Council for
19 its consideration and approval.

20 CONSULTANT authorized representative shall be ***Justin Trammell, Account Manager***

21 3. COMPENSATION

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

25 CONSULTANT may submit monthly statements for services rendered; all statements shall
26 include adequate documentation demonstrating work performed during the billing period and shall conform to
27 Federal Funding invoicing requirements, if applicable. It is intended that payments to CONSULTANT will be
28

1 made by CITY within thirty (30) days of receipt of invoice. Consultant's failure to secure CITY's written
2 authorization for additional compensation or changes to the Scope of Work shall constitute a waiver of any and
3 all right to adjustment in the price or time due, whether by way of compensation, restitution, quantum meruit,
4 or similar relief.

5 4. INDEMNIFICATION

6 A. **For Design Professional Services Only.** Pursuant to California Civil Code Section
7 2782.8, CONSULTANT agrees to indemnify the CITY (including its officers, agents, employees and
8 volunteers) against liability for claims against the CITY that arise out of, pertain to, or relate to the negligence,
9 recklessness, or willful misconduct of CONSULTANT in the performance of this Agreement. The
10 CONSULTANT will reimburse the CITY for any expenditures, including reasonable attorney fees, incurred by
11 the CITY in defending against claims ultimately determined to arise out of, pertain to, or relate to the
12 negligence, recklessness, or willful misconduct of the CONSULTANT.

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

19 5. OWNERSHIP AND MAINTENANCE OF DOCUMENTS

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

26 CONSULTANT's records, documents, calculations, and all other instruments of service pertaining to
27 actual project shall be given to CITY at the completion of the project. The CITY reserves the right to specify
28

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

10 6. STANDARD OF PERFORMANCE

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

15 7. INSURANCE REQUIRED

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

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

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

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

1 single limit per occurrence basis.

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

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

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

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

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

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

27 **(4) Verification of Coverage.** CONSULTANT shall furnish CITY with
28 certificates of insurance and the original endorsements effecting coverage required by this Agreement. The

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

7 8. SUSPENSION OF WORK

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

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

22 10. COMPLIANCE WITH CIVIL RIGHTS

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

24 A. **Equal Employment Opportunity.** In connection with the execution of this
25 AGREEMENT, CONSULTANT shall not discriminate against any employee or applicant for employment
26 because of race, religion, color, sex, or national origin. Such actions shall include, but not be limited to, the
27 following: employment, promotion, upgrading, demotion, or transfer; recruitment or recruitment advertising;
28

1 layoff or termination; rate of pay or other forms of compensation; and selection for training including
2 apprenticeship.

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

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

11 11. CONFLICT OF INTEREST

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

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

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

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

26 12. INDEPENDENT CONTRACTOR

27 In assuming and performing the services, CONSULTANT is an independent contractor and
28

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

6 13. COMPLIANCE WITH LAWS

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

10 14. CHOICE OF LAW

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

15 15. NON-WAIVER

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

20 16. ENFORCEABILITY; INTERPRETATION

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

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

Jeff Lewis, IT Director
Information Technology
City of Concord

1950 Parkside Drive
Concord, CA 94519
Phone: 925-671-3380
Fax: 925-671-3198

To CONSULTANT

*Fran Forney, Accounting
Quest Media & Supplies, Inc.
Sacramento, CA 95842
Phone: (916) 338-7070
Fax: (916) 338-3289*

21. TERM

The term of this AGREEMENT shall be from the date executed above through June 30, 2019, 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.

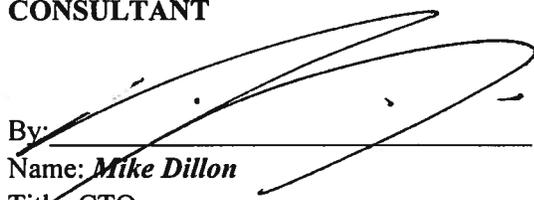
///

[Signatures follow on next page]

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

3
4 **CONSULTANT**

CITY OF CONCORD

5 By: 
6 Name: *Mike Dillon*
7 Title: CTO
8 Address: 5822 Roseville Rd.
 Sacramento, CA 95842

By: _____
Name: Valerie Barone
Title City Manager

9
10 Telephone: (916) 338-7070

Address: 1950 Parkside Drive, MS 01
Concord, CA 94519
Telephone: (925) 671-3175

11 APPROVED AS TO FORM:

ATTEST:

12
13 _____
14 City Attorney

City Clerk

15
16 Date: _____, 2016

17
18 FINANCE DIRECTOR'S CERTIFICATION:

19 Concord, California

20 Date: _____, 2016

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

23 THE SUM NOT TO EXCEED **\$250,000**. Account Code: various.

24
25 _____
26 Finance Director's Signature
27
28

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

1 **THIS AGREEMENT** made and entered into on February 3, 2016 by and between the City of Concord
2 (hereinafter "CITY"), located in the County of Contra Costa, State of California, and **QUORUM**
3 **TECHNOLOGIES** (hereinafter "CONSULTANT"), whose address is **2485 Natomas Park Drive, Suite 320,**
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 ● Microsoft Windows Applications
- 17 ● Cisco Network System
- 18 ● HP Server Systems
- 19 ● Microsoft Windows System
- 20 ● Wireless Technologies
- 21 ● Other as-needed services;
- 22 ●

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

27 CONSULTANT shall use its best efforts to perform and coordinate all activities in a timely
28

1 manner so that the projects will be completed according to the established project schedules.

2 2. AUTHORIZED REPRESENTATIVES

3 Authorized representatives shall represent CITY and CONSULTANT in all matters pertaining
4 to the services to be ordered by CITY or rendered by CONSULTANT under this Agreement except where
5 approval for the CITY is specifically required by the City Council. The CITY'S authorized representative shall
6 be the City IT Director. Said City IT Director is authorized to execute Task Orders on behalf of CITY,
7 including providing for CONSULTANT to be compensated not more than \$50,000 for each project. Task
8 Orders providing for more than \$50,000 compensation for one project shall be presented to the City Council for
9 its consideration and approval.

10 CONSULTANT authorized representative shall be *Binda Mangat, President/CEO*

11 3. COMPENSATION

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

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

22 4. INDEMNIFICATION

23 A. **For Design Professional Services Only.** Pursuant to California Civil Code Section
24 2782.8, CONSULTANT agrees to indemnify the CITY (including its officers, agents, employees and
25 volunteers) against liability for claims against the CITY that arise out of, pertain to, or relate to the negligence,
26 recklessness, or willful misconduct of CONSULTANT in the performance of this Agreement. The
27 CONSULTANT will reimburse the CITY for any expenditures, including reasonable attorney fees, incurred by
28

1 the CITY in defending against claims ultimately determined to arise out of, pertain to, or relate to the
2 negligence, recklessness, or willful misconduct of the CONSULTANT.

3 **B. For All Other Services.** CONSULTANT agrees to defend, indemnify and hold
4 harmless the CITY (including its officers, officials, employees, agents and volunteers) from and against any
5 and all claims, demands, actions, losses, damages, injuries, and liability (including all attorney's fees and other
6 litigation expenses) arising out of the CONSULTANT's performance under the terms of this Agreement. This
7 indemnification obligation on CONSULTANT'S part shall not apply to demands, actions, losses, damages,
8 injuries, and liability arising out of sole negligence or willful misconduct on the part of CITY.

9 5. OWNERSHIP AND MAINTENANCE OF DOCUMENTS

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

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

27 6. STANDARD OF PERFORMANCE

28

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

5 7. INSURANCE REQUIRED

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

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

12 **B. Automobile Liability Coverage.** CONSULTANT shall maintain automobile liability
13 insurance covering all vehicles used in the performance of this Agreement providing a one million dollar
14 (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage.

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19 single limit per occurrence basis.

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22 California Labor Code §3700, et seq. CONSULTANT shall, at all times, upon demand of the City, furnish
23 proof that Workers' Compensation Insurance is being maintained by it in force and effect in accordance with
24 the California Labor Code. The insurer shall also agree to waive all rights of subrogation against the CITY, its
25 officers, officials, employees and volunteers for losses arising from work performed by CONSULTANT for
26 CITY. This provision shall not apply upon written verification by CONSULTANT that CONSULTANT has
27 no employees.

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3 to be covered as an additional insured as respects: Liability arising out of activities performed by or on behalf
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5 The coverage shall contain no special limitations on the scope or protection afforded to CITY, its officers,
6 officials, employees, or volunteers.

7 Except for worker's compensation and professional liability insurance, the policies
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9 CITY. CONSULTANT shall also provide timely and prompt notice to CITY if CONSULTANT receives any
10 notice of cancellation or nonrenewal from its insurer.

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17 **(4) Verification of Coverage.** CONSULTANT shall furnish CITY with
18 certificates of insurance and the original endorsements effecting coverage required by this Agreement. The
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22 of the execution of this Agreement or before work commences. Such policies and certificates shall be in a form
23 approved by the City Attorney. CITY reserves the right to require complete certified copies of all required
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9 data, and other deliverables (“Work Materials”) prepared for the CITY prior to the effective date of such
10 termination, all of which shall become CITY’s sole property. After receipt of the Work Materials, CITY will
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17 following: employment, promotion, upgrading, demotion, or transfer; recruitment or recruitment advertising;
18 layoff or termination; rate of pay or other forms of compensation; and selection for training including
19 apprenticeship.

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

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

1 11. CONFLICT OF INTEREST

2 A. CONSULTANT covenants and represents that neither it, nor any officer or principal of
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5 Agreement. CONSULTANT further covenants that in the performance of the Agreement, no person having
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7 written consent of the CITY. CONSULTANT agrees to at all times avoid conflicts of interest, or the
8 appearance of any conflicts of interest, with the interests of the CITY in the performance of this Agreement.

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

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

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

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

23 13. COMPLIANCE WITH LAWS

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

27 14. CHOICE OF LAW

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

5 15. NON-WAIVER

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

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11 In the event that any of the provisions or portions of application of any of the provisions of the
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13 shall negotiate an equitable adjustment in the provisions of the AGREEMENT with a view toward affecting the
14 purpose of the AGREEMENT. The illegality or invalidity of any of the provisions or portions of application of
15 any of the provisions of the AGREEMENT shall not affect the legality or enforceability of the remaining
16 provisions or portions of application of any of the provisions of the AGREEMENT. This Agreement shall be
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18 party on the ground that said party was solely or primarily responsible for drafting the language to be
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21 The AGREEMENT contains the entire AGREEMENT and understanding between the parties
22 as to the subject matter of this AGREEMENT. It merges and supersedes all prior or contemporaneous
23 agreements, commitments, representation, writings, and discussions between CONSULTANT and CITY,
24 whether oral or written.

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26 VENTURE

27 CITY and CONSULTANT respectively, bind themselves, their successors, assigns, and legal
28

1 representatives to the terms and obligations of this Agreement. CONSULTANT shall not assign or transfer any
2 interest in the Agreement without the CITY's prior written consent, which consent shall be in the CITY's sole
3 discretion. Any attempted assignment or transfer in breach of this provision shall be void. This Agreement is
4 not intended and shall not be construed to create any third party benefit. This Agreement is not intended and
5 shall not be construed to create a joint venture or partnership between the parties. CONSULTANT, its officers,
6 employees and agents shall not have any power to bind or commit the CITY to any decision.

7 19. FINANCIAL RECORDS

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

11 20. NOTICES

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

17 To CITY

**Jeff Lewis, IT Director
Information Technology
City of Concord
1950 Parkside Drive
Concord, CA 94519
Phone: 925-671-3380
Fax: 925-671-3198**

21 To CONSULTANT

***Binda Mangat, President/CEO
Quorum Technologies, Inc.
Sacramento, CA 95833
Phone: 916-669-5577
Fax: 916-441-3641***

22 21. TERM

23 The term of this AGREEMENT shall be from the date executed above through June 30, 2019,
24 with the option of one one-year extension upon mutual agreement by both CITY and CONSULTANT. The
25
26
27
28

1 City Manager is authorized to approve the extension.

2 22. NON-LIABILITY

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

7 23. EXECUTION

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

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

15 ///

16 *[Signatures follow on next page]*

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

3
4 **CONSULTANT**

CITY OF CONCORD

5 By: 

By: _____

6 Name: ***Binda Mangat***
7 Title: President/CEO
8 Address: 2485 Natomas Park Dr, Ste 320, Sacramento, CA 95833
9 Telephone: 916-669-5577

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

10
11 APPROVED AS TO FORM:

ATTEST:

12
13 _____
City Attorney

City Clerk

14
15 Date: _____, 2016

16
17 **FINANCE DIRECTOR'S CERTIFICATION:**

18 Concord, California

19 Date: _____, 2016

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

22 THE SUM NOT TO EXCEED **\$250,000**. Account Code: various.

23
24 _____
25 Finance Director's Signature

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

1 **THIS AGREEMENT** made and entered into on February 3, 2016 by and between the City of Concord
2 (hereinafter "CITY"), located in the County of Contra Costa, State of California, and **RPI CONSULTANTS LLC**
3 (hereinafter "CONSULTANT"), whose address is **101 N Haven St, Suite 201, Baltimore, MD 21224**

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 provision
7 by CONSULTANT to CITY for professional services as further described herein, upon the terms and conditions
8 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; such
13 services shall be defined, scheduled, and authorized in subsequent Task Orders. Services may include, but not be
14 limited to:

- 15 ● Lawson ERP Support
- 16 ● Other as-needed services;

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

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

22 2. AUTHORIZED REPRESENTATIVES

23 Authorized representatives shall represent CITY and CONSULTANT in all matters pertaining
24 to the services to be ordered by CITY or rendered by CONSULTANT under this Agreement except where
25 approval for the CITY is specifically required by the City Council. The CITY'S authorized representative shall
26 be the City IT Director. Said City IT Director is authorized to execute Task Orders on behalf of CITY, including
27 providing for CONSULTANT to be compensated not more than **\$50,000** for each project. Task Orders providing
28

1 for more than **\$50,000** compensation for one project shall be presented to the City Council for its consideration
2 and approval.

3 CONSULTANT authorized representative shall be **Larry Mattson, Solutions Sales Manager**

4 3. COMPENSATION

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

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

15 4. INDEMNIFICATION

16 A. **For Design Professional Services Only.** Pursuant to California Civil Code Section
17 2782.8, CONSULTANT agrees to indemnify the CITY (including its officers, agents, employees and volunteers)
18 against liability for claims against the CITY that arise out of, pertain to, or relate to the negligence, recklessness,
19 or willful misconduct of CONSULTANT in the performance of this Agreement. The CONSULTANT will
20 reimburse the CITY for any expenditures, including reasonable attorney fees, incurred by the CITY in defending
21 against claims ultimately determined to arise out of, pertain to, or relate to the negligence, recklessness, or willful
22 misconduct of the CONSULTANT.

23 B. **For All Other Services.** CONSULTANT agrees to defend, indemnify and hold harmless
24 the CITY (including its officers, officials, employees, agents and volunteers) from and against any and all claims,
25 demands, actions, losses, damages, injuries, and liability (including all attorney's fees and other litigation
26 expenses) arising out of the CONSULTANT's performance under the terms of this Agreement. This
27 indemnification obligation on CONSULTANT'S part shall not apply to demands, actions, losses, damages,
28

1 injuries, and liability arising out of sole negligence or willful misconduct on the part of CITY.

2 5. OWNERSHIP AND MAINTENANCE OF DOCUMENTS

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

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

20 6. STANDARD OF PERFORMANCE

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

25 7. INSURANCE REQUIRED

26 CONSULTANT shall, at its own expense, procure and maintain in full force at all times during
27 the term of this AGREEMENT the following insurance:
28

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

5 **B. Automobile Liability Coverage.** CONSULTANT shall maintain automobile liability
6 insurance covering all vehicles used in the performance of this Agreement providing a one million dollar
7 (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage.

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

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

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

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

28 Except for worker's compensation and professional liability insurance, the policies

1 mentioned in this subsection shall name CITY as an additional insured and provide for notice of cancellation to
2 CITY. CONSULTANT shall also provide timely and prompt notice to CITY if CONSULTANT receives any
3 notice of cancellation or nonrenewal from its insurer.

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

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

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

18 8. SUSPENSION OF WORK

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

25 9. TERMINATION

26 CITY may terminate this Agreement for any reason upon ten (10) days written notice to the other
27 party. CITY may terminate the Agreement upon five (5) days written notice if CONSULTANT breaches this
28

1 Agreement. In the event of any termination, CONSULTANT shall promptly deliver to the CITY any and all
2 finished and unfinished reports or other written, recorded, photographic, or visual materials, documents, data,
3 and other deliverables ("Work Materials") prepared for the CITY prior to the effective date of such termination,
4 all of which shall become CITY's sole property. After receipt of the Work Materials, CITY will pay
5 CONSULTANT for the services performed as of the effective date of the termination.

6 10. COMPLIANCE WITH CIVIL RIGHTS

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

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

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

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

22 11. CONFLICT OF INTEREST

23 A. CONSULTANT covenants and represents that neither it, nor any officer or principal of
24 its firm, has, or shall acquire any interest, directly or indirectly, which would conflict in any manner with the
25 interests of CITY or which would in any way hinder CONSULTANT's performance of services under this
26 Agreement. CONSULTANT further covenants that in the performance of the Agreement, no person having any
27 such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written
28

1 consent of the CITY. CONSULTANT agrees to at all times avoid conflicts of interest, or the appearance of any
2 conflicts of interest, with the interests of the CITY in the performance of this Agreement.

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

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

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

10 12. INDEPENDENT CONTRACTOR

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

16 13. COMPLIANCE WITH LAWS

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

20 14. CHOICE OF LAW

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

25 15. NON-WAIVER

26 The waiver by either party of any breach of any term, covenant, or condition contained in the
27 AGREEMENT, or any default in their performance of any obligations under the AGREEMENT shall not be
28

1 deemed to be a waiver of any other breach or default of the same or any other term, covenant, condition, or
2 obligation, nor shall any waiver of any incident of breach of default constitute a continuing waiver of same.

3 16. ENFORCEABILITY; INTERPRETATION

4 In the event that any of the provisions or portions of application of any of the provisions of the
5 AGREEMENT are held to be illegal or invalid by a court of competent jurisdiction, CITY and CONSULTANT
6 shall negotiate an equitable adjustment in the provisions of the AGREEMENT with a view toward affecting the
7 purpose of the AGREEMENT. The illegality or invalidity of any of the provisions or portions of application of
8 any of the provisions of the AGREEMENT shall not affect the legality or enforceability of the remaining
9 provisions or portions of application of any of the provisions of the AGREEMENT. This Agreement shall be
10 interpreted as though it was a product of a joint drafting effort and no provisions shall be interpreted against a
11 party on the ground that said party was solely or primarily responsible for drafting the language to be interpreted.

12 17. INTEGRATION

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

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

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

26 19. FINANCIAL RECORDS

27 Records of CONSULTANT's direct labor costs, payroll costs, and reimbursable expenses
28

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

3 20. NOTICES

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

9 To CITY

Jeff Lewis, IT Director
Information Technology
City of Concord
1950 Parkside Drive
Concord, CA 94519
Phone: 925-671-3380
Fax: 925-671-3198

13 To CONSULTANT

Barbara McPherson, Office Manager
RPIConsultants,LLC

101 N Haven St, Suite 201
Baltimore, MD 21224

Phone: 410-276-6090
Fax: 800-375-6872

19 21. TERM

20 The term of this AGREEMENT shall be from the date executed above through June 30, 2019,
21 with the option of one one-year extension upon mutual agreement by both CITY and CONSULTANT. The City
22 Manager is authorized to approve the extension.

23 22. NON-LIABILITY

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

28 23. EXECUTION

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT made and entered into on February 3, 2016 by and between the City of Concord (hereinafter "CITY"), located in the County of Contra Costa, State of California, and **SPATIAL FOCUS LLC** (hereinafter "CONSULTANT"), whose address is **318 Patterson Ave, Scottsdale, GA 30079**

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

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

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

1. SERVICES

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

- GIS Technologies
- Other as-needed services;

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

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

2. AUTHORIZED REPRESENTATIVES

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

1 including providing for CONSULTANT to be compensated not more than **\$50,000** for each project. Task
2 Orders providing for more than **\$50,000** compensation for one project shall be presented to the City Council for
3 its consideration and approval.

4 CONSULTANT authorized representative shall be *Sara W. Yurman, Co-owner/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.

16 4. INDEMNIFICATION

17 A. **For Design Professional Services Only.** Pursuant to California Civil Code Section
18 2782.8, CONSULTANT agrees to indemnify the CITY (including its officers, agents, employees and
19 volunteers) against liability for claims against the CITY that arise out of, pertain to, or relate to the negligence,
20 recklessness, or willful misconduct of CONSULTANT in the performance of this Agreement. The
21 CONSULTANT will reimburse the CITY for any expenditures, including reasonable attorney fees, incurred by
22 the CITY in defending against claims ultimately determined to arise out of, pertain to, or relate to the
23 negligence, recklessness, or willful misconduct of the CONSULTANT.

24 B. **For All Other Services.** CONSULTANT agrees to defend, indemnify and hold
25 harmless the CITY (including its officers, officials, employees, agents and volunteers) from and against any
26 and all claims, demands, actions, losses, damages, injuries, and liability (including all attorney's fees and other
27 litigation expenses) arising out of the CONSULTANT's performance under the terms of this Agreement. This
28

1 indemnification obligation on CONSULTANT'S part shall not apply to demands, actions, losses, damages,
2 injuries, and liability arising out of sole negligence or willful misconduct on the part of CITY.

3 5. OWNERSHIP AND MAINTENANCE OF DOCUMENTS

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

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

21 6. STANDARD OF PERFORMANCE

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

26 7. INSURANCE REQUIRED

27 CONSULTANT shall, at its own expense, procure and maintain in full force at all times during
28

1 the term of this AGREEMENT the following insurance:

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

6 **B. Automobile Liability Coverage.** CONSULTANT shall maintain automobile liability
7 insurance covering all vehicles used in the performance of this Agreement providing a one million dollar
8 (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage.

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

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

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

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

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

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

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

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

19 8. SUSPENSION OF WORK

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

26 9. TERMINATION

27 CITY may terminate this Agreement for any reason upon ten (10) days written notice to the
28 other party. CITY may terminate the Agreement upon five (5) days written notice if CONSULTANT breaches

1 this Agreement. In the event of any termination, CONSULTANT shall promptly deliver to the CITY any and
2 all finished and unfinished reports or other written, recorded, photographic, or visual materials, documents,
3 data, and other deliverables ("Work Materials") prepared for the CITY prior to the effective date of such
4 termination, all of which shall become CITY's sole property. After receipt of the Work Materials, CITY will
5 pay CONSULTANT for the services performed as of the effective date of the termination.

6 10. COMPLIANCE WITH CIVIL RIGHTS

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

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

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

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

22 11. CONFLICT OF INTEREST

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

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

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

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

10 12. INDEPENDENT CONTRACTOR

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

17 13. COMPLIANCE WITH LAWS

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

21 14. CHOICE OF LAW

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

26 15. NON-WAIVER

27 The waiver by either party of any breach of any term, covenant, or condition contained in the
28

1 AGREEMENT, or any default in their performance of any obligations under the AGREEMENT shall not be
2 deemed to be a waiver of any other breach or default of the same or any other term, covenant, condition, or
3 obligation, nor shall any waiver of any incident of breach of default constitute a continuing waiver of same.

4 16. ENFORCEABILITY; INTERPRETATION

5 In the event that any of the provisions or portions of application of any of the provisions of the
6 AGREEMENT are held to be illegal or invalid by a court of competent jurisdiction, CITY and CONSULTANT
7 shall negotiate an equitable adjustment in the provisions of the AGREEMENT with a view toward affecting the
8 purpose of the AGREEMENT. The illegality or invalidity of any of the provisions or portions of application of
9 any of the provisions of the AGREEMENT shall not affect the legality or enforceability of the remaining
10 provisions or portions of application of any of the provisions of the AGREEMENT. This Agreement shall be
11 interpreted as though it was a product of a joint drafting effort and no provisions shall be interpreted against a
12 party on the ground that said party was solely or primarily responsible for drafting the language to be
13 interpreted.

14 17. INTEGRATION

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

19 18. SUCCESSORS AND ASSIGNS: NO THIRD PARTY BENEFICIARIES; NO JOINT
20 VENTURE

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

1 19. FINANCIAL RECORDS

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

5 20. NOTICES

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

11 To CITY

**Jeff Lewis, IT Director
Information Technology
City of Concord
1950 Parkside Drive
Concord, CA 94519
Phone: 925-671-3380
Fax: 925-671-3198**

15 To CONSULTANT

***Sara Yurman, Co-Owner/Manager]
Spatial Focus LLC
P.O. Box 683, Avondale Estates, GA 30002 (physical
address 318 Patterson Ave., Scottdale, GA 30079)***

**Phone: 404-378-0989
Fax: 404-806-6257**

20 21. TERM

21 The term of this AGREEMENT shall be from the date executed above through June 30, 2019,
22 with the option of one one-year extension upon mutual agreement by both CITY and CONSULTANT. The
23 City Manager is authorized to approve the extension.

24 22. NON-LIABILITY

25 No member of the CITY and no other officer, employee or agent of the CITY shall be
26 personally liable to CONSULTANT or otherwise in the event of any default or breach of the CITY, or for any
27 amount which may become due to CONSULTANT or any successor in interest, or for any obligations directly
28

1 or indirectly incurred under the terms of this Agreement.

2 23. EXECUTION

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

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

10 ///

11 *[Signatures follow on next page]*

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

3
4 **CONSULTANT**

CITY OF CONCORD

5 By: Martha M. Wells
6 Name: **Martha M Wells**
7 Title: Co-Owner
8 Address: 6813 40th Ave.
University Park, MD
MS 01
9 Telephone: 205-616-0205

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

11 APPROVED AS TO FORM:

ATTEST:

12
13 _____
14 City Attorney

_____ City Clerk

15 Date: _____, 2016

17 **FINANCE DIRECTOR'S CERTIFICATION:**

18 Concord, California

19 Date: _____, 2016

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

23 THE SUM NOT TO EXCEED **\$250,000**. Account Code: various.

24
25 _____
Finance Director's Signature

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

1 **THIS AGREEMENT** made and entered into on February 3, 2016 by and between the City of Concord
2 (hereinafter "CITY"), located in the County of Contra Costa, State of California, and **THOR, INC** (hereinafter
3 "CONSULTANT"), whose address is *840 Apollo St., #225, El Segundo, CA 90245*

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 ● Network Cabling
- 16 ● Lawson ERP Support
- 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 IT Director. Said City IT Director is authorized to execute Task Orders on behalf of CITY,
2 including providing for CONSULTANT to be compensated not more than **\$50,000** for each project. Task
3 Orders providing for more than **\$50,000** compensation for one project shall be presented to the City Council for
4 its consideration and approval.

5 CONSULTANT authorized representative shall be **David Rains, General 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 A. **For Design Professional Services Only.** Pursuant to California Civil Code Section
19 2782.8, CONSULTANT agrees to indemnify the CITY (including its officers, agents, employees and
20 volunteers) against liability for claims against the CITY that arise out of, pertain to, or relate to the negligence,
21 recklessness, or willful misconduct of CONSULTANT in the performance of this Agreement. The
22 CONSULTANT will reimburse the CITY for any expenditures, including reasonable attorney fees, incurred by
23 the CITY in defending against claims ultimately determined to arise out of, pertain to, or relate to the
24 negligence, recklessness, or willful misconduct of the CONSULTANT.

25 B. **For All Other Services.** CONSULTANT agrees to defend, indemnify and hold
26 harmless the CITY (including its officers, officials, employees, agents and volunteers) from and against any
27 and all claims, demands, actions, losses, damages, injuries, and liability (including all attorney's fees and other
28

1 litigation expenses) arising out of the CONSULTANT's performance under the terms of this Agreement. This
2 indemnification obligation on CONSULTANT'S part shall not apply to demands, actions, losses, damages,
3 injuries, and liability arising out of sole negligence or willful misconduct on the part of CITY.

4 5. OWNERSHIP AND MAINTENANCE OF DOCUMENTS

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

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

22 6. STANDARD OF PERFORMANCE

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

27 7. INSURANCE REQUIRED

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

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

7 **B. Automobile Liability Coverage.** CONSULTANT shall maintain automobile liability
8 insurance covering all vehicles used in the performance of this Agreement providing a one million dollar
9 (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage.

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

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

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

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

1 officials, employees, or volunteers.

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

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

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

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25 services, or expenses, except for reasonable administration expenses, incurred by CONSULTANT by reason of
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19 work to be performed under a subcontract including procurement of materials or leases of equipment, each
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21 under this AGREEMENT and the regulations relative to nondiscrimination on the grounds of race, religion,
22 color, sex, or national origin.

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2 written consent of the CITY. CONSULTANT agrees to at all times avoid conflicts of interest, or the
3 appearance of any conflicts of interest, with the interests of the CITY in the performance of this Agreement.

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5 Reform Act because CONSULTANT:

6 (1) Will conduct research and arrive at conclusions with respect to its rendition of
7 information, advice, recommendation or counsel independent of the control and direction of the CITY or of any
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21 performance of the services.

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12 To CITY

Jeff Lewis, IT Director
Information Technology
City of Concord
1950 Parkside Drive
Concord, CA 94519
Phone: 925-671-3380
Fax: 925-671-3198

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David Rains, General Manager
Thor, Inc.
840 Apollo St, #225, El Segundo, CA 90245
Phone: 310-727-5623
Fax: 310-919-1151

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22 with the option of one one-year extension upon mutual agreement by both CITY and CONSULTANT. The
23 City Manager is authorized to approve the extension.

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10 ///

11 *[Signatures follow on next page]*

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

3
4 **CONSULTANT**

CITY OF CONCORD

5 By: 
6 Name: **David Rains**
7 Title: General Manager
8 Address: 840 Apollo St., #225 El Segundo CA 90245
9 Telephone: 310-727-5623

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

10
11 APPROVED AS TO FORM:

ATTEST:

12
13 _____
City Attorney

City Clerk

14
15 Date: _____, 2016

16
17 **FINANCE DIRECTOR'S CERTIFICATION:**

18 Concord, California

19 Date: _____, 2016

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

22 THE SUM NOT TO EXCEED **\$250,000**. Account Code: various.

23
24 _____
25 Finance Director's Signature
26
27
28

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

1 **THIS AGREEMENT** made and entered into on February 3, 2016 by and between the City of Concord
2 (hereinafter "CITY"), located in the County of Contra Costa, State of California, and **TRUEPOINT**
3 **SOLUTIONS** (hereinafter "CONSULTANT"), whose address is **3262 Penryn Road, 100-B, Loomis, CA**
4 **95650.**

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 ● Accela Systems Support
- 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 IT Director. Said City IT Director is authorized to execute Task Orders on behalf of CITY,
2 including providing for CONSULTANT to be compensated not more than **\$50,000** for each project. Task
3 Orders providing for more than **\$50,000** compensation for one project shall be presented to the City Council for
4 its consideration and approval.

5 CONSULTANT authorized representative shall be ***Kent Johnson, CEO***

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 A. **For Design Professional Services Only.** Pursuant to California Civil Code Section
19 2782.8, CONSULTANT agrees to indemnify the CITY (including its officers, agents, employees and
20 volunteers) against liability for claims against the CITY that arise out of, pertain to, or relate to the negligence,
21 recklessness, or willful misconduct of CONSULTANT in the performance of this Agreement. The
22 CONSULTANT will reimburse the CITY for any expenditures, including reasonable attorney fees, incurred by
23 the CITY in defending against claims ultimately determined to arise out of, pertain to, or relate to the
24 negligence, recklessness, or willful misconduct of the CONSULTANT.

25 B. **For All Other Services.** CONSULTANT agrees to defend, indemnify and hold
26 harmless the CITY (including its officers, officials, employees, agents and volunteers) from and against any
27 and all claims, demands, actions, losses, damages, injuries, and liability (including all attorney's fees and other
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1 litigation expenses) arising out of the CONSULTANT's performance under the terms of this Agreement. This
2 indemnification obligation on CONSULTANT'S part shall not apply to demands, actions, losses, damages,
3 injuries, and liability arising out of sole negligence or willful misconduct on the part of CITY.

4 5. OWNERSHIP AND MAINTENANCE OF DOCUMENTS

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

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

22 6. STANDARD OF PERFORMANCE

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

27 7. INSURANCE REQUIRED

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

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

7 **B. Automobile Liability Coverage.** CONSULTANT shall maintain automobile liability
8 insurance covering all vehicles used in the performance of this Agreement providing a one million dollar
9 (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage.

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

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

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

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

1 officials, employees, or volunteers.

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

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

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

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

20 8. SUSPENSION OF WORK

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

27 9. TERMINATION

28 CITY may terminate this Agreement for any reason upon ten (10) days written notice to the

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

7 10. COMPLIANCE WITH CIVIL RIGHTS

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

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

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

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

23 11. CONFLICT OF INTEREST

24 **A.** CONSULTANT covenants and represents that neither it, nor any officer or principal of
25 its firm, has, or shall acquire any interest, directly or indirectly, which would conflict in any manner with the
26 interests of CITY or which would in any way hinder CONSULTANT's performance of services under this
27 Agreement. CONSULTANT further covenants that in the performance of the Agreement, no person having
28

1 any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express
2 written consent of the CITY. CONSULTANT agrees to at all times avoid conflicts of interest, or the
3 appearance of any conflicts of interest, with the interests of the CITY in the performance of this Agreement.

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

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

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

11 12. INDEPENDENT CONTRACTOR

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

18 13. COMPLIANCE WITH LAWS

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

22 14. CHOICE OF LAW

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

27 15. NON-WAIVER

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

5 16. ENFORCEABILITY; INTERPRETATION

6 In the event that any of the provisions or portions of application of any of the provisions of the
7 AGREEMENT are held to be illegal or invalid by a court of competent jurisdiction, CITY and CONSULTANT
8 shall negotiate an equitable adjustment in the provisions of the AGREEMENT with a view toward affecting the
9 purpose of the AGREEMENT. The illegality or invalidity of any of the provisions or portions of application of
10 any of the provisions of the AGREEMENT shall not affect the legality or enforceability of the remaining
11 provisions or portions of application of any of the provisions of the AGREEMENT. This Agreement shall be
12 interpreted as though it was a product of a joint drafting effort and no provisions shall be interpreted against a
13 party on the ground that said party was solely or primarily responsible for drafting the language to be
14 interpreted.

15 17. INTEGRATION

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

20 18. SUCCESSORS AND ASSIGNS: NO THIRD PARTY BENEFICIARIES; NO JOINT
21 VENTURE

22 CITY and CONSULTANT respectively, bind themselves, their successors, assigns, and legal
23 representatives to the terms and obligations of this Agreement. CONSULTANT shall not assign or transfer any
24 interest in the Agreement without the CITY's prior written consent, which consent shall be in the CITY's sole
25 discretion. Any attempted assignment or transfer in breach of this provision shall be void. This Agreement is
26 not intended and shall not be construed to create any third party benefit. This Agreement is not intended and
27 shall not be construed to create a joint venture or partnership between the parties. CONSULTANT, its officers,
28

1 employees and agents shall not have any power to bind or commit the CITY to any decision.

2 19. FINANCIAL RECORDS

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

6 20. NOTICES

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

12 To CITY

Jeff Lewis, IT Director
Information Technology
City of Concord
1950 Parkside Drive
Concord, CA 94519
Phone: 925-671-3380
Fax: 925-671-3198

16 To CONSULTANT

Kent Johnson, CEO
TruePoint Solutions, LLC
3262 Penryn Rd, 100-B Loomis, CA 95650

Phone: 916-259-1293
Fax: 916-256-1975

21 21. TERM

22 The term of this AGREEMENT shall be from the date executed above through June 30, 2019,
23 with the option of one one-year extension upon mutual agreement by both CITY and CONSULTANT. The
24 City Manager is authorized to approve the extension.

25 22. NON-LIABILITY

26 No member of the CITY and no other officer, employee or agent of the CITY shall be
27 personally liable to CONSULTANT or otherwise in the event of any default or breach of the CITY, or for any
28 amount which may become due to CONSULTANT or any successor in interest, or for any obligations directly

1 or indirectly incurred under the terms of this Agreement.

2 23. EXECUTION

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

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

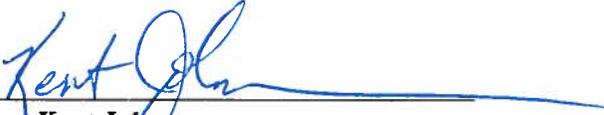
10 ///

11 *[Signatures follow on next page]*

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

3
4 **CONSULTANT**

CITY OF CONCORD

5 By: 
6 Name: **Kent Johnson**
7 Title: CEO
8 Address: 3262 Penryn Rd, 100-B Loomis, CA 95650
9 MS 01
10 Telephone: 916-259-1293

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

11 APPROVED AS TO FORM:

ATTEST:

12
13 _____
City Attorney

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15 Date: _____, 2016

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17 FINANCE DIRECTOR'S CERTIFICATION:

18 Concord, California

19 Date: _____, 2016

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

22 THE SUM NOT TO EXCEED **\$250,000**. Account Code: various.

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24 _____
25 Finance Director's Signature

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

1 **THIS AGREEMENT** made and entered into on February 3, 2016 by and between the City of Concord
2 (hereinafter "CITY"), located in the County of Contra Costa, State of California, and *VIVA USA, INC.*
3 (hereinafter "CONSULTANT"), whose address is *3601 Algonquin Rd. Suite 425 Rolling Meadows, IL 60008*

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 ● GIS Technologies
- 16 ● Business Intelligence Systems
- 17 ● Web Systems
- 18 ● Network Cabling
- 19 ● General Project Management
- 20 ● Accela System Support
- 21 ● Other as-needed services;

22 CONSULTANT shall be an independent contractor and shall have responsibility for and
23 control over the details and means of providing its services under this AGREEMENT. CONSULTANT agrees
24 that its services shall be performed with due diligence and in accordance with generally accepted engineering
25 practices.
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1 manner so that the projects will be completed according to the established project schedules.

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4 to the services to be ordered by CITY or rendered by CONSULTANT under this Agreement except where
5 approval for the CITY is specifically required by the City Council. The CITY'S authorized representative shall
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7 including providing for CONSULTANT to be compensated not more than \$50,000 for each project. Task
8 Orders providing for more than \$50,000 compensation for one project shall be presented to the City Council for
9 its consideration and approval.

10 CONSULTANT authorized representative shall be *Ilango Radhakrishnan, Vice President*

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

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16 include adequate documentation demonstrating work performed during the billing period and shall conform to
17 Federal Funding invoicing requirements, if applicable. It is intended that payments to CONSULTANT will be
18 made by CITY within thirty (30) days of receipt of invoice. Consultant's failure to secure CITY's written
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13 arrangement, or self-insurance maintained by CITY, its officers, officials, employees, or volunteers shall be in
14 excess of CONSULTANT'S insurance and shall not contribute with it.

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

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

25 8. SUSPENSION OF WORK

26 CITY may, at any time, by ten (10) days' written notice, suspend further performance by
27 CONSULTANT. All suspensions shall extend the time schedule for performance in a mutually satisfactory
28 manner, and CONSULTANT shall be paid for services performed and reimbursable expenses incurred prior to

1 the suspension date. During the period of suspension, CONSULTANT shall not receive any payment for
2 services, or expenses, except for reasonable administration expenses, incurred by CONSULTANT by reason of
3 such suspension.

4 9. TERMINATION

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

12 10. COMPLIANCE WITH CIVIL RIGHTS

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

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

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

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

1 11. CONFLICT OF INTEREST

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

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

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

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

16 12. INDEPENDENT CONTRACTOR

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

23 13. COMPLIANCE WITH LAWS

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

27 14. CHOICE OF LAW

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

5 15. NON-WAIVER

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

10 16. ENFORCEABILITY; INTERPRETATION

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

20 17. INTEGRATION

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

25 18. SUCCESSORS AND ASSIGNS; NO THIRD PARTY BENEFICIARIES; NO JOINT
26 VENTURE

27 CITY and CONSULTANT respectively, bind themselves, their successors, assigns, and legal
28

1 representatives to the terms and obligations of this Agreement. CONSULTANT shall not assign or transfer any
2 interest in the Agreement without the CITY's prior written consent, which consent shall be in the CITY's sole
3 discretion. Any attempted assignment or transfer in breach of this provision shall be void. This Agreement is
4 not intended and shall not be construed to create any third party benefit. This Agreement is not intended and
5 shall not be construed to create a joint venture or partnership between the parties. CONSULTANT, its officers,
6 employees and agents shall not have any power to bind or commit the CITY to any decision.

7 19. FINANCIAL RECORDS

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

11 20. NOTICES

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

17 To CITY

Jeff Lewis, IT Director
Information Technology
City of Concord
1950 Parkside Drive
Concord, CA 94519
Phone: 925-671-3380
Fax: 925-671-3198

21 To CONSULTANT

Ilango Radhakrishnan, Vice President
Viva USA, Inc.
3601 Algonquin Rd. Suite 425
Rolling Meadows, IL 60008

Phone: 847-368-0860 ext. 223
Fax: 847-483-1317

26 21. TERM

27 The term of this AGREEMENT shall be from the date executed above through June 30, 2019,
28

1 with the option of one one-year extension upon mutual agreement by both CITY and CONSULTANT. The
2 City Manager is authorized to approve the extension.

3 22. NON-LIABILITY

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

8 23. EXECUTION

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

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

16 ///

17 [Signatures follow on next page]

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

3 **CONSULTANT**

CITY OF CONCORD

4 By:  _____

By: _____

5 Name: *Ilango Radhakrishnan*
6 Title: Vice President
7 Address: 3601 Algonquin Rd. Suite 425
8 Rolling Meadows, IL 60008
9 MS 01
Telephone: 847-368-0860 ext. 223

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

10 APPROVED AS TO FORM:

ATTEST:

11 _____
12 City Attorney

13 Date: _____, 2016

14 FINANCE DIRECTOR'S CERTIFICATION:

15 Concord, California

16 Date: _____, 2016

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 NOT TO EXCEED *\$250,000*. Account Code: various.

21 _____
22 Finance Director's Signature

**Responses by Discipline with Vendors
Rated above Average in Each Category**

IT Discipline	Vendors Rated Above Average by Discipline
Accela System Support	Interwest Consulting Group TruePoint Solutions VIVA, Inc.
Business Intelligence Systems	Ciber Interwest Consulting Group Robert Half International VIVA, Inc.
Cisco Network System	AMS.NET Apex Technology Management, Inc Botts Strategic Solutions NetXperts, Inc. Nexus Connected GovEd Quest Systems (Questsys) Quorum Technologies
Cisco VOIP	AMS.NET Botts Strategic Solutions NetXperts, Inc. Quest Systems (Questsys) Robert Half International
Citrix Systems	Axiom Technologies LLC Entisys Solutions Inc. Quest Systems (Questsys) Robert Half International
General Project Management	Nexus Connected GovEd Quest Systems (Questsys) Robert Half International VIVA, Inc.
GIS Technologies	Ciber Geographic Technologies Group Spatial Focus LLC VIVA, Inc.
HP Server Systems	AMS.NET Axiom Technologies LLC Entisys Solutions Inc.

	Nexus Connected GovEd Quest Systems (Questsys) Quorum Technologies Robert Half International
Lawson ERP Support	Ciber Robert Half International RPI Consultants LLC THOR, Inc.
Microsoft Windows Applications	Axiom Technologies LLC Entisys Solutions Inc. NetXperts, Inc. Nexus Connected GovEd Quest Systems (Questsys) Quorum Technologies Robert Half International
Microsoft Windows System	AMS.NET Apex Technology Management, Inc Axiom Technologies LLC Entisys Solutions Inc. NetXperts, Inc. Nexus Connected GovEd Precision IT Consulting Quest Systems (Questsys) Quorum Technologies Robert Half International
Net App Storage Systems	Axiom Technologies LLC Entisys Solutions Inc. Nexus Connected GovEd Quest Systems (Questsys)
Network Cabling	Kimley-Horn & Associates Quest Systems (Questsys) THOR, Inc. VIVA, Inc.
	Botts Strategic Solutions Nexus Connected GovEd Quest Systems (Questsys) Robert Half International
VMware	AMS.NET Axiom Technologies LLC Entisys Solutions Inc. NetXperts, Inc. Nexus Connected GovEd

	Precision IT Consulting
	Quest Systems (Questsys)
Web Systems	Ciber
	Quest Systems (Questsys)
	Robert Half International
	VIVA, Inc.
Wireless Technologies	AMS.NET
	Botts Strategic Solutions
	NetXperts, Inc.
	Quest Systems (Questsys)
	Quorum Technologies