

**REPORT TO MAYOR AND COUNCIL**

**TO THE HONORABLE MAYOR AND COUNCIL:**

DATE: July 14, 2015

**SUBJECT: APPROVE THIRTY-THREE (33) MASTER SERVICES AGREEMENTS FOR VARIOUS CONSULTANT SERVICES FOR CAPITAL IMPROVEMENT PROJECTS (NO EXPENDITURES ARE AUTHORIZED BY THESE AGREEMENTS); AND AUTHORIZE THE CITY MANAGER TO EXECUTE THE AGREEMENTS**

**Report in Brief**

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

Master Services Agreements allow staff to utilize pre-approved consultants when a design and/or construction project that is approved and funded by the City requires reliance on an outside consultant. Having a list of pre-qualified consultants saves time on project delivery and reduces staff workloads. Master Service Agreements do not authorize or assign work to the firms. It is estimated that the use of Master Services Agreements will save the City over \$100,000 this year alone in the staff time that would otherwise be spent requesting and evaluating multiple proposals and issuing and processing contracts for each small project or need.

Assigning work under a Master Service Agreement is done through a project-specific "Task Order" and all Task Orders must follow the Council's approved procurement Resolution (15-44). Each "Task Order" has a clearly defined scope of work, project cost, and delivery schedule and can only be issued for funded projects, which are typically included in the approved Capital Improvement Program. With the Council's approval and City Manager's execution of the Master Services Agreements, the City Engineer is authorized to issue Task Orders up to \$50,000. Task Orders with compensation greater than \$50,000 would be reviewed and approved by the City Council. The proposed Master Services Agreements would expire on June 30, 2017, with the option for a mutually agreed upon one-year extension. The Master Service Agreement also limits the maximum annual cumulative value of work performed through all assigned Task Orders to \$250,000. It is clear to all of the proposed firms that are recommended for a Master Service Agreement that the agreement does not guarantee any future work with the City. The City Attorney's office has reviewed the 33 proposed Master Services Agreements attached to this report. The Master Services Agreement process has been used successfully for the past 6 years.

**APPROVE THIRTY-THREE (33) MASTER SERVICES AGREEMENTS FOR  
VARIOUS CONSULTANT SERVICES; AND AUTHORIZING THE CITY  
MANAGER TO EXECUTE THE AGREEMENTS**

July 14, 2015

Page 2

On July 2<sup>nd</sup> the Council's Ad Hoc Committee on Contracts (Councilmembers Helix and Leone) met with staff and discussed the Master Service Agreements being brought forward with this report. After completing their review, they directed staff to bring the Agreements to the full Council with a recommendation for approval.

**Background**

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

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

The purpose of the MSA process is to simplify and accelerate the delivery of small to medium-sized projects by pre-qualifying consultants and establishing a contractual relationship between the City and consulting firms. The use of these consultant firms is needed by the City as they provide specialized expertise and/or professional experience that is needed for certain projects, but is not within the skill set or capacity of existing City staff. Pre-qualifying consultants accelerates project schedules by at least one month and probably more. The MSA process is used by other cities and is considered a best practice.

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. For each project, staff will select a consultant based on their qualifications, availability, and the specific needs of the project.

Under the proposed Master Service Agreements, the City Engineer is authorized to approve up to \$50,000 for a Task Order. Task Orders with compensation of more than \$50,000 would be brought to the City Council for consideration. The proposed MSAs will all expire on June 30, 2017, with the option for a one-year extension upon mutual agreement. None of the proposed MSAs will be active longer than a three year period. Each Task Order requires review and clearance by the City Attorney and the Finance Director, along with approval by the City Engineer if the work value is under \$50,000 and the City Council if the work value is over \$50,000. Under the Master Service Agreements, the total cumulative annual value of services provided 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.

**APPROVE THIRTY-THREE (33) MASTER SERVICES AGREEMENTS FOR  
VARIOUS CONSULTANT SERVICES; AND AUTHORIZING THE CITY  
MANAGER TO EXECUTE THE AGREEMENTS**

July 14, 2015

Page 3

To identify firms that desired to pre-qualify for work through a Master Service Agreement, city staff issued a Request for Qualifications (RFQ) which was advertised in the Contra Costa Times on February 13, 23, and March 3, 2015. The Chamber of Commerce was also notified and the RFQ was placed on the City's website. Responses were requested by March 9, 2015.

Staff received one hundred and eighteen (118) Statements of Qualifications (SOQs) from firms related to a number of professional disciplines (or areas of expertise). The firms were separated into thirteen disciplines for evaluation: Civil Design, Project/Construction Management and Inspection, Geotechnical and Materials Testing, California Environmental Quality Act and National Environmental Policy Act (CEQA/NEPA), Environmental Engineering and Assessment, Structural Engineering, Architecture, Land Survey, Right-of-Way Services (appraisal and acquisition), Landscape Architecture, Transportation/Traffic Engineering, Hydraulic Engineering, and Development Review. Ten panel committees, which included staff from Community and Economic Development, Public Works, and the City Attorney's Office, reviewed the SOQs based on discipline. A total of 50 firms were invited to participate in an interview process. The panel committees selected the firms best suited to providing services for the City's projects and anticipated needs and are recommending award of a total of 33 Master Service Agreements.

On July 2<sup>nd</sup> the Council's Ad Hoc Committee on Contracts (Councilmembers Helix and Leone), met with staff and discussed the Master Service Agreements being brought forward with this report. After completing their review, they directed staff to bring the MSA's to the full Council with a recommendation for approval.

**Discussion**

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

The proposed MSAs with thirty-three (33) consultants (Attachments 1 through 33) include consulting firms selected to provide professional and specialized services in the thirteen disciplines described earlier in this report. Staff reviewed each firm's qualifications, past experience, past performance, and availability and is recommending the Council pre-qualify the following thirty-three (33) firms by approving a Master Agreement with each. (Note: The below list of recommended firms includes the specific disciplines that staff is recommending the firm be pre-qualified to do. Additionally many of the firms below have had Master Service Agreements with the City in past years; however 16 of the 33 firms would be receiving a MSA for the first time this year and are identified by the use of the word "**New**"):

- Bellecci & Associates (Civil Design and Land Surveying Services)
- Harrison Engineering, Inc. (Civil Design) (NEW)
- Nichols Consulting Engineers, Chtd. (Civil Design and Environmental Services)

**APPROVE THIRTY-THREE (33) MASTER SERVICES AGREEMENTS FOR  
VARIOUS CONSULTANT SERVICES; AND AUTHORIZING THE CITY  
MANAGER TO EXECUTE THE AGREEMENTS**

July 14, 2015

Page 4

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

**APPROVE THIRTY-THREE (33) MASTER SERVICES AGREEMENTS FOR  
VARIOUS CONSULTANT SERVICES; AND AUTHORIZING THE CITY  
MANAGER TO EXECUTE THE AGREEMENTS**

July 14, 2015

Page 5

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

After providing the MSA for review and execution to perspective recipients, staff was contacted by several consultants with questions regarding the language included for design services. Through the City Attorney's office, staff found that pursuant to an update in the California Civil Code Section 2782.8, there are new indemnification requirements for any new design contracts. Consequently, staff prepared an amendment for all MSAs for design services which included the updated indemnification language. An indemnification amendment to each affected MSA is included with the appropriate Master Services Agreements.

**Council's Ad Hoc Committee on Consultant Services**

The Mayor formed an ad-hoc Committee to review the City's use of contracts on June 2, 2015, and appointed Councilmember Helix to chair the Committee and Councilmember Leone as a member of the Committee. The Committee is exploring the City's use of consultants, the method for selecting consultants, the method for managing consultants, and other related topics. As part of that process, on July 2, 2015, the Committee met and discussed these proposed MSAs.

In addition, the Committee directed staff to review the use of MSAs and determine if there are alternative methods for obtaining routine and reoccurring services (namely design, construction management, and project management services). Staff committed to provide the Committee with such an analysis and any appropriate recommendations to modify the use of MSAs at a subsequent meeting. The Committee then directed staff to forward the thirty-three (33) Master Services Agreements to the full City Council with a recommendation for approval based on current needs and project schedules.

**Fiscal Impact**

The approval of the Master Services Agreements pre-qualifies firms to work for the City and does not appropriate or expend funds.

**Public Contact**

The City Council Agenda was posted.

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VARIOUS CONSULTANT SERVICES; AND AUTHORIZING THE CITY  
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July 14, 2015

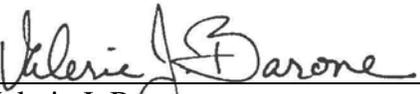
Page 6

**Recommendation for Action**

The Council's ad-hoc committee on contracts and staff recommend that the City Council approve thirty-three (33) Master Services Agreements for various consultant services; and authorize the City Manager to execute the Agreements.

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- Attachment 1 – Bellecci & Associates, Inc. Master Agreement
- Attachment 2 – Harrison Engineering, Inc. Master Agreement (w/ Amendment)
- Attachment 3 – Nichols Consulting Engineers, Chtd. Master Agreement
- Attachment 4 – Pavement Engineering, Inc. Master Agreement (w/ Amendment)
- Attachment 5 – Diablo Engineering Group Master Agreement (w/ Amendment)
- Attachment 6 – Harris and Associates, Inc. Master Agreement
- Attachment 7 – F. J. Kennedy and Associates, Inc. Master Agreement
- Attachment 8 – CSG Consultants, Inc. Master Agreement
- Attachment 9 – Swinerton Management & Consulting Master Agreement
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- Attachment 11 – Park Engineering Master Agreement
- Attachment 12 – 4LEAF, Inc. Master Agreement
- Attachment 13 – tBP Architecture, Inc. Master Agreement (w/ Amendment)
- Attachment 14 – SVA Architects, Inc. Master Agreement (w/ Amendment)
- Attachment 15 – Interactive Resources Master Agreement (w/ Amendment)
- Attachment 16 – JMEC Engineering, Inc. Master Agreement (w/ Amendment)
- Attachment 17 – Associated Right of Way Services, Inc. Master Agreement
- Attachment 18 – Paragon Partners, Ltd. Master Agreement
- Attachment 19 – Balance Hydrologics, Inc. Master Agreement
- Attachment 20 – WRECO Engineers Master Agreement
- Attachment 21 – TJKM Transportation Consultants Master Agreement (w/ Amendment)
- Attachment 22 – DKS Associates Master Agreement (w/ Amendment)
- Attachment 23 – McArdle Design Master Agreement (w/ Amendment)
- Attachment 24 – Golden Associates Master Agreement (w/ Amendment)
- Attachment 25 – LCC, Inc. Master Agreement
- Attachment 26 – Mark Thomas & Company Master Agreement

**APPROVE THIRTY-THREE (33) MASTER SERVICES AGREEMENTS FOR  
VARIOUS CONSULTANT SERVICES; AND AUTHORIZING THE CITY  
MANAGER TO EXECUTE THE AGREEMENTS**

July 14, 2015

Page 7

- Attachment 27 – Analytical Environmental Services Master Agreement
- Attachment 28 – Rincon Consultants, Inc. Master Agreement
- Attachment 29 – LSA Associates, Inc. Master Agreement
- Attachment 30 – Kimley-Horn and Associates, Inc. Master Agreement
- Attachment 31 – Kleinfelder West, Inc. Master Agreement
- Attachment 32 – Neil O. Anderson & Associates Master Agreement
- Attachment 33 – Geocon Consultants, Inc. Master Agreement

# ATTACHMENT 1

## MASTER AGREEMENT FOR PROFESSIONAL SERVICES

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

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

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

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

11           1.     SERVICES

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

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

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

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

24           2.     AUTHORIZED REPRESENTATIVES

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

1 be the City Engineer. Said City Engineer is authorized to execute Task Orders on behalf of CITY, including  
2 providing for CONSULTANT to be compensated not more than **\$50,000** for each project. Task Orders  
3 providing for more than **\$50,000** compensation for one project shall be presented to the City Council for its  
4 consideration.

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

6 3. COMPENSATION

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

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

17 4. INDEMNIFICATION

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

24 5. OWNERSHIP AND MAINTENANCE OF DOCUMENTS

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

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

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

14 6. STANDARD OF PERFORMANCE

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

19 7. INSURANCE REQUIRED

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

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

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

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

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

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

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

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

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

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

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

11                   8.       SUSPENSION OF WORK

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

18                   9.       TERMINATION

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

26                   10.       COMPLIANCE WITH CIVIL RIGHTS

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

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

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

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

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

14 11. CONFLICT OF INTEREST

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

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

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

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

1           12.    INDEPENDENT CONTRACTOR

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

8           13.    COMPLIANCE WITH LAWS

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

12          14.    CHOICE OF LAW

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

17          15.    NON-WAIVER

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

22          16.    ENFORCEABILITY; INTERPRETATION

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

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

4 17. INTEGRATION

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

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

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

18 19. FINANCIAL RECORDS

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

22 20. NOTICES

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

28 To CITY

**Robert Ovadia, City Engineer**

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

7 To CONSULTANT

8 **Frank Bellecci, President**  
9 **Bellecci & Associates**  
10 **2290 Diamond Blvd., Suite 100**  
11 **Concord, CA 94520**  
12 **Phone: (925) 685-4569**  
13 **Fax: (925) 685-4838**

14 21. TERM

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

17 22. NON-LIABILITY

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

22 23. EXECUTION

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

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

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

**CONSULTANT**

**CITY OF CONCORD**

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

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

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

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

APPROVED AS TO FORM:

ATTEST:

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

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

Date: \_\_\_\_\_, 2015

FINANCE DIRECTOR'S CERTIFICATION:

Concord, California

Date: \_\_\_\_\_, 2015

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

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

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

# ATTACHMENT 2

## MASTER AGREEMENT FOR PROFESSIONAL SERVICES

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

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

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

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

12           1.       SERVICES

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

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

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

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

24           2.       AUTHORIZED REPRESENTATIVES

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

1 be the City Engineer. Said City Engineer is authorized to execute Task Orders on behalf of CITY, including  
2 providing for CONSULTANT to be compensated not more than **\$50,000** for each project. Task Orders  
3 providing for more than **\$50,000** compensation for one project shall be presented to the City Council for its  
4 consideration.

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

6 3. COMPENSATION

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

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

17 4. INDEMNIFICATION

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

24 5. OWNERSHIP AND MAINTENANCE OF DOCUMENTS

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

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

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

14 6. STANDARD OF PERFORMANCE

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

19 7. INSURANCE REQUIRED

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

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

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

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

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

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

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

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

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

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

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

11           8.       SUSPENSION OF WORK

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

18           9.       TERMINATION

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

26           10.      COMPLIANCE WITH CIVIL RIGHTS

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

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

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

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

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

14 11. CONFLICT OF INTEREST

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

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

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

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

1           12.    INDEPENDENT CONTRACTOR

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

8           13.    COMPLIANCE WITH LAWS

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

12          14.    CHOICE OF LAW

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

17          15.    NON-WAIVER

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

22          16.    ENFORCEABILITY; INTERPRETATION

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

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

4 17. INTEGRATION

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

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10 VENTURE

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

18 19. FINANCIAL RECORDS

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

22 20. NOTICES

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

28 To CITY

**Robert Ovadia, City Engineer**

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

7 To CONSULTANT

8 **Randell Harrison, President**  
9 **Harrison Engineering Inc.**  
10 **399 Taylor Blvd., Suite 100**  
11 **Pleasant Hill, CA 94523**  
12 **Phone: (925) 691-0450**

13 21. TERM

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

15 22. NON-LIABILITY

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

17 23. EXECUTION

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

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

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

21 **CONSULTANT**

22 **CITY OF CONCORD**

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

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

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

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

APPROVED AS TO FORM:

ATTEST:

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

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

Date: \_\_\_\_\_, 2015

FINANCE DIRECTOR'S CERTIFICATION:

Concord, California

Date: \_\_\_\_\_, 2015

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

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

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

## **FIRST AMENDMENT TO MASTER SERVICES AGREEMENT**

This First Amendment to Master Services Agreement is entered into on this date, July 1, 2015, and amends the agreement between the City of Concord (the "CITY") and Harrison Engineering, Inc., whose address is 399 Taylor Boulevard, Suite 100, Pleasant Hill, CA 94523 (the "CONSULTANT") dated July 1, 2015.

**WHEREAS**, the CITY and CONSULTANT entered into a Master Agreement dated July 1, 2015 to provide: Civil Engineering Design Services related to CIP Projects.

**WHEREAS**, the CITY and CONSULTANT wish to amend the Master Agreement by updating the Indemnification language for Design Services Contracts.

**NOW THEREFORE**, in consideration of the promises and conditions set forth in the Agreement dated July 1, 2015, the parties mutually desire to amend the Indemnification provisions of its Master Agreement with the following:

1. Section 4 of the July 1, 2015 Master Services Agreement is hereby deleted in its entirety and is replaced with the following:

4. INDEMNIFICATION

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

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

2. Except as expressly amended herein, all other terms and conditions of the Master Agreement dated July 1, 2015 shall remain in full force and effect.

**IN WITNESS WHEREOF**, the parties have executed this First Amendment on the day and year written above.

Dated: \_\_\_\_\_, 2015

Harrison Engineering, Inc.

BY: \_\_\_\_\_

Dated: \_\_\_\_\_, 2015

CITY OF CONCORD

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

APPROVED AS TO FORM:

ATTEST:

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

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

FINANCE DIRECTOR'S CERTIFICATION:

Concord, California

Date: \_\_\_\_\_, 2015

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

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

# ATTACHMENT 3

## MASTER AGREEMENT FOR PROFESSIONAL SERVICES

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

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

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

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

12           1.     SERVICES

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

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

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

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

25           2.     AUTHORIZED REPRESENTATIVES

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

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

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

7 3. COMPENSATION

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

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

18 4. INDEMNIFICATION

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

25 5. OWNERSHIP AND MAINTENANCE OF DOCUMENTS

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

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

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

15 6. STANDARD OF PERFORMANCE

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

20 7. INSURANCE REQUIRED

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

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

27 **B. Automobile Liability Coverage.** CONSULTANT shall maintain automobile liability  
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1 (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage.

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

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

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

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

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

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

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

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

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

12           8.       SUSPENSION OF WORK

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

19           9.       TERMINATION

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

27           10.      COMPLIANCE WITH CIVIL RIGHTS

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

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

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

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

15           11. CONFLICT OF INTEREST

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

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

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

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

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

2 12. INDEPENDENT CONTRACTOR

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

9 13. COMPLIANCE WITH LAWS

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

13 14. CHOICE OF LAW

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

18 15. NON-WAIVER

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

23 16. ENFORCEABILITY; INTERPRETATION

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

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

5 17. INTEGRATION

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

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

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

19 19. FINANCIAL RECORDS

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

23 20. NOTICES

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

1 To CITY

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

2  
3  
4  
5  
6 To CONSULTANT

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

7  
8  
9  
10 21. TERM

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

14 22. NON-LIABILITY

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

19 23. EXECUTION

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

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

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

1 **CONSULTANT**

CITY OF CONCORD

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

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

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

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

8 APPROVED AS TO FORM:

ATTEST:

9 \_\_\_\_\_  
10 City Attorney

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

11 Date: \_\_\_\_\_, 2015

13 FINANCE DIRECTOR'S CERTIFICATION:

14 Concord, California

15 Date: \_\_\_\_\_, 2015

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

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

21 \_\_\_\_\_  
22 Finance Director's Signature

**MASTER AGREEMENT FOR PROFESSIONAL SERVICES**

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2 (hereinafter "CITY"), located in the County of Contra Costa, State of California, and **Pavement Engineering**  
3 **Inc.**, (hereinafter "CONSULTANT"), whose address is 3485 Sacramento Drive, Suite A, San Luis Obispo, CA  
4 93401.

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

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

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

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

11           8.     SUSPENSION OF WORK

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

18           9.     TERMINATION

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

26           10.    COMPLIANCE WITH CIVIL RIGHTS

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

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

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

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

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

14 11. CONFLICT OF INTEREST

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

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

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

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

1           12.    INDEPENDENT CONTRACTOR

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

8           13.    COMPLIANCE WITH LAWS

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

12           14.    CHOICE OF LAW

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

17           15.    NON-WAIVER

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

22           16.    ENFORCEABILITY; INTERPRETATION

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

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

4 17. INTEGRATION

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

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

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

18 19. FINANCIAL RECORDS

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

22 20. NOTICES

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

28 To CITY

**Robert Ovadia, City Engineer**

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

7 To CONSULTANT

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

14 21. TERM

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

17 22. NON-LIABILITY

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

22 23. EXECUTION

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

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

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

**CONSULTANT**

**CITY OF CONCORD**

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

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

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

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

APPROVED AS TO FORM:

ATTEST:

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

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

Date: \_\_\_\_\_, 2015

FINANCE DIRECTOR'S CERTIFICATION:

Concord, California

Date: \_\_\_\_\_, 2015

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

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

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

**FIRST AMENDMENT TO  
MASTER SERVICES AGREEMENT**

This First Amendment to Master Services Agreement is entered into on this date, July 1, 2015, and amends the agreement between the City of Concord (the "CITY") and Pavement Engineering, Inc., whose address is 3485 Sacramento Drive, Suite A, San Luis Obispo, CA 93401 (the "CONSULTANT") dated July 1, 2015.

**WHEREAS**, the CITY and CONSULTANT entered into a Master Agreement dated July 1, 2015 to provide: Civil Engineering Design Services related to CIP Projects.

**WHEREAS**, the CITY and CONSULTANT wish to amend the Master Agreement by updating the Indemnification language for Design Services Contracts.

**NOW THEREFORE**, in consideration of the promises and conditions set forth in the Agreement dated July 1, 2015, the parties mutually desire to amend the Indemnification provisions of its Master Agreement with the following:

1. Section 4 of the July 1, 2015 Master Services Agreement is hereby deleted in its entirety and is replaced with the following:

4. INDEMNIFICATION

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

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

2. Except as expressly amended herein, all other terms and conditions of the Master Agreement dated July 1, 2015 shall remain in full force and effect.

**IN WITNESS WHEREOF**, the parties have executed this First Amendment on the day and year written above.

Dated: June 9, 2015

Pavement Engineering, Inc.

BY: 

Dated: \_\_\_\_\_, 2015

CITY OF CONCORD

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

APPROVED AS TO FORM:

ATTEST:

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

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

FINANCE DIRECTOR'S CERTIFICATION:

Concord, California

Date: \_\_\_\_\_, 2015

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

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

# ATTACHMENT 5

## MASTER AGREEMENT FOR PROFESSIONAL SERVICES

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

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

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

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

12           1.       SERVICES

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

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

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

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

24           2.       AUTHORIZED REPRESENTATIVES

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

1 be the City Engineer. Said City Engineer is authorized to execute Task Orders on behalf of CITY, including  
2 providing for CONSULTANT to be compensated not more than **\$50,000** for each project. Task Orders  
3 providing for more than **\$50,000** compensation for one project shall be presented to the City Council for its  
4 consideration.

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

6 3. COMPENSATION

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

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

17 4. INDEMNIFICATION

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

24 5. OWNERSHIP AND MAINTENANCE OF DOCUMENTS

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

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

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

14 6. STANDARD OF PERFORMANCE

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

19 7. INSURANCE REQUIRED

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

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

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

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

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

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

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

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

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

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

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

11                 8.     SUSPENSION OF WORK

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

18                 9.     TERMINATION

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

26                 10.    COMPLIANCE WITH CIVIL RIGHTS

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

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

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

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

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

14 11. CONFLICT OF INTEREST

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

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

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

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

1           12.    INDEPENDENT CONTRACTOR

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

8           13.    COMPLIANCE WITH LAWS

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

12           14.    CHOICE OF LAW

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

17           15.    NON-WAIVER

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

22           16.    ENFORCEABILITY; INTERPRETATION

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

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

4 17. INTEGRATION

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

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

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

18 19. FINANCIAL RECORDS

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

22 20. NOTICES

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

28 To CITY

**Robert Ovadia, City Engineer**

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

7 To CONSULTANT

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

14 21. TERM

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

17 22. NON-LIABILITY

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

22 23. EXECUTION

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

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

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

**CONSULTANT**

**CITY OF CONCORD**

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

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

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

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

APPROVED AS TO FORM:

ATTEST:

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

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

Date: \_\_\_\_\_, 2015

FINANCE DIRECTOR'S CERTIFICATION:

Concord, California

Date: \_\_\_\_\_, 2015

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

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

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

**FIRST AMENDMENT TO  
MASTER SERVICES AGREEMENT**

This First Amendment to Master Services Agreement is entered into on this date, July 1, 2015, and amends the agreement between the City of Concord (the "CITY") and Diablo Engineering Group, whose address is 500 Ygnacio Valley Road, Suite 300, Walnut Creek, CA 94596 (the "CONSULTANT") dated July 1, 2015.

**WHEREAS**, the CITY and CONSULTANT entered into a Master Agreement dated July 1, 2015 to provide: Civil Engineering Design Services related to CIP Projects.

**WHEREAS**, the CITY and CONSULTANT wish to amend the Master Agreement by updating the Indemnification language for Design Services Contracts.

**NOW THEREFORE**, in consideration of the promises and conditions set forth in the Agreement dated July 1, 2015, the parties mutually desire to amend the Indemnification provisions of its Master Agreement with the following:

1. Section 4 of the July 1, 2015 Master Services Agreement is hereby deleted in its entirety and is replaced with the following:

4. INDEMNIFICATION

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

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

2. Except as expressly amended herein, all other terms and conditions of the Master Agreement dated July 1, 2015 shall remain in full force and effect.

**IN WITNESS WHEREOF**, the parties have executed this First Amendment on the day and year written above.

Dated: June 9, 2015

Diablo Engineering Group

BY:   
Jennifer Harmon  
Principal

Dated: \_\_\_\_\_, 2015

CITY OF CONCORD

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

APPROVED AS TO FORM:

ATTEST:

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

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

FINANCE DIRECTOR'S CERTIFICATION:

Concord, California

Date: \_\_\_\_\_, 2015

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

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

# ATTACHMENT 6

## MASTER AGREEMENT FOR PROFESSIONAL SERVICES

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

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

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

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

12           1.       SERVICES

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

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

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

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

25           2.       AUTHORIZED REPRESENTATIVES

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

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

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

8 3. COMPENSATION

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

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

19 4. INDEMNIFICATION

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

26 5. OWNERSHIP AND MAINTENANCE OF DOCUMENTS

27 All documents furnished by CONSULTANT pursuant to this AGREEMENT are instruments  
28 of CONSULTANT's services in respect to this project. They are not intended nor represented to be suitable for

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

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

16 6. STANDARD OF PERFORMANCE

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

21 7. INSURANCE REQUIRED

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

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

28 **B. Automobile Liability Coverage.** CONSULTANT shall maintain automobile liability

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

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

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

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

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

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

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

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

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

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

13           8.       SUSPENSION OF WORK

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

20           9.       TERMINATION

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

28           10.      COMPLIANCE WITH CIVIL RIGHTS

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

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

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

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

16 11. CONFLICT OF INTEREST

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

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

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

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

3 12. INDEPENDENT CONTRACTOR

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

10 13. COMPLIANCE WITH LAWS

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

14 14. CHOICE OF LAW

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

19 15. NON-WAIVER

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

24 16. ENFORCEABILITY; INTERPRETATION

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

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

6 17. INTEGRATION

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

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

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

20 19. FINANCIAL RECORDS

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

24 20. NOTICES

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

1 upon personal delivery.

2 To CITY

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

6 To CONSULTANT

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

10 21. TERM

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

14 22. NON-LIABILITY

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

19 23. EXECUTION

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

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

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

1 date and year first written above.

2 **CONSULTANT**

CITY OF CONCORD

3  
4 By: \_\_\_\_\_

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

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

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

8 APPROVED AS TO FORM:

ATTEST:

10  
11 \_\_\_\_\_  
12 City Attorney

\_\_\_\_\_

City Clerk

12 Date: \_\_\_\_\_, 2015

14 FINANCE DIRECTOR'S CERTIFICATION:

15 Concord, California

16 Date: \_\_\_\_\_, 2015

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

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

22 \_\_\_\_\_  
23 Finance Director's Signature

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

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

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

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

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

12 1. SERVICES

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

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

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

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

24 2. AUTHORIZED REPRESENTATIVES

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

1 be the City Engineer. Said City Engineer is authorized to execute Task Orders on behalf of CITY, including  
2 providing for CONSULTANT to be compensated not more than **\$50,000** for each project. Task Orders  
3 providing for more than **\$50,000** compensation for one project shall be presented to the City Council for its  
4 consideration.

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

6 3. COMPENSATION

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

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

17 4. INDEMNIFICATION

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

24 5. OWNERSHIP AND MAINTENANCE OF DOCUMENTS

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

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

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

14 6. STANDARD OF PERFORMANCE

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

19 7. INSURANCE REQUIRED

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

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

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

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

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

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

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

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

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

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

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

11                   8.       SUSPENSION OF WORK

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

18                   9.       TERMINATION

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

26                   10.       COMPLIANCE WITH CIVIL RIGHTS

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

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

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

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

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

14 11. CONFLICT OF INTEREST

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

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

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

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

1           12.    INDEPENDENT CONTRACTOR

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

8           13.    COMPLIANCE WITH LAWS

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

12           14.    CHOICE OF LAW

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

17           15.    NON-WAIVER

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

22           16.    ENFORCEABILITY; INTERPRETATION

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

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

4 17. INTEGRATION

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

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

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

18 19. FINANCIAL RECORDS

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

22 20. NOTICES

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

28 To CITY

**Robert Ovadia, City Engineer**

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

To CONSULTANT

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

21. TERM

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

22. NON-LIABILITY

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

23. EXECUTION

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

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

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

CONSULTANT

CITY OF CONCORD

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

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

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

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

APPROVED AS TO FORM:

ATTEST:

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

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

Date: \_\_\_\_\_, 2015

FINANCE DIRECTOR'S CERTIFICATION:

Concord, California

Date: \_\_\_\_\_, 2015

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

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

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

# ATTACHMENT 8

## MASTER AGREEMENT FOR PROFESSIONAL SERVICES

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2 (hereinafter "CITY"), located in the County of Contra Costa, State of California, and **CSG Consultants, Inc.**  
3 (hereinafter "CONSULTANT"), whose address is 6200 Stoneridge Mall Road, #300, Pleasanton, CA 94588

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

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

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

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14 not be limited to:

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

17           CONSULTANT shall be an independent contractor and shall have responsibility for and  
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22 manner so that the projects will be completed according to the established project schedules.

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27 be the City Engineer. Said City Engineer is authorized to execute Task Orders on behalf of CITY, including  
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2 providing for more than **\$50,000** compensation for one project shall be presented to the City Council for its  
3 consideration.

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

5 3. COMPENSATION

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

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

17           9.       TERMINATION

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

25           10.      COMPLIANCE WITH CIVIL RIGHTS

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

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

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

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

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

13 11. CONFLICT OF INTEREST

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

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

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

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

28 12. INDEPENDENT CONTRACTOR

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

7           13.    COMPLIANCE WITH LAWS

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

11           14.    CHOICE OF LAW

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

16           15.    NON-WAIVER

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

21           16.    ENFORCEABILITY; INTERPRETATION

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

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

3 17. INTEGRATION

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

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

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

17 19. FINANCIAL RECORDS

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

21 20. NOTICES

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

27 To CITY

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

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

4 To CONSULTANT

**Hatem Ahmed, Principal**  
**CSG Consultants, Inc.**  
**6200 Stoneridge Mall Road, #300**  
**Pleasanton, CA 94588**  
**Phone: (925) 931-0370**  
**Fax: (925) 931-0388**

8 21. TERM

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

12 22. NON-LIABILITY

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

17 23. EXECUTION

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

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

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

27 **CONSULTANT**

**CITY OF CONCORD**

1 By: \_\_\_\_\_  
2 Name: Cyrus Kianpour, PE, PLS  
3 Title: President  
4 Address: 6200 Stoneridge Mall Road, #300  
5 Pleasanton, CA 94588  
6 Telephone: (925) 931-0370

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

6 APPROVED AS TO FORM:

ATTEST:

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

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

10 Date: \_\_\_\_\_, 2015

12 FINANCE DIRECTOR'S CERTIFICATION:

13 Concord, California

14 Date: \_\_\_\_\_, 2015

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

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

20 \_\_\_\_\_  
Finance Director's Signature

# ATTACHMENT 9

## MASTER AGREEMENT FOR PROFESSIONAL SERVICES

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

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

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

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

12           1.     SERVICES

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

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

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

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

25           2.     AUTHORIZED REPRESENTATIVES

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

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

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

7 3. COMPENSATION

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

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

18 4. INDEMNIFICATION

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

25 5. OWNERSHIP AND MAINTENANCE OF DOCUMENTS

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

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

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

15 6. STANDARD OF PERFORMANCE

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

20 7. INSURANCE REQUIRED

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

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

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

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

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

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

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

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

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

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

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

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

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

12           8.       SUSPENSION OF WORK

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

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26 pay CONSULTANT for the services performed as of the effective date of the termination.

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4 following: employment, promotion, upgrading, demotion, or transfer; recruitment or recruitment advertising;  
5 layoff or termination; rate of pay or other forms of compensation; and selection for training including  
6 apprenticeship.

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

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10 **Equipment.** In all solicitation, either by competitive bidding or negotiations, made by CONSULTANT for  
11 work to be performed under a subcontract including procurement of materials or leases of equipment, each  
12 potential subcontractor, supplier or lessor shall be notified by CONSULTANT of CONSULTANT'S obligation  
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19 Agreement. CONSULTANT further covenants that in the performance of the Agreement, no person having  
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21 written consent of the CITY. CONSULTANT agrees to at all times avoid conflicts of interest, or the  
22 appearance of any conflicts of interest, with the interests of the CITY in the performance of this Agreement.

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28 upon personal delivery.

1 To CITY

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

2  
3  
4  
5  
6 To CONSULTANT

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

7  
8  
9  
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11 The term of this AGREEMENT shall be from the date executed above through **June 30<sup>th</sup>**,  
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18 or indirectly incurred under the terms of this Agreement.

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

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

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

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**CONSULTANT**

CITY OF CONCORD

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

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

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

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

APPROVED AS TO FORM:

ATTEST:

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

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

Date: \_\_\_\_\_, 2015

FINANCE DIRECTOR'S CERTIFICATION:

Concord, California

Date: \_\_\_\_\_, 2015

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

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

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

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

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

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

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

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

12 1. SERVICES

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

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

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

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

25 2. AUTHORIZED REPRESENTATIVES

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

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

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

7 3. COMPENSATION

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

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

18 4. INDEMNIFICATION

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

25 5. OWNERSHIP AND MAINTENANCE OF DOCUMENTS

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

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

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

15 6. STANDARD OF PERFORMANCE

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

20 7. INSURANCE REQUIRED

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

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

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

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

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

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

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

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

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

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

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

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

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

12           8.       SUSPENSION OF WORK

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

19           9.       TERMINATION

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

27           10.      COMPLIANCE WITH CIVIL RIGHTS

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

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

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

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

15           11. CONFLICT OF INTEREST

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

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

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

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

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

2 12. INDEPENDENT CONTRACTOR

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

9 13. COMPLIANCE WITH LAWS

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

13 14. CHOICE OF LAW

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

18 15. NON-WAIVER

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

23 16. ENFORCEABILITY; INTERPRETATION

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

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

5 17. INTEGRATION

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

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

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

19 19. FINANCIAL RECORDS

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

23 20. NOTICES

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

1 To CITY

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

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6 To CONSULTANT

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

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10 21. TERM

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

14 22. NON-LIABILITY

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

19 23. EXECUTION

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

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

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

1 **CONSULTANT**

CITY OF CONCORD

2  
3 By: \_\_\_\_\_

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

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

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

8 APPROVED AS TO FORM:

ATTEST:

9  
10 \_\_\_\_\_  
City Attorney

\_\_\_\_\_

11 Date: \_\_\_\_\_, 2015

13 FINANCE DIRECTOR'S CERTIFICATION:

14 Concord, California

15 Date: \_\_\_\_\_, 2015

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

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

21 \_\_\_\_\_  
22 Finance Director's Signature

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

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

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

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

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

11           1.     SERVICES

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

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

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

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

24           2.     AUTHORIZED REPRESENTATIVES

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

1 be the City Engineer. Said City Engineer is authorized to execute Task Orders on behalf of CITY, including  
2 providing for CONSULTANT to be compensated not more than **\$50,000** for each project. Task Orders  
3 providing for more than **\$50,000** compensation for one project shall be presented to the City Council for its  
4 consideration.

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

6 3. COMPENSATION

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

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

17 4. INDEMNIFICATION

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

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25 All documents furnished by CONSULTANT pursuant to this AGREEMENT are instruments  
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4 actual project shall be given to CITY at the completion of the project. The CITY reserves the right to specify  
5 the file format that electronic document deliverables are presented to the CITY. Title to all plans,  
6 specifications, maps, estimates, reports, manuscripts, drawings, descriptions and other final work products  
7 compiled by the CONSULTANT under the Agreement shall be vested in the CITY, none of which shall be  
8 used in any manner whatsoever, by any person, firm, corporation, or agency without the expressed written  
9 consent of the CITY. Basic survey notes and sketches, charts, computations, and other data prepared or  
10 obtained under the Agreement shall be made available, upon request, to the CITY without restriction or  
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12 to disclose or discuss any information gathered, discussed or generated in any way through this Agreement  
13 without the written permission of CITY during the term of this Agreement, unless required by law.

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

19           7.       INSURANCE REQUIRED

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

22           **A.       Commercial General Liability Coverage.**   CONSULTANT shall maintain  
23 commercial general liability insurance with limits of no less than one million dollars (\$1,000,000) combined  
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25 injury, and property damage.

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

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

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

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

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

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

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

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

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

11                   8.       SUSPENSION OF WORK

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

18                   9.       TERMINATION

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

26                   10.       COMPLIANCE WITH CIVIL RIGHTS

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

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

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

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

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

14 11. CONFLICT OF INTEREST

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

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

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

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

1           12.    INDEPENDENT CONTRACTOR

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

8           13.    COMPLIANCE WITH LAWS

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

12           14.    CHOICE OF LAW

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

17           15.    NON-WAIVER

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

22           16.    ENFORCEABILITY; INTERPRETATION

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

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

4 17. INTEGRATION

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

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

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

18 19. FINANCIAL RECORDS

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

22 20. NOTICES

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

28 To CITY

**Robert Ovadia, City Engineer**

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

7 To CONSULTANT

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

13 21. TERM

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

15 22. NON-LIABILITY

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

17 23. EXECUTION

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

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

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

21 **CONSULTANT**

22 **CITY OF CONCORD**

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

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

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

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

APPROVED AS TO FORM:

ATTEST:

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

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

Date: \_\_\_\_\_, 2015

FINANCE DIRECTOR'S CERTIFICATION:

Concord, California

Date: \_\_\_\_\_, 2015

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

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

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

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

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

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

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

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

11 1. SERVICES

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

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

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

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

24 2. AUTHORIZED REPRESENTATIVES

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

1 be the City Engineer. Said City Engineer is authorized to execute Task Orders on behalf of CITY, including  
2 providing for CONSULTANT to be compensated not more than **\$50,000** for each project. Task Orders  
3 providing for more than **\$50,000** compensation for one project shall be presented to the City Council for its  
4 consideration.

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

6 3. COMPENSATION

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

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

17 4. INDEMNIFICATION

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

24 5. OWNERSHIP AND MAINTENANCE OF DOCUMENTS

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

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

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

14 6. STANDARD OF PERFORMANCE

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

19 7. INSURANCE REQUIRED

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

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

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

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

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

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

16           **(1) Additional Insured.** CITY, its officers, agents, employees, and volunteers are  
17 to be covered as an additional insured as respects: Liability arising out of activities performed by or on behalf  
18 of CONSULTANT and operations of CONSULTANT, premises owned, occupied, or used by CONSULTANT.  
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20 officials, employees, or volunteers.

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22 mentioned in this subsection shall name CITY as an additional insured and provide for notice of cancellation to  
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27 arrangement, or self-insurance maintained by CITY, its officers, officials, employees, or volunteers shall be in  
28 excess of CONSULTANT'S insurance and shall not contribute with it.

1                   (3)     **Reporting Provisions.** Any failure to comply with the reporting provisions of  
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3                   (4)     **Verification of Coverage.** CONSULTANT shall furnish CITY with  
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5 certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer  
6 to bind coverage on its behalf. The aforementioned policies shall be issued by an insurance carrier having a  
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10 insurance policies at any time.

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

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

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

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3 following: employment, promotion, upgrading, demotion, or transfer; recruitment or recruitment advertising;  
4 layoff or termination; rate of pay or other forms of compensation; and selection for training including  
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7 federal regulations relative to nondiscrimination in federally assisted programs.

8 **C. Solicitations for Subcontractors including Procurement of Materials and**  
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10 work to be performed under a subcontract including procurement of materials or leases of equipment, each  
11 potential subcontractor, supplier or lessor shall be notified by CONSULTANT of CONSULTANT'S obligation  
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18 Agreement. CONSULTANT further covenants that in the performance of the Agreement, no person having  
19 any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express  
20 written consent of the CITY. CONSULTANT agrees to at all times avoid conflicts of interest, or the  
21 appearance of any conflicts of interest, with the interests of the CITY in the performance of this Agreement.

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

24 (1) Will conduct research and arrive at conclusions with respect to its rendition of  
25 information, advice, recommendation or counsel independent of the control and direction of the CITY or of any  
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6 CONSULTANT shall have responsibility for and control over the means of providing services under this  
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19 AGREEMENT, or any default in their performance of any obligations under the AGREEMENT shall not be  
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21 obligation, nor shall any waiver of any incident of breach of default constitute a continuing waiver of same.

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18 19. FINANCIAL RECORDS

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

22 20. NOTICES

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

28 To CITY

**Robert Ovadia, City Engineer**

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

7 To CONSULTANT

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

14 21. TERM

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

17 22. NON-LIABILITY

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

22 23. EXECUTION

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

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

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

**CONSULTANT**

**CITY OF CONCORD**

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

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

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

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

APPROVED AS TO FORM:

ATTEST:

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

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

Date: \_\_\_\_\_, 2015

FINANCE DIRECTOR'S CERTIFICATION:

Concord, California

Date: \_\_\_\_\_, 2015

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

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

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

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

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

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

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

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

11 1. SERVICES

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

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

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

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

23 2. AUTHORIZED REPRESENTATIVES

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

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

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

5 3. COMPENSATION

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

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

16 4. INDEMNIFICATION

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

23 5. OWNERSHIP AND MAINTENANCE OF DOCUMENTS

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

1 such unauthorized reuse.

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

13           6.       STANDARD OF PERFORMANCE

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

18           7.       INSURANCE REQUIRED

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

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

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

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

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

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

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

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

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

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

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

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

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

10           8.       SUSPENSION OF WORK

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

17           9.       TERMINATION

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

25           10.      COMPLIANCE WITH CIVIL RIGHTS

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

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

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

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

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

13 11. CONFLICT OF INTEREST

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

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

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

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

28 12. INDEPENDENT CONTRACTOR

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

7           13.    COMPLIANCE WITH LAWS

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

11           14.    CHOICE OF LAW

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

16           15.    NON-WAIVER

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

21           16.    ENFORCEABILITY; INTERPRETATION

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

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

3 17. INTEGRATION

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

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

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

17 19. FINANCIAL RECORDS

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

21 20. NOTICES

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

27 To CITY

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

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

5 To CONSULTANT

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

12 21. TERM

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

15 22. NON-LIABILITY

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

17 23. EXECUTION

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

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

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

21 **CONSULTANT**

22 **CITY OF CONCORD**

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

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

2 Name: Philip Newsom  
3 Title: Principal  
4 Address: 1000 Burnett Avenue, Suite 320  
Concord, CA 94520  
5 Telephone: (925) 246-6419

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

6 APPROVED AS TO FORM:

ATTEST:

7  
8 \_\_\_\_\_  
City Attorney

\_\_\_\_\_

9  
10 Date: \_\_\_\_\_, 2015

11  
12 FINANCE DIRECTOR'S CERTIFICATION:

13 Concord, California

14 Date: \_\_\_\_\_, 2015

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

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

19  
20 \_\_\_\_\_  
Finance Director's Signature

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**FIRST AMENDMENT TO  
MASTER SERVICES AGREEMENT**

This First Amendment to Master Services Agreement is entered into on this date, July 1, 2015, and amends the agreement between the City of Concord (the "CITY") and tBP Architecture, Inc., whose address is 1000 Burnett Avenue, Suite 320, Concord, CA 94520 (the "CONSULTANT") dated July 1, 2015.

**WHEREAS**, the CITY and CONSULTANT entered into a Master Agreement dated July 1, 2015 to provide: Architectural Design Services related to CIP Projects.

**WHEREAS**, the CITY and CONSULTANT wish to amend the Master Agreement by updating the Indemnification language for Design Services Contracts.

**NOW THEREFORE**, in consideration of the promises and conditions set forth in the Agreement dated July 1, 2015, the parties mutually desire to amend the Indemnification provisions of its Master Agreement with the following:

1. Section 4 of the July 1, 2015 Master Services Agreement is hereby deleted in its entirety and is replaced with the following:

4. INDEMNIFICATION

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

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

2. Except as expressly amended herein, all other terms and conditions of the Master Agreement dated July 1, 2015 shall remain in full force and effect.

**IN WITNESS WHEREOF**, the parties have executed this First Amendment on the day and year written above.

Dated: June 9, 2015

tBP Architecture, Inc.

BY:   
Philip J. Newsom  
Vice President *ARct*

Dated: \_\_\_\_\_, 2015

CITY OF CONCORD

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

APPROVED AS TO FORM:

ATTEST:

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

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

FINANCE DIRECTOR'S CERTIFICATION:

Concord, California

Date: \_\_\_\_\_, 2015

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

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

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

1           **THIS AGREEMENT** made and entered into on **July 1<sup>st</sup>, 2015** by and between the City of Concord  
2 (hereinafter "CITY"), located in the County of Contra Costa, State of California, and **SVA Architects, Inc.**,  
3 (hereinafter "CONSULTANT"), whose address is 444 17<sup>th</sup> Street, Suite 101, Oakland, CA 94612.

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

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

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

11           1.     SERVICES

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

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

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

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

23           2.     AUTHORIZED REPRESENTATIVES

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

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

4 CONSULTANT authorized representative shall be **Robert Simons, President**

5 3. COMPENSATION

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

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

16 4. INDEMNIFICATION

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

23 5. OWNERSHIP AND MAINTENANCE OF DOCUMENTS

24 All documents furnished by CONSULTANT pursuant to this AGREEMENT are instruments  
25 of CONSULTANT's services in respect to this project. They are not intended nor represented to be suitable for  
26 reuse by others on extensions of this project or on any other project. Any reuse without specific written  
27 verification and adoption by CONSULTANT for the specific purposes intended will be at user's sole risk and  
28 without liability or legal exposure and expenses to CONSULTANT, including attorney's fees arising out of

1 such unauthorized reuse.

2 CONSULTANT's records, documents, calculations, and all other instruments of service pertaining to  
3 actual project shall be given to CITY at the completion of the project. The CITY reserves the right to specify  
4 the file format that electronic document deliverables are presented to the CITY. Title to all plans,  
5 specifications, maps, estimates, reports, manuscripts, drawings, descriptions and other final work products  
6 compiled by the CONSULTANT under the Agreement shall be vested in the CITY, none of which shall be  
7 used in any manner whatsoever, by any person, firm, corporation, or agency without the expressed written  
8 consent of the CITY. Basic survey notes and sketches, charts, computations, and other data prepared or  
9 obtained under the Agreement shall be made available, upon request, to the CITY without restriction or  
10 limitations on their use. CONSULTANT may retain copies of the above-described information but agrees not  
11 to disclose or discuss any information gathered, discussed or generated in any way through this Agreement  
12 without the written permission of CITY during the term of this Agreement, unless required by law.

13 6. STANDARD OF PERFORMANCE

14 CONSULTANT represents to CITY that the services shall be performed in an expeditious  
15 manner, and with the degree of skill and care that is required by current, good, and sound procedures and  
16 practices. CONSULTANT further agrees that the services shall be in conformance with generally accepted  
17 professional standards prevailing at the time work is performed.

18 7. INSURANCE REQUIRED

19 CONSULTANT shall, at its own expense, procure and maintain in full force at all times during  
20 the term of this AGREEMENT the following insurance:

21 **A. Commercial General Liability Coverage.** CONSULTANT shall maintain  
22 commercial general liability insurance with limits of no less than one million dollars (\$1,000,000) combined  
23 single limit per occurrence or two million dollars (\$2,000,000) aggregate limit for bodily injury, personal  
24 injury, and property damage.

25 **B. Automobile Liability Coverage.** CONSULTANT shall maintain automobile liability  
26 insurance covering all vehicles used in the performance of this Agreement providing a one million dollar  
27 (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage.

28 **C. Professional Liability Coverage (Errors and Omissions).** CONSULTANT shall

1 maintain professional liability insurance with coverage for all negligent errors, acts or omissions committed by  
2 CONSULTANT, its agents and employees in the performance of this Agreement. The amount of this insurance  
3 shall be not less than one million dollars (\$1,000,000) on a claims made annual aggregate basis or a combined  
4 single limit per occurrence basis.

5 **D. Compliance with State Workers' Compensation Requirements.** CONSULTANT  
6 covenants that it will insure itself against liability for Workers' Compensation pursuant to the provisions of  
7 California Labor Code §3700, et seq. CONSULTANT shall, at all times, upon demand of the City, furnish  
8 proof that Workers' Compensation Insurance is being maintained by it in force and effect in accordance with  
9 the California Labor Code. The insurer shall also agree to waive all rights of subrogation against the CITY, its  
10 officers, officials, employees and volunteers for losses arising from work performed by CONSULTANT for  
11 CITY. This provision shall not apply upon written verification by CONSULTANT that CONSULTANT has  
12 no employees.

13 **E. Other Insurance Provisions.** The policies are to contain, or be endorsed to contain  
14 the following provisions:

15 (1) **Additional Insured.** CITY, its officers, agents, employees, and volunteers are  
16 to be covered as an additional insured as respects: Liability arising out of activities performed by or on behalf  
17 of CONSULTANT and operations of CONSULTANT, premises owned, occupied, or used by CONSULTANT.  
18 The coverage shall contain no special limitations on the scope or protection afforded to CITY, its officers,  
19 officials, employees, or volunteers.

20 Except for worker's compensation and professional liability insurance, the policies  
21 mentioned in this subsection shall name CITY as an additional insured and provide for notice of cancellation to  
22 CITY. CONSULTANT shall also provide timely and prompt notice to CITY if CONSULTANT receives any  
23 notice of cancellation or nonrenewal from its insurer.

24 (2) **Primary Coverage.** CONSULTANT'S insurance coverage shall be primary  
25 insurance with respect to CITY, its officers, officials, employees, and volunteers. Any insurance, risk pooling  
26 arrangement, or self-insurance maintained by CITY, its officers, officials, employees, or volunteers shall be in  
27 excess of CONSULTANT'S insurance and shall not contribute with it.

28 (3) **Reporting Provisions.** Any failure to comply with the reporting provisions of

1 the policy shall not affect the coverage provided to the CITY, its officers, officials, employees, or volunteers.

2                   **(4) Verification of Coverage.** CONSULTANT shall furnish CITY with  
3 certificates of insurance and the original endorsements effecting coverage required by this Agreement. The  
4 certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer  
5 to bind coverage on its behalf. The aforementioned policies shall be issued by an insurance carrier having a  
6 rating of Best A-7 or better which is satisfactory to the City Attorney and shall be delivered to CITY at the time  
7 of the execution of this Agreement or before work commences. Such policies and certificates shall be in a form  
8 approved by the City Attorney. CITY reserves the right to require complete certified copies of all required  
9 insurance policies at any time.

10           8.       SUSPENSION OF WORK

11                   CITY may, at any time, by ten (10) days' written notice, suspend further performance by  
12 CONSULTANT. All suspensions shall extend the time schedule for performance in a mutually satisfactory  
13 manner, and CONSULTANT shall be paid for services performed and reimbursable expenses incurred prior to  
14 the suspension date. During the period of suspension, CONSULTANT shall not receive any payment for  
15 services, or expenses, except for reasonable administration expenses, incurred by CONSULTANT by reason of  
16 such suspension.

17           9.       TERMINATION

18                   CITY may terminate this Agreement for any reason upon ten (10) days written notice to the  
19 other party. CITY may terminate the Agreement upon five (5) days written notice if CONSULTANT breaches  
20 this Agreement. In the event of any termination, CONSULTANT shall promptly deliver to the CITY any and  
21 all finished and unfinished reports or other written, recorded, photographic, or visual materials, documents,  
22 data, and other deliverables ("Work Materials") prepared for the CITY prior to the effective date of such  
23 termination, all of which shall become CITY's sole property. After receipt of the Work Materials, CITY will  
24 pay CONSULTANT for the services performed as of the effective date of the termination.

25           10.      COMPLIANCE WITH CIVIL RIGHTS

26                   During the performance of this contract, CONSULTANT agrees as follows:

27                   **A. Equal Employment Opportunity.** In connection with the execution of this  
28 AGREEMENT, CONSULTANT shall not discriminate against any employee or applicant for employment

1 because of race, religion, color, sex, or national origin. Such actions shall include, but not be limited to, the  
2 following: employment, promotion, upgrading, demotion, or transfer; recruitment or recruitment advertising;  
3 layoff or termination; rate of pay or other forms of compensation; and selection for training including  
4 apprenticeship.

5 **B. Nondiscrimination Civil Rights Act of 1964.** CONSULTANT will comply with all  
6 federal regulations relative to nondiscrimination in federally assisted programs.

7 **C. Solicitations for Subcontractors including Procurement of Materials and**  
8 **Equipment.** In all solicitation, either by competitive bidding or negotiations, made by CONSULTANT for  
9 work to be performed under a subcontract including procurement of materials or leases of equipment, each  
10 potential subcontractor, supplier or lessor shall be notified by CONSULTANT of CONSULTANT'S obligation  
11 under this AGREEMENT and the regulations relative to nondiscrimination on the grounds of race, religion,  
12 color, sex, or national origin.

13 11. CONFLICT OF INTEREST

14 A. CONSULTANT covenants and represents that neither it, nor any officer or principal of  
15 its firm, has, or shall acquire any interest, directly or indirectly, which would conflict in any manner with the  
16 interests of CITY or which would in any way hinder CONSULTANT's performance of services under this  
17 Agreement. CONSULTANT further covenants that in the performance of the Agreement, no person having  
18 any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express  
19 written consent of the CITY. CONSULTANT agrees to at all times avoid conflicts of interest, or the  
20 appearance of any conflicts of interest, with the interests of the CITY in the performance of this Agreement.

21 B. CONSULTANT is not a designated employee within the meaning of the Political  
22 Reform Act because CONSULTANT:

23 (1) Will conduct research and arrive at conclusions with respect to its rendition of  
24 information, advice, recommendation or counsel independent of the control and direction of the CITY or of any  
25 CITY official, other than normal contract monitoring; and

26 (2) Possesses no authority with respect to any CITY decision beyond the rendition of  
27 information, advice, recommendation or counsel. (2 Cal. Code Regs. § 18700(a)(2).)

28 12. INDEPENDENT CONTRACTOR

1 In assuming and performing the services, CONSULTANT is an independent contractor and  
2 shall not be eligible for any benefits, which the CITY may provide its employees, except as expressly provided  
3 for in the AGREEMENT. All persons, if any, hired by CONSULTANT shall be employees or subcontractors of  
4 CONSULTANT and shall not be construed as employees or agents of the CITY in any respect.  
5 CONSULTANT shall have responsibility for and control over the means of providing services under this  
6 AGREEMENT.

7 13. COMPLIANCE WITH LAWS

8 CONSULTANT shall comply with all applicable federal, State of California, and local laws,  
9 rules, and regulations and shall obtain all applicable licenses and permits for the conduct of its business and the  
10 performance of the services.

11 14. CHOICE OF LAW

12 This Agreement shall be construed and interpreted in accordance with the laws of the State of  
13 California, excluding any choice of law rules which may direct the application of the laws of another  
14 jurisdiction. In the event that suit shall be brought by either party hereunder, the parties agree that trial of such  
15 action shall be held exclusively in a state court in the County of Contra Costa, California.

16 15. NON-WAIVER

17 The waiver by either party of any breach of any term, covenant, or condition contained in the  
18 AGREEMENT, or any default in their performance of any obligations under the AGREEMENT shall not be  
19 deemed to be a waiver of any other breach or default of the same or any other term, covenant, condition, or  
20 obligation, nor shall any waiver of any incident of breach of default constitute a continuing waiver of same.

21 16. ENFORCEABILITY; INTERPRETATION

22 In the event that any of the provisions or portions of application of any of the provisions of the  
23 AGREEMENT are held to be illegal or invalid by a court of competent jurisdiction, CITY and CONSULTANT  
24 shall negotiate an equitable adjustment in the provisions of the AGREEMENT with a view toward affecting the  
25 purpose of the AGREEMENT. The illegality or invalidity of any of the provisions or portions of application of  
26 any of the provisions of the AGREEMENT shall not affect the legality or enforceability of the remaining  
27 provisions or portions of application of any of the provisions of the AGREEMENT. This Agreement shall be  
28 interpreted as though it was a product of a joint drafting effort and no provisions shall be interpreted against a

1 party on the ground that said party was solely or primarily responsible for drafting the language to be  
2 interpreted.

3 17. INTEGRATION

4 The AGREEMENT contains the entire AGREEMENT and understanding between the parties  
5 as to the subject matter of this AGREEMENT. It merges and supersedes all prior or contemporaneous  
6 agreements, commitments, representation, writings, and discussions between CONSULTANT and CITY,  
7 whether oral or written.

8 18. SUCCESSORS AND ASSIGNS; NO THIRD PARTY BENEFICIARIES; NO JOINT  
9 VENTURE

10 CITY and CONSULTANT respectively, bind themselves, their successors, assigns, and legal  
11 representatives to the terms and obligations of this Agreement. CONSULTANT shall not assign or transfer any  
12 interest in the Agreement without the CITY's prior written consent, which consent shall be in the CITY's sole  
13 discretion. Any attempted assignment or transfer in breach of this provision shall be void. This Agreement is  
14 not intended and shall not be construed to create any third party benefit. This Agreement is not intended and  
15 shall not be construed to create a joint venture or partnership between the parties. CONSULTANT, its officers,  
16 employees and agents shall not have any power to bind or commit the CITY to any decision.

17 19. FINANCIAL RECORDS

18 Records of CONSULTANT's direct labor costs, payroll costs, and reimbursable expenses  
19 pertaining to this project covered by this AGREEMENT will be kept on a generally recognized accounting  
20 basis and made available to CITY if and when required.

21 20. NOTICES

22 All notices required hereunder shall be in writing and mailed postage prepaid by Certified or  
23 Registered mail, return receipt requested, or by personal delivery to the CITY's address as shown below, or  
24 such other places as CITY or CONSULTANT may, from time to time, respectively, designate in a written  
25 notice given to the other. Notice shall be deemed received three (3) days after the date of the mailing thereof or  
26 upon personal delivery.

27 To CITY

**Robert Ovadia, City Engineer**  
**Community & Economic Development Department**  
**City of Concord**

1 **1950 Parkside Drive, MS/40**  
2 **Concord, CA 94519**  
3 **Phone: (925) 671-3470**  
4 **Fax: (925) 798-9692**

4 To CONSULTANT

**Robert Simons, President**  
**SVA Architects Inc.**  
**444 17<sup>th</sup> Street, Suite 101**  
**Oakland, CA 94612**  
**Phone: (510) 267-3180**  
**Fax: (949) 809-3381**

8 21. TERM

9 The term of this AGREEMENT shall be from the date executed above through **June 30<sup>th</sup>,**  
10 **2017**, with the option of one one-year extension upon mutual agreement by both CITY and CONSULTANT.  
11 The City Manager is authorized to approve the extension.

12 22. NON-LIABILITY

13 No member of the CITY and no other officer, employee or agent of the CITY shall be  
14 personally liable to CONSULTANT or otherwise in the event of any default or breach of the CITY, or for any  
15 amount which may become due to CONSULTANT or any successor in interest, or for any obligations directly  
16 or indirectly incurred under the terms of this Agreement.

17 23. EXECUTION

18 Each individual or entity executing this Agreement on behalf of CONSULTANT represents  
19 and warrants that he or she or it is duly authorized to execute and deliver this Agreement on behalf of  
20 CONSULTANT and that such execution is binding upon CONSULTANT.

21 This Agreement may be executed in several counterparts, each of which shall constitute one  
22 and the same instrument and shall become binding upon the parties when at least one copy hereof shall have  
23 been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or  
24 account for more than one such counterpart.

25 **IN WITNESS WHEREOF**, the parties have executed this AGREEMENT in three (3) copies as of the  
26 date and year first written above.

27 **CONSULTANT**

**CITY OF CONCORD**

1 By: \_\_\_\_\_

By: \_\_\_\_\_

2 Name: Robert Simons  
3 Title: Partner & President  
4 Address: 444 17<sup>th</sup> Street, Suite 101  
Oakland, CA 94612  
5 Telephone: (510) 267-3180

Name: Valerie Barone  
Title: City Manager  
Address: 1950 Parkside Drive, MS 01  
Concord, CA 94519  
Telephone: (925) 671-3175

6 APPROVED AS TO FORM:

ATTEST:

7  
8 \_\_\_\_\_  
City Attorney

\_\_\_\_\_

9  
10 Date: \_\_\_\_\_, 2015

11  
12 FINANCE DIRECTOR'S CERTIFICATION:

13 Concord, California

14 Date: \_\_\_\_\_, 2015

15 I HEREBY CERTIFY THAT ADEQUATE FUNDS EXIST OR WILL BE RECEIVED  
16 DURING THE CURRENT FISCAL YEARS 2015-16 AND 2016-17 TO PAY THE  
17 ANTICIPATED EXPENSES TO BE INCURRED PURSUANT TO THIS CONTRACT.

18 THE SUM OF **\$250,000.**

19  
20 \_\_\_\_\_  
Finance Director's Signature

## **FIRST AMENDMENT TO MASTER SERVICES AGREEMENT**

This First Amendment to Master Services Agreement is entered into on this date, July 1, 2015, and amends the agreement between the City of Concord (the "CITY") and SVA Architects, Inc., whose address is 444 17th Street, Suite 101, Oakland, CA 94612 (the "CONSULTANT") dated July 1, 2015.

**WHEREAS**, the CITY and CONSULTANT entered into a Master Agreement dated July 1, 2015 to provide: Architectural Design Services related to CIP Projects.

**WHEREAS**, the CITY and CONSULTANT wish to amend the Master Agreement by updating the Indemnification language for Design Services Contracts.

**NOW THEREFORE**, in consideration of the promises and conditions set forth in the Agreement dated July 1, 2015, the parties mutually desire to amend the Indemnification provisions of its Master Agreement with the following:

1. Section 4 of the July 1, 2015 Master Services Agreement is hereby deleted in its entirety and is replaced with the following:

4. INDEMNIFICATION

- a. For Design Professional Services Only. Pursuant to California Civil Code Section 2782.8, CONSULTANT agrees to indemnify the CITY (including its officers, agents, employees and volunteers) against liability for claims against the CITY that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of CONSULTANT in the performance of this Agreement. The CONSULTANT will reimburse the CITY for any expenditures, including reasonable attorney fees, incurred by the CITY in defending against claims ultimately determined to arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the CONSULTANT.

- b. For All Other Services. CONSULTANT agrees to defend, indemnify and hold harmless the CITY (including its officers, officials, employees, agents and volunteers) from and against any and all claims, demands, actions, losses, damages, injuries, and liability (including all attorney's fees and other litigation expenses) arising out of the CONSULTANT's performance under the terms of this Agreement. This indemnification obligation on CONSULTANT'S part shall not apply to demands, actions, losses, damages, injuries, and liability arising out of sole negligence or willful misconduct on the part of CITY.

2. Except as expressly amended herein, all other terms and conditions of the Master Agreement dated July 1, 2015 shall remain in full force and effect.

**IN WITNESS WHEREOF**, the parties have executed this First Amendment on the day and year written above.

Dated: June 9, 2015

SVA Architects, Inc.

BY: 

Dated: \_\_\_\_\_, 2015

CITY OF CONCORD

By: \_\_\_\_\_  
Valerie Barone  
City Manager

APPROVED AS TO FORM:

ATTEST:

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
City Clerk

FINANCE DIRECTOR'S CERTIFICATION:

Concord, California

Date: \_\_\_\_\_, 2015

I HEREBY CERTIFY THAT ADEQUATE FUNDS EXIST OR WILL BE RECEIVED DURING THE CURRENT FISCAL YEAR 2015-16 AND 2016-17, TO PAY THE ANTICIPATED EXPENSES TO BE INCURRED PURSUANT TO THIS CONTRACT, THE SUM OF **\$250,000**.

\_\_\_\_\_  
Finance Director's Signature

**MASTER AGREEMENT FOR PROFESSIONAL SERVICES**

1           **THIS AGREEMENT** made and entered into on **July 1<sup>st</sup>, 2015** by and between the City of Concord  
2 (hereinafter "CITY"), located in the County of Contra Costa, State of California, and **Interactive Resources**,  
3 (hereinafter "CONSULTANT"), whose address is 117 Park Place, Richmond, CA 94801.

4           **THE PARTIES ENTER THIS AGREEMENT** based upon the following facts, understandings and  
5 intentions:

6           CITY desires to contract with CONSULTANT and CONSULTANT to contract with CITY for  
7 provision by CONSULTANT to CITY for professional services as further described herein, upon the terms and  
8 conditions hereinafter set forth.

9           **NOW, THEREFORE, IN CONSIDERATION** of the mutual covenants and promises of the parties  
10 herein contained, the parties hereto agree as follows:

11           1.     SERVICES

12           CONSULTANT shall provide services for specific projects as may be requested by CITY;  
13 such services shall be defined, scheduled, and authorized in subsequent Task Orders. Services may include, but  
14 not be limited to:

- 15           ● Architectural services related to CIP Projects
- 16           ● Structural Design services related to CIP Projects
- 17           ● Other as-needed services;

18           CONSULTANT shall be an independent contractor and shall have responsibility for and  
19 control over the details and means of providing its services under this AGREEMENT. CONSULTANT agrees  
20 that its services shall be performed with due diligence and in accordance with generally accepted engineering  
21 practices.

22           CONSULTANT shall use its best efforts to perform and coordinate all activities in a timely  
23 manner so that the projects will be completed according to the established project schedules.

24           2.     AUTHORIZED REPRESENTATIVES

25           Authorized representatives shall represent CITY and CONSULTANT in all matters pertaining  
26 to the services to be ordered by CITY or rendered by CONSULTANT under this Agreement except where  
27 approval for the CITY is specifically required by the City Council. The CITY'S authorized representative shall  
28

1 be the City Engineer. Said City Engineer is authorized to execute Task Orders on behalf of CITY, including  
2 providing for CONSULTANT to be compensated not more than **\$50,000** for each project. Task Orders  
3 providing for more than **\$50,000** compensation for one project shall be presented to the City Council for its  
4 consideration.

5 CONSULTANT authorized representative shall be **Thomas Butt, Principal in Charge**

6 3. COMPENSATION

7 CONSULTANT shall be compensated, not to exceed **\$250,000** per fiscal year for basic  
8 services rendered under Section 1, as more particularly described in authorized Task Orders, in accordance with  
9 the terms and conditions included therein.

10 CONSULTANT may submit monthly statements for services rendered; all statements shall  
11 include adequate documentation demonstrating work performed during the billing period and shall conform to  
12 Federal Funding invoicing requirements, if applicable. It is intended that payments to CONSULTANT will be  
13 made by CITY within thirty (30) days of receipt of invoice. Consultant's failure to secure CITY's written  
14 authorization for additional compensation or changes to the Scope of Work shall constitute a waiver of any and  
15 all right to adjustment in the price or time due, whether by way of compensation, restitution, quantum meruit,  
16 or similar relief.

17 4. INDEMNIFICATION

18 CONSULTANT agrees to defend, indemnify and hold harmless the CITY, its officers,  
19 officials, employees, agents and volunteers from and against any and all claims, demands, actions, losses,  
20 damages, injuries, and liability (including all attorney's fees and other litigation expenses) arising out of the  
21 CONSULTANT's performance under the terms of this Agreement. This indemnification obligation on  
22 CONSULTANT'S part shall not apply to demands, actions, losses, damages, injuries, and liability arising out  
23 of sole negligence or willful misconduct on the part of CITY.

24 5. OWNERSHIP AND MAINTENANCE OF DOCUMENTS

25 All documents furnished by CONSULTANT pursuant to this AGREEMENT are instruments  
26 of CONSULTANT's services in respect to this project. They are not intended nor represented to be suitable for  
27 reuse by others on extensions of this project or on any other project. Any reuse without specific written  
28 verification and adoption by CONSULTANT for the specific purposes intended will be at user's sole risk and

1 without liability or legal exposure and expenses to CONSULTANT, including attorney's fees arising out of  
2 such unauthorized reuse.

3 CONSULTANT's records, documents, calculations, and all other instruments of service pertaining to  
4 actual project shall be given to CITY at the completion of the project. The CITY reserves the right to specify  
5 the file format that electronic document deliverables are presented to the CITY. Title to all plans,  
6 specifications, maps, estimates, reports, manuscripts, drawings, descriptions and other final work products  
7 compiled by the CONSULTANT under the Agreement shall be vested in the CITY, none of which shall be  
8 used in any manner whatsoever, by any person, firm, corporation, or agency without the expressed written  
9 consent of the CITY. Basic survey notes and sketches, charts, computations, and other data prepared or  
10 obtained under the Agreement shall be made available, upon request, to the CITY without restriction or  
11 limitations on their use. CONSULTANT may retain copies of the above-described information but agrees not  
12 to disclose or discuss any information gathered, discussed or generated in any way through this Agreement  
13 without the written permission of CITY during the term of this Agreement, unless required by law.

14 6. STANDARD OF PERFORMANCE

15 CONSULTANT represents to CITY that the services shall be performed in an expeditious  
16 manner, and with the degree of skill and care that is required by current, good, and sound procedures and  
17 practices. CONSULTANT further agrees that the services shall be in conformance with generally accepted  
18 professional standards prevailing at the time work is performed.

19 7. INSURANCE REQUIRED

20 CONSULTANT shall, at its own expense, procure and maintain in full force at all times during  
21 the term of this AGREEMENT the following insurance:

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23 commercial general liability insurance with limits of no less than one million dollars (\$1,000,000) combined  
24 single limit per occurrence or two million dollars (\$2,000,000) aggregate limit for bodily injury, personal  
25 injury, and property damage.

26 **B. Automobile Liability Coverage.** CONSULTANT shall maintain automobile liability  
27 insurance covering all vehicles used in the performance of this Agreement providing a one million dollar  
28 (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage.

1           **C. Professional Liability Coverage (Errors and Omissions).** CONSULTANT shall  
2 maintain professional liability insurance with coverage for all negligent errors, acts or omissions committed by  
3 CONSULTANT, its agents and employees in the performance of this Agreement. The amount of this insurance  
4 shall be not less than one million dollars (\$1,000,000) on a claims made annual aggregate basis or a combined  
5 single limit per occurrence basis.

6           **D. Compliance with State Workers' Compensation Requirements.** CONSULTANT  
7 covenants that it will insure itself against liability for Workers' Compensation pursuant to the provisions of  
8 California Labor Code §3700, et seq. CONSULTANT shall, at all times, upon demand of the City, furnish  
9 proof that Workers' Compensation Insurance is being maintained by it in force and effect in accordance with  
10 the California Labor Code. The insurer shall also agree to waive all rights of subrogation against the CITY, its  
11 officers, officials, employees and volunteers for losses arising from work performed by CONSULTANT for  
12 CITY. This provision shall not apply upon written verification by CONSULTANT that CONSULTANT has  
13 no employees.

14           **E. Other Insurance Provisions.** The policies are to contain, or be endorsed to contain  
15 the following provisions:

16           **(1) Additional Insured.** CITY, its officers, agents, employees, and volunteers are  
17 to be covered as an additional insured as respects: Liability arising out of activities performed by or on behalf  
18 of CONSULTANT and operations of CONSULTANT, premises owned, occupied, or used by CONSULTANT.  
19 The coverage shall contain no special limitations on the scope or protection afforded to CITY, its officers,  
20 officials, employees, or volunteers.

21           Except for worker's compensation and professional liability insurance, the policies  
22 mentioned in this subsection shall name CITY as an additional insured and provide for notice of cancellation to  
23 CITY. CONSULTANT shall also provide timely and prompt notice to CITY if CONSULTANT receives any  
24 notice of cancellation or nonrenewal from its insurer.

25           **(2) Primary Coverage.** CONSULTANT'S insurance coverage shall be primary  
26 insurance with respect to CITY, its officers, officials, employees, and volunteers. Any insurance, risk pooling  
27 arrangement, or self-insurance maintained by CITY, its officers, officials, employees, or volunteers shall be in  
28 excess of CONSULTANT'S insurance and shall not contribute with it.

1                   **(3) Reporting Provisions.** Any failure to comply with the reporting provisions of  
2 the policy shall not affect the coverage provided to the CITY, its officers, officials, employees, or volunteers.

3                   **(4) Verification of Coverage.** CONSULTANT shall furnish CITY with  
4 certificates of insurance and the original endorsements effecting coverage required by this Agreement. The  
5 certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer  
6 to bind coverage on its behalf. The aforementioned policies shall be issued by an insurance carrier having a  
7 rating of Best A-7 or better which is satisfactory to the City Attorney and shall be delivered to CITY at the time  
8 of the execution of this Agreement or before work commences. Such policies and certificates shall be in a form  
9 approved by the City Attorney. CITY reserves the right to require complete certified copies of all required  
10 insurance policies at any time.

11           8.       SUSPENSION OF WORK

12                   CITY may, at any time, by ten (10) days' written notice, suspend further performance by  
13 CONSULTANT. All suspensions shall extend the time schedule for performance in a mutually satisfactory  
14 manner, and CONSULTANT shall be paid for services performed and reimbursable expenses incurred prior to  
15 the suspension date. During the period of suspension, CONSULTANT shall not receive any payment for  
16 services, or expenses, except for reasonable administration expenses, incurred by CONSULTANT by reason of  
17 such suspension.

18           9.       TERMINATION

19                   CITY may terminate this Agreement for any reason upon ten (10) days written notice to the  
20 other party. CITY may terminate the Agreement upon five (5) days written notice if CONSULTANT breaches  
21 this Agreement. In the event of any termination, CONSULTANT shall promptly deliver to the CITY any and  
22 all finished and unfinished reports or other written, recorded, photographic, or visual materials, documents,  
23 data, and other deliverables ("Work Materials") prepared for the CITY prior to the effective date of such  
24 termination, all of which shall become CITY's sole property. After receipt of the Work Materials, CITY will  
25 pay CONSULTANT for the services performed as of the effective date of the termination.

26           10.      COMPLIANCE WITH CIVIL RIGHTS

27                   During the performance of this contract, CONSULTANT agrees as follows:

28                   **A. Equal Employment Opportunity.** In connection with the execution of this

1 AGREEMENT, CONSULTANT shall not discriminate against any employee or applicant for employment  
2 because of race, religion, color, sex, or national origin. Such actions shall include, but not be limited to, the  
3 following: employment, promotion, upgrading, demotion, or transfer; recruitment or recruitment advertising;  
4 layoff or termination; rate of pay or other forms of compensation; and selection for training including  
5 apprenticeship.

6 **B. Nondiscrimination Civil Rights Act of 1964.** CONSULTANT will comply with all  
7 federal regulations relative to nondiscrimination in federally assisted programs.

8 **C. Solicitations for Subcontractors including Procurement of Materials and**  
9 **Equipment.** In all solicitation, either by competitive bidding or negotiations, made by CONSULTANT for  
10 work to be performed under a subcontract including procurement of materials or leases of equipment, each  
11 potential subcontractor, supplier or lessor shall be notified by CONSULTANT of CONSULTANT'S obligation  
12 under this AGREEMENT and the regulations relative to nondiscrimination on the grounds of race, religion,  
13 color, sex, or national origin.

14 11. CONFLICT OF INTEREST

15 A. CONSULTANT covenants and represents that neither it, nor any officer or principal of  
16 its firm, has, or shall acquire any interest, directly or indirectly, which would conflict in any manner with the  
17 interests of CITY or which would in any way hinder CONSULTANT's performance of services under this  
18 Agreement. CONSULTANT further covenants that in the performance of the Agreement, no person having  
19 any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express  
20 written consent of the CITY. CONSULTANT agrees to at all times avoid conflicts of interest, or the  
21 appearance of any conflicts of interest, with the interests of the CITY in the performance of this Agreement.

22 B. CONSULTANT is not a designated employee within the meaning of the Political  
23 Reform Act because CONSULTANT:

24 (1) Will conduct research and arrive at conclusions with respect to its rendition of  
25 information, advice, recommendation or counsel independent of the control and direction of the CITY or of any  
26 CITY official, other than normal contract monitoring; and

27 (2) Possesses no authority with respect to any CITY decision beyond the rendition of  
28 information, advice, recommendation or counsel. (2 Cal. Code Regs. § 18700(a)(2).)

1           12.    INDEPENDENT CONTRACTOR

2           In assuming and performing the services, CONSULTANT is an independent contractor and  
3 shall not be eligible for any benefits, which the CITY may provide its employees, except as expressly provided  
4 for in the AGREEMENT. All persons, if any, hired by CONSULTANT shall be employees or subcontractors of  
5 CONSULTANT and shall not be construed as employees or agents of the CITY in any respect.  
6 CONSULTANT shall have responsibility for and control over the means of providing services under this  
7 AGREEMENT.

8           13.    COMPLIANCE WITH LAWS

9           CONSULTANT shall comply with all applicable federal, State of California, and local laws,  
10 rules, and regulations and shall obtain all applicable licenses and permits for the conduct of its business and the  
11 performance of the services.

12           14.    CHOICE OF LAW

13           This Agreement shall be construed and interpreted in accordance with the laws of the State of  
14 California, excluding any choice of law rules which may direct the application of the laws of another  
15 jurisdiction. In the event that suit shall be brought by either party hereunder, the parties agree that trial of such  
16 action shall be held exclusively in a state court in the County of Contra Costa, California.

17           15.    NON-WAIVER

18           The waiver by either party of any breach of any term, covenant, or condition contained in the  
19 AGREEMENT, or any default in their performance of any obligations under the AGREEMENT shall not be  
20 deemed to be a waiver of any other breach or default of the same or any other term, covenant, condition, or  
21 obligation, nor shall any waiver of any incident of breach of default constitute a continuing waiver of same.

22           16.    ENFORCEABILITY; INTERPRETATION

23           In the event that any of the provisions or portions of application of any of the provisions of the  
24 AGREEMENT are held to be illegal or invalid by a court of competent jurisdiction, CITY and CONSULTANT  
25 shall negotiate an equitable adjustment in the provisions of the AGREEMENT with a view toward affecting the  
26 purpose of the AGREEMENT. The illegality or invalidity of any of the provisions or portions of application of  
27 any of the provisions of the AGREEMENT shall not affect the legality or enforceability of the remaining  
28 provisions or portions of application of any of the provisions of the AGREEMENT. This Agreement shall be

1 interpreted as though it was a product of a joint drafting effort and no provisions shall be interpreted against a  
2 party on the ground that said party was solely or primarily responsible for drafting the language to be  
3 interpreted.

4 17. INTEGRATION

5 The AGREEMENT contains the entire AGREEMENT and understanding between the parties  
6 as to the subject matter of this AGREEMENT. It merges and supersedes all prior or contemporaneous  
7 agreements, commitments, representation, writings, and discussions between CONSULTANT and CITY,  
8 whether oral or written.

9 18. SUCCESSORS AND ASSIGNS; NO THIRD PARTY BENEFICIARIES; NO JOINT  
10 VENTURE

11 CITY and CONSULTANT respectively, bind themselves, their successors, assigns, and legal  
12 representatives to the terms and obligations of this Agreement. CONSULTANT shall not assign or transfer any  
13 interest in the Agreement without the CITY's prior written consent, which consent shall be in the CITY's sole  
14 discretion. Any attempted assignment or transfer in breach of this provision shall be void. This Agreement is  
15 not intended and shall not be construed to create any third party benefit. This Agreement is not intended and  
16 shall not be construed to create a joint venture or partnership between the parties. CONSULTANT, its officers,  
17 employees and agents shall not have any power to bind or commit the CITY to any decision.

18 19. FINANCIAL RECORDS

19 Records of CONSULTANT's direct labor costs, payroll costs, and reimbursable expenses  
20 pertaining to this project covered by this AGREEMENT will be kept on a generally recognized accounting  
21 basis and made available to CITY if and when required.

22 20. NOTICES

23 All notices required hereunder shall be in writing and mailed postage prepaid by Certified or  
24 Registered mail, return receipt requested, or by personal delivery to the CITY's address as shown below, or  
25 such other places as CITY or CONSULTANT may, from time to time, respectively, designate in a written  
26 notice given to the other. Notice shall be deemed received three (3) days after the date of the mailing thereof or  
27 upon personal delivery.

28 To CITY

**Robert Ovadia, City Engineer**

1 **Community & Economic Development Department**  
2 **City of Concord**  
3 **1950 Parkside Drive, MS/40**  
4 **Concord, CA 94519**  
5 **Phone: (925) 671-3470**  
6 **Fax: (925) 798-9692**

7 To CONSULTANT

8 **Thomas Butt, Principal in Charge**  
9 **Interactive Resources**  
10 **117 Park Place**  
11 **Richmond, CA 94801**  
12 **Phone: (510) 236-7435**

13 21. TERM

14 The term of this AGREEMENT shall be from the date executed above through **June 30<sup>th</sup>, 2017**, with the option of one one-year extension upon mutual agreement by both CITY and CONSULTANT. The City Manager is authorized to approve the extension.

15 22. NON-LIABILITY

16 No member of the CITY and no other officer, employee or agent of the CITY shall be personally liable to CONSULTANT or otherwise in the event of any default or breach of the CITY, or for any amount which may become due to CONSULTANT or any successor in interest, or for any obligations directly or indirectly incurred under the terms of this Agreement.

17 23. EXECUTION

18 Each individual or entity executing this Agreement on behalf of CONSULTANT represents and warrants that he or she or it is duly authorized to execute and deliver this Agreement on behalf of CONSULTANT and that such execution is binding upon CONSULTANT.

19 This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

20 **IN WITNESS WHEREOF**, the parties have executed this AGREEMENT in three (3) copies as of the date and year first written above.

21 **CONSULTANT**

22 **CITY OF CONCORD**

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By: \_\_\_\_\_

Name: Thomas Butt  
Title: Principal in Charge  
Address: 117 Park Place  
Richmond, CA 94801  
Telephone: (510) 236-7435

By: \_\_\_\_\_

Name: Valerie Barone  
Title: City Manager  
Address: 1950 Parkside Drive, MS 01  
Concord, CA 94519  
Telephone: (925) 671-3175

APPROVED AS TO FORM:

ATTEST:

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
City Clerk

Date: \_\_\_\_\_, 2015

FINANCE DIRECTOR'S CERTIFICATION:

Concord, California

Date: \_\_\_\_\_, 2015

I HEREBY CERTIFY THAT ADEQUATE FUNDS EXIST OR WILL BE RECEIVED  
DURING THE CURRENT FISCAL YEARS 2015-16 AND 2016-17 TO PAY THE  
ANTICIPATED EXPENSES TO BE INCURRED PURSUANT TO THIS CONTRACT.

THE SUM OF **\$250,000.**

\_\_\_\_\_  
Finance Director's Signature

## **FIRST AMENDMENT TO MASTER SERVICES AGREEMENT**

This First Amendment to Master Services Agreement is entered into on this date, July 1, 2015, and amends the agreement between the City of Concord (the "CITY") and Interactive Resources, whose address is 117 Park Place, Richmond, CA 94801 (the "CONSULTANT") dated July 1, 2015.

**WHEREAS**, the CITY and CONSULTANT entered into a Master Agreement dated July 1, 2015 to provide: Architectural and Structural Design Services related to CIP Projects.

**WHEREAS**, the CITY and CONSULTANT wish to amend the Master Agreement by updating the Indemnification language for Design Services Contracts.

**NOW THEREFORE**, in consideration of the promises and conditions set forth in the Agreement dated July 1, 2015, the parties mutually desire to amend the Indemnification provisions of its Master Agreement with the following:

1. Section 4 of the July 1, 2015 Master Services Agreement is hereby deleted in its entirety and is replaced with the following:

4. INDEMNIFICATION

- a. For Design Professional Services Only. Pursuant to California Civil Code Section 2782.8, CONSULTANT agrees to indemnify the CITY (including its officers, agents, employees and volunteers) against liability for claims against the CITY that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of CONSULTANT in the performance of this Agreement. The CONSULTANT will reimburse the CITY for any expenditures, including reasonable attorney fees, incurred by the CITY in defending against claims ultimately determined to arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the CONSULTANT.

- b. For All Other Services. CONSULTANT agrees to defend, indemnify and hold harmless the CITY (including its officers, officials, employees, agents and volunteers) from and against any and all claims, demands, actions, losses, damages, injuries, and liability (including all attorney's fees and other litigation expenses) arising out of the CONSULTANT's performance under the terms of this Agreement. This indemnification obligation on CONSULTANT'S part shall not apply to demands, actions, losses, damages, injuries, and liability arising out of sole negligence or willful misconduct on the part of CITY.

2. Except as expressly amended herein, all other terms and conditions of the Master Agreement dated July 1, 2015 shall remain in full force and effect.

**IN WITNESS WHEREOF**, the parties have executed this First Amendment on the day and year written above.

Dated: \_\_\_\_\_, 2015

Interactive Resources

BY: \_\_\_\_\_

Dated: \_\_\_\_\_, 2015

CITY OF CONCORD

By: \_\_\_\_\_

Valerie Barone  
City Manager

APPROVED AS TO FORM:

ATTEST:

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
City Clerk

FINANCE DIRECTOR'S CERTIFICATION:

Concord, California

Date: \_\_\_\_\_, 2015

I HEREBY CERTIFY THAT ADEQUATE FUNDS EXIST OR WILL BE RECEIVED DURING THE CURRENT FISCAL YEAR 2015-16 AND 2016-17, TO PAY THE ANTICIPATED EXPENSES TO BE INCURRED PURSUANT TO THIS CONTRACT, THE SUM OF **\$250,000**.

\_\_\_\_\_  
Finance Director's Signature

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

1 THIS AGREEMENT made and entered into on July 1<sup>st</sup>, 2015 by and between the City of Concord  
2 (hereinafter "CITY"), located in the County of Contra Costa, State of California, and JMEC Engineering, Inc.,  
3 (hereinafter "CONSULTANT"), whose address is 165 Lennon Lane, Suite 106, Walnut Creek, CA 94598.

4 THE PARTIES ENTER THIS AGREEMENT based upon the following facts, understandings and  
5 intentions:

6 CITY desires to contract with CONSULTANT and CONSULTANT to contract with CITY for  
7 provision by CONSULTANT to CITY for professional services as further described herein, upon the terms and  
8 conditions hereinafter set forth.

9 NOW, THEREFORE, IN CONSIDERATION of the mutual covenants and promises of the parties  
10 herein contained, the parties hereto agree as follows:

11 1. SERVICES

12 CONSULTANT shall provide services for specific projects as may be requested by CITY;  
13 such services shall be defined, scheduled, and authorized in subsequent Task Orders. Services may include, but  
14 not be limited to:

- 15 ● Structural Design services related to CIP Projects
- 16 ● Other as-needed services;

17 CONSULTANT shall be an independent contractor and shall have responsibility for and  
18 control over the details and means of providing its services under this AGREEMENT. CONSULTANT agrees  
19 that its services shall be performed with due diligence and in accordance with generally accepted engineering  
20 practices.

21 CONSULTANT shall use its best efforts to perform and coordinate all activities in a timely  
22 manner so that the projects will be completed according to the established project schedules.

23 2. AUTHORIZED REPRESENTATIVES

24 Authorized representatives shall represent CITY and CONSULTANT in all matters pertaining  
25 to the services to be ordered by CITY or rendered by CONSULTANT under this Agreement except where  
26 approval for the CITY is specifically required by the City Council. The CITY'S authorized representative shall  
27 be the City Engineer. Said City Engineer is authorized to execute Task Orders on behalf of CITY, including  
28

1 providing for CONSULTANT to be compensated not more than **\$50,000** for each project. Task Orders  
2 providing for more than **\$50,000** compensation for one project shall be presented to the City Council for its  
3 consideration.

4 CONSULTANT authorized representative shall be **Esmond C. Chan, President**

5 3. COMPENSATION

6 CONSULTANT shall be compensated, not to exceed **\$250,000** per fiscal year for basic  
7 services rendered under Section 1, as more particularly described in authorized Task Orders, in accordance with  
8 the terms and conditions included therein.

9 CONSULTANT may submit monthly statements for services rendered; all statements shall  
10 include adequate documentation demonstrating work performed during the billing period and shall conform to  
11 Federal Funding invoicing requirements, if applicable. It is intended that payments to CONSULTANT will be  
12 made by CITY within thirty (30) days of receipt of invoice. Consultant's failure to secure CITY's written  
13 authorization for additional compensation or changes to the Scope of Work shall constitute a waiver of any and  
14 all right to adjustment in the price or time due, whether by way of compensation, restitution, quantum meruit,  
15 or similar relief.

16 4. INDEMNIFICATION

17 CONSULTANT agrees to defend, indemnify and hold harmless the CITY, its officers,  
18 officials, employees, agents and volunteers from and against any and all claims, demands, actions, losses,  
19 damages, injuries, and liability (including all attorney's fees and other litigation expenses) arising out of the  
20 CONSULTANT's performance under the terms of this Agreement. This indemnification obligation on  
21 CONSULTANT'S part shall not apply to demands, actions, losses, damages, injuries, and liability arising out  
22 of sole negligence or willful misconduct on the part of CITY.

23 5. OWNERSHIP AND MAINTENANCE OF DOCUMENTS

24 All documents furnished by CONSULTANT pursuant to this AGREEMENT are instruments  
25 of CONSULTANT's services in respect to this project. They are not intended nor represented to be suitable for  
26 reuse by others on extensions of this project or on any other project. Any reuse without specific written  
27 verification and adoption by CONSULTANT for the specific purposes intended will be at user's sole risk and  
28 without liability or legal exposure and expenses to CONSULTANT, including attorney's fees arising out of

1 such unauthorized reuse.

2 CONSULTANT's records, documents, calculations, and all other instruments of service pertaining to  
3 actual project shall be given to CITY at the completion of the project. The CITY reserves the right to specify  
4 the file format that electronic document deliverables are presented to the CITY. Title to all plans,  
5 specifications, maps, estimates, reports, manuscripts, drawings, descriptions and other final work products  
6 compiled by the CONSULTANT under the Agreement shall be vested in the CITY, none of which shall be  
7 used in any manner whatsoever, by any person, firm, corporation, or agency without the expressed written  
8 consent of the CITY. Basic survey notes and sketches, charts, computations, and other data prepared or  
9 obtained under the Agreement shall be made available, upon request, to the CITY without restriction or  
10 limitations on their use. CONSULTANT may retain copies of the above-described information but agrees not  
11 to disclose or discuss any information gathered, discussed or generated in any way through this Agreement  
12 without the written permission of CITY during the term of this Agreement, unless required by law.

13 6. STANDARD OF PERFORMANCE

14 CONSULTANT represents to CITY that the services shall be performed in an expeditious  
15 manner, and with the degree of skill and care that is required by current, good, and sound procedures and  
16 practices. CONSULTANT further agrees that the services shall be in conformance with generally accepted  
17 professional standards prevailing at the time work is performed.

18 7. INSURANCE REQUIRED

19 CONSULTANT shall, at its own expense, procure and maintain in full force at all times during  
20 the term of this AGREEMENT the following insurance:

21 **A. Commercial General Liability Coverage.** CONSULTANT shall maintain  
22 commercial general liability insurance with limits of no less than one million dollars (\$1,000,000) combined  
23 single limit per occurrence or two million dollars (\$2,000,000) aggregate limit for bodily injury, personal  
24 injury, and property damage.

25 **B. Automobile Liability Coverage.** CONSULTANT shall maintain automobile liability  
26 insurance covering all vehicles used in the performance of this Agreement providing a one million dollar  
27 (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage.

28 **C. Professional Liability Coverage (Errors and Omissions).** CONSULTANT shall

1 maintain professional liability insurance with coverage for all negligent errors, acts or omissions committed by  
2 CONSULTANT, its agents and employees in the performance of this Agreement. The amount of this insurance  
3 shall be not less than one million dollars (\$1,000,000) on a claims made annual aggregate basis or a combined  
4 single limit per occurrence basis.

5 **D. Compliance with State Workers' Compensation Requirements.** CONSULTANT  
6 covenants that it will insure itself against liability for Workers' Compensation pursuant to the provisions of  
7 California Labor Code §3700, et seq. CONSULTANT shall, at all times, upon demand of the City, furnish  
8 proof that Workers' Compensation Insurance is being maintained by it in force and effect in accordance with  
9 the California Labor Code. The insurer shall also agree to waive all rights of subrogation against the CITY, its  
10 officers, officials, employees and volunteers for losses arising from work performed by CONSULTANT for  
11 CITY. This provision shall not apply upon written verification by CONSULTANT that CONSULTANT has  
12 no employees.

13 **E. Other Insurance Provisions.** The policies are to contain, or be endorsed to contain  
14 the following provisions:

15 (1) **Additional Insured.** CITY, its officers, agents, employees, and volunteers are  
16 to be covered as an additional insured as respects: Liability arising out of activities performed by or on behalf  
17 of CONSULTANT and operations of CONSULTANT, premises owned, occupied, or used by CONSULTANT.  
18 The coverage shall contain no special limitations on the scope or protection afforded to CITY, its officers,  
19 officials, employees, or volunteers.

20 Except for worker's compensation and professional liability insurance, the policies  
21 mentioned in this subsection shall name CITY as an additional insured and provide for notice of cancellation to  
22 CITY. CONSULTANT shall also provide timely and prompt notice to CITY if CONSULTANT receives any  
23 notice of cancellation or nonrenewal from its insurer.

24 (2) **Primary Coverage.** CONSULTANT'S insurance coverage shall be primary  
25 insurance with respect to CITY, its officers, officials, employees, and volunteers. Any insurance, risk pooling  
26 arrangement, or self-insurance maintained by CITY, its officers, officials, employees, or volunteers shall be in  
27 excess of CONSULTANT'S insurance and shall not contribute with it.

28 (3) **Reporting Provisions.** Any failure to comply with the reporting provisions of

1 the policy shall not affect the coverage provided to the CITY, its officers, officials, employees, or volunteers.

2                   **(4) Verification of Coverage.** CONSULTANT shall furnish CITY with  
3 certificates of insurance and the original endorsements effecting coverage required by this Agreement. The  
4 certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer  
5 to bind coverage on its behalf. The aforementioned policies shall be issued by an insurance carrier having a  
6 rating of Best A-7 or better which is satisfactory to the City Attorney and shall be delivered to CITY at the time  
7 of the execution of this Agreement or before work commences. Such policies and certificates shall be in a form  
8 approved by the City Attorney. CITY reserves the right to require complete certified copies of all required  
9 insurance policies at any time.

10           8.       SUSPENSION OF WORK

11                   CITY may, at any time, by ten (10) days' written notice, suspend further performance by  
12 CONSULTANT. All suspensions shall extend the time schedule for performance in a mutually satisfactory  
13 manner, and CONSULTANT shall be paid for services performed and reimbursable expenses incurred prior to  
14 the suspension date. During the period of suspension, CONSULTANT shall not receive any payment for  
15 services, or expenses, except for reasonable administration expenses, incurred by CONSULTANT by reason of  
16 such suspension.

17           9.       TERMINATION

18                   CITY may terminate this Agreement for any reason upon ten (10) days written notice to the  
19 other party. CITY may terminate the Agreement upon five (5) days written notice if CONSULTANT breaches  
20 this Agreement. In the event of any termination, CONSULTANT shall promptly deliver to the CITY any and  
21 all finished and unfinished reports or other written, recorded, photographic, or visual materials, documents,  
22 data, and other deliverables ("Work Materials") prepared for the CITY prior to the effective date of such  
23 termination, all of which shall become CITY's sole property. After receipt of the Work Materials, CITY will  
24 pay CONSULTANT for the services performed as of the effective date of the termination.

25           10.      COMPLIANCE WITH CIVIL RIGHTS

26                   During the performance of this contract, CONSULTANT agrees as follows:

27                   **A. Equal Employment Opportunity.** In connection with the execution of this  
28 AGREEMENT, CONSULTANT shall not discriminate against any employee or applicant for employment

1 because of race, religion, color, sex, or national origin. Such actions shall include, but not be limited to, the  
2 following: employment, promotion, upgrading, demotion, or transfer; recruitment or recruitment advertising;  
3 layoff or termination; rate of pay or other forms of compensation; and selection for training including  
4 apprenticeship.

5 **B. Nondiscrimination Civil Rights Act of 1964.** CONSULTANT will comply with all  
6 federal regulations relative to nondiscrimination in federally assisted programs.

7 **C. Solicitations for Subcontractors including Procurement of Materials and**  
8 **Equipment.** In all solicitation, either by competitive bidding or negotiations, made by CONSULTANT for  
9 work to be performed under a subcontract including procurement of materials or leases of equipment, each  
10 potential subcontractor, supplier or lessor shall be notified by CONSULTANT of CONSULTANT'S obligation  
11 under this AGREEMENT and the regulations relative to nondiscrimination on the grounds of race, religion,  
12 color, sex, or national origin.

13 11. CONFLICT OF INTEREST

14 A. CONSULTANT covenants and represents that neither it, nor any officer or principal of  
15 its firm, has, or shall acquire any interest, directly or indirectly, which would conflict in any manner with the  
16 interests of CITY or which would in any way hinder CONSULTANT's performance of services under this  
17 Agreement. CONSULTANT further covenants that in the performance of the Agreement, no person having  
18 any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express  
19 written consent of the CITY. CONSULTANT agrees to at all times avoid conflicts of interest, or the  
20 appearance of any conflicts of interest, with the interests of the CITY in the performance of this Agreement.

21 B. CONSULTANT is not a designated employee within the meaning of the Political  
22 Reform Act because CONSULTANT:

23 (1) Will conduct research and arrive at conclusions with respect to its rendition of  
24 information, advice, recommendation or counsel independent of the control and direction of the CITY or of any  
25 CITY official, other than normal contract monitoring; and

26 (2) Possesses no authority with respect to any CITY decision beyond the rendition of  
27 information, advice, recommendation or counsel. (2 Cal. Code Regs. § 18700(a)(2).)

28 12. INDEPENDENT CONTRACTOR

1 In assuming and performing the services, CONSULTANT is an independent contractor and  
2 shall not be eligible for any benefits, which the CITY may provide its employees, except as expressly provided  
3 for in the AGREEMENT. All persons, if any, hired by CONSULTANT shall be employees or subcontractors of  
4 CONSULTANT and shall not be construed as employees or agents of the CITY in any respect.  
5 CONSULTANT shall have responsibility for and control over the means of providing services under this  
6 AGREEMENT.

7 13. COMPLIANCE WITH LAWS

8 CONSULTANT shall comply with all applicable federal, State of California, and local laws,  
9 rules, and regulations and shall obtain all applicable licenses and permits for the conduct of its business and the  
10 performance of the services.

11 14. CHOICE OF LAW

12 This Agreement shall be construed and interpreted in accordance with the laws of the State of  
13 California, excluding any choice of law rules which may direct the application of the laws of another  
14 jurisdiction. In the event that suit shall be brought by either party hereunder, the parties agree that trial of such  
15 action shall be held exclusively in a state court in the County of Contra Costa, California.

16 15. NON-WAIVER

17 The waiver by either party of any breach of any term, covenant, or condition contained in the  
18 AGREEMENT, or any default in their performance of any obligations under the AGREEMENT shall not be  
19 deemed to be a waiver of any other breach or default of the same or any other term, covenant, condition, or  
20 obligation, nor shall any waiver of any incident of breach of default constitute a continuing waiver of same.

21 16. ENFORCEABILITY; INTERPRETATION

22 In the event that any of the provisions or portions of application of any of the provisions of the  
23 AGREEMENT are held to be illegal or invalid by a court of competent jurisdiction, CITY and CONSULTANT  
24 shall negotiate an equitable adjustment in the provisions of the AGREEMENT with a view toward affecting the  
25 purpose of the AGREEMENT. The illegality or invalidity of any of the provisions or portions of application of  
26 any of the provisions of the AGREEMENT shall not affect the legality or enforceability of the remaining  
27 provisions or portions of application of any of the provisions of the AGREEMENT. This Agreement shall be  
28 interpreted as though it was a product of a joint drafting effort and no provisions shall be interpreted against a

1 party on the ground that said party was solely or primarily responsible for drafting the language to be  
2 interpreted.

3 17. INTEGRATION

4 The AGREEMENT contains the entire AGREEMENT and understanding between the parties  
5 as to the subject matter of this AGREEMENT. It merges and supersedes all prior or contemporaneous  
6 agreements, commitments, representation, writings, and discussions between CONSULTANT and CITY,  
7 whether oral or written.

8 18. SUCCESSORS AND ASSIGNS; NO THIRD PARTY BENEFICIARIES; NO JOINT  
9 VENTURE

10 CITY and CONSULTANT respectively, bind themselves, their successors, assigns, and legal  
11 representatives to the terms and obligations of this Agreement. CONSULTANT shall not assign or transfer any  
12 interest in the Agreement without the CITY's prior written consent, which consent shall be in the CITY's sole  
13 discretion. Any attempted assignment or transfer in breach of this provision shall be void. This Agreement is  
14 not intended and shall not be construed to create any third party benefit. This Agreement is not intended and  
15 shall not be construed to create a joint venture or partnership between the parties. CONSULTANT, its officers,  
16 employees and agents shall not have any power to bind or commit the CITY to any decision.

17 19. FINANCIAL RECORDS

18 Records of CONSULTANT's direct labor costs, payroll costs, and reimbursable expenses  
19 pertaining to this project covered by this AGREEMENT will be kept on a generally recognized accounting  
20 basis and made available to CITY if and when required.

21 20. NOTICES

22 All notices required hereunder shall be in writing and mailed postage prepaid by Certified or  
23 Registered mail, return receipt requested, or by personal delivery to the CITY's address as shown below, or  
24 such other places as CITY or CONSULTANT may, from time to time, respectively, designate in a written  
25 notice given to the other. Notice shall be deemed received three (3) days after the date of the mailing thereof or  
26 upon personal delivery.

27 To CITY

**Robert Ovadia, City Engineer**  
**Community & Economic Development Department**  
**City of Concord**

1 **1950 Parkside Drive, MS/40**  
2 **Concord, CA 94519**  
3 **Phone: (925) 671-3470**  
4 **Fax: (925) 798-9692**

4 To CONSULTANT

**Esmond C. Chan, President**  
**JMEC Engineering, Inc.**  
**165 Lennon Lane, Suite 106**  
**Walnut Creek, CA 94598**  
**Phone: (925) 944-8999**  
**Fax: (925) 944-9998**

8 21. TERM

9 The term of this AGREEMENT shall be from the date executed above through **June 30<sup>th</sup>**,  
10 **2017**, with the option of one one-year extension upon mutual agreement by both CITY and CONSULTANT.  
11 The City Manager is authorized to approve the extension.

12 22. NON-LIABILITY

13 No member of the CITY and no other officer, employee or agent of the CITY shall be  
14 personally liable to CONSULTANT or otherwise in the event of any default or breach of the CITY, or for any  
15 amount which may become due to CONSULTANT or any successor in interest, or for any obligations directly  
16 or indirectly incurred under the terms of this Agreement.

17 23. EXECUTION

18 Each individual or entity executing this Agreement on behalf of CONSULTANT represents  
19 and warrants that he or she or it is duly authorized to execute and deliver this Agreement on behalf of  
20 CONSULTANT and that such execution is binding upon CONSULTANT.

21 This Agreement may be executed in several counterparts, each of which shall constitute one  
22 and the same instrument and shall become binding upon the parties when at least one copy hereof shall have  
23 been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or  
24 account for more than one such counterpart.

25 **IN WITNESS WHEREOF**, the parties have executed this AGREEMENT in three (3) copies as of the  
26 date and year first written above.

27 **CONSULTANT**

**CITY OF CONCORD**

1 By: \_\_\_\_\_

By: \_\_\_\_\_

2 Name: Esmond C. Chan  
3 Title: President  
4 Address: 164 Lennon Lane, Suite 106  
Walnut Creek, CA 94598  
5 Telephone: (925) 944-8999

Name: Valerie Barone  
Title: City Manager  
Address: 1950 Parkside Drive, MS 01  
Concord, CA 94519  
Telephone: (925) 671-3175

6 APPROVED AS TO FORM:

ATTEST:

7  
8 \_\_\_\_\_  
City Attorney

\_\_\_\_\_

9  
10 Date: \_\_\_\_\_, 2015

11  
12 FINANCE DIRECTOR'S CERTIFICATION:

13 Concord, California

14 Date: \_\_\_\_\_, 2015

15 I HEREBY CERTIFY THAT ADEQUATE FUNDS EXIST OR WILL BE RECEIVED  
16 DURING THE CURRENT FISCAL YEARS 2015-16 AND 2016-17 TO PAY THE  
17 ANTICIPATED EXPENSES TO BE INCURRED PURSUANT TO THIS CONTRACT.

18 THE SUM OF **\$250,000.**

19  
20 \_\_\_\_\_  
Finance Director's Signature

**FIRST AMENDMENT TO  
MASTER SERVICES AGREEMENT**

This First Amendment to Master Services Agreement is entered into on this date, July 1, 2015, and amends the agreement between the City of Concord (the "CITY") and JMEC Engineering, Inc., whose address is 165 Lennon Lane, Suite 106, Walnut Creek, CA 94598 (the "CONSULTANT") dated July 1, 2015.

**WHEREAS**, the CITY and CONSULTANT entered into a Master Agreement dated July 1, 2015 to provide: Structural Design Services related to CIP Projects.

**WHEREAS**, the CITY and CONSULTANT wish to amend the Master Agreement by updating the Indemnification language for Design Services Contracts.

**NOW THEREFORE**, in consideration of the promises and conditions set forth in the Agreement dated July 1, 2015, the parties mutually desire to amend the Indemnification provisions of its Master Agreement with the following:

1. Section 4 of the July 1, 2015 Master Services Agreement is hereby deleted in its entirety and is replaced with the following:
  4. INDEMNIFICATION
    - a. For Design Professional Services Only. Pursuant to California Civil Code Section 2782.8, CONSULTANT agrees to indemnify the CITY (including its officers, agents, employees and volunteers) against liability for claims against the CITY that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of CONSULTANT in the performance of this Agreement. The CONSULTANT will reimburse the CITY for any expenditures, including reasonable attorney fees, incurred by the CITY in defending against claims ultimately determined to arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the CONSULTANT.
    - b. For All Other Services. CONSULTANT agrees to defend, indemnify and hold harmless the CITY (including its officers, officials, employees, agents and volunteers) from and against any and all claims, demands, actions, losses, damages, injuries, and liability (including all attorney's fees and other litigation expenses) arising out of the CONSULTANT's performance under the terms of this Agreement. This indemnification obligation on CONSULTANT'S part shall not apply to demands, actions, losses, damages, injuries, and liability arising out of sole negligence or willful misconduct on the part of CITY.
2. Except as expressly amended herein, all other terms and conditions of the Master Agreement dated July 1, 2015 shall remain in full force and effect.

**IN WITNESS WHEREOF**, the parties have executed this First Amendment on the day and year written above.

Dated: \_\_\_\_\_, 2015

JMEC Engineering, Inc.

BY: Edward Quijia

Dated: \_\_\_\_\_, 2015

CITY OF CONCORD

By: \_\_\_\_\_  
Valerie Barone  
City Manager

APPROVED AS TO FORM:

ATTEST:

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
City Clerk

FINANCE DIRECTOR'S CERTIFICATION:

Concord, California

Date: \_\_\_\_\_, 2015

I HEREBY CERTIFY THAT ADEQUATE FUNDS EXIST OR WILL BE RECEIVED DURING THE CURRENT FISCAL YEAR 2015-16 AND 2016-17, TO PAY THE ANTICIPATED EXPENSES TO BE INCURRED PURSUANT TO THIS CONTRACT, THE SUM OF **\$250,000**.

\_\_\_\_\_  
Finance Director's Signature

**MASTER AGREEMENT FOR PROFESSIONAL SERVICES**

1           **THIS AGREEMENT** made and entered into on **July 1<sup>st</sup>, 2015** by and between the City of Concord  
2 (hereinafter "CITY"), located in the County of Contra Costa, State of California, and **Associated Right of Way**  
3 **Services, Inc.**, (hereinafter "CONSULTANT"), whose address is 2300 Contra Costa Blvd., Suite 525, Pleasant  
4 Hill, CA 94523

5           **THE PARTIES ENTER THIS AGREEMENT** based upon the following facts, understandings and  
6 intentions:

7           CITY desires to contract with CONSULTANT and CONSULTANT to contract with CITY for  
8 provision by CONSULTANT to CITY for professional services as further described herein, upon the terms and  
9 conditions hereinafter set forth.

10           **NOW, THEREFORE, IN CONSIDERATION** of the mutual covenants and promises of the parties  
11 herein contained, the parties hereto agree as follows:

12           1.       SERVICES

13           CONSULTANT shall provide services for specific projects as may be requested by CITY;  
14 such services shall be defined, scheduled, and authorized in subsequent Task Orders. Services may include, but  
15 not be limited to:

- 16           ● Right of Way Services related to CIP Projects
- 17           ● Other as-needed services;

18           CONSULTANT shall be an independent contractor and shall have responsibility for and  
19 control over the details and means of providing its services under this AGREEMENT. CONSULTANT agrees  
20 that its services shall be performed with due diligence and in accordance with generally accepted engineering  
21 practices.

22           CONSULTANT shall use its best efforts to perform and coordinate all activities in a timely  
23 manner so that the projects will be completed according to the established project schedules.

24           2.       AUTHORIZED REPRESENTATIVES

25           Authorized representatives shall represent CITY and CONSULTANT in all matters pertaining  
26 to the services to be ordered by CITY or rendered by CONSULTANT under this Agreement except where  
27 approval for the CITY is specifically required by the City Council. The CITY'S authorized representative shall  
28

1 be the City Engineer. Said City Engineer is authorized to execute Task Orders on behalf of CITY, including  
2 providing for CONSULTANT to be compensated not more than **\$50,000** for each project. Task Orders  
3 providing for more than **\$50,000** compensation for one project shall be presented to the City Council for its  
4 consideration.

5 CONSULTANT authorized representative shall be Larry Castellanos, President

6 3. COMPENSATION

7 CONSULTANT shall be compensated, not to exceed **\$250,000** per fiscal year for basic  
8 services rendered under Section 1, as more particularly described in authorized Task Orders, in accordance with  
9 the terms and conditions included therein.

10 CONSULTANT may submit monthly statements for services rendered; all statements shall  
11 include adequate documentation demonstrating work performed during the billing period and shall conform to  
12 Federal Funding invoicing requirements, if applicable. It is intended that payments to CONSULTANT will be  
13 made by CITY within thirty (30) days of receipt of invoice. Consultant's failure to secure CITY's written  
14 authorization for additional compensation or changes to the Scope of Work shall constitute a waiver of any and  
15 all right to adjustment in the price or time due, whether by way of compensation, restitution, quantum meruit,  
16 or similar relief.

17 4. INDEMNIFICATION

18 CONSULTANT agrees to defend, indemnify and hold harmless the CITY, its officers,  
19 officials, employees, agents and volunteers from and against any and all claims, demands, actions, losses,  
20 damages, injuries, and liability (including all attorney's fees and other litigation expenses) arising out of the  
21 CONSULTANT's performance under the terms of this Agreement. This indemnification obligation on  
22 CONSULTANT'S part shall not apply to demands, actions, losses, damages, injuries, and liability arising out  
23 of sole negligence or willful misconduct on the part of CITY.

24 5. OWNERSHIP AND MAINTENANCE OF DOCUMENTS

25 All documents furnished by CONSULTANT pursuant to this AGREEMENT are instruments  
26 of CONSULTANT's services in respect to this project. They are not intended nor represented to be suitable for  
27 reuse by others on extensions of this project or on any other project. Any reuse without specific written  
28 verification and adoption by CONSULTANT for the specific purposes intended will be at user's sole risk and

1 without liability or legal exposure and expenses to CONSULTANT, including attorney's fees arising out of  
2 such unauthorized reuse.

3 CONSULTANT's records, documents, calculations, and all other instruments of service pertaining to  
4 actual project shall be given to CITY at the completion of the project. The CITY reserves the right to specify  
5 the file format that electronic document deliverables are presented to the CITY. Title to all plans,  
6 specifications, maps, estimates, reports, manuscripts, drawings, descriptions and other final work products  
7 compiled by the CONSULTANT under the Agreement shall be vested in the CITY, none of which shall be  
8 used in any manner whatsoever, by any person, firm, corporation, or agency without the expressed written  
9 consent of the CITY. Basic survey notes and sketches, charts, computations, and other data prepared or  
10 obtained under the Agreement shall be made available, upon request, to the CITY without restriction or  
11 limitations on their use. CONSULTANT may retain copies of the above-described information but agrees not  
12 to disclose or discuss any information gathered, discussed or generated in any way through this Agreement  
13 without the written permission of CITY during the term of this Agreement, unless required by law.

14 6. STANDARD OF PERFORMANCE

15 CONSULTANT represents to CITY that the services shall be performed in an expeditious  
16 manner, and with the degree of skill and care that is required by current, good, and sound procedures and  
17 practices. CONSULTANT further agrees that the services shall be in conformance with generally accepted  
18 professional standards prevailing at the time work is performed.

19 7. INSURANCE REQUIRED

20 CONSULTANT shall, at its own expense, procure and maintain in full force at all times during  
21 the term of this AGREEMENT the following insurance:

22 **A. Commercial General Liability Coverage.** CONSULTANT shall maintain  
23 commercial general liability insurance with limits of no less than one million dollars (\$1,000,000) combined  
24 single limit per occurrence or two million dollars (\$2,000,000) aggregate limit for bodily injury, personal  
25 injury, and property damage.

26 **B. Automobile Liability Coverage.** CONSULTANT shall maintain automobile liability  
27 insurance covering all vehicles used in the performance of this Agreement providing a one million dollar  
28 (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage.

1           **C. Professional Liability Coverage (Errors and Omissions).** CONSULTANT shall  
2 maintain professional liability insurance with coverage for all negligent errors, acts or omissions committed by  
3 CONSULTANT, its agents and employees in the performance of this Agreement. The amount of this insurance  
4 shall be not less than one million dollars (\$1,000,000) on a claims made annual aggregate basis or a combined  
5 single limit per occurrence basis.

6           **D. Compliance with State Workers' Compensation Requirements.** CONSULTANT  
7 covenants that it will insure itself against liability for Workers' Compensation pursuant to the provisions of  
8 California Labor Code §3700, et seq. CONSULTANT shall, at all times, upon demand of the City, furnish  
9 proof that Workers' Compensation Insurance is being maintained by it in force and effect in accordance with  
10 the California Labor Code. The insurer shall also agree to waive all rights of subrogation against the CITY, its  
11 officers, officials, employees and volunteers for losses arising from work performed by CONSULTANT for  
12 CITY. This provision shall not apply upon written verification by CONSULTANT that CONSULTANT has  
13 no employees.

14           **E. Other Insurance Provisions.** The policies are to contain, or be endorsed to contain  
15 the following provisions:

16           **(1) Additional Insured.** CITY, its officers, agents, employees, and volunteers are  
17 to be covered as an additional insured as respects: Liability arising out of activities performed by or on behalf  
18 of CONSULTANT and operations of CONSULTANT, premises owned, occupied, or used by CONSULTANT.  
19 The coverage shall contain no special limitations on the scope or protection afforded to CITY, its officers,  
20 officials, employees, or volunteers.

21           Except for worker's compensation and professional liability insurance, the policies  
22 mentioned in this subsection shall name CITY as an additional insured and provide for notice of cancellation to  
23 CITY. CONSULTANT shall also provide timely and prompt notice to CITY if CONSULTANT receives any  
24 notice of cancellation or nonrenewal from its insurer.

25           **(2) Primary Coverage.** CONSULTANT'S insurance coverage shall be primary  
26 insurance with respect to CITY, its officers, officials, employees, and volunteers. Any insurance, risk pooling  
27 arrangement, or self-insurance maintained by CITY, its officers, officials, employees, or volunteers shall be in  
28 excess of CONSULTANT'S insurance and shall not contribute with it.

1                   **(3) Reporting Provisions.** Any failure to comply with the reporting provisions of  
2 the policy shall not affect the coverage provided to the CITY, its officers, officials, employees, or volunteers.

3                   **(4) Verification of Coverage.** CONSULTANT shall furnish CITY with  
4 certificates of insurance and the original endorsements effecting coverage required by this Agreement. The  
5 certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer  
6 to bind coverage on its behalf. The aforementioned policies shall be issued by an insurance carrier having a  
7 rating of Best A-7 or better which is satisfactory to the City Attorney and shall be delivered to CITY at the time  
8 of the execution of this Agreement or before work commences. Such policies and certificates shall be in a form  
9 approved by the City Attorney. CITY reserves the right to require complete certified copies of all required  
10 insurance policies at any time.

11                   8.       SUSPENSION OF WORK

12                   CITY may, at any time, by ten (10) days' written notice, suspend further performance by  
13 CONSULTANT. All suspensions shall extend the time schedule for performance in a mutually satisfactory  
14 manner, and CONSULTANT shall be paid for services performed and reimbursable expenses incurred prior to  
15 the suspension date. During the period of suspension, CONSULTANT shall not receive any payment for  
16 services, or expenses, except for reasonable administration expenses, incurred by CONSULTANT by reason of  
17 such suspension.

18                   9.       TERMINATION

19                   CITY may terminate this Agreement for any reason upon ten (10) days written notice to the  
20 other party. CITY may terminate the Agreement upon five (5) days written notice if CONSULTANT breaches  
21 this Agreement. In the event of any termination, CONSULTANT shall promptly deliver to the CITY any and  
22 all finished and unfinished reports or other written, recorded, photographic, or visual materials, documents,  
23 data, and other deliverables ("Work Materials") prepared for the CITY prior to the effective date of such  
24 termination, all of which shall become CITY's sole property. After receipt of the Work Materials, CITY will  
25 pay CONSULTANT for the services performed as of the effective date of the termination.

26                   10.       COMPLIANCE WITH CIVIL RIGHTS

27                   During the performance of this contract, CONSULTANT agrees as follows:

28                   **A. Equal Employment Opportunity.** In connection with the execution of this

1 AGREEMENT, CONSULTANT shall not discriminate against any employee or applicant for employment  
2 because of race, religion, color, sex, or national origin. Such actions shall include, but not be limited to, the  
3 following: employment, promotion, upgrading, demotion, or transfer; recruitment or recruitment advertising;  
4 layoff or termination; rate of pay or other forms of compensation; and selection for training including  
5 apprenticeship.

6 **B. Nondiscrimination Civil Rights Act of 1964.** CONSULTANT will comply with all  
7 federal regulations relative to nondiscrimination in federally assisted programs.

8 **C. Solicitations for Subcontractors including Procurement of Materials and**  
9 **Equipment.** In all solicitation, either by competitive bidding or negotiations, made by CONSULTANT for  
10 work to be performed under a subcontract including procurement of materials or leases of equipment, each  
11 potential subcontractor, supplier or lessor shall be notified by CONSULTANT of CONSULTANT'S obligation  
12 under this AGREEMENT and the regulations relative to nondiscrimination on the grounds of race, religion,  
13 color, sex, or national origin.

14 11. CONFLICT OF INTEREST

15 A. CONSULTANT covenants and represents that neither it, nor any officer or principal of  
16 its firm, has, or shall acquire any interest, directly or indirectly, which would conflict in any manner with the  
17 interests of CITY or which would in any way hinder CONSULTANT's performance of services under this  
18 Agreement. CONSULTANT further covenants that in the performance of the Agreement, no person having  
19 any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express  
20 written consent of the CITY. CONSULTANT agrees to at all times avoid conflicts of interest, or the  
21 appearance of any conflicts of interest, with the interests of the CITY in the performance of this Agreement.

22 B. CONSULTANT is not a designated employee within the meaning of the Political  
23 Reform Act because CONSULTANT:

24 (1) Will conduct research and arrive at conclusions with respect to its rendition of  
25 information, advice, recommendation or counsel independent of the control and direction of the CITY or of any  
26 CITY official, other than normal contract monitoring; and

27 (2) Possesses no authority with respect to any CITY decision beyond the rendition of  
28 information, advice, recommendation or counsel. (2 Cal. Code Regs. § 18700(a)(2).)

1           12.    INDEPENDENT CONTRACTOR

2           In assuming and performing the services, CONSULTANT is an independent contractor and  
3 shall not be eligible for any benefits, which the CITY may provide its employees, except as expressly provided  
4 for in the AGREEMENT. All persons, if any, hired by CONSULTANT shall be employees or subcontractors of  
5 CONSULTANT and shall not be construed as employees or agents of the CITY in any respect.  
6 CONSULTANT shall have responsibility for and control over the means of providing services under this  
7 AGREEMENT.

8           13.    COMPLIANCE WITH LAWS

9           CONSULTANT shall comply with all applicable federal, State of California, and local laws,  
10 rules, and regulations and shall obtain all applicable licenses and permits for the conduct of its business and the  
11 performance of the services.

12          14.    CHOICE OF LAW

13          This Agreement shall be construed and interpreted in accordance with the laws of the State of  
14 California, excluding any choice of law rules which may direct the application of the laws of another  
15 jurisdiction. In the event that suit shall be brought by either party hereunder, the parties agree that trial of such  
16 action shall be held exclusively in a state court in the County of Contra Costa, California.

17          15.    NON-WAIVER

18          The waiver by either party of any breach of any term, covenant, or condition contained in the  
19 AGREEMENT, or any default in their performance of any obligations under the AGREEMENT shall not be  
20 deemed to be a waiver of any other breach or default of the same or any other term, covenant, condition, or  
21 obligation, nor shall any waiver of any incident of breach of default constitute a continuing waiver of same.

22          16.    ENFORCEABILITY; INTERPRETATION

23          In the event that any of the provisions or portions of application of any of the provisions of the  
24 AGREEMENT are held to be illegal or invalid by a court of competent jurisdiction, CITY and CONSULTANT  
25 shall negotiate an equitable adjustment in the provisions of the AGREEMENT with a view toward affecting the  
26 purpose of the AGREEMENT. The illegality or invalidity of any of the provisions or portions of application of  
27 any of the provisions of the AGREEMENT shall not affect the legality or enforceability of the remaining  
28 provisions or portions of application of any of the provisions of the AGREEMENT. This Agreement shall be

1 interpreted as though it was a product of a joint drafting effort and no provisions shall be interpreted against a  
2 party on the ground that said party was solely or primarily responsible for drafting the language to be  
3 interpreted.

4 17. INTEGRATION

5 The AGREEMENT contains the entire AGREEMENT and understanding between the parties  
6 as to the subject matter of this AGREEMENT. It merges and supersedes all prior or contemporaneous  
7 agreements, commitments, representation, writings, and discussions between CONSULTANT and CITY,  
8 whether oral or written.

9 18. SUCCESSORS AND ASSIGNS; NO THIRD PARTY BENEFICIARIES; NO JOINT  
10 VENTURE

11 CITY and CONSULTANT respectively, bind themselves, their successors, assigns, and legal  
12 representatives to the terms and obligations of this Agreement. CONSULTANT shall not assign or transfer any  
13 interest in the Agreement without the CITY's prior written consent, which consent shall be in the CITY's sole  
14 discretion. Any attempted assignment or transfer in breach of this provision shall be void. This Agreement is  
15 not intended and shall not be construed to create any third party benefit. This Agreement is not intended and  
16 shall not be construed to create a joint venture or partnership between the parties. CONSULTANT, its officers,  
17 employees and agents shall not have any power to bind or commit the CITY to any decision.

18 19. FINANCIAL RECORDS

19 Records of CONSULTANT's direct labor costs, payroll costs, and reimbursable expenses  
20 pertaining to this project covered by this AGREEMENT will be kept on a generally recognized accounting  
21 basis and made available to CITY if and when required.

22 20. NOTICES

23 All notices required hereunder shall be in writing and mailed postage prepaid by Certified or  
24 Registered mail, return receipt requested, or by personal delivery to the CITY's address as shown below, or  
25 such other places as CITY or CONSULTANT may, from time to time, respectively, designate in a written  
26 notice given to the other. Notice shall be deemed received three (3) days after the date of the mailing thereof or  
27 upon personal delivery.

28 To CITY

**Robert Ovadia, City Engineer**

1 **Community & Economic Development Department**  
2 **City of Concord**  
3 **1950 Parkside Drive, MS/40**  
4 **Concord, CA 94519**  
5 **Phone: (925) 671-3470**  
6 **Fax: (925) 798-9692**

7 To CONSULTANT

8 **Larry Castellanos**  
9 **Associated Right of Way Services, Inc.**  
10 **2300 Contra Costa Blvd., Suite 525**  
11 **Pleasant Hill, CA 94523**  
12 **Phone: (925) 691-8500**  
13 **Fax: (925) 691-6505**

14 21. TERM

15 The term of this AGREEMENT shall be from the date executed above through **June 30<sup>th</sup>, 2017**, with the option of one one-year extension upon mutual agreement by both CITY and CONSULTANT. The City Manager is authorized to approve the extension.

16 22. NON-LIABILITY

17 No member of the CITY and no other officer, employee or agent of the CITY shall be personally liable to CONSULTANT or otherwise in the event of any default or breach of the CITY, or for any amount which may become due to CONSULTANT or any successor in interest, or for any obligations directly or indirectly incurred under the terms of this Agreement.

18 23. EXECUTION

19 Each individual or entity executing this Agreement on behalf of CONSULTANT represents and warrants that he or she or it is duly authorized to execute and deliver this Agreement on behalf of CONSULTANT and that such execution is binding upon CONSULTANT.

20 This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

21 **IN WITNESS WHEREOF**, the parties have executed this AGREEMENT in three (3) copies as of the date and year first written above.

22 **CONSULTANT**

23 **CITY OF CONCORD**

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By: \_\_\_\_\_

Name: Larry Castellanos  
Title: Vice President  
Address: 2300 Contra Costa Blvd., Suite 525  
Pleasant Hill, CA 94523  
Telephone: (925) 691-8500

By: \_\_\_\_\_

Name: Valerie Barone  
Title: City Manager  
Address: 1950 Parkside Drive, MS 01  
Concord, CA 94519  
Telephone: (925) 671-3175

APPROVED AS TO FORM:

ATTEST:

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
City Clerk

Date: \_\_\_\_\_, 2015

FINANCE DIRECTOR'S CERTIFICATION:

Concord, California

Date: \_\_\_\_\_, 2015

I HEREBY CERTIFY THAT ADEQUATE FUNDS EXIST OR WILL BE RECEIVED  
DURING THE CURRENT FISCAL YEARS 2015-16 AND 2016-17 TO PAY THE  
ANTICIPATED EXPENSES TO BE INCURRED PURSUANT TO THIS CONTRACT.

THE SUM OF **\$250,000.**

\_\_\_\_\_  
Finance Director's Signature

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

1           **THIS AGREEMENT** made and entered into on **July 1<sup>st</sup>, 2015** by and between the City of Concord  
2 (hereinafter "CITY"), located in the County of Contra Costa, State of California, and **Paragon Partners Ltd.**,  
3 (hereinafter "CONSULTANT"), whose address is 5762 Bolsa Avenue, Huntington Beach, CA 92649.

4           **THE PARTIES ENTER THIS AGREEMENT** based upon the following facts, understandings and  
5 intentions:

6           CITY desires to contract with CONSULTANT and CONSULTANT to contract with CITY for  
7 provision by CONSULTANT to CITY for professional services as further described herein, upon the terms and  
8 conditions hereinafter set forth.

9           **NOW, THEREFORE, IN CONSIDERATION** of the mutual covenants and promises of the parties  
10 herein contained, the parties hereto agree as follows:

11           1.     SERVICES

12           CONSULTANT shall provide services for specific projects as may be requested by CITY;  
13 such services shall be defined, scheduled, and authorized in subsequent Task Orders. Services may include, but  
14 not be limited to:

- 15           ● Right of Way Services related to CIP Projects
- 16           ● Other as-needed services;

17           CONSULTANT shall be an independent contractor and shall have responsibility for and  
18 control over the details and means of providing its services under this AGREEMENT. CONSULTANT agrees  
19 that its services shall be performed with due diligence and in accordance with generally accepted engineering  
20 practices.

21           CONSULTANT shall use its best efforts to perform and coordinate all activities in a timely  
22 manner so that the projects will be completed according to the established project schedules.

23           2.     AUTHORIZED REPRESENTATIVES

24           Authorized representatives shall represent CITY and CONSULTANT in all matters pertaining  
25 to the services to be ordered by CITY or rendered by CONSULTANT under this Agreement except where  
26 approval for the CITY is specifically required by the City Council. The CITY'S authorized representative shall  
27 be the City Engineer. Said City Engineer is authorized to execute Task Orders on behalf of CITY, including  
28

1 providing for CONSULTANT to be compensated not more than **\$50,000** for each project. Task Orders  
2 providing for more than **\$50,000** compensation for one project shall be presented to the City Council for its  
3 consideration.

4 CONSULTANT authorized representative shall be **Neilia LaValle, President.**

5 3. COMPENSATION

6 CONSULTANT shall be compensated, not to exceed **\$250,000** per fiscal year for basic  
7 services rendered under Section 1, as more particularly described in authorized Task Orders, in accordance with  
8 the terms and conditions included therein.

9 CONSULTANT may submit monthly statements for services rendered; all statements shall  
10 include adequate documentation demonstrating work performed during the billing period and shall conform to  
11 Federal Funding invoicing requirements, if applicable. It is intended that payments to CONSULTANT will be  
12 made by CITY within thirty (30) days of receipt of invoice. Consultant's failure to secure CITY's written  
13 authorization for additional compensation or changes to the Scope of Work shall constitute a waiver of any and  
14 all right to adjustment in the price or time due, whether by way of compensation, restitution, quantum meruit,  
15 or similar relief.

16 4. INDEMNIFICATION

17 CONSULTANT agrees to defend, indemnify and hold harmless the CITY, its officers,  
18 officials, employees, agents and volunteers from and against any and all claims, demands, actions, losses,  
19 damages, injuries, and liability (including all attorney's fees and other litigation expenses) arising out of the  
20 CONSULTANT's performance under the terms of this Agreement. This indemnification obligation on  
21 CONSULTANT'S part shall not apply to demands, actions, losses, damages, injuries, and liability arising out  
22 of sole negligence or willful misconduct on the part of CITY.

23 5. OWNERSHIP AND MAINTENANCE OF DOCUMENTS

24 All documents furnished by CONSULTANT pursuant to this AGREEMENT are instruments  
25 of CONSULTANT's services in respect to this project. They are not intended nor represented to be suitable for  
26 reuse by others on extensions of this project or on any other project. Any reuse without specific written  
27 verification and adoption by CONSULTANT for the specific purposes intended will be at user's sole risk and  
28 without liability or legal exposure and expenses to CONSULTANT, including attorney's fees arising out of

1 such unauthorized reuse.

2           CONSULTANT's records, documents, calculations, and all other instruments of service pertaining to  
3 actual project shall be given to CITY at the completion of the project. The CITY reserves the right to specify  
4 the file format that electronic document deliverables are presented to the CITY. Title to all plans,  
5 specifications, maps, estimates, reports, manuscripts, drawings, descriptions and other final work products  
6 compiled by the CONSULTANT under the Agreement shall be vested in the CITY, none of which shall be  
7 used in any manner whatsoever, by any person, firm, corporation, or agency without the expressed written  
8 consent of the CITY. Basic survey notes and sketches, charts, computations, and other data prepared or  
9 obtained under the Agreement shall be made available, upon request, to the CITY without restriction or  
10 limitations on their use. CONSULTANT may retain copies of the above-described information but agrees not  
11 to disclose or discuss any information gathered, discussed or generated in any way through this Agreement  
12 without the written permission of CITY during the term of this Agreement, unless required by law.

13           6.       STANDARD OF PERFORMANCE

14           CONSULTANT represents to CITY that the services shall be performed in an expeditious  
15 manner, and with the degree of skill and care that is required by current, good, and sound procedures and  
16 practices. CONSULTANT further agrees that the services shall be in conformance with generally accepted  
17 professional standards prevailing at the time work is performed.

18           7.       INSURANCE REQUIRED

19           CONSULTANT shall, at its own expense, procure and maintain in full force at all times during  
20 the term of this AGREEMENT the following insurance:

21           **A.       Commercial General Liability Coverage.** CONSULTANT shall maintain  
22 commercial general liability insurance with limits of no less than one million dollars (\$1,000,000) combined  
23 single limit per occurrence or two million dollars (\$2,000,000) aggregate limit for bodily injury, personal  
24 injury, and property damage.

25           **B.       Automobile Liability Coverage.** CONSULTANT shall maintain automobile liability  
26 insurance covering all vehicles used in the performance of this Agreement providing a one million dollar  
27 (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage.

28           **C.       Professional Liability Coverage (Errors and Omissions).** CONSULTANT shall

1 maintain professional liability insurance with coverage for all negligent errors, acts or omissions committed by  
2 CONSULTANT, its agents and employees in the performance of this Agreement. The amount of this insurance  
3 shall be not less than one million dollars (\$1,000,000) on a claims made annual aggregate basis or a combined  
4 single limit per occurrence basis.

5 **D. Compliance with State Workers' Compensation Requirements.** CONSULTANT  
6 covenants that it will insure itself against liability for Workers' Compensation pursuant to the provisions of  
7 California Labor Code §3700, et seq. CONSULTANT shall, at all times, upon demand of the City, furnish  
8 proof that Workers' Compensation Insurance is being maintained by it in force and effect in accordance with  
9 the California Labor Code. The insurer shall also agree to waive all rights of subrogation against the CITY, its  
10 officers, officials, employees and volunteers for losses arising from work performed by CONSULTANT for  
11 CITY. This provision shall not apply upon written verification by CONSULTANT that CONSULTANT has  
12 no employees.

13 **E. Other Insurance Provisions.** The policies are to contain, or be endorsed to contain  
14 the following provisions:

15 (1) **Additional Insured.** CITY, its officers, agents, employees, and volunteers are  
16 to be covered as an additional insured as respects: Liability arising out of activities performed by or on behalf  
17 of CONSULTANT and operations of CONSULTANT, premises owned, occupied, or used by CONSULTANT.  
18 The coverage shall contain no special limitations on the scope or protection afforded to CITY, its officers,  
19 officials, employees, or volunteers.

20 Except for worker's compensation and professional liability insurance, the policies  
21 mentioned in this subsection shall name CITY as an additional insured and provide for notice of cancellation to  
22 CITY. CONSULTANT shall also provide timely and prompt notice to CITY if CONSULTANT receives any  
23 notice of cancellation or nonrenewal from its insurer.

24 (2) **Primary Coverage.** CONSULTANT'S insurance coverage shall be primary  
25 insurance with respect to CITY, its officers, officials, employees, and volunteers. Any insurance, risk pooling  
26 arrangement, or self-insurance maintained by CITY, its officers, officials, employees, or volunteers shall be in  
27 excess of CONSULTANT'S insurance and shall not contribute with it.

28 (3) **Reporting Provisions.** Any failure to comply with the reporting provisions of

1 the policy shall not affect the coverage provided to the CITY, its officers, officials, employees, or volunteers.

2                   **(4) Verification of Coverage.** CONSULTANT shall furnish CITY with  
3 certificates of insurance and the original endorsements effecting coverage required by this Agreement. The  
4 certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer  
5 to bind coverage on its behalf. The aforementioned policies shall be issued by an insurance carrier having a  
6 rating of Best A-7 or better which is satisfactory to the City Attorney and shall be delivered to CITY at the time  
7 of the execution of this Agreement or before work commences. Such policies and certificates shall be in a form  
8 approved by the City Attorney. CITY reserves the right to require complete certified copies of all required  
9 insurance policies at any time.

10           8.       SUSPENSION OF WORK

11                   CITY may, at any time, by ten (10) days' written notice, suspend further performance by  
12 CONSULTANT. All suspensions shall extend the time schedule for performance in a mutually satisfactory  
13 manner, and CONSULTANT shall be paid for services performed and reimbursable expenses incurred prior to  
14 the suspension date. During the period of suspension, CONSULTANT shall not receive any payment for  
15 services, or expenses, except for reasonable administration expenses, incurred by CONSULTANT by reason of  
16 such suspension.

17           9.       TERMINATION

18                   CITY may terminate this Agreement for any reason upon ten (10) days written notice to the  
19 other party. CITY may terminate the Agreement upon five (5) days written notice if CONSULTANT breaches  
20 this Agreement. In the event of any termination, CONSULTANT shall promptly deliver to the CITY any and  
21 all finished and unfinished reports or other written, recorded, photographic, or visual materials, documents,  
22 data, and other deliverables ("Work Materials") prepared for the CITY prior to the effective date of such  
23 termination, all of which shall become CITY's sole property. After receipt of the Work Materials, CITY will  
24 pay CONSULTANT for the services performed as of the effective date of the termination.

25           10.      COMPLIANCE WITH CIVIL RIGHTS

26                   During the performance of this contract, CONSULTANT agrees as follows:

27                   **A. Equal Employment Opportunity.** In connection with the execution of this  
28 AGREEMENT, CONSULTANT shall not discriminate against any employee or applicant for employment

1 because of race, religion, color, sex, or national origin. Such actions shall include, but not be limited to, the  
2 following: employment, promotion, upgrading, demotion, or transfer; recruitment or recruitment advertising;  
3 layoff or termination; rate of pay or other forms of compensation; and selection for training including  
4 apprenticeship.

5 **B. Nondiscrimination Civil Rights Act of 1964.** CONSULTANT will comply with all  
6 federal regulations relative to nondiscrimination in federally assisted programs.

7 **C. Solicitations for Subcontractors including Procurement of Materials and**  
8 **Equipment.** In all solicitation, either by competitive bidding or negotiations, made by CONSULTANT for  
9 work to be performed under a subcontract including procurement of materials or leases of equipment, each  
10 potential subcontractor, supplier or lessor shall be notified by CONSULTANT of CONSULTANT'S obligation  
11 under this AGREEMENT and the regulations relative to nondiscrimination on the grounds of race, religion,  
12 color, sex, or national origin.

13 11. CONFLICT OF INTEREST

14 A. CONSULTANT covenants and represents that neither it, nor any officer or principal of  
15 its firm, has, or shall acquire any interest, directly or indirectly, which would conflict in any manner with the  
16 interests of CITY or which would in any way hinder CONSULTANT's performance of services under this  
17 Agreement. CONSULTANT further covenants that in the performance of the Agreement, no person having  
18 any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express  
19 written consent of the CITY. CONSULTANT agrees to at all times avoid conflicts of interest, or the  
20 appearance of any conflicts of interest, with the interests of the CITY in the performance of this Agreement.

21 B. CONSULTANT is not a designated employee within the meaning of the Political  
22 Reform Act because CONSULTANT:

23 (1) Will conduct research and arrive at conclusions with respect to its rendition of  
24 information, advice, recommendation or counsel independent of the control and direction of the CITY or of any  
25 CITY official, other than normal contract monitoring; and

26 (2) Possesses no authority with respect to any CITY decision beyond the rendition of  
27 information, advice, recommendation or counsel. (2 Cal. Code Regs. § 18700(a)(2).)

28 12. INDEPENDENT CONTRACTOR

1 In assuming and performing the services, CONSULTANT is an independent contractor and  
2 shall not be eligible for any benefits, which the CITY may provide its employees, except as expressly provided  
3 for in the AGREEMENT. All persons, if any, hired by CONSULTANT shall be employees or subcontractors of  
4 CONSULTANT and shall not be construed as employees or agents of the CITY in any respect.  
5 CONSULTANT shall have responsibility for and control over the means of providing services under this  
6 AGREEMENT.

7 13. COMPLIANCE WITH LAWS

8 CONSULTANT shall comply with all applicable federal, State of California, and local laws,  
9 rules, and regulations and shall obtain all applicable licenses and permits for the conduct of its business and the  
10 performance of the services.

11 14. CHOICE OF LAW

12 This Agreement shall be construed and interpreted in accordance with the laws of the State of  
13 California, excluding any choice of law rules which may direct the application of the laws of another  
14 jurisdiction. In the event that suit shall be brought by either party hereunder, the parties agree that trial of such  
15 action shall be held exclusively in a state court in the County of Contra Costa, California.

16 15. NON-WAIVER

17 The waiver by either party of any breach of any term, covenant, or condition contained in the  
18 AGREEMENT, or any default in their performance of any obligations under the AGREEMENT shall not be  
19 deemed to be a waiver of any other breach or default of the same or any other term, covenant, condition, or  
20 obligation, nor shall any waiver of any incident of breach of default constitute a continuing waiver of same.

21 16. ENFORCEABILITY; INTERPRETATION

22 In the event that any of the provisions or portions of application of any of the provisions of the  
23 AGREEMENT are held to be illegal or invalid by a court of competent jurisdiction, CITY and CONSULTANT  
24 shall negotiate an equitable adjustment in the provisions of the AGREEMENT with a view toward affecting the  
25 purpose of the AGREEMENT. The illegality or invalidity of any of the provisions or portions of application of  
26 any of the provisions of the AGREEMENT shall not affect the legality or enforceability of the remaining  
27 provisions or portions of application of any of the provisions of the AGREEMENT. This Agreement shall be  
28 interpreted as though it was a product of a joint drafting effort and no provisions shall be interpreted against a

1 party on the ground that said party was solely or primarily responsible for drafting the language to be  
2 interpreted.

3 17. INTEGRATION

4 The AGREEMENT contains the entire AGREEMENT and understanding between the parties  
5 as to the subject matter of this AGREEMENT. It merges and supersedes all prior or contemporaneous  
6 agreements, commitments, representation, writings, and discussions between CONSULTANT and CITY,  
7 whether oral or written.

8 18. SUCCESSORS AND ASSIGNS; NO THIRD PARTY BENEFICIARIES; NO JOINT  
9 VENTURE

10 CITY and CONSULTANT respectively, bind themselves, their successors, assigns, and legal  
11 representatives to the terms and obligations of this Agreement. CONSULTANT shall not assign or transfer any  
12 interest in the Agreement without the CITY's prior written consent, which consent shall be in the CITY's sole  
13 discretion. Any attempted assignment or transfer in breach of this provision shall be void. This Agreement is  
14 not intended and shall not be construed to create any third party benefit. This Agreement is not intended and  
15 shall not be construed to create a joint venture or partnership between the parties. CONSULTANT, its officers,  
16 employees and agents shall not have any power to bind or commit the CITY to any decision.

17 19. FINANCIAL RECORDS

18 Records of CONSULTANT's direct labor costs, payroll costs, and reimbursable expenses  
19 pertaining to this project covered by this AGREEMENT will be kept on a generally recognized accounting  
20 basis and made available to CITY if and when required.

21 20. NOTICES

22 All notices required hereunder shall be in writing and mailed postage prepaid by Certified or  
23 Registered mail, return receipt requested, or by personal delivery to the CITY's address as shown below, or  
24 such other places as CITY or CONSULTANT may, from time to time, respectively, designate in a written  
25 notice given to the other. Notice shall be deemed received three (3) days after the date of the mailing thereof or  
26 upon personal delivery.

27 To CITY

**Robert Ovadia, PE**  
**City Engineer**  
**City of Concord**

1 **1950 Parkside Drive, MS/40**  
2 **Concord, CA 94519**  
3 **Phone: (925) 671-3470**  
4 **Fax: (925) 798-9692**

4 To CONSULTANT

**Neilia LaValle, President**  
**Paragon Partners LTD.**  
**5762 Bolsa Avenue**  
**Huntington Beach, CA 92649**  
**Phone: (714) 379-3376**  
**Fax: (714) 373-1234**

8 21. TERM

9 The term of this AGREEMENT shall be from the date executed above through **June 30<sup>th</sup>**,  
10 **2017**, with the option of one one-year extension upon mutual agreement by both CITY and CONSULTANT.

11 The City Manager is authorized to approve the extension.

12 22. NON-LIABILITY

13 No member of the CITY and no other officer, employee or agent of the CITY shall be  
14 personally liable to CONSULTANT or otherwise in the event of any default or breach of the CITY, or for any  
15 amount which may become due to CONSULTANT or any successor in interest, or for any obligations directly  
16 or indirectly incurred under the terms of this Agreement.

17 23. EXECUTION

18 Each individual or entity executing this Agreement on behalf of CONSULTANT represents  
19 and warrants that he or she or it is duly authorized to execute and deliver this Agreement on behalf of  
20 CONSULTANT and that such execution is binding upon CONSULTANT.

21 This Agreement may be executed in several counterparts, each of which shall constitute one  
22 and the same instrument and shall become binding upon the parties when at least one copy hereof shall have  
23 been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or  
24 account for more than one such counterpart.

25 **IN WITNESS WHEREOF**, the parties have executed this AGREEMENT in three (3) copies as of the  
26 date and year first written above.

27 **CONSULTANT**

**CITY OF CONCORD**

1 By: \_\_\_\_\_

2 Name: Neilia LaValle  
3 Title: President  
4 Address: 5762 Bolsa Avenue  
5 Huntington Beach, CA 92649  
6 Telephone: (714) 379-3376

By: \_\_\_\_\_

Name: Valerie Barone  
Title: City Manager  
Address: 1950 Parkside Drive, MS 01  
Concord, CA 94519  
Telephone: (925) 671-3175

7 APPROVED AS TO FORM:

ATTEST:

8 \_\_\_\_\_  
9 City Attorney

\_\_\_\_\_

10 Date: \_\_\_\_\_, 2015

11 FINANCE DIRECTOR'S CERTIFICATION:

12 Concord, California

13 Date: \_\_\_\_\_, 2015

14 I HEREBY CERTIFY THAT ADEQUATE FUNDS EXIST OR WILL BE RECEIVED  
15 DURING THE CURRENT FISCAL YEARS 2015-16 AND 2016-17 TO PAY THE  
16 ANTICIPATED EXPENSES TO BE INCURRED PURSUANT TO THIS CONTRACT.

17 THE SUM OF **\$250,000.**

18 \_\_\_\_\_  
19 Finance Director's Signature

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

1 THIS AGREEMENT made and entered into on July 1<sup>st</sup>, 2015 by and between the City of Concord  
2 (hereinafter "CITY"), located in the County of Contra Costa, State of California, and Balance Hydrologics,  
3 Inc. (hereinafter "CONSULTANT"), whose address is 800 Bancroft Way, Suite 101, Berkeley, CA 94710.

4 THE PARTIES ENTER THIS AGREEMENT based upon the following facts, understandings and  
5 intentions:

6 CITY desires to contract with CONSULTANT and CONSULTANT to contract with CITY for  
7 provision by CONSULTANT to CITY for professional services as further described herein, upon the terms and  
8 conditions hereinafter set forth.

9 NOW, THEREFORE, IN CONSIDERATION of the mutual covenants and promises of the parties  
10 herein contained, the parties hereto agree as follows:

11 1. SERVICES

12 CONSULTANT shall provide services for specific projects as may be requested by CITY;  
13 such services shall be defined, scheduled, and authorized in subsequent Task Orders. Services may include, but  
14 not be limited to:

- 15 ● Hydraulics/Hydrologic services related to CIP Projects
- 16 ● Other as-needed services;

17 CONSULTANT shall be an independent contractor and shall have responsibility for and  
18 control over the details and means of providing its services under this AGREEMENT. CONSULTANT agrees  
19 that its services shall be performed with due diligence and in accordance with generally accepted engineering  
20 practices.

21 CONSULTANT shall use its best efforts to perform and coordinate all activities in a timely  
22 manner so that the projects will be completed according to the established project schedules.

23 2. AUTHORIZED REPRESENTATIVES

24 Authorized representatives shall represent CITY and CONSULTANT in all matters pertaining  
25 to the services to be ordered by CITY or rendered by CONSULTANT under this Agreement except where  
26 approval for the CITY is specifically required by the City Council. The CITY'S authorized representative shall  
27 be the City Engineer. Said City Engineer is authorized to execute Task Orders on behalf of CITY, including  
28

1 providing for CONSULTANT to be compensated not more than **\$50,000** for each project. Task Orders  
2 providing for more than **\$50,000** compensation for one project shall be presented to the City Council for its  
3 consideration.

4 CONSULTANT authorized representative shall be **Edward Ballman, Principal**

5 3. COMPENSATION

6 CONSULTANT shall be compensated, not to exceed **\$250,000** per fiscal year for basic  
7 services rendered under Section 1, as more particularly described in authorized Task Orders, in accordance with  
8 the terms and conditions included therein.

9 CONSULTANT may submit monthly statements for services rendered; all statements shall  
10 include adequate documentation demonstrating work performed during the billing period and shall conform to  
11 Federal Funding invoicing requirements, if applicable. It is intended that payments to CONSULTANT will be  
12 made by CITY within thirty (30) days of receipt of invoice. Consultant's failure to secure CITY's written  
13 authorization for additional compensation or changes to the Scope of Work shall constitute a waiver of any and  
14 all right to adjustment in the price or time due, whether by way of compensation, restitution, quantum meruit,  
15 or similar relief.

16 4. INDEMNIFICATION

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18 officials, employees, agents and volunteers from and against any and all claims, demands, actions, losses,  
19 damages, injuries, and liability (including all attorney's fees and other litigation expenses) arising out of the  
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21 CONSULTANT'S part shall not apply to demands, actions, losses, damages, injuries, and liability arising out  
22 of sole negligence or willful misconduct on the part of CITY.

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24 All documents furnished by CONSULTANT pursuant to this AGREEMENT are instruments  
25 of CONSULTANT's services in respect to this project. They are not intended nor represented to be suitable for  
26 reuse by others on extensions of this project or on any other project. Any reuse without specific written  
27 verification and adoption by CONSULTANT for the specific purposes intended will be at user's sole risk and  
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6 compiled by the CONSULTANT under the Agreement shall be vested in the CITY, none of which shall be  
7 used in any manner whatsoever, by any person, firm, corporation, or agency without the expressed written  
8 consent of the CITY. Basic survey notes and sketches, charts, computations, and other data prepared or  
9 obtained under the Agreement shall be made available, upon request, to the CITY without restriction or  
10 limitations on their use. CONSULTANT may retain copies of the above-described information but agrees not  
11 to disclose or discuss any information gathered, discussed or generated in any way through this Agreement  
12 without the written permission of CITY during the term of this Agreement, unless required by law.

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14 CONSULTANT represents to CITY that the services shall be performed in an expeditious  
15 manner, and with the degree of skill and care that is required by current, good, and sound procedures and  
16 practices. CONSULTANT further agrees that the services shall be in conformance with generally accepted  
17 professional standards prevailing at the time work is performed.

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19 CONSULTANT shall, at its own expense, procure and maintain in full force at all times during  
20 the term of this AGREEMENT the following insurance:

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22 commercial general liability insurance with limits of no less than one million dollars (\$1,000,000) combined  
23 single limit per occurrence or two million dollars (\$2,000,000) aggregate limit for bodily injury, personal  
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4 single limit per occurrence basis.

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8 proof that Workers' Compensation Insurance is being maintained by it in force and effect in accordance with  
9 the California Labor Code. The insurer shall also agree to waive all rights of subrogation against the CITY, its  
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11 CITY. This provision shall not apply upon written verification by CONSULTANT that CONSULTANT has  
12 no employees.

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17 of CONSULTANT and operations of CONSULTANT, premises owned, occupied, or used by CONSULTANT.  
18 The coverage shall contain no special limitations on the scope or protection afforded to CITY, its officers,  
19 officials, employees, or volunteers.

20 Except for worker's compensation and professional liability insurance, the policies  
21 mentioned in this subsection shall name CITY as an additional insured and provide for notice of cancellation to  
22 CITY. CONSULTANT shall also provide timely and prompt notice to CITY if CONSULTANT receives any  
23 notice of cancellation or nonrenewal from its insurer.

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27                   **A. Equal Employment Opportunity.** In connection with the execution of this  
28 AGREEMENT, CONSULTANT shall not discriminate against any employee or applicant for employment

1 because of race, religion, color, sex, or national origin. Such actions shall include, but not be limited to, the  
2 following: employment, promotion, upgrading, demotion, or transfer; recruitment or recruitment advertising;  
3 layoff or termination; rate of pay or other forms of compensation; and selection for training including  
4 apprenticeship.

5 **B. Nondiscrimination Civil Rights Act of 1964.** CONSULTANT will comply with all  
6 federal regulations relative to nondiscrimination in federally assisted programs.

7 **C. Solicitations for Subcontractors including Procurement of Materials and**  
8 **Equipment.** In all solicitation, either by competitive bidding or negotiations, made by CONSULTANT for  
9 work to be performed under a subcontract including procurement of materials or leases of equipment, each  
10 potential subcontractor, supplier or lessor shall be notified by CONSULTANT of CONSULTANT'S obligation  
11 under this AGREEMENT and the regulations relative to nondiscrimination on the grounds of race, religion,  
12 color, sex, or national origin.

13 11. CONFLICT OF INTEREST

14 A. CONSULTANT covenants and represents that neither it, nor any officer or principal of  
15 its firm, has, or shall acquire any interest, directly or indirectly, which would conflict in any manner with the  
16 interests of CITY or which would in any way hinder CONSULTANT's performance of services under this  
17 Agreement. CONSULTANT further covenants that in the performance of the Agreement, no person having  
18 any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express  
19 written consent of the CITY. CONSULTANT agrees to at all times avoid conflicts of interest, or the  
20 appearance of any conflicts of interest, with the interests of the CITY in the performance of this Agreement.

21 B. CONSULTANT is not a designated employee within the meaning of the Political  
22 Reform Act because CONSULTANT:

23 (1) Will conduct research and arrive at conclusions with respect to its rendition of  
24 information, advice, recommendation or counsel independent of the control and direction of the CITY or of any  
25 CITY official, other than normal contract monitoring; and

26 (2) Possesses no authority with respect to any CITY decision beyond the rendition of  
27 information, advice, recommendation or counsel. (2 Cal. Code Regs. § 18700(a)(2).)

28 12. INDEPENDENT CONTRACTOR

1           In assuming and performing the services, CONSULTANT is an independent contractor and  
2 shall not be eligible for any benefits, which the CITY may provide its employees, except as expressly provided  
3 for in the AGREEMENT. All persons, if any, hired by CONSULTANT shall be employees or subcontractors of  
4 CONSULTANT and shall not be construed as employees or agents of the CITY in any respect.  
5 CONSULTANT shall have responsibility for and control over the means of providing services under this  
6 AGREEMENT.

7           13.    COMPLIANCE WITH LAWS

8           CONSULTANT shall comply with all applicable federal, State of California, and local laws,  
9 rules, and regulations and shall obtain all applicable licenses and permits for the conduct of its business and the  
10 performance of the services.

11           14.    CHOICE OF LAW

12           This Agreement shall be construed and interpreted in accordance with the laws of the State of  
13 California, excluding any choice of law rules which may direct the application of the laws of another  
14 jurisdiction. In the event that suit shall be brought by either party hereunder, the parties agree that trial of such  
15 action shall be held exclusively in a state court in the County of Contra Costa, California.

16           15.    NON-WAIVER

17           The waiver by either party of any breach of any term, covenant, or condition contained in the  
18 AGREEMENT, or any default in their performance of any obligations under the AGREEMENT shall not be  
19 deemed to be a waiver of any other breach or default of the same or any other term, covenant, condition, or  
20 obligation, nor shall any waiver of any incident of breach of default constitute a continuing waiver of same.

21           16.    ENFORCEABILITY; INTERPRETATION

22           In the event that any of the provisions or portions of application of any of the provisions of the  
23 AGREEMENT are held to be illegal or invalid by a court of competent jurisdiction, CITY and CONSULTANT  
24 shall negotiate an equitable adjustment in the provisions of the AGREEMENT with a view toward affecting the  
25 purpose of the AGREEMENT. The illegality or invalidity of any of the provisions or portions of application of  
26 any of the provisions of the AGREEMENT shall not affect the legality or enforceability of the remaining  
27 provisions or portions of application of any of the provisions of the AGREEMENT. This Agreement shall be  
28 interpreted as though it was a product of a joint drafting effort and no provisions shall be interpreted against a

1 party on the ground that said party was solely or primarily responsible for drafting the language to be  
2 interpreted.

3 17. INTEGRATION

4 The AGREEMENT contains the entire AGREEMENT and understanding between the parties  
5 as to the subject matter of this AGREEMENT. It merges and supersedes all prior or contemporaneous  
6 agreements, commitments, representation, writings, and discussions between CONSULTANT and CITY,  
7 whether oral or written.

8 18. SUCCESSORS AND ASSIGNS; NO THIRD PARTY BENEFICIARIES; NO JOINT  
9 VENTURE

10 CITY and CONSULTANT respectively, bind themselves, their successors, assigns, and legal  
11 representatives to the terms and obligations of this Agreement. CONSULTANT shall not assign or transfer any  
12 interest in the Agreement without the CITY's prior written consent, which consent shall be in the CITY's sole  
13 discretion. Any attempted assignment or transfer in breach of this provision shall be void. This Agreement is  
14 not intended and shall not be construed to create any third party benefit. This Agreement is not intended and  
15 shall not be construed to create a joint venture or partnership between the parties. CONSULTANT, its officers,  
16 employees and agents shall not have any power to bind or commit the CITY to any decision.

17 19. FINANCIAL RECORDS

18 Records of CONSULTANT's direct labor costs, payroll costs, and reimbursable expenses  
19 pertaining to this project covered by this AGREEMENT will be kept on a generally recognized accounting  
20 basis and made available to CITY if and when required.

21 20. NOTICES

22 All notices required hereunder shall be in writing and mailed postage prepaid by Certified or  
23 Registered mail, return receipt requested, or by personal delivery to the CITY's address as shown below, or  
24 such other places as CITY or CONSULTANT may, from time to time, respectively, designate in a written  
25 notice given to the other. Notice shall be deemed received three (3) days after the date of the mailing thereof or  
26 upon personal delivery.

27 To CITY

**Robert Ovadia, City Engineer**  
**Community & Economic Development Department**  
**City of Concord**

1 1950 Parkside Drive, MS/40  
2 Concord, CA 94519  
3 Phone: (925) 671-3470  
4 Fax: (925) 798-9692

5 To CONSULTANT

6 Edward Ballman, Principal  
7 Balance Hydrologics, Inc  
8 800 Bancroft Way, Suite 101  
9 Berkeley, CA 94710  
10 Phone: (510) 704-1000  
11 Fax: (510) 704-1001

12 21. TERM

13 The term of this AGREEMENT shall be from the date executed above through **June 30<sup>th</sup>**,  
14 **2017**, with the option of one one-year extension upon mutual agreement by both CITY and CONSULTANT.  
15 The City Manager is authorized to approve the extension.

16 22. NON-LIABILITY

17 No member of the CITY and no other officer, employee or agent of the CITY shall be  
18 personally liable to CONSULTANT or otherwise in the event of any default or breach of the CITY, or for any  
19 amount which may become due to CONSULTANT or any successor in interest, or for any obligations directly  
20 or indirectly incurred under the terms of this Agreement.

21 23. EXECUTION

22 Each individual or entity executing this Agreement on behalf of CONSULTANT represents  
23 and warrants that he or she or it is duly authorized to execute and deliver this Agreement on behalf of  
24 CONSULTANT and that such execution is binding upon CONSULTANT.

25 This Agreement may be executed in several counterparts, each of which shall constitute one  
26 and the same instrument and shall become binding upon the parties when at least one copy hereof shall have  
27 been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or  
28 account for more than one such counterpart.

**IN WITNESS WHEREOF**, the parties have executed this AGREEMENT in three (3) copies as of the  
date and year first written above.

**CONSULTANT**

CITY OF CONCORD

1 By: \_\_\_\_\_

By: \_\_\_\_\_

2 Name: Edward Ballman  
3 Title: Principal  
4 Address: 800 Bancroft Way, Suite 101  
Berkeley, CA 94710  
5 Telephone: (510) 704-1000

Name: Valerie Barone  
Title: City Manager  
Address: 1950 Parkside Drive, MS 01  
Concord, CA 94519  
Telephone: (925) 671-3175

6 APPROVED AS TO FORM:

ATTEST:

7  
8 \_\_\_\_\_  
City Attorney

\_\_\_\_\_

9  
10 Date: \_\_\_\_\_, 2015

11  
12 FINANCE DIRECTOR'S CERTIFICATION:

13 Concord, California

14 Date: \_\_\_\_\_, 2015

15 I HEREBY CERTIFY THAT ADEQUATE FUNDS EXIST OR WILL BE RECEIVED  
16 DURING THE CURRENT FISCAL YEARS 2015-16 AND 2016-17 TO PAY THE  
17 ANTICIPATED EXPENSES TO BE INCURRED PURSUANT TO THIS CONTRACT.

18 THE SUM OF **\$250,000.**

19  
20 \_\_\_\_\_  
Finance Director's Signature

21  
22  
23  
24  
25  
26  
27  
28

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

1           **THIS AGREEMENT** made and entered into on **July 1<sup>st</sup>, 2015** by and between the City of Concord  
2 (hereinafter "CITY"), located in the County of Contra Costa, State of California, and **WRECO** (hereinafter  
3 "CONSULTANT"), whose address is 1243 Alpine Road, Suite 108, Walnut Creek, CA 94596.

4           **THE PARTIES ENTER THIS AGREEMENT** based upon the following facts, understandings and  
5 intentions:

6           CITY desires to contract with CONSULTANT and CONSULTANT to contract with CITY for  
7 provision by CONSULTANT to CITY for professional services as further described herein, upon the terms and  
8 conditions hereinafter set forth.

9           **NOW, THEREFORE, IN CONSIDERATION** of the mutual covenants and promises of the parties  
10 herein contained, the parties hereto agree as follows:

11           1.     SERVICES

12           CONSULTANT shall provide services for specific projects as may be requested by CITY;  
13 such services shall be defined, scheduled, and authorized in subsequent Task Orders. Services may include, but  
14 not be limited to:

- 15           ●   Hydraulics/Hydrologic services related to CIP Projects
- 16           ●   Other as-needed services;

17           CONSULTANT shall be an independent contractor and shall have responsibility for and  
18 control over the details and means of providing its services under this AGREEMENT. CONSULTANT agrees  
19 that its services shall be performed with due diligence and in accordance with generally accepted engineering  
20 practices.

21           CONSULTANT shall use its best efforts to perform and coordinate all activities in a timely  
22 manner so that the projects will be completed according to the established project schedules.

23           2.     AUTHORIZED REPRESENTATIVES

24           Authorized representatives shall represent CITY and CONSULTANT in all matters pertaining  
25 to the services to be ordered by CITY or rendered by CONSULTANT under this Agreement except where  
26 approval for the CITY is specifically required by the City Council. The CITY'S authorized representative shall  
27 be the City Engineer. Said City Engineer is authorized to execute Task Orders on behalf of CITY, including  
28

1 providing for CONSULTANT to be compensated not more than **\$50,000** for each project. Task Orders  
2 providing for more than **\$50,000** compensation for one project shall be presented to the City Council for its  
3 consideration.

4 CONSULTANT authorized representative shall be **Han-Bin Liang, President**

5 3. COMPENSATION

6 CONSULTANT shall be compensated, not to exceed **\$250,000** per fiscal year for basic  
7 services rendered under Section 1, as more particularly described in authorized Task Orders, in accordance with  
8 the terms and conditions included therein.

9 CONSULTANT may submit monthly statements for services rendered; all statements shall  
10 include adequate documentation demonstrating work performed during the billing period and shall conform to  
11 Federal Funding invoicing requirements, if applicable. It is intended that payments to CONSULTANT will be  
12 made by CITY within thirty (30) days of receipt of invoice. Consultant's failure to secure CITY's written  
13 authorization for additional compensation or changes to the Scope of Work shall constitute a waiver of any and  
14 all right to adjustment in the price or time due, whether by way of compensation, restitution, quantum meruit,  
15 or similar relief.

16 4. INDEMNIFICATION

17 CONSULTANT agrees to defend, indemnify and hold harmless the CITY, its officers,  
18 officials, employees, agents and volunteers from and against any and all claims, demands, actions, losses,  
19 damages, injuries, and liability (including all attorney's fees and other litigation expenses) arising out of the  
20 CONSULTANT's performance under the terms of this Agreement. This indemnification obligation on  
21 CONSULTANT'S part shall not apply to demands, actions, losses, damages, injuries, and liability arising out  
22 of sole negligence or willful misconduct on the part of CITY.

23 5. OWNERSHIP AND MAINTENANCE OF DOCUMENTS

24 All documents furnished by CONSULTANT pursuant to this AGREEMENT are instruments  
25 of CONSULTANT's services in respect to this project. They are not intended nor represented to be suitable for  
26 reuse by others on extensions of this project or on any other project. Any reuse without specific written  
27 verification and adoption by CONSULTANT for the specific purposes intended will be at user's sole risk and  
28 without liability or legal exposure and expenses to CONSULTANT, including attorney's fees arising out of

1 such unauthorized reuse.

2 CONSULTANT's records, documents, calculations, and all other instruments of service pertaining to  
3 actual project shall be given to CITY at the completion of the project. The CITY reserves the right to specify  
4 the file format that electronic document deliverables are presented to the CITY. Title to all plans,  
5 specifications, maps, estimates, reports, manuscripts, drawings, descriptions and other final work products  
6 compiled by the CONSULTANT under the Agreement shall be vested in the CITY, none of which shall be  
7 used in any manner whatsoever, by any person, firm, corporation, or agency without the expressed written  
8 consent of the CITY. Basic survey notes and sketches, charts, computations, and other data prepared or  
9 obtained under the Agreement shall be made available, upon request, to the CITY without restriction or  
10 limitations on their use. CONSULTANT may retain copies of the above-described information but agrees not  
11 to disclose or discuss any information gathered, discussed or generated in any way through this Agreement  
12 without the written permission of CITY during the term of this Agreement, unless required by law.

13 6. STANDARD OF PERFORMANCE

14 CONSULTANT represents to CITY that the services shall be performed in an expeditious  
15 manner, and with the degree of skill and care that is required by current, good, and sound procedures and  
16 practices. CONSULTANT further agrees that the services shall be in conformance with generally accepted  
17 professional standards prevailing at the time work is performed.

18 7. INSURANCE REQUIRED

19 CONSULTANT shall, at its own expense, procure and maintain in full force at all times during  
20 the term of this AGREEMENT the following insurance:

21 **A. Commercial General Liability Coverage.** CONSULTANT shall maintain  
22 commercial general liability insurance with limits of no less than one million dollars (\$1,000,000) combined  
23 single limit per occurrence or two million dollars (\$2,000,000) aggregate limit for bodily injury, personal  
24 injury, and property damage.

25 **B. Automobile Liability Coverage.** CONSULTANT shall maintain automobile liability  
26 insurance covering all vehicles used in the performance of this Agreement providing a one million dollar  
27 (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage.

28 **C. Professional Liability Coverage (Errors and Omissions).** CONSULTANT shall

1 maintain professional liability insurance with coverage for all negligent errors, acts or omissions committed by  
2 CONSULTANT, its agents and employees in the performance of this Agreement. The amount of this insurance  
3 shall be not less than one million dollars (\$1,000,000) on a claims made annual aggregate basis or a combined  
4 single limit per occurrence basis.

5 **D. Compliance with State Workers' Compensation Requirements.** CONSULTANT  
6 covenants that it will insure itself against liability for Workers' Compensation pursuant to the provisions of  
7 California Labor Code §3700, et seq. CONSULTANT shall, at all times, upon demand of the City, furnish  
8 proof that Workers' Compensation Insurance is being maintained by it in force and effect in accordance with  
9 the California Labor Code. The insurer shall also agree to waive all rights of subrogation against the CITY, its  
10 officers, officials, employees and volunteers for losses arising from work performed by CONSULTANT for  
11 CITY. This provision shall not apply upon written verification by CONSULTANT that CONSULTANT has  
12 no employees.

13 **E. Other Insurance Provisions.** The policies are to contain, or be endorsed to contain  
14 the following provisions:

15 (1) **Additional Insured.** CITY, its officers, agents, employees, and volunteers are  
16 to be covered as an additional insured as respects: Liability arising out of activities performed by or on behalf  
17 of CONSULTANT and operations of CONSULTANT, premises owned, occupied, or used by CONSULTANT.  
18 The coverage shall contain no special limitations on the scope or protection afforded to CITY, its officers,  
19 officials, employees, or volunteers.

20 Except for worker's compensation and professional liability insurance, the policies  
21 mentioned in this subsection shall name CITY as an additional insured and provide for notice of cancellation to  
22 CITY. CONSULTANT shall also provide timely and prompt notice to CITY if CONSULTANT receives any  
23 notice of cancellation or nonrenewal from its insurer.

24 (2) **Primary Coverage.** CONSULTANT'S insurance coverage shall be primary  
25 insurance with respect to CITY, its officers, officials, employees, and volunteers. Any insurance, risk pooling  
26 arrangement, or self-insurance maintained by CITY, its officers, officials, employees, or volunteers shall be in  
27 excess of CONSULTANT'S insurance and shall not contribute with it.

28 (3) **Reporting Provisions.** Any failure to comply with the reporting provisions of

1 the policy shall not affect the coverage provided to the CITY, its officers, officials, employees, or volunteers.

2                   **(4) Verification of Coverage.** CONSULTANT shall furnish CITY with  
3 certificates of insurance and the original endorsements effecting coverage required by this Agreement. The  
4 certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer  
5 to bind coverage on its behalf. The aforementioned policies shall be issued by an insurance carrier having a  
6 rating of Best A-7 or better which is satisfactory to the City Attorney and shall be delivered to CITY at the time  
7 of the execution of this Agreement or before work commences. Such policies and certificates shall be in a form  
8 approved by the City Attorney. CITY reserves the right to require complete certified copies of all required  
9 insurance policies at any time.

10           8.       SUSPENSION OF WORK

11                   CITY may, at any time, by ten (10) days' written notice, suspend further performance by  
12 CONSULTANT. All suspensions shall extend the time schedule for performance in a mutually satisfactory  
13 manner, and CONSULTANT shall be paid for services performed and reimbursable expenses incurred prior to  
14 the suspension date. During the period of suspension, CONSULTANT shall not receive any payment for  
15 services, or expenses, except for reasonable administration expenses, incurred by CONSULTANT by reason of  
16 such suspension.

17           9.       TERMINATION

18                   CITY may terminate this Agreement for any reason upon ten (10) days written notice to the  
19 other party. CITY may terminate the Agreement upon five (5) days written notice if CONSULTANT breaches  
20 this Agreement. In the event of any termination, CONSULTANT shall promptly deliver to the CITY any and  
21 all finished and unfinished reports or other written, recorded, photographic, or visual materials, documents,  
22 data, and other deliverables ("Work Materials") prepared for the CITY prior to the effective date of such  
23 termination, all of which shall become CITY's sole property. After receipt of the Work Materials, CITY will  
24 pay CONSULTANT for the services performed as of the effective date of the termination.

25           10.      COMPLIANCE WITH CIVIL RIGHTS

26                   During the performance of this contract, CONSULTANT agrees as follows:

27                   **A. Equal Employment Opportunity.** In connection with the execution of this  
28 AGREEMENT, CONSULTANT shall not discriminate against any employee or applicant for employment

1 because of race, religion, color, sex, or national origin. Such actions shall include, but not be limited to, the  
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25 notice given to the other. Notice shall be deemed received three (3) days after the date of the mailing thereof or  
26 upon personal delivery.

27 To CITY

**Robert Ovadia, City Engineer**  
**Community & Economic Development Department**  
**City of Concord**

1 **1950 Parkside Drive, MS/40**  
2 **Concord, CA 94519**  
3 **Phone: (925) 671-3470**  
4 **Fax: (925) 798-9692**

4 To CONSULTANT

**Han-Bin Liang, President**  
**WRECO**  
**1243 Alpine Road, Suite 108**  
**Walnut Creek, CA 94596**  
**Phone: (925) 941-0017**  
**Fax: (925) 941-0018**

8 21. TERM

9 The term of this AGREEMENT shall be from the date executed above through **June 30<sup>th</sup>**,  
10 **2017**, with the option of one one-year extension upon mutual agreement by both CITY and CONSULTANT.  
11 The City Manager is authorized to approve the extension.

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14 personally liable to CONSULTANT or otherwise in the event of any default or breach of the CITY, or for any  
15 amount which may become due to CONSULTANT or any successor in interest, or for any obligations directly  
16 or indirectly incurred under the terms of this Agreement.

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18 Each individual or entity executing this Agreement on behalf of CONSULTANT represents  
19 and warrants that he or she or it is duly authorized to execute and deliver this Agreement on behalf of  
20 CONSULTANT and that such execution is binding upon CONSULTANT.

21 This Agreement may be executed in several counterparts, each of which shall constitute one  
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23 been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or  
24 account for more than one such counterpart.

25 **IN WITNESS WHEREOF**, the parties have executed this AGREEMENT in three (3) copies as of the  
26 date and year first written above.

27 **CONSULTANT**

**CITY OF CONCORD**

1 By: \_\_\_\_\_

By: \_\_\_\_\_

2 Name: Han-Bin Liang  
3 Title: President  
4 Address: 1243 Alpine Road, Suite 108  
Walnut Creek, CA 94596  
5 Telephone: (925) 941-0017

Name: Valerie Barone  
Title: City Manager  
Address: 1950 Parkside Drive, MS 01  
Concord, CA 94519  
Telephone: (925) 671-3175

6 APPROVED AS TO FORM:

ATTEST:

7  
8 \_\_\_\_\_  
City Attorney

\_\_\_\_\_

9  
10 Date: \_\_\_\_\_, 2015

11  
12 FINANCE DIRECTOR'S CERTIFICATION:

13 Concord, California

14 Date: \_\_\_\_\_, 2015

15 I HEREBY CERTIFY THAT ADEQUATE FUNDS EXIST OR WILL BE RECEIVED  
16 DURING THE CURRENT FISCAL YEARS 2015-16 AND 2016-17 TO PAY THE  
17 ANTICIPATED EXPENSES TO BE INCURRED PURSUANT TO THIS CONTRACT.

18 THE SUM OF **\$250,000.**

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20 \_\_\_\_\_  
Finance Director's Signature

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MASTER AGREEMENT FOR PROFESSIONAL SERVICES

1 THIS AGREEMENT made and entered into on July 1<sup>st</sup>, 2015 by and between the City of Concord  
2 (hereinafter "CITY"), located in the County of Contra Costa, State of California, and TJKM Transportation  
3 Consultants (hereinafter "CONSULTANT"), whose address is 4305 Hacienda Drive, Suite 550, Pleasanton,  
4 CA 94588.

5 THE PARTIES ENTER THIS AGREEMENT based upon the following facts, understandings and  
6 intentions:

7 CITY desires to contract with CONSULTANT and CONSULTANT to contract with CITY for  
8 provision by CONSULTANT to CITY for professional services as further described herein, upon the terms and  
9 conditions hereinafter set forth.

10 NOW, THEREFORE, IN CONSIDERATION of the mutual covenants and promises of the parties  
11 herein contained, the parties hereto agree as follows:

12 1. SERVICES

13 CONSULTANT shall provide services for specific projects as may be requested by CITY;  
14 such services shall be defined, scheduled, and authorized in subsequent Task Orders. Services may include, but  
15 not be limited to:

- 16 • Transportation solutions services related to CIP Projects
- 17 • Other as-needed services;

18 CONSULTANT shall be an independent contractor and shall have responsibility for and  
19 control over the details and means of providing its services under this AGREEMENT. CONSULTANT agrees  
20 that its services shall be performed with due diligence and in accordance with generally accepted engineering  
21 practices.

22 CONSULTANT shall use its best efforts to perform and coordinate all activities in a timely  
23 manner so that the projects will be completed according to the established project schedules.

24 2. AUTHORIZED REPRESENTATIVES

25 Authorized representatives shall represent CITY and CONSULTANT in all matters pertaining  
26 to the services to be ordered by CITY or rendered by CONSULTANT under this Agreement except where  
27 approval for the CITY is specifically required by the City Council. The CITY'S authorized representative shall  
28

1 be the City Engineer. Said City Engineer is authorized to execute Task Orders on behalf of CITY, including  
2 providing for CONSULTANT to be compensated not more than **\$50,000** for each project. Task Orders  
3 providing for more than **\$50,000** compensation for one project shall be presented to the City Council for its  
4 consideration.

5 CONSULTANT authorized representative shall be **Nayan Amin, President**

6 3. COMPENSATION

7 CONSULTANT shall be compensated, not to exceed **\$250,000** per fiscal year for basic  
8 services rendered under Section 1, as more particularly described in authorized Task Orders, in accordance with  
9 the terms and conditions included therein.

10 CONSULTANT may submit monthly statements for services rendered; all statements shall  
11 include adequate documentation demonstrating work performed during the billing period and shall conform to  
12 Federal Funding invoicing requirements, if applicable. It is intended that payments to CONSULTANT will be  
13 made by CITY within thirty (30) days of receipt of invoice. Consultant's failure to secure CITY's written  
14 authorization for additional compensation or changes to the Scope of Work shall constitute a waiver of any and  
15 all right to adjustment in the price or time due, whether by way of compensation, restitution, quantum meruit,  
16 or similar relief.

17 4. INDEMNIFICATION

18 CONSULTANT agrees to defend, indemnify and hold harmless the CITY, its officers,  
19 officials, employees, agents and volunteers from and against any and all claims, demands, actions, losses,  
20 damages, injuries, and liability (including all attorney's fees and other litigation expenses) arising out of the  
21 CONSULTANT's performance under the terms of this Agreement. This indemnification obligation on  
22 CONSULTANT'S part shall not apply to demands, actions, losses, damages, injuries, and liability arising out  
23 of sole negligence or willful misconduct on the part of CITY.

24 5. OWNERSHIP AND MAINTENANCE OF DOCUMENTS

25 All documents furnished by CONSULTANT pursuant to this AGREEMENT are instruments  
26 of CONSULTANT's services in respect to this project. They are not intended nor represented to be suitable for  
27 reuse by others on extensions of this project or on any other project. Any reuse without specific written  
28 verification and adoption by CONSULTANT for the specific purposes intended will be at user's sole risk and

1 without liability or legal exposure and expenses to CONSULTANT, including attorney's fees arising out of  
2 such unauthorized reuse.

3 CONSULTANT's records, documents, calculations, and all other instruments of service pertaining to  
4 actual project shall be given to CITY at the completion of the project. The CITY reserves the right to specify  
5 the file format that electronic document deliverables are presented to the CITY. Title to all plans,  
6 specifications, maps, estimates, reports, manuscripts, drawings, descriptions and other final work products  
7 compiled by the CONSULTANT under the Agreement shall be vested in the CITY, none of which shall be  
8 used in any manner whatsoever, by any person, firm, corporation, or agency without the expressed written  
9 consent of the CITY. Basic survey notes and sketches, charts, computations, and other data prepared or  
10 obtained under the Agreement shall be made available, upon request, to the CITY without restriction or  
11 limitations on their use. CONSULTANT may retain copies of the above-described information but agrees not  
12 to disclose or discuss any information gathered, discussed or generated in any way through this Agreement  
13 without the written permission of CITY during the term of this Agreement, unless required by law.

14 6. STANDARD OF PERFORMANCE

15 CONSULTANT represents to CITY that the services shall be performed in an expeditious  
16 manner, and with the degree of skill and care that is required by current, good, and sound procedures and  
17 practices. CONSULTANT further agrees that the services shall be in conformance with generally accepted  
18 professional standards prevailing at the time work is performed.

19 7. INSURANCE REQUIRED

20 CONSULTANT shall, at its own expense, procure and maintain in full force at all times during  
21 the term of this AGREEMENT the following insurance:

22 **A. Commercial General Liability Coverage.** CONSULTANT shall maintain  
23 commercial general liability insurance with limits of no less than one million dollars (\$1,000,000) combined  
24 single limit per occurrence or two million dollars (\$2,000,000) aggregate limit for bodily injury, personal  
25 injury, and property damage.

26 **B. Automobile Liability Coverage.** CONSULTANT shall maintain automobile liability  
27 insurance covering all vehicles used in the performance of this Agreement providing a one million dollar  
28 (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage.

1           **C. Professional Liability Coverage (Errors and Omissions).** CONSULTANT shall  
2 maintain professional liability insurance with coverage for all negligent errors, acts or omissions committed by  
3 CONSULTANT, its agents and employees in the performance of this Agreement. The amount of this insurance  
4 shall be not less than one million dollars (\$1,000,000) on a claims made annual aggregate basis or a combined  
5 single limit per occurrence basis.

6           **D. Compliance with State Workers' Compensation Requirements.** CONSULTANT  
7 covenants that it will insure itself against liability for Workers' Compensation pursuant to the provisions of  
8 California Labor Code §3700, et seq. CONSULTANT shall, at all times, upon demand of the City, furnish  
9 proof that Workers' Compensation Insurance is being maintained by it in force and effect in accordance with  
10 the California Labor Code. The insurer shall also agree to waive all rights of subrogation against the CITY, its  
11 officers, officials, employees and volunteers for losses arising from work performed by CONSULTANT for  
12 CITY. This provision shall not apply upon written verification by CONSULTANT that CONSULTANT has  
13 no employees.

14           **E. Other Insurance Provisions.** The policies are to contain, or be endorsed to contain  
15 the following provisions:

16           **(1) Additional Insured.** CITY, its officers, agents, employees, and volunteers are  
17 to be covered as an additional insured as respects: Liability arising out of activities performed by or on behalf  
18 of CONSULTANT and operations of CONSULTANT, premises owned, occupied, or used by CONSULTANT.  
19 The coverage shall contain no special limitations on the scope or protection afforded to CITY, its officers,  
20 officials, employees, or volunteers.

21           Except for worker's compensation and professional liability insurance, the policies  
22 mentioned in this subsection shall name CITY as an additional insured and provide for notice of cancellation to  
23 CITY. CONSULTANT shall also provide timely and prompt notice to CITY if CONSULTANT receives any  
24 notice of cancellation or nonrenewal from its insurer.

25           **(2) Primary Coverage.** CONSULTANT'S insurance coverage shall be primary  
26 insurance with respect to CITY, its officers, officials, employees, and volunteers. Any insurance, risk pooling  
27 arrangement, or self-insurance maintained by CITY, its officers, officials, employees, or volunteers shall be in  
28 excess of CONSULTANT'S insurance and shall not contribute with it.

1                   **(3) Reporting Provisions.** Any failure to comply with the reporting provisions of  
2 the policy shall not affect the coverage provided to the CITY, its officers, officials, employees, or volunteers.

3                   **(4) Verification of Coverage.** CONSULTANT shall furnish CITY with  
4 certificates of insurance and the original endorsements effecting coverage required by this Agreement. The  
5 certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer  
6 to bind coverage on its behalf. The aforementioned policies shall be issued by an insurance carrier having a  
7 rating of Best A-7 or better which is satisfactory to the City Attorney and shall be delivered to CITY at the time  
8 of the execution of this Agreement or before work commences. Such policies and certificates shall be in a form  
9 approved by the City Attorney. CITY reserves the right to require complete certified copies of all required  
10 insurance policies at any time.

11           8.       SUSPENSION OF WORK

12                   CITY may, at any time, by ten (10) days' written notice, suspend further performance by  
13 CONSULTANT. All suspensions shall extend the time schedule for performance in a mutually satisfactory  
14 manner, and CONSULTANT shall be paid for services performed and reimbursable expenses incurred prior to  
15 the suspension date. During the period of suspension, CONSULTANT shall not receive any payment for  
16 services, or expenses, except for reasonable administration expenses, incurred by CONSULTANT by reason of  
17 such suspension.

18           9.       TERMINATION

19                   CITY may terminate this Agreement for any reason upon ten (10) days written notice to the  
20 other party. CITY may terminate the Agreement upon five (5) days written notice if CONSULTANT breaches  
21 this Agreement. In the event of any termination, CONSULTANT shall promptly deliver to the CITY any and  
22 all finished and unfinished reports or other written, recorded, photographic, or visual materials, documents,  
23 data, and other deliverables ("Work Materials") prepared for the CITY prior to the effective date of such  
24 termination, all of which shall become CITY's sole property. After receipt of the Work Materials, CITY will  
25 pay CONSULTANT for the services performed as of the effective date of the termination.

26           10.      COMPLIANCE WITH CIVIL RIGHTS

27                   During the performance of this contract, CONSULTANT agrees as follows:

28                   **A. Equal Employment Opportunity.** In connection with the execution of this

1 AGREEMENT, CONSULTANT shall not discriminate against any employee or applicant for employment  
2 because of race, religion, color, sex, or national origin. Such actions shall include, but not be limited to, the  
3 following: employment, promotion, upgrading, demotion, or transfer; recruitment or recruitment advertising;  
4 layoff or termination; rate of pay or other forms of compensation; and selection for training including  
5 apprenticeship.

6 **B. Nondiscrimination Civil Rights Act of 1964.** CONSULTANT will comply with all  
7 federal regulations relative to nondiscrimination in federally assisted programs.

8 **C. Solicitations for Subcontractors including Procurement of Materials and**  
9 **Equipment.** In all solicitation, either by competitive bidding or negotiations, made by CONSULTANT for  
10 work to be performed under a subcontract including procurement of materials or leases of equipment, each  
11 potential subcontractor, supplier or lessor shall be notified by CONSULTANT of CONSULTANT'S obligation  
12 under this AGREEMENT and the regulations relative to nondiscrimination on the grounds of race, religion,  
13 color, sex, or national origin.

14 11. CONFLICT OF INTEREST

15 A. CONSULTANT covenants and represents that neither it, nor any officer or principal of  
16 its firm, has, or shall acquire any interest, directly or indirectly, which would conflict in any manner with the  
17 interests of CITY or which would in any way hinder CONSULTANT's performance of services under this  
18 Agreement. CONSULTANT further covenants that in the performance of the Agreement, no person having  
19 any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express  
20 written consent of the CITY. CONSULTANT agrees to at all times avoid conflicts of interest, or the  
21 appearance of any conflicts of interest, with the interests of the CITY in the performance of this Agreement.

22 B. CONSULTANT is not a designated employee within the meaning of the Political  
23 Reform Act because CONSULTANT:

24 (1) Will conduct research and arrive at conclusions with respect to its rendition of  
25 information, advice, recommendation or counsel independent of the control and direction of the CITY or of any  
26 CITY official, other than normal contract monitoring; and

27 (2) Possesses no authority with respect to any CITY decision beyond the rendition of  
28 information, advice, recommendation or counsel. (2 Cal. Code Regs. § 18700(a)(2).)

1           12.    INDEPENDENT CONTRACTOR

2           In assuming and performing the services, CONSULTANT is an independent contractor and  
3 shall not be eligible for any benefits, which the CITY may provide its employees, except as expressly provided  
4 for in the AGREEMENT. All persons, if any, hired by CONSULTANT shall be employees or subcontractors of  
5 CONSULTANT and shall not be construed as employees or agents of the CITY in any respect.  
6 CONSULTANT shall have responsibility for and control over the means of providing services under this  
7 AGREEMENT.

8           13.    COMPLIANCE WITH LAWS

9           CONSULTANT shall comply with all applicable federal, State of California, and local laws,  
10 rules, and regulations and shall obtain all applicable licenses and permits for the conduct of its business and the  
11 performance of the services.

12          14.    CHOICE OF LAW

13          This Agreement shall be construed and interpreted in accordance with the laws of the State of  
14 California, excluding any choice of law rules which may direct the application of the laws of another  
15 jurisdiction. In the event that suit shall be brought by either party hereunder, the parties agree that trial of such  
16 action shall be held exclusively in a state court in the County of Contra Costa, California.

17          15.    NON-WAIVER

18          The waiver by either party of any breach of any term, covenant, or condition contained in the  
19 AGREEMENT, or any default in their performance of any obligations under the AGREEMENT shall not be  
20 deemed to be a waiver of any other breach or default of the same or any other term, covenant, condition, or  
21 obligation, nor shall any waiver of any incident of breach of default constitute a continuing waiver of same.

22          16.    ENFORCEABILITY; INTERPRETATION

23          In the event that any of the provisions or portions of application of any of the provisions of the  
24 AGREEMENT are held to be illegal or invalid by a court of competent jurisdiction, CITY and CONSULTANT  
25 shall negotiate an equitable adjustment in the provisions of the AGREEMENT with a view toward affecting the  
26 purpose of the AGREEMENT. The illegality or invalidity of any of the provisions or portions of application of  
27 any of the provisions of the AGREEMENT shall not affect the legality or enforceability of the remaining  
28 provisions or portions of application of any of the provisions of the AGREEMENT. This Agreement shall be

1 interpreted as though it was a product of a joint drafting effort and no provisions shall be interpreted against a  
2 party on the ground that said party was solely or primarily responsible for drafting the language to be  
3 interpreted.

4 17. INTEGRATION

5 The AGREEMENT contains the entire AGREEMENT and understanding between the parties  
6 as to the subject matter of this AGREEMENT. It merges and supersedes all prior or contemporaneous  
7 agreements, commitments, representation, writings, and discussions between CONSULTANT and CITY,  
8 whether oral or written.

9 18. SUCCESSORS AND ASSIGNS; NO THIRD PARTY BENEFICIARIES; NO JOINT  
10 VENTURE

11 CITY and CONSULTANT respectively, bind themselves, their successors, assigns, and legal  
12 representatives to the terms and obligations of this Agreement. CONSULTANT shall not assign or transfer any  
13 interest in the Agreement without the CITY's prior written consent, which consent shall be in the CITY's sole  
14 discretion. Any attempted assignment or transfer in breach of this provision shall be void. This Agreement is  
15 not intended and shall not be construed to create any third party benefit. This Agreement is not intended and  
16 shall not be construed to create a joint venture or partnership between the parties. CONSULTANT, its officers,  
17 employees and agents shall not have any power to bind or commit the CITY to any decision.

18 19. FINANCIAL RECORDS

19 Records of CONSULTANT's direct labor costs, payroll costs, and reimbursable expenses  
20 pertaining to this project covered by this AGREEMENT will be kept on a generally recognized accounting  
21 basis and made available to CITY if and when required.

22 20. NOTICES

23 All notices required hereunder shall be in writing and mailed postage prepaid by Certified or  
24 Registered mail, return receipt requested, or by personal delivery to the CITY's address as shown below, or  
25 such other places as CITY or CONSULTANT may, from time to time, respectively, designate in a written  
26 notice given to the other. Notice shall be deemed received three (3) days after the date of the mailing thereof or  
27 upon personal delivery.

28 To CITY

**Robert Ovadia, City Engineer**

1 **Community & Economic Development Department**  
2 **City of Concord**  
3 **1950 Parkside Drive, MS/40**  
4 **Concord, CA 94519**  
5 **Phone: (925) 671-3470**  
6 **Fax: (925) 798-9692**

7 To CONSULTANT

8 **Nayan Amin, President**  
9 **TJKM Transportation Consultants**  
10 **4305 Hacienda Drive, Suite 550**  
11 **Pleasanton, CA 94588**  
12 **Phone: (925) 463-0611**  
13 **Fax: (925) 463-3690**

14 21. TERM

15 The term of this AGREEMENT shall be from the date executed above through **June 30<sup>th</sup>, 2017**, with the option of one one-year extension upon mutual agreement by both CITY and CONSULTANT.  
16 The City Manager is authorized to approve the extension.

17 22. NON-LIABILITY

18 No member of the CITY and no other officer, employee or agent of the CITY shall be  
19 personally liable to CONSULTANT or otherwise in the event of any default or breach of the CITY, or for any  
20 amount which may become due to CONSULTANT or any successor in interest, or for any obligations directly  
21 or indirectly incurred under the terms of this Agreement.

22 23. EXECUTION

23 Each individual or entity executing this Agreement on behalf of CONSULTANT represents  
24 and warrants that he or she or it is duly authorized to execute and deliver this Agreement on behalf of  
25 CONSULTANT and that such execution is binding upon CONSULTANT.

26 This Agreement may be executed in several counterparts, each of which shall constitute one  
27 and the same instrument and shall become binding upon the parties when at least one copy hereof shall have  
28 been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or  
account for more than one such counterpart.

**IN WITNESS WHEREOF**, the parties have executed this AGREEMENT in three (3) copies as of the  
date and year first written above.

**CONSULTANT**

**CITY OF CONCORD**

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By: \_\_\_\_\_

Name: Nayan Amin  
Title: President  
Address: 4305 Hacienda Drive, Suite 550  
Pleasanton, CA 94588  
Telephone: (925) 463-0611

By: \_\_\_\_\_

Name: Valerie Barone  
Title: City Manager  
Address: 1950 Parkside Drive, MS 01  
Concord, CA 94519  
Telephone: (925) 671-3175

APPROVED AS TO FORM:

ATTEST:

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
City Clerk

Date: \_\_\_\_\_, 2015

FINANCE DIRECTOR'S CERTIFICATION:

Concord, California

Date: \_\_\_\_\_, 2015

I HEREBY CERTIFY THAT ADEQUATE FUNDS EXIST OR WILL BE RECEIVED  
DURING THE CURRENT FISCAL YEARS 2015-16 AND 2016-17 TO PAY THE  
ANTICIPATED EXPENSES TO BE INCURRED PURSUANT TO THIS CONTRACT.

THE SUM OF **\$250,000.**

\_\_\_\_\_  
Finance Director's Signature

**FIRST AMENDMENT TO  
MASTER SERVICES AGREEMENT**

This First Amendment to Master Services Agreement is entered into on this date, July 1, 2015, and amends the agreement between the City of Concord (the "CITY") and TJKM Transportation Consultants, whose address is 4305 Hacienda Drive, Suite 550, Pleasanton, CA 94588 (the "CONSULTANT") dated July 1, 2015.

**WHEREAS**, the CITY and CONSULTANT entered into a Master Agreement dated July 1, 2015 to provide: Transportation Design Services related to CIP Projects.

**WHEREAS**, the CITY and CONSULTANT wish to amend the Master Agreement by updating the Indemnification language for Design Services Contracts.

**NOW THEREFORE**, in consideration of the promises and conditions set forth in the Agreement dated July 1, 2015, the parties mutually desire to amend the Indemnification provisions of its Master Agreement with the following:

1. Section 4 of the July 1, 2015 Master Services Agreement is hereby deleted in its entirety and is replaced with the following:
  4. INDEMNIFICATION
    - a. For Design Professional Services Only. Pursuant to California Civil Code Section 2782.8, CONSULTANT agrees to indemnify the CITY (including its officers, agents, employees and volunteers) against liability for claims against the CITY that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of CONSULTANT in the performance of this Agreement. The CONSULTANT will reimburse the CITY for any expenditures, including reasonable attorney fees, incurred by the CITY in defending against claims ultimately determined to arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the CONSULTANT.
    - b. For All Other Services. CONSULTANT agrees to defend, indemnify and hold harmless the CITY (including its officers, officials, employees, agents and volunteers) from and against any and all claims, demands, actions, losses, damages, injuries, and liability (including all attorney's fees and other litigation expenses) arising out of the CONSULTANT's performance under the terms of this Agreement. This indemnification obligation on CONSULTANT'S part shall not apply to demands, actions, losses, damages, injuries, and liability arising out of sole negligence or willful misconduct on the part of CITY.
2. Except as expressly amended herein, all other terms and conditions of the Master Agreement dated July 1, 2015 shall remain in full force and effect.

**IN WITNESS WHEREOF**, the parties have executed this First Amendment on the day and year written above.

Dated: 6/9/, 2015

TJKM Transportation Consultants

BY: 

Dated: \_\_\_\_\_, 2015

CITY OF CONCORD

By: \_\_\_\_\_  
Valerie Barone  
City Manager

APPROVED AS TO FORM:

ATTEST:

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
City Clerk

FINANCE DIRECTOR'S CERTIFICATION:

Concord, California

Date: \_\_\_\_\_, 2015

I HEREBY CERTIFY THAT ADEQUATE FUNDS EXIST OR WILL BE RECEIVED DURING THE CURRENT FISCAL YEAR 2015-16 AND 2016-17, TO PAY THE ANTICIPATED EXPENSES TO BE INCURRED PURSUANT TO THIS CONTRACT, THE SUM OF **\$250,000**.

\_\_\_\_\_  
Finance Director's Signature

# ATTACHMENT 22

## MASTER AGREEMENT FOR PROFESSIONAL SERVICES

1           **THIS AGREEMENT** made and entered into on **July 1<sup>st</sup>, 2015** by and between the City of Concord  
2 (hereinafter "CITY"), located in the County of Contra Costa, State of California, and **DKS Associates,**  
3 (hereinafter "CONSULTANT"), whose address is 1970 Broadway, Suite 740, Oakland, CA 94612.

4           **THE PARTIES ENTER THIS AGREEMENT** based upon the following facts, understandings and  
5 intentions:

6           CITY desires to contract with CONSULTANT and CONSULTANT to contract with CITY for  
7 provision by CONSULTANT to CITY for professional services as further described herein, upon the terms and  
8 conditions hereinafter set forth.

9           **NOW, THEREFORE, IN CONSIDERATION** of the mutual covenants and promises of the parties  
10 herein contained, the parties hereto agree as follows:

11           1.     SERVICES

12           CONSULTANT shall provide services for specific projects as may be requested by CITY;  
13 such services shall be defined, scheduled, and authorized in subsequent Task Orders. Services may include, but  
14 not be limited to:

- 15           ● Transportation solution services related to CIP Projects
- 16           ● Other as-needed services;

17           CONSULTANT shall be an independent contractor and shall have responsibility for and  
18 control over the details and means of providing its services under this AGREEMENT. CONSULTANT agrees  
19 that its services shall be performed with due diligence and in accordance with generally accepted engineering  
20 practices.

21           CONSULTANT shall use its best efforts to perform and coordinate all activities in a timely  
22 manner so that the projects will be completed according to the established project schedules.

23           2.     AUTHORIZED REPRESENTATIVES

24           Authorized representatives shall represent CITY and CONSULTANT in all matters pertaining  
25 to the services to be ordered by CITY or rendered by CONSULTANT under this Agreement except where  
26 approval for the CITY is specifically required by the City Council. The CITY'S authorized representative shall  
27 be the City Engineer. Said City Engineer is authorized to execute Task Orders on behalf of CITY, including  
28

1 providing for CONSULTANT to be compensated not more than **\$50,000** for each project. Task Orders  
2 providing for more than **\$50,000** compensation for one project shall be presented to the City Council for its  
3 consideration.

4 CONSULTANT authorized representative shall be **Kevin Fehon, Principal in Charge**

5 3. COMPENSATION

6 CONSULTANT shall be compensated, not to exceed **\$250,000** per fiscal year for basic  
7 services rendered under Section 1, as more particularly described in authorized Task Orders, in accordance with  
8 the terms and conditions included therein.

9 CONSULTANT may submit monthly statements for services rendered; all statements shall  
10 include adequate documentation demonstrating work performed during the billing period and shall conform to  
11 Federal Funding invoicing requirements, if applicable. It is intended that payments to CONSULTANT will be  
12 made by CITY within thirty (30) days of receipt of invoice. Consultant's failure to secure CITY's written  
13 authorization for additional compensation or changes to the Scope of Work shall constitute a waiver of any and  
14 all right to adjustment in the price or time due, whether by way of compensation, restitution, quantum meruit,  
15 or similar relief.

16 4. INDEMNIFICATION

17 CONSULTANT agrees to defend, indemnify and hold harmless the CITY, its officers,  
18 officials, employees, agents and volunteers from and against any and all claims, demands, actions, losses,  
19 damages, injuries, and liability (including all attorney's fees and other litigation expenses) arising out of the  
20 CONSULTANT's performance under the terms of this Agreement. This indemnification obligation on  
21 CONSULTANT'S part shall not apply to demands, actions, losses, damages, injuries, and liability arising out  
22 of sole negligence or willful misconduct on the part of CITY.

23 5. OWNERSHIP AND MAINTENANCE OF DOCUMENTS

24 All documents furnished by CONSULTANT pursuant to this AGREEMENT are instruments  
25 of CONSULTANT's services in respect to this project. They are not intended nor represented to be suitable for  
26 reuse by others on extensions of this project or on any other project. Any reuse without specific written  
27 verification and adoption by CONSULTANT for the specific purposes intended will be at user's sole risk and  
28 without liability or legal exposure and expenses to CONSULTANT, including attorney's fees arising out of

1 such unauthorized reuse.

2 CONSULTANT's records, documents, calculations, and all other instruments of service pertaining to  
3 actual project shall be given to CITY at the completion of the project. The CITY reserves the right to specify  
4 the file format that electronic document deliverables are presented to the CITY. Title to all plans,  
5 specifications, maps, estimates, reports, manuscripts, drawings, descriptions and other final work products  
6 compiled by the CONSULTANT under the Agreement shall be vested in the CITY, none of which shall be  
7 used in any manner whatsoever, by any person, firm, corporation, or agency without the expressed written  
8 consent of the CITY. Basic survey notes and sketches, charts, computations, and other data prepared or  
9 obtained under the Agreement shall be made available, upon request, to the CITY without restriction or  
10 limitations on their use. CONSULTANT may retain copies of the above-described information but agrees not  
11 to disclose or discuss any information gathered, discussed or generated in any way through this Agreement  
12 without the written permission of CITY during the term of this Agreement, unless required by law.

13 6. STANDARD OF PERFORMANCE

14 CONSULTANT represents to CITY that the services shall be performed in an expeditious  
15 manner, and with the degree of skill and care that is required by current, good, and sound procedures and  
16 practices. CONSULTANT further agrees that the services shall be in conformance with generally accepted  
17 professional standards prevailing at the time work is performed.

18 7. INSURANCE REQUIRED

19 CONSULTANT shall, at its own expense, procure and maintain in full force at all times during  
20 the term of this AGREEMENT the following insurance:

21 **A. Commercial General Liability Coverage.** CONSULTANT shall maintain  
22 commercial general liability insurance with limits of no less than one million dollars (\$1,000,000) combined  
23 single limit per occurrence or two million dollars (\$2,000,000) aggregate limit for bodily injury, personal  
24 injury, and property damage.

25 **B. Automobile Liability Coverage.** CONSULTANT shall maintain automobile liability  
26 insurance covering all vehicles used in the performance of this Agreement providing a one million dollar  
27 (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage.

28 **C. Professional Liability Coverage (Errors and Omissions).** CONSULTANT shall

1 maintain professional liability insurance with coverage for all negligent errors, acts or omissions committed by  
2 CONSULTANT, its agents and employees in the performance of this Agreement. The amount of this insurance  
3 shall be not less than one million dollars (\$1,000,000) on a claims made annual aggregate basis or a combined  
4 single limit per occurrence basis.

5 **D. Compliance with State Workers' Compensation Requirements.** CONSULTANT  
6 covenants that it will insure itself against liability for Workers' Compensation pursuant to the provisions of  
7 California Labor Code §3700, et seq. CONSULTANT shall, at all times, upon demand of the City, furnish  
8 proof that Workers' Compensation Insurance is being maintained by it in force and effect in accordance with  
9 the California Labor Code. The insurer shall also agree to waive all rights of subrogation against the CITY, its  
10 officers, officials, employees and volunteers for losses arising from work performed by CONSULTANT for  
11 CITY. This provision shall not apply upon written verification by CONSULTANT that CONSULTANT has  
12 no employees.

13 **E. Other Insurance Provisions.** The policies are to contain, or be endorsed to contain  
14 the following provisions:

15 (1) **Additional Insured.** CITY, its officers, agents, employees, and volunteers are  
16 to be covered as an additional insured as respects: Liability arising out of activities performed by or on behalf  
17 of CONSULTANT and operations of CONSULTANT, premises owned, occupied, or used by CONSULTANT.  
18 The coverage shall contain no special limitations on the scope or protection afforded to CITY, its officers,  
19 officials, employees, or volunteers.

20 Except for worker's compensation and professional liability insurance, the policies  
21 mentioned in this subsection shall name CITY as an additional insured and provide for notice of cancellation to  
22 CITY. CONSULTANT shall also provide timely and prompt notice to CITY if CONSULTANT receives any  
23 notice of cancellation or nonrenewal from its insurer.

24 (2) **Primary Coverage.** CONSULTANT'S insurance coverage shall be primary  
25 insurance with respect to CITY, its officers, officials, employees, and volunteers. Any insurance, risk pooling  
26 arrangement, or self-insurance maintained by CITY, its officers, officials, employees, or volunteers shall be in  
27 excess of CONSULTANT'S insurance and shall not contribute with it.

28 (3) **Reporting Provisions.** Any failure to comply with the reporting provisions of

1 the policy shall not affect the coverage provided to the CITY, its officers, officials, employees, or volunteers.

2                   **(4) Verification of Coverage.** CONSULTANT shall furnish CITY with  
3 certificates of insurance and the original endorsements effecting coverage required by this Agreement. The  
4 certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer  
5 to bind coverage on its behalf. The aforementioned policies shall be issued by an insurance carrier having a  
6 rating of Best A-7 or better which is satisfactory to the City Attorney and shall be delivered to CITY at the time  
7 of the execution of this Agreement or before work commences. Such policies and certificates shall be in a form  
8 approved by the City Attorney. CITY reserves the right to require complete certified copies of all required  
9 insurance policies at any time.

10           8.       SUSPENSION OF WORK

11                   CITY may, at any time, by ten (10) days' written notice, suspend further performance by  
12 CONSULTANT. All suspensions shall extend the time schedule for performance in a mutually satisfactory  
13 manner, and CONSULTANT shall be paid for services performed and reimbursable expenses incurred prior to  
14 the suspension date. During the period of suspension, CONSULTANT shall not receive any payment for  
15 services, or expenses, except for reasonable administration expenses, incurred by CONSULTANT by reason of  
16 such suspension.

17           9.       TERMINATION

18                   CITY may terminate this Agreement for any reason upon ten (10) days written notice to the  
19 other party. CITY may terminate the Agreement upon five (5) days written notice if CONSULTANT breaches  
20 this Agreement. In the event of any termination, CONSULTANT shall promptly deliver to the CITY any and  
21 all finished and unfinished reports or other written, recorded, photographic, or visual materials, documents,  
22 data, and other deliverables ("Work Materials") prepared for the CITY prior to the effective date of such  
23 termination, all of which shall become CITY's sole property. After receipt of the Work Materials, CITY will  
24 pay CONSULTANT for the services performed as of the effective date of the termination.

25           10.      COMPLIANCE WITH CIVIL RIGHTS

26                   During the performance of this contract, CONSULTANT agrees as follows:

27                   **A. Equal Employment Opportunity.** In connection with the execution of this  
28 AGREEMENT, CONSULTANT shall not discriminate against any employee or applicant for employment

1 because of race, religion, color, sex, or national origin. Such actions shall include, but not be limited to, the  
2 following: employment, promotion, upgrading, demotion, or transfer; recruitment or recruitment advertising;  
3 layoff or termination; rate of pay or other forms of compensation; and selection for training including  
4 apprenticeship.

5 **B. Nondiscrimination Civil Rights Act of 1964.** CONSULTANT will comply with all  
6 federal regulations relative to nondiscrimination in federally assisted programs.

7 **C. Solicitations for Subcontractors including Procurement of Materials and**  
8 **Equipment.** In all solicitation, either by competitive bidding or negotiations, made by CONSULTANT for  
9 work to be performed under a subcontract including procurement of materials or leases of equipment, each  
10 potential subcontractor, supplier or lessor shall be notified by CONSULTANT of CONSULTANT'S obligation  
11 under this AGREEMENT and the regulations relative to nondiscrimination on the grounds of race, religion,  
12 color, sex, or national origin.

13 11. CONFLICT OF INTEREST

14 A. CONSULTANT covenants and represents that neither it, nor any officer or principal of  
15 its firm, has, or shall acquire any interest, directly or indirectly, which would conflict in any manner with the  
16 interests of CITY or which would in any way hinder CONSULTANT's performance of services under this  
17 Agreement. CONSULTANT further covenants that in the performance of the Agreement, no person having  
18 any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express  
19 written consent of the CITY. CONSULTANT agrees to at all times avoid conflicts of interest, or the  
20 appearance of any conflicts of interest, with the interests of the CITY in the performance of this Agreement.

21 B. CONSULTANT is not a designated employee within the meaning of the Political  
22 Reform Act because CONSULTANT:

23 (1) Will conduct research and arrive at conclusions with respect to its rendition of  
24 information, advice, recommendation or counsel independent of the control and direction of the CITY or of any  
25 CITY official, other than normal contract monitoring; and

26 (2) Possesses no authority with respect to any CITY decision beyond the rendition of  
27 information, advice, recommendation or counsel. (2 Cal. Code Regs. § 18700(a)(2).)

28 12. INDEPENDENT CONTRACTOR

1 In assuming and performing the services, CONSULTANT is an independent contractor and  
2 shall not be eligible for any benefits, which the CITY may provide its employees, except as expressly provided  
3 for in the AGREEMENT. All persons, if any, hired by CONSULTANT shall be employees or subcontractors of  
4 CONSULTANT and shall not be construed as employees or agents of the CITY in any respect.  
5 CONSULTANT shall have responsibility for and control over the means of providing services under this  
6 AGREEMENT.

7 13. COMPLIANCE WITH LAWS

8 CONSULTANT shall comply with all applicable federal, State of California, and local laws,  
9 rules, and regulations and shall obtain all applicable licenses and permits for the conduct of its business and the  
10 performance of the services.

11 14. CHOICE OF LAW

12 This Agreement shall be construed and interpreted in accordance with the laws of the State of  
13 California, excluding any choice of law rules which may direct the application of the laws of another  
14 jurisdiction. In the event that suit shall be brought by either party hereunder, the parties agree that trial of such  
15 action shall be held exclusively in a state court in the County of Contra Costa, California.

16 15. NON-WAIVER

17 The waiver by either party of any breach of any term, covenant, or condition contained in the  
18 AGREEMENT, or any default in their performance of any obligations under the AGREEMENT shall not be  
19 deemed to be a waiver of any other breach or default of the same or any other term, covenant, condition, or  
20 obligation, nor shall any waiver of any incident of breach of default constitute a continuing waiver of same.

21 16. ENFORCEABILITY; INTERPRETATION

22 In the event that any of the provisions or portions of application of any of the provisions of the  
23 AGREEMENT are held to be illegal or invalid by a court of competent jurisdiction, CITY and CONSULTANT  
24 shall negotiate an equitable adjustment in the provisions of the AGREEMENT with a view toward affecting the  
25 purpose of the AGREEMENT. The illegality or invalidity of any of the provisions or portions of application of  
26 any of the provisions of the AGREEMENT shall not affect the legality or enforceability of the remaining  
27 provisions or portions of application of any of the provisions of the AGREEMENT. This Agreement shall be  
28 interpreted as though it was a product of a joint drafting effort and no provisions shall be interpreted against a

1 party on the ground that said party was solely or primarily responsible for drafting the language to be  
2 interpreted.

3 17. INTEGRATION

4 The AGREEMENT contains the entire AGREEMENT and understanding between the parties  
5 as to the subject matter of this AGREEMENT. It merges and supersedes all prior or contemporaneous  
6 agreements, commitments, representation, writings, and discussions between CONSULTANT and CITY,  
7 whether oral or written.

8 18. SUCCESSORS AND ASSIGNS; NO THIRD PARTY BENEFICIARIES; NO JOINT  
9 VENTURE

10 CITY and CONSULTANT respectively, bind themselves, their successors, assigns, and legal  
11 representatives to the terms and obligations of this Agreement. CONSULTANT shall not assign or transfer any  
12 interest in the Agreement without the CITY's prior written consent, which consent shall be in the CITY's sole  
13 discretion. Any attempted assignment or transfer in breach of this provision shall be void. This Agreement is  
14 not intended and shall not be construed to create any third party benefit. This Agreement is not intended and  
15 shall not be construed to create a joint venture or partnership between the parties. CONSULTANT, its officers,  
16 employees and agents shall not have any power to bind or commit the CITY to any decision.

17 19. FINANCIAL RECORDS

18 Records of CONSULTANT's direct labor costs, payroll costs, and reimbursable expenses  
19 pertaining to this project covered by this AGREEMENT will be kept on a generally recognized accounting  
20 basis and made available to CITY if and when required.

21 20. NOTICES

22 All notices required hereunder shall be in writing and mailed postage prepaid by Certified or  
23 Registered mail, return receipt requested, or by personal delivery to the CITY's address as shown below, or  
24 such other places as CITY or CONSULTANT may, from time to time, respectively, designate in a written  
25 notice given to the other. Notice shall be deemed received three (3) days after the date of the mailing thereof or  
26 upon personal delivery.

27 To CITY

**Robert Ovadia, City Engineer**  
**Community & Economic Development Department**  
**City of Concord**

1 1950 Parkside Drive, MS/40  
2 Concord, CA 94519  
3 Phone: (925) 671-3470  
4 Fax: (925) 798-9692

4 To CONSULTANT

5 Kevin Fehon, Principal in Charge  
6 DKS Associates  
7 1970 Broadway, Suite 740  
8 Oakland, CA 94612  
9 Phone: (510) 763-2061  
10 Fax: (510) 268-1739

8 21. TERM

9 The term of this AGREEMENT shall be from the date executed above through **June 30<sup>th</sup>**,  
10 **2017**, with the option of one one-year extension upon mutual agreement by both CITY and CONSULTANT.  
11 The City Manager is authorized to approve the extension.

12 22. NON-LIABILITY

13 No member of the CITY and no other officer, employee or agent of the CITY shall be  
14 personally liable to CONSULTANT or otherwise in the event of any default or breach of the CITY, or for any  
15 amount which may become due to CONSULTANT or any successor in interest, or for any obligations directly  
16 or indirectly incurred under the terms of this Agreement.

17 23. EXECUTION

18 Each individual or entity executing this Agreement on behalf of CONSULTANT represents  
19 and warrants that he or she or it is duly authorized to execute and deliver this Agreement on behalf of  
20 CONSULTANT and that such execution is binding upon CONSULTANT.

21 This Agreement may be executed in several counterparts, each of which shall constitute one  
22 and the same instrument and shall become binding upon the parties when at least one copy hereof shall have  
23 been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or  
24 account for more than one such counterpart.

25 **IN WITNESS WHEREOF**, the parties have executed this AGREEMENT in three (3) copies as of the  
26 date and year first written above.

27 **CONSULTANT**

CITY OF CONCORD

1 By: \_\_\_\_\_

By: \_\_\_\_\_

2 Name: Kevin Fehon  
3 Title: Principal in Charge  
4 Address: 1970 Broadway, Suite 740  
Oakland, CA 94612  
5 Telephone: (510) 763-2061

Name: Valerie Barone  
Title: City Manager  
Address: 1950 Parkside Drive, MS 01  
Concord, CA 94519  
Telephone: (925) 671-3175

6 APPROVED AS TO FORM:

ATTEST:

7  
8 \_\_\_\_\_  
City Attorney

\_\_\_\_\_

9  
10 Date: \_\_\_\_\_, 2015

11  
12 FINANCE DIRECTOR'S CERTIFICATION:

13 Concord, California

14 Date: \_\_\_\_\_, 2015

15 I HEREBY CERTIFY THAT ADEQUATE FUNDS EXIST OR WILL BE RECEIVED  
16 DURING THE CURRENT FISCAL YEARS 2015-16 AND 2016-17 TO PAY THE  
17 ANTICIPATED EXPENSES TO BE INCURRED PURSUANT TO THIS CONTRACT.

18 THE SUM OF **\$250,000.**

19  
20 \_\_\_\_\_  
Finance Director's Signature

**FIRST AMENDMENT TO  
MASTER SERVICES AGREEMENT**

This First Amendment to Master Services Agreement is entered into on this date, July 1, 2015, and amends the agreement between the City of Concord (the "CITY") and DKS Associates, whose address is 1970 Broadway, Suite 740, Oakland, CA 94612 (the "CONSULTANT") dated July 1, 2015.

**WHEREAS**, the CITY and CONSULTANT entered into a Master Agreement dated July 1, 2015 to provide: Transportation Design Services related to CIP Projects.

**WHEREAS**, the CITY and CONSULTANT wish to amend the Master Agreement by updating the Indemnification language for Design Services Contracts.

**NOW THEREFORE**, in consideration of the promises and conditions set forth in the Agreement dated July 1, 2015, the parties mutually desire to amend the Indemnification provisions of its Master Agreement with the following:

1. Section 4 of the July 1, 2015 Master Services Agreement is hereby deleted in its entirety and is replaced with the following:

4. INDEMNIFICATION

- a. For Design Professional Services Only. Pursuant to California Civil Code Section 2782.8, CONSULTANT agrees to indemnify the CITY (including its officers, agents, employees and volunteers) against liability for claims against the CITY that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of CONSULTANT in the performance of this Agreement. The CONSULTANT will reimburse the CITY for any expenditures, including reasonable attorney fees, incurred by the CITY in defending against claims ultimately determined to arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the CONSULTANT.

- b. For All Other Services. CONSULTANT agrees to defend, indemnify and hold harmless the CITY (including its officers, officials, employees, agents and volunteers) from and against any and all claims, demands, actions, losses, damages, injuries, and liability (including all attorney's fees and other litigation expenses) arising out of the CONSULTANT's performance under the terms of this Agreement. This indemnification obligation on CONSULTANT'S part shall not apply to demands, actions, losses, damages, injuries, and liability arising out of sole negligence or willful misconduct on the part of CITY.

2. Except as expressly amended herein, all other terms and conditions of the Master Agreement dated July 1, 2015 shall remain in full force and effect.

**IN WITNESS WHEREOF**, the parties have executed this First Amendment on the day and year written above.

Dated: \_\_\_\_\_, 2015

DKS Associates

BY: \_\_\_\_\_

Dated: \_\_\_\_\_, 2015

CITY OF CONCORD

By: \_\_\_\_\_

Valerie Barone  
City Manager

APPROVED AS TO FORM:

ATTEST:

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
City Clerk

FINANCE DIRECTOR'S CERTIFICATION:

Concord, California

Date: \_\_\_\_\_, 2015

I HEREBY CERTIFY THAT ADEQUATE FUNDS EXIST OR WILL BE RECEIVED DURING THE CURRENT FISCAL YEAR 2015-16 AND 2016-17, TO PAY THE ANTICIPATED EXPENSES TO BE INCURRED PURSUANT TO THIS CONTRACT, THE SUM OF **\$250,000**.

\_\_\_\_\_  
Finance Director's Signature

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

1 THIS AGREEMENT made and entered into on July 1<sup>st</sup>, 2015 by and between the City of Concord  
2 (hereinafter "CITY"), located in the County of Contra Costa, State of California, and McArdle Design  
3 (hereinafter "CONSULTANT"), whose address is 3400 Mt. Diablo Blvd., Suite 207, Lafayette, CA 94549.

4 THE PARTIES ENTER THIS AGREEMENT based upon the following facts, understandings and  
5 intentions:

6 CITY desires to contract with CONSULTANT and CONSULTANT to contract with CITY for  
7 provision by CONSULTANT to CITY for professional services as further described herein, upon the terms and  
8 conditions hereinafter set forth.

9 NOW, THEREFORE, IN CONSIDERATION of the mutual covenants and promises of the parties  
10 herein contained, the parties hereto agree as follows:

11 1. SERVICES

12 CONSULTANT shall provide services for specific projects as may be requested by CITY;  
13 such services shall be defined, scheduled, and authorized in subsequent Task Orders. Services may include, but  
14 not be limited to:

- 15 ● Landscape Architectural services related to CIP Projects
- 16 ● Other as-needed services;

17 CONSULTANT shall be an independent contractor and shall have responsibility for and  
18 control over the details and means of providing its services under this AGREEMENT. CONSULTANT agrees  
19 that its services shall be performed with due diligence and in accordance with generally accepted engineering  
20 practices.

21 CONSULTANT shall use its best efforts to perform and coordinate all activities in a timely  
22 manner so that the projects will be completed according to the established project schedules.

23 2. AUTHORIZED REPRESENTATIVES

24 Authorized representatives shall represent CITY and CONSULTANT in all matters pertaining  
25 to the services to be ordered by CITY or rendered by CONSULTANT under this Agreement except where  
26 approval for the CITY is specifically required by the City Council. The CITY'S authorized representative shall  
27 be the City Engineer. Said City Engineer is authorized to execute Task Orders on behalf of CITY, including  
28

1 providing for CONSULTANT to be compensated not more than **\$50,000** for each project. Task Orders  
2 providing for more than **\$50,000** compensation for one project shall be presented to the City Council for its  
3 consideration.

4 CONSULTANT authorized representative shall be **Karen McArdle, Principal**

5 3. COMPENSATION

6 CONSULTANT shall be compensated, not to exceed **\$250,000** per fiscal year for basic  
7 services rendered under Section 1, as more particularly described in authorized Task Orders, in accordance with  
8 the terms and conditions included therein.

9 CONSULTANT may submit monthly statements for services rendered; all statements shall  
10 include adequate documentation demonstrating work performed during the billing period and shall conform to  
11 Federal Funding invoicing requirements, if applicable. It is intended that payments to CONSULTANT will be  
12 made by CITY within thirty (30) days of receipt of invoice. Consultant's failure to secure CITY's written  
13 authorization for additional compensation or changes to the Scope of Work shall constitute a waiver of any and  
14 all right to adjustment in the price or time due, whether by way of compensation, restitution, quantum meruit,  
15 or similar relief.

16 4. INDEMNIFICATION

17 CONSULTANT agrees to defend, indemnify and hold harmless the CITY, its officers,  
18 officials, employees, agents and volunteers from and against any and all claims, demands, actions, losses,  
19 damages, injuries, and liability (including all attorney's fees and other litigation expenses) arising out of the  
20 CONSULTANT's performance under the terms of this Agreement. This indemnification obligation on  
21 CONSULTANT'S part shall not apply to demands, actions, losses, damages, injuries, and liability arising out  
22 of sole negligence or willful misconduct on the part of CITY.

23 5. OWNERSHIP AND MAINTENANCE OF DOCUMENTS

24 All documents furnished by CONSULTANT pursuant to this AGREEMENT are instruments  
25 of CONSULTANT's services in respect to this project. They are not intended nor represented to be suitable for  
26 reuse by others on extensions of this project or on any other project. Any reuse without specific written  
27 verification and adoption by CONSULTANT for the specific purposes intended will be at user's sole risk and  
28 without liability or legal exposure and expenses to CONSULTANT, including attorney's fees arising out of

1 such unauthorized reuse.

2 CONSULTANT's records, documents, calculations, and all other instruments of service pertaining to  
3 actual project shall be given to CITY at the completion of the project. The CITY reserves the right to specify  
4 the file format that electronic document deliverables are presented to the CITY. Title to all plans,  
5 specifications, maps, estimates, reports, manuscripts, drawings, descriptions and other final work products  
6 compiled by the CONSULTANT under the Agreement shall be vested in the CITY, none of which shall be  
7 used in any manner whatsoever, by any person, firm, corporation, or agency without the expressed written  
8 consent of the CITY. Basic survey notes and sketches, charts, computations, and other data prepared or  
9 obtained under the Agreement shall be made available, upon request, to the CITY without restriction or  
10 limitations on their use. CONSULTANT may retain copies of the above-described information but agrees not  
11 to disclose or discuss any information gathered, discussed or generated in any way through this Agreement  
12 without the written permission of CITY during the term of this Agreement, unless required by law.

13 6. STANDARD OF PERFORMANCE

14 CONSULTANT represents to CITY that the services shall be performed in an expeditious  
15 manner, and with the degree of skill and care that is required by current, good, and sound procedures and  
16 practices. CONSULTANT further agrees that the services shall be in conformance with generally accepted  
17 professional standards prevailing at the time work is performed.

18 7. INSURANCE REQUIRED

19 CONSULTANT shall, at its own expense, procure and maintain in full force at all times during  
20 the term of this AGREEMENT the following insurance:

21 **A. Commercial General Liability Coverage.** CONSULTANT shall maintain  
22 commercial general liability insurance with limits of no less than one million dollars (\$1,000,000) combined  
23 single limit per occurrence or two million dollars (\$2,000,000) aggregate limit for bodily injury, personal  
24 injury, and property damage.

25 **B. Automobile Liability Coverage.** CONSULTANT shall maintain automobile liability  
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27 (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage.

28 **C. Professional Liability Coverage (Errors and Omissions).** CONSULTANT shall

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2 CONSULTANT, its agents and employees in the performance of this Agreement. The amount of this insurance  
3 shall be not less than one million dollars (\$1,000,000) on a claims made annual aggregate basis or a combined  
4 single limit per occurrence basis.

5 **D. Compliance with State Workers' Compensation Requirements.** CONSULTANT  
6 covenants that it will insure itself against liability for Workers' Compensation pursuant to the provisions of  
7 California Labor Code §3700, et seq. CONSULTANT shall, at all times, upon demand of the City, furnish  
8 proof that Workers' Compensation Insurance is being maintained by it in force and effect in accordance with  
9 the California Labor Code. The insurer shall also agree to waive all rights of subrogation against the CITY, its  
10 officers, officials, employees and volunteers for losses arising from work performed by CONSULTANT for  
11 CITY. This provision shall not apply upon written verification by CONSULTANT that CONSULTANT has  
12 no employees.

13 **E. Other Insurance Provisions.** The policies are to contain, or be endorsed to contain  
14 the following provisions:

15 (1) **Additional Insured.** CITY, its officers, agents, employees, and volunteers are  
16 to be covered as an additional insured as respects: Liability arising out of activities performed by or on behalf  
17 of CONSULTANT and operations of CONSULTANT, premises owned, occupied, or used by CONSULTANT.  
18 The coverage shall contain no special limitations on the scope or protection afforded to CITY, its officers,  
19 officials, employees, or volunteers.

20 Except for worker's compensation and professional liability insurance, the policies  
21 mentioned in this subsection shall name CITY as an additional insured and provide for notice of cancellation to  
22 CITY. CONSULTANT shall also provide timely and prompt notice to CITY if CONSULTANT receives any  
23 notice of cancellation or nonrenewal from its insurer.

24 (2) **Primary Coverage.** CONSULTANT'S insurance coverage shall be primary  
25 insurance with respect to CITY, its officers, officials, employees, and volunteers. Any insurance, risk pooling  
26 arrangement, or self-insurance maintained by CITY, its officers, officials, employees, or volunteers shall be in  
27 excess of CONSULTANT'S insurance and shall not contribute with it.

28 (3) **Reporting Provisions.** Any failure to comply with the reporting provisions of

1 the policy shall not affect the coverage provided to the CITY, its officers, officials, employees, or volunteers.

2                   **(4) Verification of Coverage.** CONSULTANT shall furnish CITY with  
3 certificates of insurance and the original endorsements effecting coverage required by this Agreement. The  
4 certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer  
5 to bind coverage on its behalf. The aforementioned policies shall be issued by an insurance carrier having a  
6 rating of Best A-7 or better which is satisfactory to the City Attorney and shall be delivered to CITY at the time  
7 of the execution of this Agreement or before work commences. Such policies and certificates shall be in a form  
8 approved by the City Attorney. CITY reserves the right to require complete certified copies of all required  
9 insurance policies at any time.

10           8.       SUSPENSION OF WORK

11                   CITY may, at any time, by ten (10) days' written notice, suspend further performance by  
12 CONSULTANT. All suspensions shall extend the time schedule for performance in a mutually satisfactory  
13 manner, and CONSULTANT shall be paid for services performed and reimbursable expenses incurred prior to  
14 the suspension date. During the period of suspension, CONSULTANT shall not receive any payment for  
15 services, or expenses, except for reasonable administration expenses, incurred by CONSULTANT by reason of  
16 such suspension.

17           9.       TERMINATION

18                   CITY may terminate this Agreement for any reason upon ten (10) days written notice to the  
19 other party. CITY may terminate the Agreement upon five (5) days written notice if CONSULTANT breaches  
20 this Agreement. In the event of any termination, CONSULTANT shall promptly deliver to the CITY any and  
21 all finished and unfinished reports or other written, recorded, photographic, or visual materials, documents,  
22 data, and other deliverables ("Work Materials") prepared for the CITY prior to the effective date of such  
23 termination, all of which shall become CITY's sole property. After receipt of the Work Materials, CITY will  
24 pay CONSULTANT for the services performed as of the effective date of the termination.

25           10.      COMPLIANCE WITH CIVIL RIGHTS

26                   During the performance of this contract, CONSULTANT agrees as follows:

27                   **A. Equal Employment Opportunity.** In connection with the execution of this  
28 AGREEMENT, CONSULTANT shall not discriminate against any employee or applicant for employment

1 because of race, religion, color, sex, or national origin. Such actions shall include, but not be limited to, the  
2 following: employment, promotion, upgrading, demotion, or transfer; recruitment or recruitment advertising;  
3 layoff or termination; rate of pay or other forms of compensation; and selection for training including  
4 apprenticeship.

5 **B. Nondiscrimination Civil Rights Act of 1964.** CONSULTANT will comply with all  
6 federal regulations relative to nondiscrimination in federally assisted programs.

7 **C. Solicitations for Subcontractors including Procurement of Materials and**  
8 **Equipment.** In all solicitation, either by competitive bidding or negotiations, made by CONSULTANT for  
9 work to be performed under a subcontract including procurement of materials or leases of equipment, each  
10 potential subcontractor, supplier or lessor shall be notified by CONSULTANT of CONSULTANT'S obligation  
11 under this AGREEMENT and the regulations relative to nondiscrimination on the grounds of race, religion,  
12 color, sex, or national origin.

13 11. CONFLICT OF INTEREST

14 A. CONSULTANT covenants and represents that neither it, nor any officer or principal of  
15 its firm, has, or shall acquire any interest, directly or indirectly, which would conflict in any manner with the  
16 interests of CITY or which would in any way hinder CONSULTANT's performance of services under this  
17 Agreement. CONSULTANT further covenants that in the performance of the Agreement, no person having  
18 any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express  
19 written consent of the CITY. CONSULTANT agrees to at all times avoid conflicts of interest, or the  
20 appearance of any conflicts of interest, with the interests of the CITY in the performance of this Agreement.

21 B. CONSULTANT is not a designated employee within the meaning of the Political  
22 Reform Act because CONSULTANT:

23 (1) Will conduct research and arrive at conclusions with respect to its rendition of  
24 information, advice, recommendation or counsel independent of the control and direction of the CITY or of any  
25 CITY official, other than normal contract monitoring; and

26 (2) Possesses no authority with respect to any CITY decision beyond the rendition of  
27 information, advice, recommendation or counsel. (2 Cal. Code Regs. § 18700(a)(2).)

28 12. INDEPENDENT CONTRACTOR

1           In assuming and performing the services, CONSULTANT is an independent contractor and  
2 shall not be eligible for any benefits, which the CITY may provide its employees, except as expressly provided  
3 for in the AGREEMENT. All persons, if any, hired by CONSULTANT shall be employees or subcontractors of  
4 CONSULTANT and shall not be construed as employees or agents of the CITY in any respect.  
5 CONSULTANT shall have responsibility for and control over the means of providing services under this  
6 AGREEMENT.

7           13.    COMPLIANCE WITH LAWS

8           CONSULTANT shall comply with all applicable federal, State of California, and local laws,  
9 rules, and regulations and shall obtain all applicable licenses and permits for the conduct of its business and the  
10 performance of the services.

11           14.    CHOICE OF LAW

12           This Agreement shall be construed and interpreted in accordance with the laws of the State of  
13 California, excluding any choice of law rules which may direct the application of the laws of another  
14 jurisdiction. In the event that suit shall be brought by either party hereunder, the parties agree that trial of such  
15 action shall be held exclusively in a state court in the County of Contra Costa, California.

16           15.    NON-WAIVER

17           The waiver by either party of any breach of any term, covenant, or condition contained in the  
18 AGREEMENT, or any default in their performance of any obligations under the AGREEMENT shall not be  
19 deemed to be a waiver of any other breach or default of the same or any other term, covenant, condition, or  
20 obligation, nor shall any waiver of any incident of breach of default constitute a continuing waiver of same.

21           16.    ENFORCEABILITY; INTERPRETATION

22           In the event that any of the provisions or portions of application of any of the provisions of the  
23 AGREEMENT are held to be illegal or invalid by a court of competent jurisdiction, CITY and CONSULTANT  
24 shall negotiate an equitable adjustment in the provisions of the AGREEMENT with a view toward affecting the  
25 purpose of the AGREEMENT. The illegality or invalidity of any of the provisions or portions of application of  
26 any of the provisions of the AGREEMENT shall not affect the legality or enforceability of the remaining  
27 provisions or portions of application of any of the provisions of the AGREEMENT. This Agreement shall be  
28 interpreted as though it was a product of a joint drafting effort and no provisions shall be interpreted against a

1 party on the ground that said party was solely or primarily responsible for drafting the language to be  
2 interpreted.

3 17. INTEGRATION

4 The AGREEMENT contains the entire AGREEMENT and understanding between the parties  
5 as to the subject matter of this AGREEMENT. It merges and supersedes all prior or contemporaneous  
6 agreements, commitments, representation, writings, and discussions between CONSULTANT and CITY,  
7 whether oral or written.

8 18. SUCCESSORS AND ASSIGNS; NO THIRD PARTY BENEFICIARIES; NO JOINT  
9 VENTURE

10 CITY and CONSULTANT respectively, bind themselves, their successors, assigns, and legal  
11 representatives to the terms and obligations of this Agreement. CONSULTANT shall not assign or transfer any  
12 interest in the Agreement without the CITY's prior written consent, which consent shall be in the CITY's sole  
13 discretion. Any attempted assignment or transfer in breach of this provision shall be void. This Agreement is  
14 not intended and shall not be construed to create any third party benefit. This Agreement is not intended and  
15 shall not be construed to create a joint venture or partnership between the parties. CONSULTANT, its officers,  
16 employees and agents shall not have any power to bind or commit the CITY to any decision.

17 19. FINANCIAL RECORDS

18 Records of CONSULTANT's direct labor costs, payroll costs, and reimbursable expenses  
19 pertaining to this project covered by this AGREEMENT will be kept on a generally recognized accounting  
20 basis and made available to CITY if and when required.

21 20. NOTICES

22 All notices required hereunder shall be in writing and mailed postage prepaid by Certified or  
23 Registered mail, return receipt requested, or by personal delivery to the CITY's address as shown below, or  
24 such other places as CITY or CONSULTANT may, from time to time, respectively, designate in a written  
25 notice given to the other. Notice shall be deemed received three (3) days after the date of the mailing thereof or  
26 upon personal delivery.

27 To CITY

**Robert Ovadia, City Engineer**  
**Community & Economic Development Department**  
**City of Concord**

1 **1950 Parkside Drive, MS/40**  
2 **Concord, CA 94519**  
3 **Phone: (925) 671-3470**  
4 **Fax: (925) 798-9692**

4 To CONSULTANT

**Karen McArdle, Principal**  
**McArdle Design**  
**3400 Mt. Diablo Blvd., Suite 207**  
**Lafayette, CA 94549**  
**Phone: (925) 283-5520**  
**Fax: (925) 283-9476**

8 21. TERM

9 The term of this AGREEMENT shall be from the date executed above through **June 30<sup>th</sup>,**  
10 **2017**, with the option of one one-year extension upon mutual agreement by both CITY and CONSULTANT.  
11 The City Manager is authorized to approve the extension.

12 22. NON-LIABILITY

13 No member of the CITY and no other officer, employee or agent of the CITY shall be  
14 personally liable to CONSULTANT or otherwise in the event of any default or breach of the CITY, or for any  
15 amount which may become due to CONSULTANT or any successor in interest, or for any obligations directly  
16 or indirectly incurred under the terms of this Agreement.

17 23. EXECUTION

18 Each individual or entity executing this Agreement on behalf of CONSULTANT represents  
19 and warrants that he or she or it is duly authorized to execute and deliver this Agreement on behalf of  
20 CONSULTANT and that such execution is binding upon CONSULTANT.

21 This Agreement may be executed in several counterparts, each of which shall constitute one  
22 and the same instrument and shall become binding upon the parties when at least one copy hereof shall have  
23 been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or  
24 account for more than one such counterpart.

25 **IN WITNESS WHEREOF**, the parties have executed this AGREEMENT in three (3) copies as of the  
26 date and year first written above.

27 **CONSULTANT**

**CITY OF CONCORD**

1 By: \_\_\_\_\_  
2 Name: Karen McArdle  
3 Title: Principal  
4 Address: 3400 Mt. Diablo Blvd., Suite 207  
5 Lafayette, CA 94549  
6 Telephone: (925) 283-5520

By: \_\_\_\_\_  
Name: Valerie Barone  
Title: City Manager  
Address: 1950 Parkside Drive, MS 01  
Concord, CA 94519  
Telephone: (925) 671-3175

6 APPROVED AS TO FORM:  
7  
8 \_\_\_\_\_  
9 City Attorney

ATTEST:  
  
\_\_\_\_\_ City Clerk

10 Date: \_\_\_\_\_, 2015

11  
12 FINANCE DIRECTOR'S CERTIFICATION:  
13 Concord, California  
14 Date: \_\_\_\_\_, 2015

15 I HEREBY CERTIFY THAT ADEQUATE FUNDS EXIST OR WILL BE RECEIVED  
16 DURING THE CURRENT FISCAL YEARS 2015-16 AND 2016-17 TO PAY THE  
17 ANTICIPATED EXPENSES TO BE INCURRED PURSUANT TO THIS CONTRACT.  
18 THE SUM OF **\$250,000.**

19  
20 \_\_\_\_\_  
21 Finance Director's Signature  
22  
23  
24  
25  
26  
27  
28

**FIRST AMENDMENT TO  
MASTER SERVICES AGREEMENT**

This First Amendment to Master Services Agreement is entered into on this date, July 1, 2015, and amends the agreement between the City of Concord (the "CITY") and McArdle Design, whose address is 3400 Mt. Diablo Blvd., Suite 207, Lafayette, CA 94549 (the "CONSULTANT") dated July 1, 2015.

**WHEREAS**, the CITY and CONSULTANT entered into a Master Agreement dated July 1, 2015 to provide: Landscape Architecture Design Services related to CIP Projects.

**WHEREAS**, the CITY and CONSULTANT wish to amend the Master Agreement by updating the Indemnification language for Design Services Contracts.

**NOW THEREFORE**, in consideration of the promises and conditions set forth in the Agreement dated July 1, 2015, the parties mutually desire to amend the Indemnification provisions of its Master Agreement with the following:

1. Section 4 of the July 1, 2015 Master Services Agreement is hereby deleted in its entirety and is replaced with the following:

4. INDEMNIFICATION

- a. For Design Professional Services Only. Pursuant to California Civil Code Section 2782.8, CONSULTANT agrees to indemnify the CITY (including its officers, agents, employees and volunteers) against liability for claims against the CITY that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of CONSULTANT in the performance of this Agreement. The CONSULTANT will reimburse the CITY for any expenditures, including reasonable attorney fees, incurred by the CITY in defending against claims ultimately determined to arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the CONSULTANT.

- b. For All Other Services. CONSULTANT agrees to defend, indemnify and hold harmless the CITY (including its officers, officials, employees, agents and volunteers) from and against any and all claims, demands, actions, losses, damages, injuries, and liability (including all attorney's fees and other litigation expenses) arising out of the CONSULTANT's performance under the terms of this Agreement. This indemnification obligation on CONSULTANT'S part shall not apply to demands, actions, losses, damages, injuries, and liability arising out of sole negligence or willful misconduct on the part of CITY.

2. Except as expressly amended herein, all other terms and conditions of the Master Agreement dated July 1, 2015 shall remain in full force and effect.

**IN WITNESS WHEREOF**, the parties have executed this First Amendment on the day and year written above.

Dated: JUNE 9, 2015

McArdle Designs

BY: 

Dated: \_\_\_\_\_, 2015

CITY OF CONCORD

By: \_\_\_\_\_  
Valerie Barone  
City Manager

APPROVED AS TO FORM:

ATTEST:

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
City Clerk

FINANCE DIRECTOR'S CERTIFICATION:

Concord, California

Date: \_\_\_\_\_, 2015

I HEREBY CERTIFY THAT ADEQUATE FUNDS EXIST OR WILL BE RECEIVED DURING THE CURRENT FISCAL YEAR 2015-16 AND 2016-17, TO PAY THE ANTICIPATED EXPENSES TO BE INCURRED PURSUANT TO THIS CONTRACT, THE SUM OF **\$250,000**.

\_\_\_\_\_  
Finance Director's Signature

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

1           **THIS AGREEMENT** made and entered into on **July 1<sup>st</sup>, 2015** by and between the City of Concord  
2 (hereinafter "CITY"), located in the County of Contra Costa, State of California, and Golden Associates  
3 (hereinafter "CONSULTANT"), whose address is 4400 Market Street, Oakland, CA 94608.

4           **THE PARTIES ENTER THIS AGREEMENT** based upon the following facts, understandings and  
5 intentions:

6           CITY desires to contract with CONSULTANT and CONSULTANT to contract with CITY for  
7 provision by CONSULTANT to CITY for professional services as further described herein, upon the terms and  
8 conditions hereinafter set forth.

9           **NOW, THEREFORE, IN CONSIDERATION** of the mutual covenants and promises of the parties  
10 herein contained, the parties hereto agree as follows:

11           1.     SERVICES

12           CONSULTANT shall provide services for specific projects as may be requested by CITY;  
13 such services shall be defined, scheduled, and authorized in subsequent Task Orders. Services may include, but  
14 not be limited to:

- 15           ● Landscape Architecture services related to CIP Projects
- 16           ● Other as-needed services;

17           CONSULTANT shall be an independent contractor and shall have responsibility for and  
18 control over the details and means of providing its services under this AGREEMENT. CONSULTANT agrees  
19 that its services shall be performed with due diligence and in accordance with generally accepted engineering  
20 practices.

21           CONSULTANT shall use its best efforts to perform and coordinate all activities in a timely  
22 manner so that the projects will be completed according to the established project schedules.

23           2.     AUTHORIZED REPRESENTATIVES

24           Authorized representatives shall represent CITY and CONSULTANT in all matters pertaining  
25 to the services to be ordered by CITY or rendered by CONSULTANT under this Agreement except where  
26 approval for the CITY is specifically required by the City Council. The CITY'S authorized representative shall  
27 be the City Engineer. Said City Engineer is authorized to execute Task Orders on behalf of CITY, including  
28

1 providing for CONSULTANT to be compensated not more than **\$50,000** for each project. Task Orders  
2 providing for more than **\$50,000** compensation for one project shall be presented to the City Council for its  
3 consideration.

4 CONSULTANT authorized representative shall be **Leslie Golden, Principal**

5 3. COMPENSATION

6 CONSULTANT shall be compensated, not to exceed **\$250,000** per fiscal year for basic  
7 services rendered under Section 1, as more particularly described in authorized Task Orders, in accordance with  
8 the terms and conditions included therein.

9 CONSULTANT may submit monthly statements for services rendered; all statements shall  
10 include adequate documentation demonstrating work performed during the billing period and shall conform to  
11 Federal Funding invoicing requirements, if applicable. It is intended that payments to CONSULTANT will be  
12 made by CITY within thirty (30) days of receipt of invoice. Consultant's failure to secure CITY's written  
13 authorization for additional compensation or changes to the Scope of Work shall constitute a waiver of any and  
14 all right to adjustment in the price or time due, whether by way of compensation, restitution, quantum meruit,  
15 or similar relief.

16 4. INDEMNIFICATION

17 CONSULTANT agrees to defend, indemnify and hold harmless the CITY, its officers,  
18 officials, employees, agents and volunteers from and against any and all claims, demands, actions, losses,  
19 damages, injuries, and liability (including all attorney's fees and other litigation expenses) arising out of the  
20 CONSULTANT's performance under the terms of this Agreement. This indemnification obligation on  
21 CONSULTANT'S part shall not apply to demands, actions, losses, damages, injuries, and liability arising out  
22 of sole negligence or willful misconduct on the part of CITY.

23 5. OWNERSHIP AND MAINTENANCE OF DOCUMENTS

24 All documents furnished by CONSULTANT pursuant to this AGREEMENT are instruments  
25 of CONSULTANT's services in respect to this project. They are not intended nor represented to be suitable for  
26 reuse by others on extensions of this project or on any other project. Any reuse without specific written  
27 verification and adoption by CONSULTANT for the specific purposes intended will be at user's sole risk and  
28 without liability or legal exposure and expenses to CONSULTANT, including attorney's fees arising out of

1 such unauthorized reuse.

2 CONSULTANT's records, documents, calculations, and all other instruments of service pertaining to  
3 actual project shall be given to CITY at the completion of the project. The CITY reserves the right to specify  
4 the file format that electronic document deliverables are presented to the CITY. Title to all plans,  
5 specifications, maps, estimates, reports, manuscripts, drawings, descriptions and other final work products  
6 compiled by the CONSULTANT under the Agreement shall be vested in the CITY, none of which shall be  
7 used in any manner whatsoever, by any person, firm, corporation, or agency without the expressed written  
8 consent of the CITY. Basic survey notes and sketches, charts, computations, and other data prepared or  
9 obtained under the Agreement shall be made available, upon request, to the CITY without restriction or  
10 limitations on their use. CONSULTANT may retain copies of the above-described information but agrees not  
11 to disclose or discuss any information gathered, discussed or generated in any way through this Agreement  
12 without the written permission of CITY during the term of this Agreement, unless required by law.

13 6. STANDARD OF PERFORMANCE

14 CONSULTANT represents to CITY that the services shall be performed in an expeditious  
15 manner, and with the degree of skill and care that is required by current, good, and sound procedures and  
16 practices. CONSULTANT further agrees that the services shall be in conformance with generally accepted  
17 professional standards prevailing at the time work is performed.

18 7. INSURANCE REQUIRED

19 CONSULTANT shall, at its own expense, procure and maintain in full force at all times during  
20 the term of this AGREEMENT the following insurance:

21 **A. Commercial General Liability Coverage.** CONSULTANT shall maintain  
22 commercial general liability insurance with limits of no less than one million dollars (\$1,000,000) combined  
23 single limit per occurrence or two million dollars (\$2,000,000) aggregate limit for bodily injury, personal  
24 injury, and property damage.

25 **B. Automobile Liability Coverage.** CONSULTANT shall maintain automobile liability  
26 insurance covering all vehicles used in the performance of this Agreement providing a one million dollar  
27 (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage.

28 **C. Professional Liability Coverage (Errors and Omissions).** CONSULTANT shall

1 maintain professional liability insurance with coverage for all negligent errors, acts or omissions committed by  
2 CONSULTANT, its agents and employees in the performance of this Agreement. The amount of this insurance  
3 shall be not less than one million dollars (\$1,000,000) on a claims made annual aggregate basis or a combined  
4 single limit per occurrence basis.

5 **D. Compliance with State Workers' Compensation Requirements.** CONSULTANT  
6 covenants that it will insure itself against liability for Workers' Compensation pursuant to the provisions of  
7 California Labor Code §3700, et seq. CONSULTANT shall, at all times, upon demand of the City, furnish  
8 proof that Workers' Compensation Insurance is being maintained by it in force and effect in accordance with  
9 the California Labor Code. The insurer shall also agree to waive all rights of subrogation against the CITY, its  
10 officers, officials, employees and volunteers for losses arising from work performed by CONSULTANT for  
11 CITY. This provision shall not apply upon written verification by CONSULTANT that CONSULTANT has  
12 no employees.

13 **E. Other Insurance Provisions.** The policies are to contain, or be endorsed to contain  
14 the following provisions:

15 (1) **Additional Insured.** CITY, its officers, agents, employees, and volunteers are  
16 to be covered as an additional insured as respects: Liability arising out of activities performed by or on behalf  
17 of CONSULTANT and operations of CONSULTANT, premises owned, occupied, or used by CONSULTANT.  
18 The coverage shall contain no special limitations on the scope or protection afforded to CITY, its officers,  
19 officials, employees, or volunteers.

20 Except for worker's compensation and professional liability insurance, the policies  
21 mentioned in this subsection shall name CITY as an additional insured and provide for notice of cancellation to  
22 CITY. CONSULTANT shall also provide timely and prompt notice to CITY if CONSULTANT receives any  
23 notice of cancellation or nonrenewal from its insurer.

24 (2) **Primary Coverage.** CONSULTANT'S insurance coverage shall be primary  
25 insurance with respect to CITY, its officers, officials, employees, and volunteers. Any insurance, risk pooling  
26 arrangement, or self-insurance maintained by CITY, its officers, officials, employees, or volunteers shall be in  
27 excess of CONSULTANT'S insurance and shall not contribute with it.

28 (3) **Reporting Provisions.** Any failure to comply with the reporting provisions of

1 the policy shall not affect the coverage provided to the CITY, its officers, officials, employees, or volunteers.

2                   **(4) Verification of Coverage.** CONSULTANT shall furnish CITY with  
3 certificates of insurance and the original endorsements effecting coverage required by this Agreement. The  
4 certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer  
5 to bind coverage on its behalf. The aforementioned policies shall be issued by an insurance carrier having a  
6 rating of Best A-7 or better which is satisfactory to the City Attorney and shall be delivered to CITY at the time  
7 of the execution of this Agreement or before work commences. Such policies and certificates shall be in a form  
8 approved by the City Attorney. CITY reserves the right to require complete certified copies of all required  
9 insurance policies at any time.

10           8.       SUSPENSION OF WORK

11                   CITY may, at any time, by ten (10) days' written notice, suspend further performance by  
12 CONSULTANT. All suspensions shall extend the time schedule for performance in a mutually satisfactory  
13 manner, and CONSULTANT shall be paid for services performed and reimbursable expenses incurred prior to  
14 the suspension date. During the period of suspension, CONSULTANT shall not receive any payment for  
15 services, or expenses, except for reasonable administration expenses, incurred by CONSULTANT by reason of  
16 such suspension.

17           9.       TERMINATION

18                   CITY may terminate this Agreement for any reason upon ten (10) days written notice to the  
19 other party. CITY may terminate the Agreement upon five (5) days written notice if CONSULTANT breaches  
20 this Agreement. In the event of any termination, CONSULTANT shall promptly deliver to the CITY any and  
21 all finished and unfinished reports or other written, recorded, photographic, or visual materials, documents,  
22 data, and other deliverables ("Work Materials") prepared for the CITY prior to the effective date of such  
23 termination, all of which shall become CITY's sole property. After receipt of the Work Materials, CITY will  
24 pay CONSULTANT for the services performed as of the effective date of the termination.

25           10.      COMPLIANCE WITH CIVIL RIGHTS

26                   During the performance of this contract, CONSULTANT agrees as follows:

27                   **A. Equal Employment Opportunity.** In connection with the execution of this  
28 AGREEMENT, CONSULTANT shall not discriminate against any employee or applicant for employment

1 because of race, religion, color, sex, or national origin. Such actions shall include, but not be limited to, the  
2 following: employment, promotion, upgrading, demotion, or transfer; recruitment or recruitment advertising;  
3 layoff or termination; rate of pay or other forms of compensation; and selection for training including  
4 apprenticeship.

5 **B. Nondiscrimination Civil Rights Act of 1964.** CONSULTANT will comply with all  
6 federal regulations relative to nondiscrimination in federally assisted programs.

7 **C. Solicitations for Subcontractors including Procurement of Materials and**  
8 **Equipment.** In all solicitation, either by competitive bidding or negotiations, made by CONSULTANT for  
9 work to be performed under a subcontract including procurement of materials or leases of equipment, each  
10 potential subcontractor, supplier or lessor shall be notified by CONSULTANT of CONSULTANT'S obligation  
11 under this AGREEMENT and the regulations relative to nondiscrimination on the grounds of race, religion,  
12 color, sex, or national origin.

13 11. CONFLICT OF INTEREST

14 A. CONSULTANT covenants and represents that neither it, nor any officer or principal of  
15 its firm, has, or shall acquire any interest, directly or indirectly, which would conflict in any manner with the  
16 interests of CITY or which would in any way hinder CONSULTANT's performance of services under this  
17 Agreement. CONSULTANT further covenants that in the performance of the Agreement, no person having  
18 any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express  
19 written consent of the CITY. CONSULTANT agrees to at all times avoid conflicts of interest, or the  
20 appearance of any conflicts of interest, with the interests of the CITY in the performance of this Agreement.

21 B. CONSULTANT is not a designated employee within the meaning of the Political  
22 Reform Act because CONSULTANT:

23 (1) Will conduct research and arrive at conclusions with respect to its rendition of  
24 information, advice, recommendation or counsel independent of the control and direction of the CITY or of any  
25 CITY official, other than normal contract monitoring; and

26 (2) Possesses no authority with respect to any CITY decision beyond the rendition of  
27 information, advice, recommendation or counsel. (2 Cal. Code Regs. § 18700(a)(2).)

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4 CONSULTANT and shall not be construed as employees or agents of the CITY in any respect.  
5 CONSULTANT shall have responsibility for and control over the means of providing services under this  
6 AGREEMENT.

7 13. COMPLIANCE WITH LAWS

8 CONSULTANT shall comply with all applicable federal, State of California, and local laws,  
9 rules, and regulations and shall obtain all applicable licenses and permits for the conduct of its business and the  
10 performance of the services.

11 14. CHOICE OF LAW

12 This Agreement shall be construed and interpreted in accordance with the laws of the State of  
13 California, excluding any choice of law rules which may direct the application of the laws of another  
14 jurisdiction. In the event that suit shall be brought by either party hereunder, the parties agree that trial of such  
15 action shall be held exclusively in a state court in the County of Contra Costa, California.

16 15. NON-WAIVER

17 The waiver by either party of any breach of any term, covenant, or condition contained in the  
18 AGREEMENT, or any default in their performance of any obligations under the AGREEMENT shall not be  
19 deemed to be a waiver of any other breach or default of the same or any other term, covenant, condition, or  
20 obligation, nor shall any waiver of any incident of breach of default constitute a continuing waiver of same.

21 16. ENFORCEABILITY; INTERPRETATION

22 In the event that any of the provisions or portions of application of any of the provisions of the  
23 AGREEMENT are held to be illegal or invalid by a court of competent jurisdiction, CITY and CONSULTANT  
24 shall negotiate an equitable adjustment in the provisions of the AGREEMENT with a view toward affecting the  
25 purpose of the AGREEMENT. The illegality or invalidity of any of the provisions or portions of application of  
26 any of the provisions of the AGREEMENT shall not affect the legality or enforceability of the remaining  
27 provisions or portions of application of any of the provisions of the AGREEMENT. This Agreement shall be  
28 interpreted as though it was a product of a joint drafting effort and no provisions shall be interpreted against a

1 party on the ground that said party was solely or primarily responsible for drafting the language to be  
2 interpreted.

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4 The AGREEMENT contains the entire AGREEMENT and understanding between the parties  
5 as to the subject matter of this AGREEMENT. It merges and supersedes all prior or contemporaneous  
6 agreements, commitments, representation, writings, and discussions between CONSULTANT and CITY,  
7 whether oral or written.

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9 VENTURE

10 CITY and CONSULTANT respectively, bind themselves, their successors, assigns, and legal  
11 representatives to the terms and obligations of this Agreement. CONSULTANT shall not assign or transfer any  
12 interest in the Agreement without the CITY's prior written consent, which consent shall be in the CITY's sole  
13 discretion. Any attempted assignment or transfer in breach of this provision shall be void. This Agreement is  
14 not intended and shall not be construed to create any third party benefit. This Agreement is not intended and  
15 shall not be construed to create a joint venture or partnership between the parties. CONSULTANT, its officers,  
16 employees and agents shall not have any power to bind or commit the CITY to any decision.

17 19. FINANCIAL RECORDS

18 Records of CONSULTANT's direct labor costs, payroll costs, and reimbursable expenses  
19 pertaining to this project covered by this AGREEMENT will be kept on a generally recognized accounting  
20 basis and made available to CITY if and when required.

21 20. NOTICES

22 All notices required hereunder shall be in writing and mailed postage prepaid by Certified or  
23 Registered mail, return receipt requested, or by personal delivery to the CITY's address as shown below, or  
24 such other places as CITY or CONSULTANT may, from time to time, respectively, designate in a written  
25 notice given to the other. Notice shall be deemed received three (3) days after the date of the mailing thereof or  
26 upon personal delivery.

27 To CITY

**Robert Ovadia, City Engineer**  
**Community & Economic Development Department**  
**City of Concord**

1 **1950 Parkside Drive, MS/40**  
2 **Concord, CA 94519**  
3 **Phone: (925) 671-3470**  
4 **Fax: (925) 798-9692**

4 To CONSULTANT

**Leslie Golden, Principal**  
**Golden Associates**  
**4400 Market Street**  
**Oakland, CA 94608**  
**Phone: (510) 465-4030**

8 21. TERM

9 The term of this AGREEMENT shall be from the date executed above through **June 30<sup>th</sup>**,  
10 **2017**, with the option of one one-year extension upon mutual agreement by both CITY and CONSULTANT.  
11 The City Manager is authorized to approve the extension.

12 22. NON-LIABILITY

13 No member of the CITY and no other officer, employee or agent of the CITY shall be  
14 personally liable to CONSULTANT or otherwise in the event of any default or breach of the CITY, or for any  
15 amount which may become due to CONSULTANT or any successor in interest, or for any obligations directly  
16 or indirectly incurred under the terms of this Agreement.

17 23. EXECUTION

18 Each individual or entity executing this Agreement on behalf of CONSULTANT represents  
19 and warrants that he or she or it is duly authorized to execute and deliver this Agreement on behalf of  
20 CONSULTANT and that such execution is binding upon CONSULTANT.

21 This Agreement may be executed in several counterparts, each of which shall constitute one  
22 and the same instrument and shall become binding upon the parties when at least one copy hereof shall have  
23 been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or  
24 account for more than one such counterpart.

25 **IN WITNESS WHEREOF**, the parties have executed this AGREEMENT in three (3) copies as of the  
26 date and year first written above.

27 **CONSULTANT**

**CITY OF CONCORD**

1 By: \_\_\_\_\_

By: \_\_\_\_\_

2 Name: Leslie Golden  
3 Title: Principal  
4 Address: 4400 Market Street  
Oakland, CA 94608  
5 Telephone: (510) 465-4030

Name: Valerie Barone  
Title: City Manager  
Address: 1950 Parkside Drive, MS 01  
Concord, CA 94519  
Telephone: (925) 671-3175

6 APPROVED AS TO FORM:

ATTEST:

7  
8 \_\_\_\_\_  
City Attorney

\_\_\_\_\_

9  
10 Date: \_\_\_\_\_, 2015

11  
12 FINANCE DIRECTOR'S CERTIFICATION:

13 Concord, California

14 Date: \_\_\_\_\_, 2015

15 I HEREBY CERTIFY THAT ADEQUATE FUNDS EXIST OR WILL BE RECEIVED  
16 DURING THE CURRENT FISCAL YEARS 2015-16 AND 2016-17 TO PAY THE  
17 ANTICIPATED EXPENSES TO BE INCURRED PURSUANT TO THIS CONTRACT.

18 THE SUM OF **\$250,000.**

19  
20 \_\_\_\_\_  
Finance Director's Signature

**FIRST AMENDMENT TO  
MASTER SERVICES AGREEMENT**

This First Amendment to Master Services Agreement is entered into on this date, July 1, 2015, and amends the agreement between the City of Concord (the "CITY") and Golden Associates, whose address is 4400 Market Street, Oakland, CA 94608 (the "CONSULTANT") dated July 1, 2015.

**WHEREAS**, the CITY and CONSULTANT entered into a Master Agreement dated July 1, 2015 to provide: Landscape Architecture Design Services related to CIP Projects.

**WHEREAS**, the CITY and CONSULTANT wish to amend the Master Agreement by updating the Indemnification language for Design Services Contracts.

**NOW THEREFORE**, in consideration of the promises and conditions set forth in the Agreement dated July 1, 2015, the parties mutually desire to amend the Indemnification provisions of its Master Agreement with the following:

1. Section 4 of the July 1, 2015 Master Services Agreement is hereby deleted in its entirety and is replaced with the following:

4. INDEMNIFICATION

- a. For Design Professional Services Only. Pursuant to California Civil Code Section 2782.8, CONSULTANT agrees to indemnify the CITY (including its officers, agents, employees and volunteers) against liability for claims against the CITY that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of CONSULTANT in the performance of this Agreement. The CONSULTANT will reimburse the CITY for any expenditures, including reasonable attorney fees, incurred by the CITY in defending against claims ultimately determined to arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the CONSULTANT.

- b. For All Other Services. CONSULTANT agrees to defend, indemnify and hold harmless the CITY (including its officers, officials, employees, agents and volunteers) from and against any and all claims, demands, actions, losses, damages, injuries, and liability (including all attorney's fees and other litigation expenses) arising out of the CONSULTANT's performance under the terms of this Agreement. This indemnification obligation on CONSULTANT'S part shall not apply to demands, actions, losses, damages, injuries, and liability arising out of sole negligence or willful misconduct on the part of CITY.

2. Except as expressly amended herein, all other terms and conditions of the Master Agreement dated July 1, 2015 shall remain in full force and effect.

**IN WITNESS WHEREOF**, the parties have executed this First Amendment on the day and year written above.

Dated: \_\_\_\_\_, 2015

Golden Associates

BY: \_\_\_\_\_

Dated: \_\_\_\_\_, 2015

CITY OF CONCORD

By: \_\_\_\_\_

Valerie Barone  
City Manager

APPROVED AS TO FORM:

ATTEST:

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
City Clerk

FINANCE DIRECTOR'S CERTIFICATION:

Concord, California

Date: \_\_\_\_\_, 2015

I HEREBY CERTIFY THAT ADEQUATE FUNDS EXIST OR WILL BE RECEIVED DURING THE CURRENT FISCAL YEAR 2015-16 AND 2016-17, TO PAY THE ANTICIPATED EXPENSES TO BE INCURRED PURSUANT TO THIS CONTRACT, THE SUM OF **\$250,000**.

\_\_\_\_\_  
Finance Director's Signature

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

1 THIS AGREEMENT made and entered into on July 1<sup>st</sup>, 2015 by and between the City of Concord  
2 (hereinafter "CITY"), located in the County of Contra Costa, State of California, and LCC, Inc., (hereinafter  
3 "CONSULTANT"), whose address is 930 Estudillo Street, Martinez, CA 94553-1620.

4 THE PARTIES ENTER THIS AGREEMENT based upon the following facts, understandings and  
5 intentions:

6 CITY desires to contract with CONSULTANT and CONSULTANT to contract with CITY for  
7 provision by CONSULTANT to CITY for professional services as further described herein, upon the terms and  
8 conditions hereinafter set forth.

9 NOW, THEREFORE, IN CONSIDERATION of the mutual covenants and promises of the parties  
10 herein contained, the parties hereto agree as follows:

11 1. SERVICES

12 CONSULTANT shall provide services for specific projects as may be requested by CITY;  
13 such services shall be defined, scheduled, and authorized in subsequent Task Orders. Services may include, but  
14 not be limited to:

- 15 ● Land survey services related to CIP Projects
- 16 ● Other as-needed services;

17 CONSULTANT shall be an independent contractor and shall have responsibility for and  
18 control over the details and means of providing its services under this AGREEMENT. CONSULTANT agrees  
19 that its services shall be performed with due diligence and in accordance with generally accepted engineering  
20 practices.

21 CONSULTANT shall use its best efforts to perform and coordinate all activities in a timely  
22 manner so that the projects will be completed according to the established project schedules.

23 2. AUTHORIZED REPRESENTATIVES

24 Authorized representatives shall represent CITY and CONSULTANT in all matters pertaining  
25 to the services to be ordered by CITY or rendered by CONSULTANT under this Agreement except where  
26 approval for the CITY is specifically required by the City Council. The CITY'S authorized representative shall  
27 be the City Engineer. Said City Engineer is authorized to execute Task Orders on behalf of CITY, including  
28

1 providing for CONSULTANT to be compensated not more than **\$50,000** for each project. Task Orders  
2 providing for more than **\$50,000** compensation for one project shall be presented to the City Council for its  
3 consideration.

4 CONSULTANT authorized representative shall be **Christine Leptien-Parks, Principal**.

5 3. COMPENSATION

6 CONSULTANT shall be compensated, not to exceed **\$250,000** per fiscal year for basic  
7 services rendered under Section 1, as more particularly described in authorized Task Orders, in accordance with  
8 the terms and conditions included therein.

9 CONSULTANT may submit monthly statements for services rendered; all statements shall  
10 include adequate documentation demonstrating work performed during the billing period and shall conform to  
11 Federal Funding invoicing requirements, if applicable. It is intended that payments to CONSULTANT will be  
12 made by CITY within thirty (30) days of receipt of invoice. Consultant's failure to secure CITY's written  
13 authorization for additional compensation or changes to the Scope of Work shall constitute a waiver of any and  
14 all right to adjustment in the price or time due, whether by way of compensation, restitution, quantum meruit,  
15 or similar relief.

16 4. INDEMNIFICATION

17 CONSULTANT agrees to defend, indemnify and hold harmless the CITY, its officers,  
18 officials, employees, agents and volunteers from and against any and all claims, demands, actions, losses,  
19 damages, injuries, and liability (including all attorney's fees and other litigation expenses) arising out of the  
20 CONSULTANT's performance under the terms of this Agreement. This indemnification obligation on  
21 CONSULTANT'S part shall not apply to demands, actions, losses, damages, injuries, and liability arising out  
22 of sole negligence or willful misconduct on the part of CITY.

23 5. OWNERSHIP AND MAINTENANCE OF DOCUMENTS

24 All documents furnished by CONSULTANT pursuant to this AGREEMENT are instruments  
25 of CONSULTANT's services in respect to this project. They are not intended nor represented to be suitable for  
26 reuse by others on extensions of this project or on any other project. Any reuse without specific written  
27 verification and adoption by CONSULTANT for the specific purposes intended will be at user's sole risk and  
28 without liability or legal exposure and expenses to CONSULTANT, including attorney's fees arising out of

1 such unauthorized reuse.

2 CONSULTANT's records, documents, calculations, and all other instruments of service pertaining to  
3 actual project shall be given to CITY at the completion of the project. The CITY reserves the right to specify  
4 the file format that electronic document deliverables are presented to the CITY. Title to all plans,  
5 specifications, maps, estimates, reports, manuscripts, drawings, descriptions and other final work products  
6 compiled by the CONSULTANT under the Agreement shall be vested in the CITY, none of which shall be  
7 used in any manner whatsoever, by any person, firm, corporation, or agency without the expressed written  
8 consent of the CITY. Basic survey notes and sketches, charts, computations, and other data prepared or  
9 obtained under the Agreement shall be made available, upon request, to the CITY without restriction or  
10 limitations on their use. CONSULTANT may retain copies of the above-described information but agrees not  
11 to disclose or discuss any information gathered, discussed or generated in any way through this Agreement  
12 without the written permission of CITY during the term of this Agreement, unless required by law.

13 6. STANDARD OF PERFORMANCE

14 CONSULTANT represents to CITY that the services shall be performed in an expeditious  
15 manner, and with the degree of skill and care that is required by current, good, and sound procedures and  
16 practices. CONSULTANT further agrees that the services shall be in conformance with generally accepted  
17 professional standards prevailing at the time work is performed.

18 7. INSURANCE REQUIRED

19 CONSULTANT shall, at its own expense, procure and maintain in full force at all times during  
20 the term of this AGREEMENT the following insurance:

21 **A. Commercial General Liability Coverage.** CONSULTANT shall maintain  
22 commercial general liability insurance with limits of no less than one million dollars (\$1,000,000) combined  
23 single limit per occurrence or two million dollars (\$2,000,000) aggregate limit for bodily injury, personal  
24 injury, and property damage.

25 **B. Automobile Liability Coverage.** CONSULTANT shall maintain automobile liability  
26 insurance covering all vehicles used in the performance of this Agreement providing a one million dollar  
27 (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage.

28 **C. Professional Liability Coverage (Errors and Omissions).** CONSULTANT shall

1 maintain professional liability insurance with coverage for all negligent errors, acts or omissions committed by  
2 CONSULTANT, its agents and employees in the performance of this Agreement. The amount of this insurance  
3 shall be not less than one million dollars (\$1,000,000) on a claims made annual aggregate basis or a combined  
4 single limit per occurrence basis.

5 **D. Compliance with State Workers' Compensation Requirements.** CONSULTANT  
6 covenants that it will insure itself against liability for Workers' Compensation pursuant to the provisions of  
7 California Labor Code §3700, et seq. CONSULTANT shall, at all times, upon demand of the City, furnish  
8 proof that Workers' Compensation Insurance is being maintained by it in force and effect in accordance with  
9 the California Labor Code. The insurer shall also agree to waive all rights of subrogation against the CITY, its  
10 officers, officials, employees and volunteers for losses arising from work performed by CONSULTANT for  
11 CITY. This provision shall not apply upon written verification by CONSULTANT that CONSULTANT has  
12 no employees.

13 **E. Other Insurance Provisions.** The policies are to contain, or be endorsed to contain  
14 the following provisions:

15 (1) **Additional Insured.** CITY, its officers, agents, employees, and volunteers are  
16 to be covered as an additional insured as respects: Liability arising out of activities performed by or on behalf  
17 of CONSULTANT and operations of CONSULTANT, premises owned, occupied, or used by CONSULTANT.  
18 The coverage shall contain no special limitations on the scope or protection afforded to CITY, its officers,  
19 officials, employees, or volunteers.

20 Except for worker's compensation and professional liability insurance, the policies  
21 mentioned in this subsection shall name CITY as an additional insured and provide for notice of cancellation to  
22 CITY. CONSULTANT shall also provide timely and prompt notice to CITY if CONSULTANT receives any  
23 notice of cancellation or nonrenewal from its insurer.

24 (2) **Primary Coverage.** CONSULTANT'S insurance coverage shall be primary  
25 insurance with respect to CITY, its officers, officials, employees, and volunteers. Any insurance, risk pooling  
26 arrangement, or self-insurance maintained by CITY, its officers, officials, employees, or volunteers shall be in  
27 excess of CONSULTANT'S insurance and shall not contribute with it.

28 (3) **Reporting Provisions.** Any failure to comply with the reporting provisions of

1 the policy shall not affect the coverage provided to the CITY, its officers, officials, employees, or volunteers.

2                   **(4) Verification of Coverage.** CONSULTANT shall furnish CITY with  
3 certificates of insurance and the original endorsements effecting coverage required by this Agreement. The  
4 certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer  
5 to bind coverage on its behalf. The aforementioned policies shall be issued by an insurance carrier having a  
6 rating of Best A-7 or better which is satisfactory to the City Attorney and shall be delivered to CITY at the time  
7 of the execution of this Agreement or before work commences. Such policies and certificates shall be in a form  
8 approved by the City Attorney. CITY reserves the right to require complete certified copies of all required  
9 insurance policies at any time.

10           8.       SUSPENSION OF WORK

11                   CITY may, at any time, by ten (10) days' written notice, suspend further performance by  
12 CONSULTANT. All suspensions shall extend the time schedule for performance in a mutually satisfactory  
13 manner, and CONSULTANT shall be paid for services performed and reimbursable expenses incurred prior to  
14 the suspension date. During the period of suspension, CONSULTANT shall not receive any payment for  
15 services, or expenses, except for reasonable administration expenses, incurred by CONSULTANT by reason of  
16 such suspension.

17           9.       TERMINATION

18                   CITY may terminate this Agreement for any reason upon ten (10) days written notice to the  
19 other party. CITY may terminate the Agreement upon five (5) days written notice if CONSULTANT breaches  
20 this Agreement. In the event of any termination, CONSULTANT shall promptly deliver to the CITY any and  
21 all finished and unfinished reports or other written, recorded, photographic, or visual materials, documents,  
22 data, and other deliverables ("Work Materials") prepared for the CITY prior to the effective date of such  
23 termination, all of which shall become CITY's sole property. After receipt of the Work Materials, CITY will  
24 pay CONSULTANT for the services performed as of the effective date of the termination.

25           10.      COMPLIANCE WITH CIVIL RIGHTS

26                   During the performance of this contract, CONSULTANT agrees as follows:

27                   **A. Equal Employment Opportunity.** In connection with the execution of this  
28 AGREEMENT, CONSULTANT shall not discriminate against any employee or applicant for employment

1 because of race, religion, color, sex, or national origin. Such actions shall include, but not be limited to, the  
2 following: employment, promotion, upgrading, demotion, or transfer; recruitment or recruitment advertising;  
3 layoff or termination; rate of pay or other forms of compensation; and selection for training including  
4 apprenticeship.

5 **B. Nondiscrimination Civil Rights Act of 1964.** CONSULTANT will comply with all  
6 federal regulations relative to nondiscrimination in federally assisted programs.

7 **C. Solicitations for Subcontractors including Procurement of Materials and**  
8 **Equipment.** In all solicitation, either by competitive bidding or negotiations, made by CONSULTANT for  
9 work to be performed under a subcontract including procurement of materials or leases of equipment, each  
10 potential subcontractor, supplier or lessor shall be notified by CONSULTANT of CONSULTANT'S obligation  
11 under this AGREEMENT and the regulations relative to nondiscrimination on the grounds of race, religion,  
12 color, sex, or national origin.

13 11. CONFLICT OF INTEREST

14 A. CONSULTANT covenants and represents that neither it, nor any officer or principal of  
15 its firm, has, or shall acquire any interest, directly or indirectly, which would conflict in any manner with the  
16 interests of CITY or which would in any way hinder CONSULTANT's performance of services under this  
17 Agreement. CONSULTANT further covenants that in the performance of the Agreement, no person having  
18 any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express  
19 written consent of the CITY. CONSULTANT agrees to at all times avoid conflicts of interest, or the  
20 appearance of any conflicts of interest, with the interests of the CITY in the performance of this Agreement.

21 B. CONSULTANT is not a designated employee within the meaning of the Political  
22 Reform Act because CONSULTANT:

23 (1) Will conduct research and arrive at conclusions with respect to its rendition of  
24 information, advice, recommendation or counsel independent of the control and direction of the CITY or of any  
25 CITY official, other than normal contract monitoring; and

26 (2) Possesses no authority with respect to any CITY decision beyond the rendition of  
27 information, advice, recommendation or counsel. (2 Cal. Code Regs. § 18700(a)(2).)

28 12. INDEPENDENT CONTRACTOR

1 In assuming and performing the services, CONSULTANT is an independent contractor and  
2 shall not be eligible for any benefits, which the CITY may provide its employees, except as expressly provided  
3 for in the AGREEMENT. All persons, if any, hired by CONSULTANT shall be employees or subcontractors of  
4 CONSULTANT and shall not be construed as employees or agents of the CITY in any respect.  
5 CONSULTANT shall have responsibility for and control over the means of providing services under this  
6 AGREEMENT.

7 13. COMPLIANCE WITH LAWS

8 CONSULTANT shall comply with all applicable federal, State of California, and local laws,  
9 rules, and regulations and shall obtain all applicable licenses and permits for the conduct of its business and the  
10 performance of the services.

11 14. CHOICE OF LAW

12 This Agreement shall be construed and interpreted in accordance with the laws of the State of  
13 California, excluding any choice of law rules which may direct the application of the laws of another  
14 jurisdiction. In the event that suit shall be brought by either party hereunder, the parties agree that trial of such  
15 action shall be held exclusively in a state court in the County of Contra Costa, California.

16 15. NON-WAIVER

17 The waiver by either party of any breach of any term, covenant, or condition contained in the  
18 AGREEMENT, or any default in their performance of any obligations under the AGREEMENT shall not be  
19 deemed to be a waiver of any other breach or default of the same or any other term, covenant, condition, or  
20 obligation, nor shall any waiver of any incident of breach of default constitute a continuing waiver of same.

21 16. ENFORCEABILITY; INTERPRETATION

22 In the event that any of the provisions or portions of application of any of the provisions of the  
23 AGREEMENT are held to be illegal or invalid by a court of competent jurisdiction, CITY and CONSULTANT  
24 shall negotiate an equitable adjustment in the provisions of the AGREEMENT with a view toward affecting the  
25 purpose of the AGREEMENT. The illegality or invalidity of any of the provisions or portions of application of  
26 any of the provisions of the AGREEMENT shall not affect the legality or enforceability of the remaining  
27 provisions or portions of application of any of the provisions of the AGREEMENT. This Agreement shall be  
28 interpreted as though it was a product of a joint drafting effort and no provisions shall be interpreted against a

1 party on the ground that said party was solely or primarily responsible for drafting the language to be  
2 interpreted.

3 17. INTEGRATION

4 The AGREEMENT contains the entire AGREEMENT and understanding between the parties  
5 as to the subject matter of this AGREEMENT. It merges and supersedes all prior or contemporaneous  
6 agreements, commitments, representation, writings, and discussions between CONSULTANT and CITY,  
7 whether oral or written.

8 18. SUCCESSORS AND ASSIGNS; NO THIRD PARTY BENEFICIARIES; NO JOINT  
9 VENTURE

10 CITY and CONSULTANT respectively, bind themselves, their successors, assigns, and legal  
11 representatives to the terms and obligations of this Agreement. CONSULTANT shall not assign or transfer any  
12 interest in the Agreement without the CITY's prior written consent, which consent shall be in the CITY's sole  
13 discretion. Any attempted assignment or transfer in breach of this provision shall be void. This Agreement is  
14 not intended and shall not be construed to create any third party benefit. This Agreement is not intended and  
15 shall not be construed to create a joint venture or partnership between the parties. CONSULTANT, its officers,  
16 employees and agents shall not have any power to bind or commit the CITY to any decision.

17 19. FINANCIAL RECORDS

18 Records of CONSULTANT's direct labor costs, payroll costs, and reimbursable expenses  
19 pertaining to this project covered by this AGREEMENT will be kept on a generally recognized accounting  
20 basis and made available to CITY if and when required.

21 20. NOTICES

22 All notices required hereunder shall be in writing and mailed postage prepaid by Certified or  
23 Registered mail, return receipt requested, or by personal delivery to the CITY's address as shown below, or  
24 such other places as CITY or CONSULTANT may, from time to time, respectively, designate in a written  
25 notice given to the other. Notice shall be deemed received three (3) days after the date of the mailing thereof or  
26 upon personal delivery.

27 To CITY

**Robert Ovadia, PE**  
**City Engineer**  
**City of Concord**

1 **1950 Parkside Drive, MS/40**  
2 **Concord, CA 94519**  
3 **Phone: (925) 671-3470**  
4 **Fax: (925) 798-9692**

4 To CONSULTANT

**Christine Leptien-Parks**  
**LCC, Inc.**  
**930 Estudillo Street**  
**Martinez, CA 94553-1620**  
**Phone: (925) 228-4218**  
**Fax: (925) 228-4638**

8 21. TERM

9 The term of this AGREEMENT shall be from the date executed above through **June 30<sup>th</sup>**,  
10 **2017**, with the option of one one-year extension upon mutual agreement by both CITY and CONSULTANT.  
11 The City Manager is authorized to approve the extension.

12 22. NON-LIABILITY

13 No member of the CITY and no other officer, employee or agent of the CITY shall be  
14 personally liable to CONSULTANT or otherwise in the event of any default or breach of the CITY, or for any  
15 amount which may become due to CONSULTANT or any successor in interest, or for any obligations directly  
16 or indirectly incurred under the terms of this Agreement.

17 23. EXECUTION

18 Each individual or entity executing this Agreement on behalf of CONSULTANT represents  
19 and warrants that he or she or it is duly authorized to execute and deliver this Agreement on behalf of  
20 CONSULTANT and that such execution is binding upon CONSULTANT.

21 This Agreement may be executed in several counterparts, each of which shall constitute one  
22 and the same instrument and shall become binding upon the parties when at least one copy hereof shall have  
23 been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or  
24 account for more than one such counterpart.

25 **IN WITNESS WHEREOF**, the parties have executed this AGREEMENT in three (3) copies as of the  
26 date and year first written above.

27 **CONSULTANT**

**CITY OF CONCORD**

1 By: \_\_\_\_\_

By: \_\_\_\_\_

2 Name: Christien Leptien-Parks  
3 Title: Principal  
4 Address: 930 Estudillo Street  
Martinez, CA 94553-1620  
5 Telephone: (925) 228-4218

Name: Valerie Barone  
Title: City Manager  
Address: 1950 Parkside Drive, MS 01  
Concord, CA 94519  
Telephone: (925) 671-3175

6 APPROVED AS TO FORM:

ATTEST:

7  
8 \_\_\_\_\_  
City Attorney

\_\_\_\_\_

9  
10 Date: \_\_\_\_\_, 2015

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12 FINANCE DIRECTOR'S CERTIFICATION:

13 Concord, California

14 Date: \_\_\_\_\_, 2015

15 I HEREBY CERTIFY THAT ADEQUATE FUNDS EXIST OR WILL BE RECEIVED  
16 DURING THE CURRENT FISCAL YEARS 2015-16 AND 2016-17 TO PAY THE  
17 ANTICIPATED EXPENSES TO BE INCURRED PURSUANT TO THIS CONTRACT.

18 THE SUM OF **\$250,000.**

19  
20 \_\_\_\_\_  
Finance Director's Signature

21  
22  
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27  
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MASTER AGREEMENT FOR PROFESSIONAL SERVICES

1           **THIS AGREEMENT** made and entered into on **July 1<sup>st</sup>, 2015** by and between the City of Concord  
2 (hereinafter "CITY"), located in the County of Contra Costa, State of California, and **Mark Thomas &**  
3 **Company** (hereinafter "CONSULTANT"), whose address is 3000 Oak Road, Suite 650, Walnut Creek, Ca  
4 94597.

5           **THE PARTIES ENTER THIS AGREEMENT** based upon the following facts, understandings and  
6 intentions:

7           CITY desires to contract with CONSULTANT and CONSULTANT to contract with CITY for  
8 provision by CONSULTANT to CITY for professional services as further described herein, upon the terms and  
9 conditions hereinafter set forth.

10           **NOW, THEREFORE, IN CONSIDERATION** of the mutual covenants and promises of the parties  
11 herein contained, the parties hereto agree as follows:

12           1.       SERVICES

13           CONSULTANT shall provide services for specific projects as may be requested by CITY;  
14 such services shall be defined, scheduled, and authorized in subsequent Task Orders. Services may include, but  
15 not be limited to:

- 16           ● Land survey services as related to CIP Projects
- 17           ● Other as-needed services;

18           CONSULTANT shall be an independent contractor and shall have responsibility for and  
19 control over the details and means of providing its services under this AGREEMENT. CONSULTANT agrees  
20 that its services shall be performed with due diligence and in accordance with generally accepted engineering  
21 practices.

22           CONSULTANT shall use its best efforts to perform and coordinate all activities in a timely  
23 manner so that the projects will be completed according to the established project schedules.

24           2.       AUTHORIZED REPRESENTATIVES

25           Authorized representatives shall represent CITY and CONSULTANT in all matters pertaining  
26 to the services to be ordered by CITY or rendered by CONSULTANT under this Agreement except where  
27 approval for the CITY is specifically required by the City Council. The CITY'S authorized representative shall  
28

1 be the City Engineer. Said City Engineer is authorized to execute Task Orders on behalf of CITY, including  
2 providing for CONSULTANT to be compensated not more than **\$50,000** for each project. Task Orders  
3 providing for more than **\$50,000** compensation for one project shall be presented to the City Council for its  
4 consideration.

5 CONSULTANT authorized representative shall be **Sasha Dansky, Principal/Vice President.**

6 3. COMPENSATION

7 CONSULTANT shall be compensated, not to exceed **\$250,000** per fiscal year for basic  
8 services rendered under Section 1, as more particularly described in authorized Task Orders, in accordance with  
9 the terms and conditions included therein.

10 CONSULTANT may submit monthly statements for services rendered; all statements shall  
11 include adequate documentation demonstrating work performed during the billing period and shall conform to  
12 Federal Funding invoicing requirements, if applicable. It is intended that payments to CONSULTANT will be  
13 made by CITY within thirty (30) days of receipt of invoice. Consultant's failure to secure CITY's written  
14 authorization for additional compensation or changes to the Scope of Work shall constitute a waiver of any and  
15 all right to adjustment in the price or time due, whether by way of compensation, restitution, quantum meruit,  
16 or similar relief.

17 4. INDEMNIFICATION

18 CONSULTANT agrees to defend, indemnify and hold harmless the CITY, its officers,  
19 officials, employees, agents and volunteers from and against any and all claims, demands, actions, losses,  
20 damages, injuries, and liability (including all attorney's fees and other litigation expenses) arising out of the  
21 CONSULTANT's performance under the terms of this Agreement. This indemnification obligation on  
22 CONSULTANT'S part shall not apply to demands, actions, losses, damages, injuries, and liability arising out  
23 of sole negligence or willful misconduct on the part of CITY.

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26 of CONSULTANT's services in respect to this project. They are not intended nor represented to be suitable for  
27 reuse by others on extensions of this project or on any other project. Any reuse without specific written  
28 verification and adoption by CONSULTANT for the specific purposes intended will be at user's sole risk and

1 without liability or legal exposure and expenses to CONSULTANT, including attorney's fees arising out of  
2 such unauthorized reuse.

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4 actual project shall be given to CITY at the completion of the project. The CITY reserves the right to specify  
5 the file format that electronic document deliverables are presented to the CITY. Title to all plans,  
6 specifications, maps, estimates, reports, manuscripts, drawings, descriptions and other final work products  
7 compiled by the CONSULTANT under the Agreement shall be vested in the CITY, none of which shall be  
8 used in any manner whatsoever, by any person, firm, corporation, or agency without the expressed written  
9 consent of the CITY. Basic survey notes and sketches, charts, computations, and other data prepared or  
10 obtained under the Agreement shall be made available, upon request, to the CITY without restriction or  
11 limitations on their use. CONSULTANT may retain copies of the above-described information but agrees not  
12 to disclose or discuss any information gathered, discussed or generated in any way through this Agreement  
13 without the written permission of CITY during the term of this Agreement, unless required by law.

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15 CONSULTANT represents to CITY that the services shall be performed in an expeditious  
16 manner, and with the degree of skill and care that is required by current, good, and sound procedures and  
17 practices. CONSULTANT further agrees that the services shall be in conformance with generally accepted  
18 professional standards prevailing at the time work is performed.

19 7. INSURANCE REQUIRED

20 CONSULTANT shall, at its own expense, procure and maintain in full force at all times during  
21 the term of this AGREEMENT the following insurance:

22 **A. Commercial General Liability Coverage.** CONSULTANT shall maintain  
23 commercial general liability insurance with limits of no less than one million dollars (\$1,000,000) combined  
24 single limit per occurrence or two million dollars (\$2,000,000) aggregate limit for bodily injury, personal  
25 injury, and property damage.

26 **B. Automobile Liability Coverage.** CONSULTANT shall maintain automobile liability  
27 insurance covering all vehicles used in the performance of this Agreement providing a one million dollar  
28 (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage.

1           **C. Professional Liability Coverage (Errors and Omissions).** CONSULTANT shall  
2 maintain professional liability insurance with coverage for all negligent errors, acts or omissions committed by  
3 CONSULTANT, its agents and employees in the performance of this Agreement. The amount of this insurance  
4 shall be not less than one million dollars (\$1,000,000) on a claims made annual aggregate basis or a combined  
5 single limit per occurrence basis.

6           **D. Compliance with State Workers' Compensation Requirements.** CONSULTANT  
7 covenants that it will insure itself against liability for Workers' Compensation pursuant to the provisions of  
8 California Labor Code §3700, et seq. CONSULTANT shall, at all times, upon demand of the City, furnish  
9 proof that Workers' Compensation Insurance is being maintained by it in force and effect in accordance with  
10 the California Labor Code. The insurer shall also agree to waive all rights of subrogation against the CITY, its  
11 officers, officials, employees and volunteers for losses arising from work performed by CONSULTANT for  
12 CITY. This provision shall not apply upon written verification by CONSULTANT that CONSULTANT has  
13 no employees.

14           **E. Other Insurance Provisions.** The policies are to contain, or be endorsed to contain  
15 the following provisions:

16           **(1) Additional Insured.** CITY, its officers, agents, employees, and volunteers are  
17 to be covered as an additional insured as respects: Liability arising out of activities performed by or on behalf  
18 of CONSULTANT and operations of CONSULTANT, premises owned, occupied, or used by CONSULTANT.  
19 The coverage shall contain no special limitations on the scope or protection afforded to CITY, its officers,  
20 officials, employees, or volunteers.

21           Except for worker's compensation and professional liability insurance, the policies  
22 mentioned in this subsection shall name CITY as an additional insured and provide for notice of cancellation to  
23 CITY. CONSULTANT shall also provide timely and prompt notice to CITY if CONSULTANT receives any  
24 notice of cancellation or nonrenewal from its insurer.

25           **(2) Primary Coverage.** CONSULTANT'S insurance coverage shall be primary  
26 insurance with respect to CITY, its officers, officials, employees, and volunteers. Any insurance, risk pooling  
27 arrangement, or self-insurance maintained by CITY, its officers, officials, employees, or volunteers shall be in  
28 excess of CONSULTANT'S insurance and shall not contribute with it.

1                   (3)     **Reporting Provisions.** Any failure to comply with the reporting provisions of  
2 the policy shall not affect the coverage provided to the CITY, its officers, officials, employees, or volunteers.

3                   (4)     **Verification of Coverage.** CONSULTANT shall furnish CITY with  
4 certificates of insurance and the original endorsements effecting coverage required by this Agreement. The  
5 certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer  
6 to bind coverage on its behalf. The aforementioned policies shall be issued by an insurance carrier having a  
7 rating of Best A-7 or better which is satisfactory to the City Attorney and shall be delivered to CITY at the time  
8 of the execution of this Agreement or before work commences. Such policies and certificates shall be in a form  
9 approved by the City Attorney. CITY reserves the right to require complete certified copies of all required  
10 insurance policies at any time.

11           8.     SUSPENSION OF WORK

12           CITY may, at any time, by ten (10) days' written notice, suspend further performance by  
13 CONSULTANT. All suspensions shall extend the time schedule for performance in a mutually satisfactory  
14 manner, and CONSULTANT shall be paid for services performed and reimbursable expenses incurred prior to  
15 the suspension date. During the period of suspension, CONSULTANT shall not receive any payment for  
16 services, or expenses, except for reasonable administration expenses, incurred by CONSULTANT by reason of  
17 such suspension.

18           9.     TERMINATION

19           CITY may terminate this Agreement for any reason upon ten (10) days written notice to the  
20 other party. CITY may terminate the Agreement upon five (5) days written notice if CONSULTANT breaches  
21 this Agreement. In the event of any termination, CONSULTANT shall promptly deliver to the CITY any and  
22 all finished and unfinished reports or other written, recorded, photographic, or visual materials, documents,  
23 data, and other deliverables ("Work Materials") prepared for the CITY prior to the effective date of such  
24 termination, all of which shall become CITY's sole property. After receipt of the Work Materials, CITY will  
25 pay CONSULTANT for the services performed as of the effective date of the termination.

26           10.    COMPLIANCE WITH CIVIL RIGHTS

27           During the performance of this contract, CONSULTANT agrees as follows:

28           A.     **Equal Employment Opportunity.** In connection with the execution of this

1 AGREEMENT, CONSULTANT shall not discriminate against any employee or applicant for employment  
2 because of race, religion, color, sex, or national origin. Such actions shall include, but not be limited to, the  
3 following: employment, promotion, upgrading, demotion, or transfer; recruitment or recruitment advertising;  
4 layoff or termination; rate of pay or other forms of compensation; and selection for training including  
5 apprenticeship.

6 **B. Nondiscrimination Civil Rights Act of 1964.** CONSULTANT will comply with all  
7 federal regulations relative to nondiscrimination in federally assisted programs.

8 **C. Solicitations for Subcontractors including Procurement of Materials and**  
9 **Equipment.** In all solicitation, either by competitive bidding or negotiations, made by CONSULTANT for  
10 work to be performed under a subcontract including procurement of materials or leases of equipment, each  
11 potential subcontractor, supplier or lessor shall be notified by CONSULTANT of CONSULTANT'S obligation  
12 under this AGREEMENT and the regulations relative to nondiscrimination on the grounds of race, religion,  
13 color, sex, or national origin.

14 11. CONFLICT OF INTEREST

15 A. CONSULTANT covenants and represents that neither it, nor any officer or principal of  
16 its firm, has, or shall acquire any interest, directly or indirectly, which would conflict in any manner with the  
17 interests of CITY or which would in any way hinder CONSULTANT's performance of services under this  
18 Agreement. CONSULTANT further covenants that in the performance of the Agreement, no person having  
19 any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express  
20 written consent of the CITY. CONSULTANT agrees to at all times avoid conflicts of interest, or the  
21 appearance of any conflicts of interest, with the interests of the CITY in the performance of this Agreement.

22 B. CONSULTANT is not a designated employee within the meaning of the Political  
23 Reform Act because CONSULTANT:

24 (1) Will conduct research and arrive at conclusions with respect to its rendition of  
25 information, advice, recommendation or counsel independent of the control and direction of the CITY or of any  
26 CITY official, other than normal contract monitoring; and

27 (2) Possesses no authority with respect to any CITY decision beyond the rendition of  
28 information, advice, recommendation or counsel. (2 Cal. Code Regs. § 18700(a)(2).)

1           12.    INDEPENDENT CONTRACTOR

2           In assuming and performing the services, CONSULTANT is an independent contractor and  
3 shall not be eligible for any benefits, which the CITY may provide its employees, except as expressly provided  
4 for in the AGREEMENT. All persons, if any, hired by CONSULTANT shall be employees or subcontractors of  
5 CONSULTANT and shall not be construed as employees or agents of the CITY in any respect.  
6 CONSULTANT shall have responsibility for and control over the means of providing services under this  
7 AGREEMENT.

8           13.    COMPLIANCE WITH LAWS

9           CONSULTANT shall comply with all applicable federal, State of California, and local laws,  
10 rules, and regulations and shall obtain all applicable licenses and permits for the conduct of its business and the  
11 performance of the services.

12           14.    CHOICE OF LAW

13           This Agreement shall be construed and interpreted in accordance with the laws of the State of  
14 California, excluding any choice of law rules which may direct the application of the laws of another  
15 jurisdiction. In the event that suit shall be brought by either party hereunder, the parties agree that trial of such  
16 action shall be held exclusively in a state court in the County of Contra Costa, California.

17           15.    NON-WAIVER

18           The waiver by either party of any breach of any term, covenant, or condition contained in the  
19 AGREEMENT, or any default in their performance of any obligations under the AGREEMENT shall not be  
20 deemed to be a waiver of any other breach or default of the same or any other term, covenant, condition, or  
21 obligation, nor shall any waiver of any incident of breach of default constitute a continuing waiver of same.

22           16.    ENFORCEABILITY; INTERPRETATION

23           In the event that any of the provisions or portions of application of any of the provisions of the  
24 AGREEMENT are held to be illegal or invalid by a court of competent jurisdiction, CITY and CONSULTANT  
25 shall negotiate an equitable adjustment in the provisions of the AGREEMENT with a view toward affecting the  
26 purpose of the AGREEMENT. The illegality or invalidity of any of the provisions or portions of application of  
27 any of the provisions of the AGREEMENT shall not affect the legality or enforceability of the remaining  
28 provisions or portions of application of any of the provisions of the AGREEMENT. This Agreement shall be

1 interpreted as though it was a product of a joint drafting effort and no provisions shall be interpreted against a  
2 party on the ground that said party was solely or primarily responsible for drafting the language to be  
3 interpreted.

4 17. INTEGRATION

5 The AGREEMENT contains the entire AGREEMENT and understanding between the parties  
6 as to the subject matter of this AGREEMENT. It merges and supersedes all prior or contemporaneous  
7 agreements, commitments, representation, writings, and discussions between CONSULTANT and CITY,  
8 whether oral or written.

9 18. SUCCESSORS AND ASSIGNS; NO THIRD PARTY BENEFICIARIES; NO JOINT  
10 VENTURE

11 CITY and CONSULTANT respectively, bind themselves, their successors, assigns, and legal  
12 representatives to the terms and obligations of this Agreement. CONSULTANT shall not assign or transfer any  
13 interest in the Agreement without the CITY's prior written consent, which consent shall be in the CITY's sole  
14 discretion. Any attempted assignment or transfer in breach of this provision shall be void. This Agreement is  
15 not intended and shall not be construed to create any third party benefit. This Agreement is not intended and  
16 shall not be construed to create a joint venture or partnership between the parties. CONSULTANT, its officers,  
17 employees and agents shall not have any power to bind or commit the CITY to any decision.

18 19. FINANCIAL RECORDS

19 Records of CONSULTANT's direct labor costs, payroll costs, and reimbursable expenses  
20 pertaining to this project covered by this AGREEMENT will be kept on a generally recognized accounting  
21 basis and made available to CITY if and when required.

22 20. NOTICES

23 All notices required hereunder shall be in writing and mailed postage prepaid by Certified or  
24 Registered mail, return receipt requested, or by personal delivery to the CITY's address as shown below, or  
25 such other places as CITY or CONSULTANT may, from time to time, respectively, designate in a written  
26 notice given to the other. Notice shall be deemed received three (3) days after the date of the mailing thereof or  
27 upon personal delivery.

1 To CITY

**Robert Ovadia, PE**  
**City Engineer**  
**City of Concord**  
**1950 Parkside Drive, MS/40**  
**Concord, CA 94519**  
**Phone: (925) 671-3470**  
**Fax: (925) 798-9692**

2  
3  
4  
5  
6 To CONSULTANT

**Sasha Dansky, Principal/Vice President**  
**Mark Thomas & Company**  
**3000 Oak Road, Suite 650,**  
**Walnut Creek, CA 94597**  
**Phone: (925) 938-0383**  
**Fax: (925) 938-0389**

7  
8  
9  
10 21. TERM

11 The term of this AGREEMENT shall be from the date executed above through **June 30<sup>th</sup>, 2017**, with the option of one one-year extension upon mutual agreement by both CITY and CONSULTANT.  
12  
13 The City Manager is authorized to approve the extension.

14 22. NON-LIABILITY

15 No member of the CITY and no other officer, employee or agent of the CITY shall be  
16 personally liable to CONSULTANT or otherwise in the event of any default or breach of the CITY, or for any  
17 amount which may become due to CONSULTANT or any successor in interest, or for any obligations directly  
18 or indirectly incurred under the terms of this Agreement.

19 23. EXECUTION

20 Each individual or entity executing this Agreement on behalf of CONSULTANT represents  
21 and warrants that he or she or it is duly authorized to execute and deliver this Agreement on behalf of  
22 CONSULTANT and that such execution is binding upon CONSULTANT.

23 This Agreement may be executed in several counterparts, each of which shall constitute one  
24 and the same instrument and shall become binding upon the parties when at least one copy hereof shall have  
25 been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or  
26 account for more than one such counterpart.

27 **IN WITNESS WHEREOF**, the parties have executed this AGREEMENT in three (3) copies as of the  
28 date and year first written above.

1 **CONSULTANT**

CITY OF CONCORD

2  
3 By: \_\_\_\_\_

By: \_\_\_\_\_

4 Name: Sasha Dansky  
5 Title: Principal/Vice President  
6 Address: 3000 Oak Road, Suite 650  
7 Walnut Creek, CA 94597  
8 Telephone: (925) 938-0383

Name: Valerie Barone  
Title: City Manager  
Address: 1950 Parkside Drive, MS 01  
Concord, CA 94519  
Telephone: (925) 671-3175

9 APPROVED AS TO FORM:

ATTEST:

10 \_\_\_\_\_  
City Attorney

\_\_\_\_\_

11 Date: \_\_\_\_\_, 2015

13 FINANCE DIRECTOR'S CERTIFICATION:

14 Concord, California

15 Date: \_\_\_\_\_, 2015

17 I HEREBY CERTIFY THAT ADEQUATE FUNDS EXIST OR WILL BE RECEIVED  
18 DURING THE CURRENT FISCAL YEARS 2015-16 AND 2016-17 TO PAY THE  
ANTICIPATED EXPENSES TO BE INCURRED PURSUANT TO THIS CONTRACT.

19 THE SUM OF **\$250,000.**

21 \_\_\_\_\_  
22 Finance Director's Signature

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

1 THIS AGREEMENT made and entered into on July 1st, 2015 by and between the City of Concord  
2 (hereinafter "CITY"), located in the County of Contra Costa, State of California, and Analytical  
3 Environmental Services (hereinafter "CONSULTANT"), whose address is 1801 7th Street, Suite 100,  
4 Sacramento, CA 95811.

5 THE PARTIES ENTER THIS AGREEMENT based upon the following facts, understandings and  
6 intentions:

7 CITY desires to contract with CONSULTANT and CONSULTANT to contract with CITY for  
8 provision by CONSULTANT to CITY for professional services as further described herein, upon the terms and  
9 conditions hereinafter set forth.

10 NOW, THEREFORE, IN CONSIDERATION of the mutual covenants and promises of the parties  
11 herein contained, the parties hereto agree as follows:

12 1. SERVICES

13 CONSULTANT shall provide services for specific projects as may be requested by CITY;  
14 such services shall be defined, scheduled, and authorized in subsequent Task Orders. Services may include, but  
15 not be limited to:

- 16 ● CEQA/NEPA services related to CIP Services
- 17 ● Other as-needed services;

18 CONSULTANT shall be an independent contractor and shall have responsibility for and  
19 control over the details and means of providing its services under this AGREEMENT. CONSULTANT agrees  
20 that its services shall be performed with due diligence and in accordance with generally accepted engineering  
21 practices.

22 CONSULTANT shall use its best efforts to perform and coordinate all activities in a timely  
23 manner so that the projects will be completed according to the established project schedules.

24 2. AUTHORIZED REPRESENTATIVES

25 Authorized representatives shall represent CITY and CONSULTANT in all matters pertaining  
26 to the services to be ordered by CITY or rendered by CONSULTANT under this Agreement except where  
27 approval for the CITY is specifically required by the City Council. The CITY'S authorized representative shall  
28

1 be the City Engineer. Said City Engineer is authorized to execute Task Orders on behalf of CITY, including  
2 providing for CONSULTANT to be compensated not more than **\$50,000** for each project. Task Orders  
3 providing for more than **\$50,000** compensation for one project shall be presented to the City Council for its  
4 consideration.

5 CONSULTANT authorized representative shall be **David Zweig, President.**

6 3. COMPENSATION

7 CONSULTANT shall be compensated, not to exceed **\$250,000** per fiscal year for basic  
8 services rendered under Section 1, as more particularly described in authorized Task Orders, in accordance with  
9 the terms and conditions included therein.

10 CONSULTANT may submit monthly statements for services rendered; all statements shall  
11 include adequate documentation demonstrating work performed during the billing period and shall conform to  
12 Federal Funding invoicing requirements, if applicable. It is intended that payments to CONSULTANT will be  
13 made by CITY within thirty (30) days of receipt of invoice. Consultant's failure to secure CITY's written  
14 authorization for additional compensation or changes to the Scope of Work shall constitute a waiver of any and  
15 all right to adjustment in the price or time due, whether by way of compensation, restitution, quantum meruit,  
16 or similar relief.

17 4. INDEMNIFICATION

18 CONSULTANT agrees to defend, indemnify and hold harmless the CITY, its officers,  
19 officials, employees, agents and volunteers from and against any and all claims, demands, actions, losses,  
20 damages, injuries, and liability (including all attorney's fees and other litigation expenses) arising out of the  
21 CONSULTANT's performance under the terms of this Agreement. This indemnification obligation on  
22 CONSULTANT'S part shall not apply to demands, actions, losses, damages, injuries, and liability arising out  
23 of sole negligence or willful misconduct on the part of CITY.

24 5. OWNERSHIP AND MAINTENANCE OF DOCUMENTS

25 All documents furnished by CONSULTANT pursuant to this AGREEMENT are instruments  
26 of CONSULTANT's services in respect to this project. They are not intended nor represented to be suitable for  
27 reuse by others on extensions of this project or on any other project. Any reuse without specific written  
28 verification and adoption by CONSULTANT for the specific purposes intended will be at user's sole risk and

1 without liability or legal exposure and expenses to CONSULTANT, including attorney's fees arising out of  
2 such unauthorized reuse.

3 CONSULTANT's records, documents, calculations, and all other instruments of service pertaining to  
4 actual project shall be given to CITY at the completion of the project. The CITY reserves the right to specify  
5 the file format that electronic document deliverables are presented to the CITY. Title to all plans,  
6 specifications, maps, estimates, reports, manuscripts, drawings, descriptions and other final work products  
7 compiled by the CONSULTANT under the Agreement shall be vested in the CITY, none of which shall be  
8 used in any manner whatsoever, by any person, firm, corporation, or agency without the expressed written  
9 consent of the CITY. Basic survey notes and sketches, charts, computations, and other data prepared or  
10 obtained under the Agreement shall be made available, upon request, to the CITY without restriction or  
11 limitations on their use. CONSULTANT may retain copies of the above-described information but agrees not  
12 to disclose or discuss any information gathered, discussed or generated in any way through this Agreement  
13 without the written permission of CITY during the term of this Agreement, unless required by law.

14 6. STANDARD OF PERFORMANCE

15 CONSULTANT represents to CITY that the services shall be performed in an expeditious  
16 manner, and with the degree of skill and care that is required by current, good, and sound procedures and  
17 practices. CONSULTANT further agrees that the services shall be in conformance with generally accepted  
18 professional standards prevailing at the time work is performed.

19 7. INSURANCE REQUIRED

20 CONSULTANT shall, at its own expense, procure and maintain in full force at all times during  
21 the term of this AGREEMENT the following insurance:

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5 single limit per occurrence basis.

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9 proof that Workers' Compensation Insurance is being maintained by it in force and effect in accordance with  
10 the California Labor Code. The insurer shall also agree to waive all rights of subrogation against the CITY, its  
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12 CITY. This provision shall not apply upon written verification by CONSULTANT that CONSULTANT has  
13 no employees.

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18 of CONSULTANT and operations of CONSULTANT, premises owned, occupied, or used by CONSULTANT.  
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20 officials, employees, or volunteers.

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22 mentioned in this subsection shall name CITY as an additional insured and provide for notice of cancellation to  
23 CITY. CONSULTANT shall also provide timely and prompt notice to CITY if CONSULTANT receives any  
24 notice of cancellation or nonrenewal from its insurer.

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14 manner, and CONSULTANT shall be paid for services performed and reimbursable expenses incurred prior to  
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24 termination, all of which shall become CITY's sole property. After receipt of the Work Materials, CITY will  
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3 following: employment, promotion, upgrading, demotion, or transfer; recruitment or recruitment advertising;  
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6 **B. Nondiscrimination Civil Rights Act of 1964.** CONSULTANT will comply with all  
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8 **C. Solicitations for Subcontractors including Procurement of Materials and**  
9 **Equipment.** In all solicitation, either by competitive bidding or negotiations, made by CONSULTANT for  
10 work to be performed under a subcontract including procurement of materials or leases of equipment, each  
11 potential subcontractor, supplier or lessor shall be notified by CONSULTANT of CONSULTANT'S obligation  
12 under this AGREEMENT and the regulations relative to nondiscrimination on the grounds of race, religion,  
13 color, sex, or national origin.

14 11. CONFLICT OF INTEREST

15 A. CONSULTANT covenants and represents that neither it, nor any officer or principal of  
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18 Agreement. CONSULTANT further covenants that in the performance of the Agreement, no person having  
19 any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express  
20 written consent of the CITY. CONSULTANT agrees to at all times avoid conflicts of interest, or the  
21 appearance of any conflicts of interest, with the interests of the CITY in the performance of this Agreement.

22 B. CONSULTANT is not a designated employee within the meaning of the Political  
23 Reform Act because CONSULTANT:

24 (1) Will conduct research and arrive at conclusions with respect to its rendition of  
25 information, advice, recommendation or counsel independent of the control and direction of the CITY or of any  
26 CITY official, other than normal contract monitoring; and

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28 information, advice, recommendation or counsel. (2 Cal. Code Regs. § 18700(a)(2).)

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5 CONSULTANT and shall not be construed as employees or agents of the CITY in any respect.  
6 CONSULTANT shall have responsibility for and control over the means of providing services under this  
7 AGREEMENT.

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9           CONSULTANT shall comply with all applicable federal, State of California, and local laws,  
10 rules, and regulations and shall obtain all applicable licenses and permits for the conduct of its business and the  
11 performance of the services.

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13          This Agreement shall be construed and interpreted in accordance with the laws of the State of  
14 California, excluding any choice of law rules which may direct the application of the laws of another  
15 jurisdiction. In the event that suit shall be brought by either party hereunder, the parties agree that trial of such  
16 action shall be held exclusively in a state court in the County of Contra Costa, California.

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19 AGREEMENT, or any default in their performance of any obligations under the AGREEMENT shall not be  
20 deemed to be a waiver of any other breach or default of the same or any other term, covenant, condition, or  
21 obligation, nor shall any waiver of any incident of breach of default constitute a continuing waiver of same.

22          16.    ENFORCEABILITY; INTERPRETATION

23          In the event that any of the provisions or portions of application of any of the provisions of the  
24 AGREEMENT are held to be illegal or invalid by a court of competent jurisdiction, CITY and CONSULTANT  
25 shall negotiate an equitable adjustment in the provisions of the AGREEMENT with a view toward affecting the  
26 purpose of the AGREEMENT. The illegality or invalidity of any of the provisions or portions of application of  
27 any of the provisions of the AGREEMENT shall not affect the legality or enforceability of the remaining  
28 provisions or portions of application of any of the provisions of the AGREEMENT. This Agreement shall be

1 interpreted as though it was a product of a joint drafting effort and no provisions shall be interpreted against a  
2 party on the ground that said party was solely or primarily responsible for drafting the language to be  
3 interpreted.

4 17. INTEGRATION

5 The AGREEMENT contains the entire AGREEMENT and understanding between the parties  
6 as to the subject matter of this AGREEMENT. It merges and supersedes all prior or contemporaneous  
7 agreements, commitments, representation, writings, and discussions between CONSULTANT and CITY,  
8 whether oral or written.

9 18. SUCCESSORS AND ASSIGNS; NO THIRD PARTY BENEFICIARIES; NO JOINT  
10 VENTURE

11 CITY and CONSULTANT respectively, bind themselves, their successors, assigns, and legal  
12 representatives to the terms and obligations of this Agreement. CONSULTANT shall not assign or transfer any  
13 interest in the Agreement without the CITY's prior written consent, which consent shall be in the CITY's sole  
14 discretion. Any attempted assignment or transfer in breach of this provision shall be void. This Agreement is  
15 not intended and shall not be construed to create any third party benefit. This Agreement is not intended and  
16 shall not be construed to create a joint venture or partnership between the parties. CONSULTANT, its officers,  
17 employees and agents shall not have any power to bind or commit the CITY to any decision.

18 19. FINANCIAL RECORDS

19 Records of CONSULTANT's direct labor costs, payroll costs, and reimbursable expenses  
20 pertaining to this project covered by this AGREEMENT will be kept on a generally recognized accounting  
21 basis and made available to CITY if and when required.

22 20. NOTICES

23 All notices required hereunder shall be in writing and mailed postage prepaid by Certified or  
24 Registered mail, return receipt requested, or by personal delivery to the CITY's address as shown below, or  
25 such other places as CITY or CONSULTANT may, from time to time, respectively, designate in a written  
26 notice given to the other. Notice shall be deemed received three (3) days after the date of the mailing thereof or  
27 upon personal delivery.

28 To CITY

**Robert Ovadia, City Engineer**

1 **Community & Economic Development Department**  
2 **City of Concord**  
3 **1950 Parkside Drive, MS/40**  
4 **Concord, CA 94519**  
5 **Phone: (925) 671-3470**  
6 **Fax: (925) 798-9692**

7 To CONSULTANT

8 **David Zweig, President**  
9 **Analytical Environmental Services**  
10 **1801 7<sup>th</sup> Street, Suite 100**  
11 **Sacramento, CA 95811**  
12 **Phone: (916) 447-3479**  
13 **Fax: (916) 447-1665**

14 21. TERM

15 The term of this AGREEMENT shall be from the date executed above through **June 30<sup>th</sup>, 2017**, with the option of one one-year extension upon mutual agreement by both CITY and CONSULTANT. The City Manager is authorized to approve the extension.

16 22. NON-LIABILITY

17 No member of the CITY and no other officer, employee or agent of the CITY shall be personally liable to CONSULTANT or otherwise in the event of any default or breach of the CITY, or for any amount which may become due to CONSULTANT or any successor in interest, or for any obligations directly or indirectly incurred under the terms of this Agreement.

18 23. EXECUTION

19 Each individual or entity executing this Agreement on behalf of CONSULTANT represents and warrants that he or she or it is duly authorized to execute and deliver this Agreement on behalf of CONSULTANT and that such execution is binding upon CONSULTANT.

20 This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

21 **IN WITNESS WHEREOF**, the parties have executed this AGREEMENT in three (3) copies as of the date and year first written above.

22 **CONSULTANT**

23 **CITY OF CONCORD**

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By: \_\_\_\_\_

Name: David Zweig  
Title: President  
Address: 1801 7<sup>th</sup> Street, Suite 100  
Sacramento, CA 95811  
Telephone: (916) 447-3479

By: \_\_\_\_\_

Name: Valerie Barone  
Title: City Manager  
Address: 1950 Parkside Drive, MS 01  
Concord, CA 94519  
Telephone: (925) 671-3175

APPROVED AS TO FORM:

ATTEST:

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
City Clerk

Date: \_\_\_\_\_, 2015

FINANCE DIRECTOR'S CERTIFICATION:

Concord, California

Date: \_\_\_\_\_, 2015

I HEREBY CERTIFY THAT ADEQUATE FUNDS EXIST OR WILL BE RECEIVED  
DURING THE CURRENT FISCAL YEARS 2015-16 AND 2016-17 TO PAY THE  
ANTICIPATED EXPENSES TO BE INCURRED PURSUANT TO THIS CONTRACT.

THE SUM OF **\$250,000.**

\_\_\_\_\_  
Finance Director's Signature

**MASTER AGREEMENT FOR PROFESSIONAL SERVICES**

1           **THIS AGREEMENT** made and entered into on **July 1<sup>st</sup>, 2015** by and between the City of Concord  
2 (hereinafter "CITY"), located in the County of Contra Costa, State of California, and **Rincon Consultants, Inc.**  
3 (hereinafter "CONSULTANT"), whose address is 180 Grand Avenue, Suite 400, Oakland, CA 94612.

4           **THE PARTIES ENTER THIS AGREEMENT** based upon the following facts, understandings and  
5 intentions:

6           CITY desires to contract with CONSULTANT and CONSULTANT to contract with CITY for  
7 provision by CONSULTANT to CITY for professional services as further described herein, upon the terms and  
8 conditions hereinafter set forth.

9           **NOW, THEREFORE, IN CONSIDERATION** of the mutual covenants and promises of the parties  
10 herein contained, the parties hereto agree as follows:

11           1.     SERVICES

12           CONSULTANT shall provide services for specific projects as may be requested by CITY;  
13 such services shall be defined, scheduled, and authorized in subsequent Task Orders. Services may include, but  
14 not be limited to:

- 15           ● CEQA/NEPA services related to CIP Projects
- 16           ● Other as-needed services;

17           CONSULTANT shall be an independent contractor and shall have responsibility for and  
18 control over the details and means of providing its services under this AGREEMENT. CONSULTANT agrees  
19 that its services shall be performed with due diligence and in accordance with generally accepted engineering  
20 practices.

21           CONSULTANT shall use its best efforts to perform and coordinate all activities in a timely  
22 manner so that the projects will be completed according to the established project schedules.

23           2.     AUTHORIZED REPRESENTATIVES

24           Authorized representatives shall represent CITY and CONSULTANT in all matters pertaining  
25 to the services to be ordered by CITY or rendered by CONSULTANT under this Agreement except where  
26 approval for the CITY is specifically required by the City Council. The CITY'S authorized representative shall  
27 be the City Engineer. Said City Engineer is authorized to execute Task Orders on behalf of CITY, including  
28

1 providing for CONSULTANT to be compensated not more than **\$50,000** for each project. Task Orders  
2 providing for more than **\$50,000** compensation for one project shall be presented to the City Council for its  
3 consideration.

4 CONSULTANT authorized representative shall be **Abe Leider, Senior Project Manager**

5 3. COMPENSATION

6 CONSULTANT shall be compensated, not to exceed **\$250,000** per fiscal year for basic  
7 services rendered under Section 1, as more particularly described in authorized Task Orders, in accordance with  
8 the terms and conditions included therein.

9 CONSULTANT may submit monthly statements for services rendered; all statements shall  
10 include adequate documentation demonstrating work performed during the billing period and shall conform to  
11 Federal Funding invoicing requirements, if applicable. It is intended that payments to CONSULTANT will be  
12 made by CITY within thirty (30) days of receipt of invoice. Consultant's failure to secure CITY's written  
13 authorization for additional compensation or changes to the Scope of Work shall constitute a waiver of any and  
14 all right to adjustment in the price or time due, whether by way of compensation, restitution, quantum meruit,  
15 or similar relief.

16 4. INDEMNIFICATION

17 CONSULTANT agrees to defend, indemnify and hold harmless the CITY, its officers,  
18 officials, employees, agents and volunteers from and against any and all claims, demands, actions, losses,  
19 damages, injuries, and liability (including all attorney's fees and other litigation expenses) arising out of the  
20 CONSULTANT's performance under the terms of this Agreement. This indemnification obligation on  
21 CONSULTANT'S part shall not apply to demands, actions, losses, damages, injuries, and liability arising out  
22 of sole negligence or willful misconduct on the part of CITY.

23 5. OWNERSHIP AND MAINTENANCE OF DOCUMENTS

24 All documents furnished by CONSULTANT pursuant to this AGREEMENT are instruments  
25 of CONSULTANT's services in respect to this project. They are not intended nor represented to be suitable for  
26 reuse by others on extensions of this project or on any other project. Any reuse without specific written  
27 verification and adoption by CONSULTANT for the specific purposes intended will be at user's sole risk and  
28 without liability or legal exposure and expenses to CONSULTANT, including attorney's fees arising out of

1 such unauthorized reuse.

2 CONSULTANT's records, documents, calculations, and all other instruments of service pertaining to  
3 actual project shall be given to CITY at the completion of the project. The CITY reserves the right to specify  
4 the file format that electronic document deliverables are presented to the CITY. Title to all plans,  
5 specifications, maps, estimates, reports, manuscripts, drawings, descriptions and other final work products  
6 compiled by the CONSULTANT under the Agreement shall be vested in the CITY, none of which shall be  
7 used in any manner whatsoever, by any person, firm, corporation, or agency without the expressed written  
8 consent of the CITY. Basic survey notes and sketches, charts, computations, and other data prepared or  
9 obtained under the Agreement shall be made available, upon request, to the CITY without restriction or  
10 limitations on their use. CONSULTANT may retain copies of the above-described information but agrees not  
11 to disclose or discuss any information gathered, discussed or generated in any way through this Agreement  
12 without the written permission of CITY during the term of this Agreement, unless required by law.

13 6. STANDARD OF PERFORMANCE

14 CONSULTANT represents to CITY that the services shall be performed in an expeditious  
15 manner, and with the degree of skill and care that is required by current, good, and sound procedures and  
16 practices. CONSULTANT further agrees that the services shall be in conformance with generally accepted  
17 professional standards prevailing at the time work is performed.

18 7. INSURANCE REQUIRED

19 CONSULTANT shall, at its own expense, procure and maintain in full force at all times during  
20 the term of this AGREEMENT the following insurance:

21 **A. Commercial General Liability Coverage.** CONSULTANT shall maintain  
22 commercial general liability insurance with limits of no less than one million dollars (\$1,000,000) combined  
23 single limit per occurrence or two million dollars (\$2,000,000) aggregate limit for bodily injury, personal  
24 injury, and property damage.

25 **B. Automobile Liability Coverage.** CONSULTANT shall maintain automobile liability  
26 insurance covering all vehicles used in the performance of this Agreement providing a one million dollar  
27 (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage.

28 **C. Professional Liability Coverage (Errors and Omissions).** CONSULTANT shall

1 maintain professional liability insurance with coverage for all negligent errors, acts or omissions committed by  
2 CONSULTANT, its agents and employees in the performance of this Agreement. The amount of this insurance  
3 shall be not less than one million dollars (\$1,000,000) on a claims made annual aggregate basis or a combined  
4 single limit per occurrence basis.

5 **D. Compliance with State Workers' Compensation Requirements.** CONSULTANT  
6 covenants that it will insure itself against liability for Workers' Compensation pursuant to the provisions of  
7 California Labor Code §3700, et seq. CONSULTANT shall, at all times, upon demand of the City, furnish  
8 proof that Workers' Compensation Insurance is being maintained by it in force and effect in accordance with  
9 the California Labor Code. The insurer shall also agree to waive all rights of subrogation against the CITY, its  
10 officers, officials, employees and volunteers for losses arising from work performed by CONSULTANT for  
11 CITY. This provision shall not apply upon written verification by CONSULTANT that CONSULTANT has  
12 no employees.

13 **E. Other Insurance Provisions.** The policies are to contain, or be endorsed to contain  
14 the following provisions:

15 (1) **Additional Insured.** CITY, its officers, agents, employees, and volunteers are  
16 to be covered as an additional insured as respects: Liability arising out of activities performed by or on behalf  
17 of CONSULTANT and operations of CONSULTANT, premises owned, occupied, or used by CONSULTANT.  
18 The coverage shall contain no special limitations on the scope or protection afforded to CITY, its officers,  
19 officials, employees, or volunteers.

20 Except for worker's compensation and professional liability insurance, the policies  
21 mentioned in this subsection shall name CITY as an additional insured and provide for notice of cancellation to  
22 CITY. CONSULTANT shall also provide timely and prompt notice to CITY if CONSULTANT receives any  
23 notice of cancellation or nonrenewal from its insurer.

24 (2) **Primary Coverage.** CONSULTANT'S insurance coverage shall be primary  
25 insurance with respect to CITY, its officers, officials, employees, and volunteers. Any insurance, risk pooling  
26 arrangement, or self-insurance maintained by CITY, its officers, officials, employees, or volunteers shall be in  
27 excess of CONSULTANT'S insurance and shall not contribute with it.

28 (3) **Reporting Provisions.** Any failure to comply with the reporting provisions of

1 the policy shall not affect the coverage provided to the CITY, its officers, officials, employees, or volunteers.

2                   **(4) Verification of Coverage.** CONSULTANT shall furnish CITY with  
3 certificates of insurance and the original endorsements effecting coverage required by this Agreement. The  
4 certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer  
5 to bind coverage on its behalf. The aforementioned policies shall be issued by an insurance carrier having a  
6 rating of Best A-7 or better which is satisfactory to the City Attorney and shall be delivered to CITY at the time  
7 of the execution of this Agreement or before work commences. Such policies and certificates shall be in a form  
8 approved by the City Attorney. CITY reserves the right to require complete certified copies of all required  
9 insurance policies at any time.

10           8.       SUSPENSION OF WORK

11                   CITY may, at any time, by ten (10) days' written notice, suspend further performance by  
12 CONSULTANT. All suspensions shall extend the time schedule for performance in a mutually satisfactory  
13 manner, and CONSULTANT shall be paid for services performed and reimbursable expenses incurred prior to  
14 the suspension date. During the period of suspension, CONSULTANT shall not receive any payment for  
15 services, or expenses, except for reasonable administration expenses, incurred by CONSULTANT by reason of  
16 such suspension.

17           9.       TERMINATION

18                   CITY may terminate this Agreement for any reason upon ten (10) days written notice to the  
19 other party. CITY may terminate the Agreement upon five (5) days written notice if CONSULTANT breaches  
20 this Agreement. In the event of any termination, CONSULTANT shall promptly deliver to the CITY any and  
21 all finished and unfinished reports or other written, recorded, photographic, or visual materials, documents,  
22 data, and other deliverables ("Work Materials") prepared for the CITY prior to the effective date of such  
23 termination, all of which shall become CITY's sole property. After receipt of the Work Materials, CITY will  
24 pay CONSULTANT for the services performed as of the effective date of the termination.

25           10.      COMPLIANCE WITH CIVIL RIGHTS

26                   During the performance of this contract, CONSULTANT agrees as follows:

27                   **A. Equal Employment Opportunity.** In connection with the execution of this  
28 AGREEMENT, CONSULTANT shall not discriminate against any employee or applicant for employment

1 because of race, religion, color, sex, or national origin. Such actions shall include, but not be limited to, the  
2 following: employment, promotion, upgrading, demotion, or transfer; recruitment or recruitment advertising;  
3 layoff or termination; rate of pay or other forms of compensation; and selection for training including  
4 apprenticeship.

5 **B. Nondiscrimination Civil Rights Act of 1964.** CONSULTANT will comply with all  
6 federal regulations relative to nondiscrimination in federally assisted programs.

7 **C. Solicitations for Subcontractors including Procurement of Materials and**  
8 **Equipment.** In all solicitation, either by competitive bidding or negotiations, made by CONSULTANT for  
9 work to be performed under a subcontract including procurement of materials or leases of equipment, each  
10 potential subcontractor, supplier or lessor shall be notified by CONSULTANT of CONSULTANT'S obligation  
11 under this AGREEMENT and the regulations relative to nondiscrimination on the grounds of race, religion,  
12 color, sex, or national origin.

13 11. CONFLICT OF INTEREST

14 A. CONSULTANT covenants and represents that neither it, nor any officer or principal of  
15 its firm, has, or shall acquire any interest, directly or indirectly, which would conflict in any manner with the  
16 interests of CITY or which would in any way hinder CONSULTANT's performance of services under this  
17 Agreement. CONSULTANT further covenants that in the performance of the Agreement, no person having  
18 any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express  
19 written consent of the CITY. CONSULTANT agrees to at all times avoid conflicts of interest, or the  
20 appearance of any conflicts of interest, with the interests of the CITY in the performance of this Agreement.

21 B. CONSULTANT is not a designated employee within the meaning of the Political  
22 Reform Act because CONSULTANT:

23 (1) Will conduct research and arrive at conclusions with respect to its rendition of  
24 information, advice, recommendation or counsel independent of the control and direction of the CITY or of any  
25 CITY official, other than normal contract monitoring; and

26 (2) Possesses no authority with respect to any CITY decision beyond the rendition of  
27 information, advice, recommendation or counsel. (2 Cal. Code Regs. § 18700(a)(2).)

28 12. INDEPENDENT CONTRACTOR

1 In assuming and performing the services, CONSULTANT is an independent contractor and  
2 shall not be eligible for any benefits, which the CITY may provide its employees, except as expressly provided  
3 for in the AGREEMENT. All persons, if any, hired by CONSULTANT shall be employees or subcontractors of  
4 CONSULTANT and shall not be construed as employees or agents of the CITY in any respect.  
5 CONSULTANT shall have responsibility for and control over the means of providing services under this  
6 AGREEMENT.

7 13. COMPLIANCE WITH LAWS

8 CONSULTANT shall comply with all applicable federal, State of California, and local laws,  
9 rules, and regulations and shall obtain all applicable licenses and permits for the conduct of its business and the  
10 performance of the services.

11 14. CHOICE OF LAW

12 This Agreement shall be construed and interpreted in accordance with the laws of the State of  
13 California, excluding any choice of law rules which may direct the application of the laws of another  
14 jurisdiction. In the event that suit shall be brought by either party hereunder, the parties agree that trial of such  
15 action shall be held exclusively in a state court in the County of Contra Costa, California.

16 15. NON-WAIVER

17 The waiver by either party of any breach of any term, covenant, or condition contained in the  
18 AGREEMENT, or any default in their performance of any obligations under the AGREEMENT shall not be  
19 deemed to be a waiver of any other breach or default of the same or any other term, covenant, condition, or  
20 obligation, nor shall any waiver of any incident of breach of default constitute a continuing waiver of same.

21 16. ENFORCEABILITY; INTERPRETATION

22 In the event that any of the provisions or portions of application of any of the provisions of the  
23 AGREEMENT are held to be illegal or invalid by a court of competent jurisdiction, CITY and CONSULTANT  
24 shall negotiate an equitable adjustment in the provisions of the AGREEMENT with a view toward affecting the  
25 purpose of the AGREEMENT. The illegality or invalidity of any of the provisions or portions of application of  
26 any of the provisions of the AGREEMENT shall not affect the legality or enforceability of the remaining  
27 provisions or portions of application of any of the provisions of the AGREEMENT. This Agreement shall be  
28 interpreted as though it was a product of a joint drafting effort and no provisions shall be interpreted against a

1 party on the ground that said party was solely or primarily responsible for drafting the language to be  
2 interpreted.

3 17. INTEGRATION

4 The AGREEMENT contains the entire AGREEMENT and understanding between the parties  
5 as to the subject matter of this AGREEMENT. It merges and supersedes all prior or contemporaneous  
6 agreements, commitments, representation, writings, and discussions between CONSULTANT and CITY,  
7 whether oral or written.

8 18. SUCCESSORS AND ASSIGNS; NO THIRD PARTY BENEFICIARIES; NO JOINT  
9 VENTURE

10 CITY and CONSULTANT respectively, bind themselves, their successors, assigns, and legal  
11 representatives to the terms and obligations of this Agreement. CONSULTANT shall not assign or transfer any  
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13 discretion. Any attempted assignment or transfer in breach of this provision shall be void. This Agreement is  
14 not intended and shall not be construed to create any third party benefit. This Agreement is not intended and  
15 shall not be construed to create a joint venture or partnership between the parties. CONSULTANT, its officers,  
16 employees and agents shall not have any power to bind or commit the CITY to any decision.

17 19. FINANCIAL RECORDS

18 Records of CONSULTANT's direct labor costs, payroll costs, and reimbursable expenses  
19 pertaining to this project covered by this AGREEMENT will be kept on a generally recognized accounting  
20 basis and made available to CITY if and when required.

21 20. NOTICES

22 All notices required hereunder shall be in writing and mailed postage prepaid by Certified or  
23 Registered mail, return receipt requested, or by personal delivery to the CITY's address as shown below, or  
24 such other places as CITY or CONSULTANT may, from time to time, respectively, designate in a written  
25 notice given to the other. Notice shall be deemed received three (3) days after the date of the mailing thereof or  
26 upon personal delivery.

27 To CITY

**Robert Ovadia, City Engineer**  
**Community & Economic Development Department**  
**City of Concord**

1 1950 Parkside Drive, MS/40  
2 Concord, CA 94519  
3 Phone: (925) 671-3470  
4 Fax: (925) 798-9692

5 To CONSULTANT

6 Abe Leider, Senior Project Manager  
7 Rincon Consultants, Inc.  
8 180 Grand Avenue, Suite 400  
9 Oakland, CA 94612  
10 Phone: (510) 834-4455  
11 Fax: (510) 834-4433

12 21. TERM

13 The term of this AGREEMENT shall be from the date executed above through **June 30<sup>th</sup>, 2017**, with the option of one one-year extension upon mutual agreement by both CITY and CONSULTANT.

14 The City Manager is authorized to approve the extension.

15 22. NON-LIABILITY

16 No member of the CITY and no other officer, employee or agent of the CITY shall be personally liable to CONSULTANT or otherwise in the event of any default or breach of the CITY, or for any amount which may become due to CONSULTANT or any successor in interest, or for any obligations directly or indirectly incurred under the terms of this Agreement.

17 23. EXECUTION

18 Each individual or entity executing this Agreement on behalf of CONSULTANT represents and warrants that he or she or it is duly authorized to execute and deliver this Agreement on behalf of CONSULTANT and that such execution is binding upon CONSULTANT.

19 This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

20 **IN WITNESS WHEREOF**, the parties have executed this AGREEMENT in three (3) copies as of the date and year first written above.

21 **CONSULTANT**

22 **CITY OF CONCORD**

1 By: \_\_\_\_\_

By: \_\_\_\_\_

2 Name: Stephen Svete, AICP, LEED AP ND  
3 Title: Vice President  
4 Address: 180 North Ashwood Avenue  
5 Ventura, CA 93003  
6 Telephone: (805) 644-4455

Name: Valerie Barone  
Title: City Manager  
Address: 1950 Parkside Drive, MS 01  
Concord, CA 94519  
Telephone: (925) 671-3175

6 APPROVED AS TO FORM:

ATTEST:

8 \_\_\_\_\_  
9 City Attorney

\_\_\_\_\_ City Clerk

10 Date: \_\_\_\_\_, 2015

12 FINANCE DIRECTOR'S CERTIFICATION:

13 Concord, California

14 Date: \_\_\_\_\_, 2015

15 I HEREBY CERTIFY THAT ADEQUATE FUNDS EXIST OR WILL BE RECEIVED  
16 DURING THE CURRENT FISCAL YEARS 2015-16 AND 2016-17 TO PAY THE  
17 ANTICIPATED EXPENSES TO BE INCURRED PURSUANT TO THIS CONTRACT.

18 THE SUM OF **\$250,000.**

20 \_\_\_\_\_  
Finance Director's Signature

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MASTER AGREEMENT FOR PROFESSIONAL SERVICES

1 THIS AGREEMENT made and entered into on July 1<sup>st</sup>, 2015 by and between the City of Concord  
2 (hereinafter "CITY"), located in the County of Contra Costa, State of California, and LSA Associates, Inc.  
3 (hereinafter "CONSULTANT"), whose address is 157 Park Place, Pt. Richmond, CA 94801.

4 THE PARTIES ENTER THIS AGREEMENT based upon the following facts, understandings and  
5 intentions:

6 CITY desires to contract with CONSULTANT and CONSULTANT to contract with CITY for  
7 provision by CONSULTANT to CITY for professional services as further described herein, upon the terms and  
8 conditions hereinafter set forth.

9 NOW, THEREFORE, IN CONSIDERATION of the mutual covenants and promises of the parties  
10 herein contained, the parties hereto agree as follows:

11 1. SERVICES

12 CONSULTANT shall provide services for specific projects as may be requested by CITY;  
13 such services shall be defined, scheduled, and authorized in subsequent Task Orders. Services may include, but  
14 not be limited to:

- 15 ● CEQA/NEPA services related to CIP Projects
- 16 ● Other as-needed services;

17 CONSULTANT shall be an independent contractor and shall have responsibility for and  
18 control over the details and means of providing its services under this AGREEMENT. CONSULTANT agrees  
19 that its services shall be performed with due diligence and in accordance with generally accepted engineering  
20 practices.

21 CONSULTANT shall use its best efforts to perform and coordinate all activities in a timely  
22 manner so that the projects will be completed according to the established project schedules.

23 2. AUTHORIZED REPRESENTATIVES

24 Authorized representatives shall represent CITY and CONSULTANT in all matters pertaining  
25 to the services to be ordered by CITY or rendered by CONSULTANT under this Agreement except where  
26 approval for the CITY is specifically required by the City Council. The CITY'S authorized representative shall  
27 be the City Engineer. Said City Engineer is authorized to execute Task Orders on behalf of CITY, including  
28

1 providing for CONSULTANT to be compensated not more than **\$50,000** for each project. Task Orders  
2 providing for more than **\$50,000** compensation for one project shall be presented to the City Council for its  
3 consideration.

4 CONSULTANT authorized representative shall be **Laura Lafler, Principal.**

5 3. COMPENSATION

6 CONSULTANT shall be compensated, not to exceed **\$250,000** per fiscal year for basic  
7 services rendered under Section 1, as more particularly described in authorized Task Orders, in accordance with  
8 the terms and conditions included therein.

9 CONSULTANT may submit monthly statements for services rendered; all statements shall  
10 include adequate documentation demonstrating work performed during the billing period and shall conform to  
11 Federal Funding invoicing requirements, if applicable. It is intended that payments to CONSULTANT will be  
12 made by CITY within thirty (30) days of receipt of invoice. Consultant's failure to secure CITY's written  
13 authorization for additional compensation or changes to the Scope of Work shall constitute a waiver of any and  
14 all right to adjustment in the price or time due, whether by way of compensation, restitution, quantum meruit,  
15 or similar relief.

16 4. INDEMNIFICATION

17 CONSULTANT agrees to defend, indemnify and hold harmless the CITY, its officers,  
18 officials, employees, agents and volunteers from and against any and all claims, demands, actions, losses,  
19 damages, injuries, and liability (including all attorney's fees and other litigation expenses) arising out of the  
20 CONSULTANT's performance under the terms of this Agreement. This indemnification obligation on  
21 CONSULTANT'S part shall not apply to demands, actions, losses, damages, injuries, and liability arising out  
22 of sole negligence or willful misconduct on the part of CITY.

23 5. OWNERSHIP AND MAINTENANCE OF DOCUMENTS

24 All documents furnished by CONSULTANT pursuant to this AGREEMENT are instruments  
25 of CONSULTANT's services in respect to this project. They are not intended nor represented to be suitable for  
26 reuse by others on extensions of this project or on any other project. Any reuse without specific written  
27 verification and adoption by CONSULTANT for the specific purposes intended will be at user's sole risk and  
28 without liability or legal exposure and expenses to CONSULTANT, including attorney's fees arising out of

1 such unauthorized reuse.

2 CONSULTANT's records, documents, calculations, and all other instruments of service pertaining to  
3 actual project shall be given to CITY at the completion of the project. The CITY reserves the right to specify  
4 the file format that electronic document deliverables are presented to the CITY. Title to all plans,  
5 specifications, maps, estimates, reports, manuscripts, drawings, descriptions and other final work products  
6 compiled by the CONSULTANT under the Agreement shall be vested in the CITY, none of which shall be  
7 used in any manner whatsoever, by any person, firm, corporation, or agency without the expressed written  
8 consent of the CITY. Basic survey notes and sketches, charts, computations, and other data prepared or  
9 obtained under the Agreement shall be made available, upon request, to the CITY without restriction or  
10 limitations on their use. CONSULTANT may retain copies of the above-described information but agrees not  
11 to disclose or discuss any information gathered, discussed or generated in any way through this Agreement  
12 without the written permission of CITY during the term of this Agreement, unless required by law.

13 6. STANDARD OF PERFORMANCE

14 CONSULTANT represents to CITY that the services shall be performed in an expeditious  
15 manner, and with the degree of skill and care that is required by current, good, and sound procedures and  
16 practices. CONSULTANT further agrees that the services shall be in conformance with generally accepted  
17 professional standards prevailing at the time work is performed.

18 7. INSURANCE REQUIRED

19 CONSULTANT shall, at its own expense, procure and maintain in full force at all times during  
20 the term of this AGREEMENT the following insurance:

21 **A. Commercial General Liability Coverage.** CONSULTANT shall maintain  
22 commercial general liability insurance with limits of no less than one million dollars (\$1,000,000) combined  
23 single limit per occurrence or two million dollars (\$2,000,000) aggregate limit for bodily injury, personal  
24 injury, and property damage.

25 **B. Automobile Liability Coverage.** CONSULTANT shall maintain automobile liability  
26 insurance covering all vehicles used in the performance of this Agreement providing a one million dollar  
27 (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage.

28 **C. Professional Liability Coverage (Errors and Omissions).** CONSULTANT shall

1 maintain professional liability insurance with coverage for all negligent errors, acts or omissions committed by  
2 CONSULTANT, its agents and employees in the performance of this Agreement. The amount of this insurance  
3 shall be not less than one million dollars (\$1,000,000) on a claims made annual aggregate basis or a combined  
4 single limit per occurrence basis.

5 **D. Compliance with State Workers' Compensation Requirements.** CONSULTANT  
6 covenants that it will insure itself against liability for Workers' Compensation pursuant to the provisions of  
7 California Labor Code §3700, et seq. CONSULTANT shall, at all times, upon demand of the City, furnish  
8 proof that Workers' Compensation Insurance is being maintained by it in force and effect in accordance with  
9 the California Labor Code. The insurer shall also agree to waive all rights of subrogation against the CITY, its  
10 officers, officials, employees and volunteers for losses arising from work performed by CONSULTANT for  
11 CITY. This provision shall not apply upon written verification by CONSULTANT that CONSULTANT has  
12 no employees.

13 **E. Other Insurance Provisions.** The policies are to contain, or be endorsed to contain  
14 the following provisions:

15 (1) **Additional Insured.** CITY, its officers, agents, employees, and volunteers are  
16 to be covered as an additional insured as respects: Liability arising out of activities performed by or on behalf  
17 of CONSULTANT and operations of CONSULTANT, premises owned, occupied, or used by CONSULTANT.  
18 The coverage shall contain no special limitations on the scope or protection afforded to CITY, its officers,  
19 officials, employees, or volunteers.

20 Except for worker's compensation and professional liability insurance, the policies  
21 mentioned in this subsection shall name CITY as an additional insured and provide for notice of cancellation to  
22 CITY. CONSULTANT shall also provide timely and prompt notice to CITY if CONSULTANT receives any  
23 notice of cancellation or nonrenewal from its insurer.

24 (2) **Primary Coverage.** CONSULTANT'S insurance coverage shall be primary  
25 insurance with respect to CITY, its officers, officials, employees, and volunteers. Any insurance, risk pooling  
26 arrangement, or self-insurance maintained by CITY, its officers, officials, employees, or volunteers shall be in  
27 excess of CONSULTANT'S insurance and shall not contribute with it.

28 (3) **Reporting Provisions.** Any failure to comply with the reporting provisions of

1 the policy shall not affect the coverage provided to the CITY, its officers, officials, employees, or volunteers.

2                   **(4) Verification of Coverage.** CONSULTANT shall furnish CITY with  
3 certificates of insurance and the original endorsements effecting coverage required by this Agreement. The  
4 certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer  
5 to bind coverage on its behalf. The aforementioned policies shall be issued by an insurance carrier having a  
6 rating of Best A-7 or better which is satisfactory to the City Attorney and shall be delivered to CITY at the time  
7 of the execution of this Agreement or before work commences. Such policies and certificates shall be in a form  
8 approved by the City Attorney. CITY reserves the right to require complete certified copies of all required  
9 insurance policies at any time.

10           8.       SUSPENSION OF WORK

11                   CITY may, at any time, by ten (10) days' written notice, suspend further performance by  
12 CONSULTANT. All suspensions shall extend the time schedule for performance in a mutually satisfactory  
13 manner, and CONSULTANT shall be paid for services performed and reimbursable expenses incurred prior to  
14 the suspension date. During the period of suspension, CONSULTANT shall not receive any payment for  
15 services, or expenses, except for reasonable administration expenses, incurred by CONSULTANT by reason of  
16 such suspension.

17           9.       TERMINATION

18                   CITY may terminate this Agreement for any reason upon ten (10) days written notice to the  
19 other party. CITY may terminate the Agreement upon five (5) days written notice if CONSULTANT breaches  
20 this Agreement. In the event of any termination, CONSULTANT shall promptly deliver to the CITY any and  
21 all finished and unfinished reports or other written, recorded, photographic, or visual materials, documents,  
22 data, and other deliverables ("Work Materials") prepared for the CITY prior to the effective date of such  
23 termination, all of which shall become CITY's sole property. After receipt of the Work Materials, CITY will  
24 pay CONSULTANT for the services performed as of the effective date of the termination.

25           10.      COMPLIANCE WITH CIVIL RIGHTS

26                   During the performance of this contract, CONSULTANT agrees as follows:

27                   **A. Equal Employment Opportunity.** In connection with the execution of this  
28 AGREEMENT, CONSULTANT shall not discriminate against any employee or applicant for employment

1 because of race, religion, color, sex, or national origin. Such actions shall include, but not be limited to, the  
2 following: employment, promotion, upgrading, demotion, or transfer; recruitment or recruitment advertising;  
3 layoff or termination; rate of pay or other forms of compensation; and selection for training including  
4 apprenticeship.

5 **B. Nondiscrimination Civil Rights Act of 1964.** CONSULTANT will comply with all  
6 federal regulations relative to nondiscrimination in federally assisted programs.

7 **C. Solicitations for Subcontractors including Procurement of Materials and**  
8 **Equipment.** In all solicitation, either by competitive bidding or negotiations, made by CONSULTANT for  
9 work to be performed under a subcontract including procurement of materials or leases of equipment, each  
10 potential subcontractor, supplier or lessor shall be notified by CONSULTANT of CONSULTANT'S obligation  
11 under this AGREEMENT and the regulations relative to nondiscrimination on the grounds of race, religion,  
12 color, sex, or national origin.

13 11. CONFLICT OF INTEREST

14 A. CONSULTANT covenants and represents that neither it, nor any officer or principal of  
15 its firm, has, or shall acquire any interest, directly or indirectly, which would conflict in any manner with the  
16 interests of CITY or which would in any way hinder CONSULTANT's performance of services under this  
17 Agreement. CONSULTANT further covenants that in the performance of the Agreement, no person having  
18 any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express  
19 written consent of the CITY. CONSULTANT agrees to at all times avoid conflicts of interest, or the  
20 appearance of any conflicts of interest, with the interests of the CITY in the performance of this Agreement.

21 B. CONSULTANT is not a designated employee within the meaning of the Political  
22 Reform Act because CONSULTANT:

23 (1) Will conduct research and arrive at conclusions with respect to its rendition of  
24 information, advice, recommendation or counsel independent of the control and direction of the CITY or of any  
25 CITY official, other than normal contract monitoring; and

26 (2) Possesses no authority with respect to any CITY decision beyond the rendition of  
27 information, advice, recommendation or counsel. (2 Cal. Code Regs. § 18700(a)(2).)

28 12. INDEPENDENT CONTRACTOR

1 In assuming and performing the services, CONSULTANT is an independent contractor and  
2 shall not be eligible for any benefits, which the CITY may provide its employees, except as expressly provided  
3 for in the AGREEMENT. All persons, if any, hired by CONSULTANT shall be employees or subcontractors of  
4 CONSULTANT and shall not be construed as employees or agents of the CITY in any respect.  
5 CONSULTANT shall have responsibility for and control over the means of providing services under this  
6 AGREEMENT.

7 13. COMPLIANCE WITH LAWS

8 CONSULTANT shall comply with all applicable federal, State of California, and local laws,  
9 rules, and regulations and shall obtain all applicable licenses and permits for the conduct of its business and the  
10 performance of the services.

11 14. CHOICE OF LAW

12 This Agreement shall be construed and interpreted in accordance with the laws of the State of  
13 California, excluding any choice of law rules which may direct the application of the laws of another  
14 jurisdiction. In the event that suit shall be brought by either party hereunder, the parties agree that trial of such  
15 action shall be held exclusively in a state court in the County of Contra Costa, California.

16 15. NON-WAIVER

17 The waiver by either party of any breach of any term, covenant, or condition contained in the  
18 AGREEMENT, or any default in their performance of any obligations under the AGREEMENT shall not be  
19 deemed to be a waiver of any other breach or default of the same or any other term, covenant, condition, or  
20 obligation, nor shall any waiver of any incident of breach of default constitute a continuing waiver of same.

21 16. ENFORCEABILITY; INTERPRETATION

22 In the event that any of the provisions or portions of application of any of the provisions of the  
23 AGREEMENT are held to be illegal or invalid by a court of competent jurisdiction, CITY and CONSULTANT  
24 shall negotiate an equitable adjustment in the provisions of the AGREEMENT with a view toward affecting the  
25 purpose of the AGREEMENT. The illegality or invalidity of any of the provisions or portions of application of  
26 any of the provisions of the AGREEMENT shall not affect the legality or enforceability of the remaining  
27 provisions or portions of application of any of the provisions of the AGREEMENT. This Agreement shall be  
28 interpreted as though it was a product of a joint drafting effort and no provisions shall be interpreted against a

1 party on the ground that said party was solely or primarily responsible for drafting the language to be  
2 interpreted.

3 17. INTEGRATION

4 The AGREEMENT contains the entire AGREEMENT and understanding between the parties  
5 as to the subject matter of this AGREEMENT. It merges and supersedes all prior or contemporaneous  
6 agreements, commitments, representation, writings, and discussions between CONSULTANT and CITY,  
7 whether oral or written.

8 18. SUCCESSORS AND ASSIGNS; NO THIRD PARTY BENEFICIARIES; NO JOINT  
9 VENTURE

10 CITY and CONSULTANT respectively, bind themselves, their successors, assigns, and legal  
11 representatives to the terms and obligations of this Agreement. CONSULTANT shall not assign or transfer any  
12 interest in the Agreement without the CITY's prior written consent, which consent shall be in the CITY's sole  
13 discretion. Any attempted assignment or transfer in breach of this provision shall be void. This Agreement is  
14 not intended and shall not be construed to create any third party benefit. This Agreement is not intended and  
15 shall not be construed to create a joint venture or partnership between the parties. CONSULTANT, its officers,  
16 employees and agents shall not have any power to bind or commit the CITY to any decision.

17 19. FINANCIAL RECORDS

18 Records of CONSULTANT's direct labor costs, payroll costs, and reimbursable expenses  
19 pertaining to this project covered by this AGREEMENT will be kept on a generally recognized accounting  
20 basis and made available to CITY if and when required.

21 20. NOTICES

22 All notices required hereunder shall be in writing and mailed postage prepaid by Certified or  
23 Registered mail, return receipt requested, or by personal delivery to the CITY's address as shown below, or  
24 such other places as CITY or CONSULTANT may, from time to time, respectively, designate in a written  
25 notice given to the other. Notice shall be deemed received three (3) days after the date of the mailing thereof or  
26 upon personal delivery.

27 To CITY

**Robert Ovadia, City Engineer**  
**Community & Economic Development Department**  
**City of Concord**

1 **1950 Parkside Drive, MS/40**  
2 **Concord, CA 94519**  
3 **Phone: (925) 671-3470**  
4 **Fax: (925) 798-9692**

4 To CONSULTANT

**Laura Lafler, Principal**  
**LSA Associates Inc.**  
**157 Park Place**  
**Pt. Richmond, CA 94801**  
**Phone: (510) 236-6810**  
**Fax: (510) 236-3480**

8 21. TERM

9 The term of this AGREEMENT shall be from the date executed above through **June 30<sup>th</sup>**,  
10 **2017**, with the option of one one-year extension upon mutual agreement by both CITY and CONSULTANT.  
11 The City Manager is authorized to approve the extension.

12 22. NON-LIABILITY

13 No member of the CITY and no other officer, employee or agent of the CITY shall be  
14 personally liable to CONSULTANT or otherwise in the event of any default or breach of the CITY, or for any  
15 amount which may become due to CONSULTANT or any successor in interest, or for any obligations directly  
16 or indirectly incurred under the terms of this Agreement.

17 23. EXECUTION

18 Each individual or entity executing this Agreement on behalf of CONSULTANT represents  
19 and warrants that he or she or it is duly authorized to execute and deliver this Agreement on behalf of  
20 CONSULTANT and that such execution is binding upon CONSULTANT.

21 This Agreement may be executed in several counterparts, each of which shall constitute one  
22 and the same instrument and shall become binding upon the parties when at least one copy hereof shall have  
23 been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or  
24 account for more than one such counterpart.

25 **IN WITNESS WHEREOF**, the parties have executed this AGREEMENT in three (3) copies as of the  
26 date and year first written above.

27 **CONSULTANT**

**CITY OF CONCORD**

1 By: \_\_\_\_\_

By: \_\_\_\_\_

2 Name: Laura Lafler  
3 Title: Principal  
4 Address: 157 Park Place  
Pt. Richmond, CA 94801  
5 Telephone: (510) 236-6810

Name: Valerie Barone  
Title: City Manager  
Address: 1950 Parkside Drive, MS 01  
Concord, CA 94519  
Telephone: (925) 671-3175

6 APPROVED AS TO FORM:

ATTEST:

7  
8 \_\_\_\_\_  
City Attorney

\_\_\_\_\_

9  
10 Date: \_\_\_\_\_, 2015

11  
12 FINANCE DIRECTOR'S CERTIFICATION:

13 Concord, California

14 Date: \_\_\_\_\_, 2015

15 I HEREBY CERTIFY THAT ADEQUATE FUNDS EXIST OR WILL BE RECEIVED  
16 DURING THE CURRENT FISCAL YEARS 2015-16 AND 2016-17 TO PAY THE  
17 ANTICIPATED EXPENSES TO BE INCURRED PURSUANT TO THIS CONTRACT.

18 THE SUM OF **\$250,000.**

19  
20 \_\_\_\_\_  
Finance Director's Signature

21  
22  
23  
24  
25  
26  
27  
28

# ATTACHMENT 30

## MASTER AGREEMENT FOR PROFESSIONAL SERVICES

1           **THIS AGREEMENT** made and entered into on **July 1<sup>st</sup>, 2015** by and between the City of Concord  
2 (hereinafter "CITY"), located in the County of Contra Costa, State of California, and **Kimley-Horn and**  
3 **Associates, Inc.**, (hereinafter "CONSULTANT"), whose address 2720 Gateway Oaks Dr., Suite 310,  
4 Sacramento, CA 95833.

5           **THE PARTIES ENTER THIS AGREEMENT** based upon the following facts, understandings and  
6 intentions:

7           CITY desires to contract with CONSULTANT and CONSULTANT to contract with CITY for  
8 provision by CONSULTANT to CITY for professional services as further described herein, upon the terms and  
9 conditions hereinafter set forth.

10           **NOW, THEREFORE, IN CONSIDERATION** of the mutual covenants and promises of the parties  
11 herein contained, the parties hereto agree as follows:

12           1.       SERVICES

13           CONSULTANT shall provide services for specific projects as may be requested by CITY;  
14 such services shall be defined, scheduled, and authorized in subsequent Task Orders. Services may include, but  
15 not be limited to:

- 16           ● CEQA/NEPA services related to CIP Projects
- 17           ● Other as-needed services;

18           CONSULTANT shall be an independent contractor and shall have responsibility for and  
19 control over the details and means of providing its services under this AGREEMENT. CONSULTANT agrees  
20 that its services shall be performed with due diligence and in accordance with generally accepted engineering  
21 practices.

22           CONSULTANT shall use its best efforts to perform and coordinate all activities in a timely  
23 manner so that the projects will be completed according to the established project schedules.

24           2.       AUTHORIZED REPRESENTATIVES

25           Authorized representatives shall represent CITY and CONSULTANT in all matters pertaining  
26 to the services to be ordered by CITY or rendered by CONSULTANT under this Agreement except where  
27 approval for the CITY is specifically required by the City Council. The CITY'S authorized representative shall  
28

1 be the City Engineer. Said City Engineer is authorized to execute Task Orders on behalf of CITY, including  
2 providing for CONSULTANT to be compensated not more than **\$50,000** for each project. Task Orders  
3 providing for more than **\$50,000** compensation for one project shall be presented to the City Council for its  
4 consideration.

5 CONSULTANT authorized representative shall be **Alex Jewell, Project Manager**

6 3. COMPENSATION

7 CONSULTANT shall be compensated, not to exceed **\$250,000** per fiscal year for basic  
8 services rendered under Section 1, as more particularly described in authorized Task Orders, in accordance with  
9 the terms and conditions included therein.

10 CONSULTANT may submit monthly statements for services rendered; all statements shall  
11 include adequate documentation demonstrating work performed during the billing period and shall conform to  
12 Federal Funding invoicing requirements, if applicable. It is intended that payments to CONSULTANT will be  
13 made by CITY within thirty (30) days of receipt of invoice. Consultant's failure to secure CITY's written  
14 authorization for additional compensation or changes to the Scope of Work shall constitute a waiver of any and  
15 all right to adjustment in the price or time due, whether by way of compensation, restitution, quantum meruit,  
16 or similar relief.

17 4. INDEMNIFICATION

18 CONSULTANT agrees to defend, indemnify and hold harmless the CITY, its officers,  
19 officials, employees, agents and volunteers from and against any and all claims, demands, actions, losses,  
20 damages, injuries, and liability (including all attorney's fees and other litigation expenses) arising out of the  
21 CONSULTANT's performance under the terms of this Agreement. This indemnification obligation on  
22 CONSULTANT'S part shall not apply to demands, actions, losses, damages, injuries, and liability arising out  
23 of sole negligence or willful misconduct on the part of CITY.

24 5. OWNERSHIP AND MAINTENANCE OF DOCUMENTS

25 All documents furnished by CONSULTANT pursuant to this AGREEMENT are instruments  
26 of CONSULTANT's services in respect to this project. They are not intended nor represented to be suitable for  
27 reuse by others on extensions of this project or on any other project. Any reuse without specific written  
28 verification and adoption by CONSULTANT for the specific purposes intended will be at user's sole risk and

1 without liability or legal exposure and expenses to CONSULTANT, including attorney's fees arising out of  
2 such unauthorized reuse.

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4 actual project shall be given to CITY at the completion of the project. The CITY reserves the right to specify  
5 the file format that electronic document deliverables are presented to the CITY. Title to all plans,  
6 specifications, maps, estimates, reports, manuscripts, drawings, descriptions and other final work products  
7 compiled by the CONSULTANT under the Agreement shall be vested in the CITY, none of which shall be  
8 used in any manner whatsoever, by any person, firm, corporation, or agency without the expressed written  
9 consent of the CITY. Basic survey notes and sketches, charts, computations, and other data prepared or  
10 obtained under the Agreement shall be made available, upon request, to the CITY without restriction or  
11 limitations on their use. CONSULTANT may retain copies of the above-described information but agrees not  
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13 without the written permission of CITY during the term of this Agreement, unless required by law.

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16 manner, and with the degree of skill and care that is required by current, good, and sound procedures and  
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18 professional standards prevailing at the time work is performed.

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5 single limit per occurrence basis.

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18 of CONSULTANT and operations of CONSULTANT, premises owned, occupied, or used by CONSULTANT.  
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20 officials, employees, or volunteers.

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22 mentioned in this subsection shall name CITY as an additional insured and provide for notice of cancellation to  
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24 notice of cancellation or nonrenewal from its insurer.

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27 arrangement, or self-insurance maintained by CITY, its officers, officials, employees, or volunteers shall be in  
28 excess of CONSULTANT'S insurance and shall not contribute with it.

1                   (3)     **Reporting Provisions.** Any failure to comply with the reporting provisions of  
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3                   (4)     **Verification of Coverage.** CONSULTANT shall furnish CITY with  
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8 of the execution of this Agreement or before work commences. Such policies and certificates shall be in a form  
9 approved by the City Attorney. CITY reserves the right to require complete certified copies of all required  
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15 the suspension date. During the period of suspension, CONSULTANT shall not receive any payment for  
16 services, or expenses, except for reasonable administration expenses, incurred by CONSULTANT by reason of  
17 such suspension.

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25 pay CONSULTANT for the services performed as of the effective date of the termination.

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27                 During the performance of this contract, CONSULTANT agrees as follows:

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3 following: employment, promotion, upgrading, demotion, or transfer; recruitment or recruitment advertising;  
4 layoff or termination; rate of pay or other forms of compensation; and selection for training including  
5 apprenticeship.

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7 federal regulations relative to nondiscrimination in federally assisted programs.

8 **C. Solicitations for Subcontractors including Procurement of Materials and**  
9 **Equipment.** In all solicitation, either by competitive bidding or negotiations, made by CONSULTANT for  
10 work to be performed under a subcontract including procurement of materials or leases of equipment, each  
11 potential subcontractor, supplier or lessor shall be notified by CONSULTANT of CONSULTANT'S obligation  
12 under this AGREEMENT and the regulations relative to nondiscrimination on the grounds of race, religion,  
13 color, sex, or national origin.

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15 A. CONSULTANT covenants and represents that neither it, nor any officer or principal of  
16 its firm, has, or shall acquire any interest, directly or indirectly, which would conflict in any manner with the  
17 interests of CITY or which would in any way hinder CONSULTANT's performance of services under this  
18 Agreement. CONSULTANT further covenants that in the performance of the Agreement, no person having  
19 any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express  
20 written consent of the CITY. CONSULTANT agrees to at all times avoid conflicts of interest, or the  
21 appearance of any conflicts of interest, with the interests of the CITY in the performance of this Agreement.

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23 Reform Act because CONSULTANT:

24 (1) Will conduct research and arrive at conclusions with respect to its rendition of  
25 information, advice, recommendation or counsel independent of the control and direction of the CITY or of any  
26 CITY official, other than normal contract monitoring; and

27 (2) Possesses no authority with respect to any CITY decision beyond the rendition of  
28 information, advice, recommendation or counsel. (2 Cal. Code Regs. § 18700(a)(2).)

1           12.    INDEPENDENT CONTRACTOR

2           In assuming and performing the services, CONSULTANT is an independent contractor and  
3 shall not be eligible for any benefits, which the CITY may provide its employees, except as expressly provided  
4 for in the AGREEMENT. All persons, if any, hired by CONSULTANT shall be employees or subcontractors of  
5 CONSULTANT and shall not be construed as employees or agents of the CITY in any respect.  
6 CONSULTANT shall have responsibility for and control over the means of providing services under this  
7 AGREEMENT.

8           13.    COMPLIANCE WITH LAWS

9           CONSULTANT shall comply with all applicable federal, State of California, and local laws,  
10 rules, and regulations and shall obtain all applicable licenses and permits for the conduct of its business and the  
11 performance of the services.

12           14.    CHOICE OF LAW

13           This Agreement shall be construed and interpreted in accordance with the laws of the State of  
14 California, excluding any choice of law rules which may direct the application of the laws of another  
15 jurisdiction. In the event that suit shall be brought by either party hereunder, the parties agree that trial of such  
16 action shall be held exclusively in a state court in the County of Contra Costa, California.

17           15.    NON-WAIVER

18           The waiver by either party of any breach of any term, covenant, or condition contained in the  
19 AGREEMENT, or any default in their performance of any obligations under the AGREEMENT shall not be  
20 deemed to be a waiver of any other breach or default of the same or any other term, covenant, condition, or  
21 obligation, nor shall any waiver of any incident of breach of default constitute a continuing waiver of same.

22           16.    ENFORCEABILITY; INTERPRETATION

23           In the event that any of the provisions or portions of application of any of the provisions of the  
24 AGREEMENT are held to be illegal or invalid by a court of competent jurisdiction, CITY and CONSULTANT  
25 shall negotiate an equitable adjustment in the provisions of the AGREEMENT with a view toward affecting the  
26 purpose of the AGREEMENT. The illegality or invalidity of any of the provisions or portions of application of  
27 any of the provisions of the AGREEMENT shall not affect the legality or enforceability of the remaining  
28 provisions or portions of application of any of the provisions of the AGREEMENT. This Agreement shall be

1 interpreted as though it was a product of a joint drafting effort and no provisions shall be interpreted against a  
2 party on the ground that said party was solely or primarily responsible for drafting the language to be  
3 interpreted.

4 17. INTEGRATION

5 The AGREEMENT contains the entire AGREEMENT and understanding between the parties  
6 as to the subject matter of this AGREEMENT. It merges and supersedes all prior or contemporaneous  
7 agreements, commitments, representation, writings, and discussions between CONSULTANT and CITY,  
8 whether oral or written.

9 18. SUCCESSORS AND ASSIGNS; NO THIRD PARTY BENEFICIARIES; NO JOINT  
10 VENTURE

11 CITY and CONSULTANT respectively, bind themselves, their successors, assigns, and legal  
12 representatives to the terms and obligations of this Agreement. CONSULTANT shall not assign or transfer any  
13 interest in the Agreement without the CITY's prior written consent, which consent shall be in the CITY's sole  
14 discretion. Any attempted assignment or transfer in breach of this provision shall be void. This Agreement is  
15 not intended and shall not be construed to create any third party benefit. This Agreement is not intended and  
16 shall not be construed to create a joint venture or partnership between the parties. CONSULTANT, its officers,  
17 employees and agents shall not have any power to bind or commit the CITY to any decision.

18 19. FINANCIAL RECORDS

19 Records of CONSULTANT's direct labor costs, payroll costs, and reimbursable expenses  
20 pertaining to this project covered by this AGREEMENT will be kept on a generally recognized accounting  
21 basis and made available to CITY if and when required.

22 20. NOTICES

23 All notices required hereunder shall be in writing and mailed postage prepaid by Certified or  
24 Registered mail, return receipt requested, or by personal delivery to the CITY's address as shown below, or  
25 such other places as CITY or CONSULTANT may, from time to time, respectively, designate in a written  
26 notice given to the other. Notice shall be deemed received three (3) days after the date of the mailing thereof or  
27 upon personal delivery.

28 To CITY

**Robert Ovadia, City Engineer**

1 **Community & Economic Development Department**  
2 **City of Concord**  
3 **1950 Parkside Drive, MS/40**  
4 **Concord, CA 94519**  
5 **Phone: (925) 671-3470**  
6 **Fax: (925) 798-9692**

7 To CONSULTANT

8 **Alex Jewell, Project Manager**  
9 **Kimley-Horn and Associates, Inc.**  
10 **2720 Gateway Oaks Dr., Suite 310**  
11 **Sacramento, CA 95833**  
12 **Phone: (916) 859-3625**

13 21. TERM

14 The term of this AGREEMENT shall be from the date executed above through **June 30<sup>th</sup>, 2017**, with the option of one one-year extension upon mutual agreement by both CITY and CONSULTANT. The City Manager is authorized to approve the extension.

15 22. NON-LIABILITY

16 No member of the CITY and no other officer, employee or agent of the CITY shall be personally liable to CONSULTANT or otherwise in the event of any default or breach of the CITY, or for any amount which may become due to CONSULTANT or any successor in interest, or for any obligations directly or indirectly incurred under the terms of this Agreement.

17 23. EXECUTION

18 Each individual or entity executing this Agreement on behalf of CONSULTANT represents and warrants that he or she or it is duly authorized to execute and deliver this Agreement on behalf of CONSULTANT and that such execution is binding upon CONSULTANT.

19 This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

20 **IN WITNESS WHEREOF**, the parties have executed this AGREEMENT in three (3) copies as of the date and year first written above.

21 **CONSULTANT**

22 **CITY OF CONCORD**

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By: \_\_\_\_\_

Name: Alex Jewell  
Title: Project Manager  
Address: 2720 Gateway Oaks Dr., Suite 310  
Sacramento, CA 95833  
Telephone: (916)859-3625

By: \_\_\_\_\_

Name: Valerie Barone  
Title: City Manager  
Address: 1950 Parkside Drive, MS 01  
Concord, CA 94519  
Telephone: (925) 671-3175

APPROVED AS TO FORM:

ATTEST:

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
City Clerk

Date: \_\_\_\_\_, 2015

FINANCE DIRECTOR'S CERTIFICATION:

Concord, California

Date: \_\_\_\_\_, 2015

I HEREBY CERTIFY THAT ADEQUATE FUNDS EXIST OR WILL BE RECEIVED  
DURING THE CURRENT FISCAL YEARS 2015-16 AND 2016-17 TO PAY THE  
ANTICIPATED EXPENSES TO BE INCURRED PURSUANT TO THIS CONTRACT.

THE SUM OF **\$250,000.**

\_\_\_\_\_  
Finance Director's Signature

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

1 THIS AGREEMENT made and entered into on July 1<sup>st</sup>, 2015 by and between the City of Concord  
2 (hereinafter "CITY"), located in the County of Contra Costa, State of California, and Kleinfelder West,  
3 Inc.,(hereinafter "CONSULTANT"), whose address is 981 Garcia Avenue, Suite A, Pittsburg, CA 94565.

4 THE PARTIES ENTER THIS AGREEMENT based upon the following facts, understandings and  
5 intentions:

6 CITY desires to contract with CONSULTANT and CONSULTANT to contract with CITY for  
7 provision by CONSULTANT to CITY for professional services as further described herein, upon the terms and  
8 conditions hereinafter set forth.

9 NOW, THEREFORE, IN CONSIDERATION of the mutual covenants and promises of the parties  
10 herein contained, the parties hereto agree as follows:

11 1. SERVICES

12 CONSULTANT shall provide services for specific projects as may be requested by CITY;  
13 such services shall be defined, scheduled, and authorized in subsequent Task Orders. Services may include, but  
14 not be limited to:

- 15 ● Geotechnical services related to CIP Projects
- 16 ● Materials Testing services related to CIP Projects
- 17 ● Other as-needed services;

18 CONSULTANT shall be an independent contractor and shall have responsibility for and  
19 control over the details and means of providing its services under this AGREEMENT. CONSULTANT agrees  
20 that its services shall be performed with due diligence and in accordance with generally accepted engineering  
21 practices.

22 CONSULTANT shall use its best efforts to perform and coordinate all activities in a timely  
23 manner so that the projects will be completed according to the established project schedules.

24 2. AUTHORIZED REPRESENTATIVES

25 Authorized representatives shall represent CITY and CONSULTANT in all matters pertaining  
26 to the services to be ordered by CITY or rendered by CONSULTANT under this Agreement except where  
27 approval for the CITY is specifically required by the City Council. The CITY'S authorized representative shall  
28

1 be the City Engineer. Said City Engineer is authorized to execute Task Orders on behalf of CITY, including  
2 providing for CONSULTANT to be compensated not more than **\$50,000** for each project. Task Orders  
3 providing for more than **\$50,000** compensation for one project shall be presented to the City Council for its  
4 consideration.

5 CONSULTANT authorized representative shall be **Fernando Silva, Area Manager**

6 3. COMPENSATION

7 CONSULTANT shall be compensated, not to exceed **\$250,000** per fiscal year for basic  
8 services rendered under Section 1, as more particularly described in authorized Task Orders, in accordance with  
9 the terms and conditions included therein.

10 CONSULTANT may submit monthly statements for services rendered; all statements shall  
11 include adequate documentation demonstrating work performed during the billing period and shall conform to  
12 Federal Funding invoicing requirements, if applicable. It is intended that payments to CONSULTANT will be  
13 made by CITY within thirty (30) days of receipt of invoice. Consultant's failure to secure CITY's written  
14 authorization for additional compensation or changes to the Scope of Work shall constitute a waiver of any and  
15 all right to adjustment in the price or time due, whether by way of compensation, restitution, quantum meruit,  
16 or similar relief.

17 4. INDEMNIFICATION

18 CONSULTANT agrees to defend, indemnify and hold harmless the CITY, its officers,  
19 officials, employees, agents and volunteers from and against any and all claims, demands, actions, losses,  
20 damages, injuries, and liability (including all attorney's fees and other litigation expenses) arising out of the  
21 CONSULTANT's performance under the terms of this Agreement. This indemnification obligation on  
22 CONSULTANT'S part shall not apply to demands, actions, losses, damages, injuries, and liability arising out  
23 of sole negligence or willful misconduct on the part of CITY.

24 5. OWNERSHIP AND MAINTENANCE OF DOCUMENTS

25 All documents furnished by CONSULTANT pursuant to this AGREEMENT are instruments  
26 of CONSULTANT's services in respect to this project. They are not intended nor represented to be suitable for  
27 reuse by others on extensions of this project or on any other project. Any reuse without specific written  
28 verification and adoption by CONSULTANT for the specific purposes intended will be at user's sole risk and

1 without liability or legal exposure and expenses to CONSULTANT, including attorney's fees arising out of  
2 such unauthorized reuse.

3           CONSULTANT's records, documents, calculations, and all other instruments of service pertaining to  
4 actual project shall be given to CITY at the completion of the project. The CITY reserves the right to specify  
5 the file format that electronic document deliverables are presented to the CITY. Title to all plans,  
6 specifications, maps, estimates, reports, manuscripts, drawings, descriptions and other final work products  
7 compiled by the CONSULTANT under the Agreement shall be vested in the CITY, none of which shall be  
8 used in any manner whatsoever, by any person, firm, corporation, or agency without the expressed written  
9 consent of the CITY. Basic survey notes and sketches, charts, computations, and other data prepared or  
10 obtained under the Agreement shall be made available, upon request, to the CITY without restriction or  
11 limitations on their use. CONSULTANT may retain copies of the above-described information but agrees not  
12 to disclose or discuss any information gathered, discussed or generated in any way through this Agreement  
13 without the written permission of CITY during the term of this Agreement, unless required by law.

14           6.       STANDARD OF PERFORMANCE

15           CONSULTANT represents to CITY that the services shall be performed in an expeditious  
16 manner, and with the degree of skill and care that is required by current, good, and sound procedures and  
17 practices. CONSULTANT further agrees that the services shall be in conformance with generally accepted  
18 professional standards prevailing at the time work is performed.

19           7.       INSURANCE REQUIRED

20           CONSULTANT shall, at its own expense, procure and maintain in full force at all times during  
21 the term of this AGREEMENT the following insurance:

22           **A.       Commercial General Liability Coverage.**   CONSULTANT shall maintain  
23 commercial general liability insurance with limits of no less than one million dollars (\$1,000,000) combined  
24 single limit per occurrence or two million dollars (\$2,000,000) aggregate limit for bodily injury, personal  
25 injury, and property damage.

26           **B.       Automobile Liability Coverage.**   CONSULTANT shall maintain automobile liability  
27 insurance covering all vehicles used in the performance of this Agreement providing a one million dollar  
28 (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage.

1           **C. Professional Liability Coverage (Errors and Omissions).** CONSULTANT shall  
2 maintain professional liability insurance with coverage for all negligent errors, acts or omissions committed by  
3 CONSULTANT, its agents and employees in the performance of this Agreement. The amount of this insurance  
4 shall be not less than one million dollars (\$1,000,000) on a claims made annual aggregate basis or a combined  
5 single limit per occurrence basis.

6           **D. Compliance with State Workers' Compensation Requirements.** CONSULTANT  
7 covenants that it will insure itself against liability for Workers' Compensation pursuant to the provisions of  
8 California Labor Code §3700, et seq. CONSULTANT shall, at all times, upon demand of the City, furnish  
9 proof that Workers' Compensation Insurance is being maintained by it in force and effect in accordance with  
10 the California Labor Code. The insurer shall also agree to waive all rights of subrogation against the CITY, its  
11 officers, officials, employees and volunteers for losses arising from work performed by CONSULTANT for  
12 CITY. This provision shall not apply upon written verification by CONSULTANT that CONSULTANT has  
13 no employees.

14           **E. Other Insurance Provisions.** The policies are to contain, or be endorsed to contain  
15 the following provisions:

16           **(1) Additional Insured.** CITY, its officers, agents, employees, and volunteers are  
17 to be covered as an additional insured as respects: Liability arising out of activities performed by or on behalf  
18 of CONSULTANT and operations of CONSULTANT, premises owned, occupied, or used by CONSULTANT.  
19 The coverage shall contain no special limitations on the scope or protection afforded to CITY, its officers,  
20 officials, employees, or volunteers.

21           Except for worker's compensation and professional liability insurance, the policies  
22 mentioned in this subsection shall name CITY as an additional insured and provide for notice of cancellation to  
23 CITY. CONSULTANT shall also provide timely and prompt notice to CITY if CONSULTANT receives any  
24 notice of cancellation or nonrenewal from its insurer.

25           **(2) Primary Coverage.** CONSULTANT'S insurance coverage shall be primary  
26 insurance with respect to CITY, its officers, officials, employees, and volunteers. Any insurance, risk pooling  
27 arrangement, or self-insurance maintained by CITY, its officers, officials, employees, or volunteers shall be in  
28 excess of CONSULTANT'S insurance and shall not contribute with it.

1                   (3)     **Reporting Provisions.** Any failure to comply with the reporting provisions of  
2 the policy shall not affect the coverage provided to the CITY, its officers, officials, employees, or volunteers.

3                   (4)     **Verification of Coverage.** CONSULTANT shall furnish CITY with  
4 certificates of insurance and the original endorsements effecting coverage required by this Agreement. The  
5 certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer  
6 to bind coverage on its behalf. The aforementioned policies shall be issued by an insurance carrier having a  
7 rating of Best A-7 or better which is satisfactory to the City Attorney and shall be delivered to CITY at the time  
8 of the execution of this Agreement or before work commences. Such policies and certificates shall be in a form  
9 approved by the City Attorney. CITY reserves the right to require complete certified copies of all required  
10 insurance policies at any time.

11           8.     SUSPENSION OF WORK

12                   CITY may, at any time, by ten (10) days' written notice, suspend further performance by  
13 CONSULTANT. All suspensions shall extend the time schedule for performance in a mutually satisfactory  
14 manner, and CONSULTANT shall be paid for services performed and reimbursable expenses incurred prior to  
15 the suspension date. During the period of suspension, CONSULTANT shall not receive any payment for  
16 services, or expenses, except for reasonable administration expenses, incurred by CONSULTANT by reason of  
17 such suspension.

18           9.     TERMINATION

19                   CITY may terminate this Agreement for any reason upon ten (10) days written notice to the  
20 other party. CITY may terminate the Agreement upon five (5) days written notice if CONSULTANT breaches  
21 this Agreement. In the event of any termination, CONSULTANT shall promptly deliver to the CITY any and  
22 all finished and unfinished reports or other written, recorded, photographic, or visual materials, documents,  
23 data, and other deliverables ("Work Materials") prepared for the CITY prior to the effective date of such  
24 termination, all of which shall become CITY's sole property. After receipt of the Work Materials, CITY will  
25 pay CONSULTANT for the services performed as of the effective date of the termination.

26           10.    COMPLIANCE WITH CIVIL RIGHTS

27                   During the performance of this contract, CONSULTANT agrees as follows:

28                   A.     **Equal Employment Opportunity.** In connection with the execution of this

1 AGREEMENT, CONSULTANT shall not discriminate against any employee or applicant for employment  
2 because of race, religion, color, sex, or national origin. Such actions shall include, but not be limited to, the  
3 following: employment, promotion, upgrading, demotion, or transfer; recruitment or recruitment advertising;  
4 layoff or termination; rate of pay or other forms of compensation; and selection for training including  
5 apprenticeship.

6 **B. Nondiscrimination Civil Rights Act of 1964.** CONSULTANT will comply with all  
7 federal regulations relative to nondiscrimination in federally assisted programs.

8 **C. Solicitations for Subcontractors including Procurement of Materials and**  
9 **Equipment.** In all solicitation, either by competitive bidding or negotiations, made by CONSULTANT for  
10 work to be performed under a subcontract including procurement of materials or leases of equipment, each  
11 potential subcontractor, supplier or lessor shall be notified by CONSULTANT of CONSULTANT'S obligation  
12 under this AGREEMENT and the regulations relative to nondiscrimination on the grounds of race, religion,  
13 color, sex, or national origin.

14 11. CONFLICT OF INTEREST

15 A. CONSULTANT covenants and represents that neither it, nor any officer or principal of  
16 its firm, has, or shall acquire any interest, directly or indirectly, which would conflict in any manner with the  
17 interests of CITY or which would in any way hinder CONSULTANT's performance of services under this  
18 Agreement. CONSULTANT further covenants that in the performance of the Agreement, no person having  
19 any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express  
20 written consent of the CITY. CONSULTANT agrees to at all times avoid conflicts of interest, or the  
21 appearance of any conflicts of interest, with the interests of the CITY in the performance of this Agreement.

22 B. CONSULTANT is not a designated employee within the meaning of the Political  
23 Reform Act because CONSULTANT:

24 (1) Will conduct research and arrive at conclusions with respect to its rendition of  
25 information, advice, recommendation or counsel independent of the control and direction of the CITY or of any  
26 CITY official, other than normal contract monitoring; and

27 (2) Possesses no authority with respect to any CITY decision beyond the rendition of  
28 information, advice, recommendation or counsel. (2 Cal. Code Regs. § 18700(a)(2).)

1           12.    INDEPENDENT CONTRACTOR

2           In assuming and performing the services, CONSULTANT is an independent contractor and  
3 shall not be eligible for any benefits, which the CITY may provide its employees, except as expressly provided  
4 for in the AGREEMENT. All persons, if any, hired by CONSULTANT shall be employees or subcontractors of  
5 CONSULTANT and shall not be construed as employees or agents of the CITY in any respect.  
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13           This Agreement shall be construed and interpreted in accordance with the laws of the State of  
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15 jurisdiction. In the event that suit shall be brought by either party hereunder, the parties agree that trial of such  
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21 obligation, nor shall any waiver of any incident of breach of default constitute a continuing waiver of same.

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23           In the event that any of the provisions or portions of application of any of the provisions of the  
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25 shall negotiate an equitable adjustment in the provisions of the AGREEMENT with a view toward affecting the  
26 purpose of the AGREEMENT. The illegality or invalidity of any of the provisions or portions of application of  
27 any of the provisions of the AGREEMENT shall not affect the legality or enforceability of the remaining  
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6 as to the subject matter of this AGREEMENT. It merges and supersedes all prior or contemporaneous  
7 agreements, commitments, representation, writings, and discussions between CONSULTANT and CITY,  
8 whether oral or written.

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10 VENTURE

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12 representatives to the terms and obligations of this Agreement. CONSULTANT shall not assign or transfer any  
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19 Records of CONSULTANT's direct labor costs, payroll costs, and reimbursable expenses  
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21 basis and made available to CITY if and when required.

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23 All notices required hereunder shall be in writing and mailed postage prepaid by Certified or  
24 Registered mail, return receipt requested, or by personal delivery to the CITY's address as shown below, or  
25 such other places as CITY or CONSULTANT may, from time to time, respectively, designate in a written  
26 notice given to the other. Notice shall be deemed received three (3) days after the date of the mailing thereof or  
27 upon personal delivery.

28 To CITY

**Robert Ovadia, City Engineer**

1 **Community & Economic Development Department**  
2 **City of Concord**  
3 **1950 Parkside Drive, MS/40**  
4 **Concord, CA 94519**  
5 **Phone: (925) 671-3470**  
6 **Fax: (925) 798-9692**

7 To CONSULTANT

8 **Fernando Silva, Area Manager**  
9 **Kleinfelder West, Inc.**  
10 **981 Garcia Avenue, Suite A**  
11 **Pittsburg, CA 94565**  
12 **Phone: (925) 427-6477**  
13 **Fax: (925) 427-6478**

14 21. TERM

15 The term of this AGREEMENT shall be from the date executed above through **June 30<sup>th</sup>, 2017**, with the option of one one-year extension upon mutual agreement by both CITY and CONSULTANT.  
16 The City Manager is authorized to approve the extension.

17 22. NON-LIABILITY

18 No member of the CITY and no other officer, employee or agent of the CITY shall be  
19 personally liable to CONSULTANT or otherwise in the event of any default or breach of the CITY, or for any  
20 amount which may become due to CONSULTANT or any successor in interest, or for any obligations directly  
21 or indirectly incurred under the terms of this Agreement.

22 23. EXECUTION

23 Each individual or entity executing this Agreement on behalf of CONSULTANT represents  
24 and warrants that he or she or it is duly authorized to execute and deliver this Agreement on behalf of  
25 CONSULTANT and that such execution is binding upon CONSULTANT.

26 This Agreement may be executed in several counterparts, each of which shall constitute one  
27 and the same instrument and shall become binding upon the parties when at least one copy hereof shall have  
28 been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or  
account for more than one such counterpart.

**IN WITNESS WHEREOF**, the parties have executed this AGREEMENT in three (3) copies as of the  
date and year first written above.

**CONSULTANT**

**CITY OF CONCORD**

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By: \_\_\_\_\_

Name: Nathan Stoores  
Title: Regional Delivery Manager/ Principal  
Address: 981 Garcia Avenue, Suite A  
Pittsburg, CA 94565  
Telephone: (925) 427-6477

By: \_\_\_\_\_

Name: Valerie Barone  
Title: City Manager  
Address: 1950 Parkside Drive, MS 01  
Concord, CA 94519  
Telephone: (925) 671-3175

APPROVED AS TO FORM:

ATTEST:

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
City Clerk

Date: \_\_\_\_\_, 2015

FINANCE DIRECTOR'S CERTIFICATION:

Concord, California

Date: \_\_\_\_\_, 2015

I HEREBY CERTIFY THAT ADEQUATE FUNDS EXIST OR WILL BE RECEIVED  
DURING THE CURRENT FISCAL YEARS 2015-16 AND 2016-17 TO PAY THE  
ANTICIPATED EXPENSES TO BE INCURRED PURSUANT TO THIS CONTRACT.

THE SUM OF **\$250,000.**

\_\_\_\_\_  
Finance Director's Signature

# ATTACHMENT 32

## MASTER AGREEMENT FOR PROFESSIONAL SERVICES

1           **THIS AGREEMENT** made and entered into on **July 1<sup>st</sup>, 2015** by and between the City of Concord  
2 (hereinafter "CITY"), located in the County of Contra Costa, State of California, and **Neil O. Anderson &**  
3 **Associates, A Terracon Company,** (hereinafter "CONSULTANT"), whose address is 5075 Commercial  
4 Circle, Suite E, Concord, CA 94520.

5           **THE PARTIES ENTER THIS AGREEMENT** based upon the following facts, understandings and  
6 intentions:

7           CITY desires to contract with CONSULTANT and CONSULTANT to contract with CITY for  
8 provision by CONSULTANT to CITY for professional services as further described herein, upon the terms and  
9 conditions hereinafter set forth.

10           **NOW, THEREFORE, IN CONSIDERATION** of the mutual covenants and promises of the parties  
11 herein contained, the parties hereto agree as follows:

12           1.       SERVICES

13           CONSULTANT shall provide services for specific projects as may be requested by CITY;  
14 such services shall be defined, scheduled, and authorized in subsequent Task Orders. Services may include, but  
15 not be limited to:

- 16           ● Geotechnical services related to CIP Projects
- 17           ● Materials Testing services related to CIP Projects
- 18           ● Other as-needed services;

19           CONSULTANT shall be an independent contractor and shall have responsibility for and  
20 control over the details and means of providing its services under this AGREEMENT. CONSULTANT agrees  
21 that its services shall be performed with due diligence and in accordance with generally accepted engineering  
22 practices.

23           CONSULTANT shall use its best efforts to perform and coordinate all activities in a timely  
24 manner so that the projects will be completed according to the established project schedules.

25           2.       AUTHORIZED REPRESENTATIVES

26           Authorized representatives shall represent CITY and CONSULTANT in all matters pertaining  
27 to the services to be ordered by CITY or rendered by CONSULTANT under this Agreement except where  
28

1 approval for the CITY is specifically required by the City Council. The CITY'S authorized representative shall  
2 be the City Engineer. Said City Engineer is authorized to execute Task Orders on behalf of CITY, including  
3 providing for CONSULTANT to be compensated not more than **\$50,000** for each project. Task Orders  
4 providing for more than **\$50,000** compensation for one project shall be presented to the City Council for its  
5 consideration.

6 CONSULTANT authorized representative shall be **Noah T. Smith, Senior Associate.**

7 3. COMPENSATION

8 CONSULTANT shall be compensated, not to exceed **\$250,000** per fiscal year for basic  
9 services rendered under Section 1, as more particularly described in authorized Task Orders, in accordance with  
10 the terms and conditions included therein.

11 CONSULTANT may submit monthly statements for services rendered; all statements shall  
12 include adequate documentation demonstrating work performed during the billing period and shall conform to  
13 Federal Funding invoicing requirements, if applicable. It is intended that payments to CONSULTANT will be  
14 made by CITY within thirty (30) days of receipt of invoice. Consultant's failure to secure CITY's written  
15 authorization for additional compensation or changes to the Scope of Work shall constitute a waiver of any and  
16 all right to adjustment in the price or time due, whether by way of compensation, restitution, quantum meruit,  
17 or similar relief.

18 4. INDEMNIFICATION

19 CONSULTANT agrees to defend, indemnify and hold harmless the CITY, its officers,  
20 officials, employees, agents and volunteers from and against any and all claims, demands, actions, losses,  
21 damages, injuries, and liability (including all attorney's fees and other litigation expenses) arising out of the  
22 CONSULTANT's performance under the terms of this Agreement. This indemnification obligation on  
23 CONSULTANT'S part shall not apply to demands, actions, losses, damages, injuries, and liability arising out  
24 of sole negligence or willful misconduct on the part of CITY.

25 5. OWNERSHIP AND MAINTENANCE OF DOCUMENTS

26 All documents furnished by CONSULTANT pursuant to this AGREEMENT are instruments  
27 of CONSULTANT's services in respect to this project. They are not intended nor represented to be suitable for  
28 reuse by others on extensions of this project or on any other project. Any reuse without specific written

1 verification and adoption by CONSULTANT for the specific purposes intended will be at user's sole risk and  
2 without liability or legal exposure and expenses to CONSULTANT, including attorney's fees arising out of  
3 such unauthorized reuse.

4 CONSULTANT's records, documents, calculations, and all other instruments of service pertaining to  
5 actual project shall be given to CITY at the completion of the project. The CITY reserves the right to specify  
6 the file format that electronic document deliverables are presented to the CITY. Title to all plans,  
7 specifications, maps, estimates, reports, manuscripts, drawings, descriptions and other final work products  
8 compiled by the CONSULTANT under the Agreement shall be vested in the CITY, none of which shall be  
9 used in any manner whatsoever, by any person, firm, corporation, or agency without the expressed written  
10 consent of the CITY. Basic survey notes and sketches, charts, computations, and other data prepared or  
11 obtained under the Agreement shall be made available, upon request, to the CITY without restriction or  
12 limitations on their use. CONSULTANT may retain copies of the above-described information but agrees not  
13 to disclose or discuss any information gathered, discussed or generated in any way through this Agreement  
14 without the written permission of CITY during the term of this Agreement, unless required by law.

15 6. STANDARD OF PERFORMANCE

16 CONSULTANT represents to CITY that the services shall be performed in an expeditious  
17 manner, and with the degree of skill and care that is required by current, good, and sound procedures and  
18 practices. CONSULTANT further agrees that the services shall be in conformance with generally accepted  
19 professional standards prevailing at the time work is performed.

20 7. INSURANCE REQUIRED

21 CONSULTANT shall, at its own expense, procure and maintain in full force at all times during  
22 the term of this AGREEMENT the following insurance:

23 **A. Commercial General Liability Coverage.** CONSULTANT shall maintain  
24 commercial general liability insurance with limits of no less than one million dollars (\$1,000,000) combined  
25 single limit per occurrence or two million dollars (\$2,000,000) aggregate limit for bodily injury, personal  
26 injury, and property damage.

27 **B. Automobile Liability Coverage.** CONSULTANT shall maintain automobile liability  
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2 **C. Professional Liability Coverage (Errors and Omissions).** CONSULTANT shall  
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6 single limit per occurrence basis.

7 **D. Compliance with State Workers' Compensation Requirements.** CONSULTANT  
8 covenants that it will insure itself against liability for Workers' Compensation pursuant to the provisions of  
9 California Labor Code §3700, et seq. CONSULTANT shall, at all times, upon demand of the City, furnish  
10 proof that Workers' Compensation Insurance is being maintained by it in force and effect in accordance with  
11 the California Labor Code. The insurer shall also agree to waive all rights of subrogation against the CITY, its  
12 officers, officials, employees and volunteers for losses arising from work performed by CONSULTANT for  
13 CITY. This provision shall not apply upon written verification by CONSULTANT that CONSULTANT has  
14 no employees.

15 **E. Other Insurance Provisions.** The policies are to contain, or be endorsed to contain  
16 the following provisions:

17 **(1) Additional Insured.** CITY, its officers, agents, employees, and volunteers are  
18 to be covered as an additional insured as respects: Liability arising out of activities performed by or on behalf  
19 of CONSULTANT and operations of CONSULTANT, premises owned, occupied, or used by CONSULTANT.  
20 The coverage shall contain no special limitations on the scope or protection afforded to CITY, its officers,  
21 officials, employees, or volunteers.

22 Except for worker's compensation and professional liability insurance, the policies  
23 mentioned in this subsection shall name CITY as an additional insured and provide for notice of cancellation to  
24 CITY. CONSULTANT shall also provide timely and prompt notice to CITY if CONSULTANT receives any  
25 notice of cancellation or nonrenewal from its insurer.

26 **(2) Primary Coverage.** CONSULTANT'S insurance coverage shall be primary  
27 insurance with respect to CITY, its officers, officials, employees, and volunteers. Any insurance, risk pooling  
28 arrangement, or self-insurance maintained by CITY, its officers, officials, employees, or volunteers shall be in

1 excess of CONSULTANT'S insurance and shall not contribute with it.

2                   **(3) Reporting Provisions.** Any failure to comply with the reporting provisions of  
3 the policy shall not affect the coverage provided to the CITY, its officers, officials, employees, or volunteers.

4                   **(4) Verification of Coverage.** CONSULTANT shall furnish CITY with  
5 certificates of insurance and the original endorsements effecting coverage required by this Agreement. The  
6 certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer  
7 to bind coverage on its behalf. The aforementioned policies shall be issued by an insurance carrier having a  
8 rating of Best A-7 or better which is satisfactory to the City Attorney and shall be delivered to CITY at the time  
9 of the execution of this Agreement or before work commences. Such policies and certificates shall be in a form  
10 approved by the City Attorney. CITY reserves the right to require complete certified copies of all required  
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13                   CITY may, at any time, by ten (10) days' written notice, suspend further performance by  
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22 this Agreement. In the event of any termination, CONSULTANT shall promptly deliver to the CITY any and  
23 all finished and unfinished reports or other written, recorded, photographic, or visual materials, documents,  
24 data, and other deliverables ("Work Materials") prepared for the CITY prior to the effective date of such  
25 termination, all of which shall become CITY's sole property. After receipt of the Work Materials, CITY will  
26 pay CONSULTANT for the services performed as of the effective date of the termination.

27           10.      COMPLIANCE WITH CIVIL RIGHTS

28                   During the performance of this contract, CONSULTANT agrees as follows:

1           **A. Equal Employment Opportunity.** In connection with the execution of this  
2 AGREEMENT, CONSULTANT shall not discriminate against any employee or applicant for employment  
3 because of race, religion, color, sex, or national origin. Such actions shall include, but not be limited to, the  
4 following: employment, promotion, upgrading, demotion, or transfer; recruitment or recruitment advertising;  
5 layoff or termination; rate of pay or other forms of compensation; and selection for training including  
6 apprenticeship.

7           **B. Nondiscrimination Civil Rights Act of 1964.** CONSULTANT will comply with all  
8 federal regulations relative to nondiscrimination in federally assisted programs.

9           **C. Solicitations for Subcontractors including Procurement of Materials and**  
10 **Equipment.** In all solicitation, either by competitive bidding or negotiations, made by CONSULTANT for  
11 work to be performed under a subcontract including procurement of materials or leases of equipment, each  
12 potential subcontractor, supplier or lessor shall be notified by CONSULTANT of CONSULTANT'S obligation  
13 under this AGREEMENT and the regulations relative to nondiscrimination on the grounds of race, religion,  
14 color, sex, or national origin.

15           11. CONFLICT OF INTEREST

16           A. CONSULTANT covenants and represents that neither it, nor any officer or principal of  
17 its firm, has, or shall acquire any interest, directly or indirectly, which would conflict in any manner with the  
18 interests of CITY or which would in any way hinder CONSULTANT's performance of services under this  
19 Agreement. CONSULTANT further covenants that in the performance of the Agreement, no person having  
20 any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express  
21 written consent of the CITY. CONSULTANT agrees to at all times avoid conflicts of interest, or the  
22 appearance of any conflicts of interest, with the interests of the CITY in the performance of this Agreement.

23           B. CONSULTANT is not a designated employee within the meaning of the Political  
24 Reform Act because CONSULTANT:

25                   (1) Will conduct research and arrive at conclusions with respect to its rendition of  
26 information, advice, recommendation or counsel independent of the control and direction of the CITY or of any  
27 CITY official, other than normal contract monitoring; and

28                   (2) Possesses no authority with respect to any CITY decision beyond the rendition of

1 information, advice, recommendation or counsel. (2 Cal. Code Regs. § 18700(a)(2).)

2 12. INDEPENDENT CONTRACTOR

3 In assuming and performing the services, CONSULTANT is an independent contractor and  
4 shall not be eligible for any benefits, which the CITY may provide its employees, except as expressly provided  
5 for in the AGREEMENT. All persons, if any, hired by CONSULTANT shall be employees or subcontractors of  
6 CONSULTANT and shall not be construed as employees or agents of the CITY in any respect.  
7 CONSULTANT shall have responsibility for and control over the means of providing services under this  
8 AGREEMENT.

9 13. COMPLIANCE WITH LAWS

10 CONSULTANT shall comply with all applicable federal, State of California, and local laws,  
11 rules, and regulations and shall obtain all applicable licenses and permits for the conduct of its business and the  
12 performance of the services.

13 14. CHOICE OF LAW

14 This Agreement shall be construed and interpreted in accordance with the laws of the State of  
15 California, excluding any choice of law rules which may direct the application of the laws of another  
16 jurisdiction. In the event that suit shall be brought by either party hereunder, the parties agree that trial of such  
17 action shall be held exclusively in a state court in the County of Contra Costa, California.

18 15. NON-WAIVER

19 The waiver by either party of any breach of any term, covenant, or condition contained in the  
20 AGREEMENT, or any default in their performance of any obligations under the AGREEMENT shall not be  
21 deemed to be a waiver of any other breach or default of the same or any other term, covenant, condition, or  
22 obligation, nor shall any waiver of any incident of breach of default constitute a continuing waiver of same.

23 16. ENFORCEABILITY; INTERPRETATION

24 In the event that any of the provisions or portions of application of any of the provisions of the  
25 AGREEMENT are held to be illegal or invalid by a court of competent jurisdiction, CITY and CONSULTANT  
26 shall negotiate an equitable adjustment in the provisions of the AGREEMENT with a view toward affecting the  
27 purpose of the AGREEMENT. The illegality or invalidity of any of the provisions or portions of application of  
28 any of the provisions of the AGREEMENT shall not affect the legality or enforceability of the remaining

1 provisions or portions of application of any of the provisions of the AGREEMENT. This Agreement shall be  
2 interpreted as though it was a product of a joint drafting effort and no provisions shall be interpreted against a  
3 party on the ground that said party was solely or primarily responsible for drafting the language to be  
4 interpreted.

5 17. INTEGRATION

6 The AGREEMENT contains the entire AGREEMENT and understanding between the parties  
7 as to the subject matter of this AGREEMENT. It merges and supersedes all prior or contemporaneous  
8 agreements, commitments, representation, writings, and discussions between CONSULTANT and CITY,  
9 whether oral or written.

10 18. SUCCESSORS AND ASSIGNS; NO THIRD PARTY BENEFICIARIES; NO JOINT  
11 VENTURE

12 CITY and CONSULTANT respectively, bind themselves, their successors, assigns, and legal  
13 representatives to the terms and obligations of this Agreement. CONSULTANT shall not assign or transfer any  
14 interest in the Agreement without the CITY's prior written consent, which consent shall be in the CITY's sole  
15 discretion. Any attempted assignment or transfer in breach of this provision shall be void. This Agreement is  
16 not intended and shall not be construed to create any third party benefit. This Agreement is not intended and  
17 shall not be construed to create a joint venture or partnership between the parties. CONSULTANT, its officers,  
18 employees and agents shall not have any power to bind or commit the CITY to any decision.

19 19. FINANCIAL RECORDS

20 Records of CONSULTANT's direct labor costs, payroll costs, and reimbursable expenses  
21 pertaining to this project covered by this AGREEMENT will be kept on a generally recognized accounting  
22 basis and made available to CITY if and when required.

23 20. NOTICES

24 All notices required hereunder shall be in writing and mailed postage prepaid by Certified or  
25 Registered mail, return receipt requested, or by personal delivery to the CITY's address as shown below, or  
26 such other places as CITY or CONSULTANT may, from time to time, respectively, designate in a written  
27 notice given to the other. Notice shall be deemed received three (3) days after the date of the mailing thereof or  
28 upon personal delivery.

1 To CITY

**Robert Ovadia, City Engineer**  
**Community & Economic Development Department**  
**City of Concord**  
**1950 Parkside Drive, MS/40**  
**Concord, CA 94519**  
**Phone: (925) 671-3470**  
**Fax: (925) 798-9692**

2  
3  
4  
5  
6 To CONSULTANT

**Noah T. Smith, Senior Associate**  
**Neil O. Anderson & Associates**  
**5075 Commercial Circle, Suite E**  
**Concord, CA 94520**  
**Phone: (925) 609-7224**

7  
8  
9  
10 21. TERM

11 The term of this AGREEMENT shall be from the date executed above through **June 30<sup>th</sup>**,  
12 **2017**, with the option of one one-year extension upon mutual agreement by both CITY and CONSULTANT.  
13 The City Manager is authorized to approve the extension.

14 22. NON-LIABILITY

15 No member of the CITY and no other officer, employee or agent of the CITY shall be  
16 personally liable to CONSULTANT or otherwise in the event of any default or breach of the CITY, or for any  
17 amount which may become due to CONSULTANT or any successor in interest, or for any obligations directly  
18 or indirectly incurred under the terms of this Agreement.

19 23. EXECUTION

20 Each individual or entity executing this Agreement on behalf of CONSULTANT represents  
21 and warrants that he or she or it is duly authorized to execute and deliver this Agreement on behalf of  
22 CONSULTANT and that such execution is binding upon CONSULTANT.

23 This Agreement may be executed in several counterparts, each of which shall constitute one  
24 and the same instrument and shall become binding upon the parties when at least one copy hereof shall have  
25 been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or  
26 account for more than one such counterpart.

27 **IN WITNESS WHEREOF**, the parties have executed this AGREEMENT in three (3) copies as of the  
28 date and year first written above.

1 **CONSULTANT**

CITY OF CONCORD

2  
3 By: \_\_\_\_\_

By: \_\_\_\_\_

4 Name: Noah T. Smith  
5 Title: Senior Associate  
6 Address: 5075 Commercial Circle, Suite E  
Concord, CA 94520  
7 Telephone: (925) 609-7224

Name: Valerie Barone  
Title: City Manager  
Address: 1950 Parkside Drive, MS 01  
Concord, CA 94519  
Telephone: (925) 671-3175

8 APPROVED AS TO FORM:

ATTEST:

9  
10 \_\_\_\_\_  
City Attorney

\_\_\_\_\_

11 Date: \_\_\_\_\_, 2015

13 FINANCE DIRECTOR'S CERTIFICATION:

14 Concord, California

15 Date: \_\_\_\_\_, 2015

17 I HEREBY CERTIFY THAT ADEQUATE FUNDS EXIST OR WILL BE RECEIVED  
18 DURING THE CURRENT FISCAL YEARS 2015-16 AND 2016-17 TO PAY THE  
ANTICIPATED EXPENSES TO BE INCURRED PURSUANT TO THIS CONTRACT.

19 THE SUM OF **\$250,000.**

21 \_\_\_\_\_  
22 Finance Director's Signature

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

1 THIS AGREEMENT made and entered into on July 1<sup>st</sup>, 2015 by and between the City of Concord  
2 (hereinafter "CITY"), located in the County of Contra Costa, State of California, and Geocon Consultants,  
3 Inc., (hereinafter "CONSULTANT"), whose address is 6671 Brisa Street, Livermore, CA 94550.

4 THE PARTIES ENTER THIS AGREEMENT based upon the following facts, understandings and  
5 intentions:

6 CITY desires to contract with CONSULTANT and CONSULTANT to contract with CITY for  
7 provision by CONSULTANT to CITY for professional services as further described herein, upon the terms and  
8 conditions hereinafter set forth.

9 NOW, THEREFORE, IN CONSIDERATION of the mutual covenants and promises of the parties  
10 herein contained, the parties hereto agree as follows:

11 1. SERVICES

12 CONSULTANT shall provide services for specific projects as may be requested by CITY;  
13 such services shall be defined, scheduled, and authorized in subsequent Task Orders. Services may include, but  
14 not be limited to:

- 15 ● Geotechnical services related to CIP Projects
- 16 ● Materials Testing services related to CIP Projects
- 17 ● Environmental services related to CIP Projects
- 18 ● Other as-needed services;

19 CONSULTANT shall be an independent contractor and shall have responsibility for and  
20 control over the details and means of providing its services under this AGREEMENT. CONSULTANT agrees  
21 that its services shall be performed with due diligence and in accordance with generally accepted engineering  
22 practices.

23 CONSULTANT shall use its best efforts to perform and coordinate all activities in a timely  
24 manner so that the projects will be completed according to the established project schedules.

25 2. AUTHORIZED REPRESENTATIVES

26 Authorized representatives shall represent CITY and CONSULTANT in all matters pertaining  
27 to the services to be ordered by CITY or rendered by CONSULTANT under this Agreement except where  
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1 approval for the CITY is specifically required by the City Council. The CITY'S authorized representative shall  
2 be the City Engineer. Said City Engineer is authorized to execute Task Orders on behalf of CITY, including  
3 providing for CONSULTANT to be compensated not more than \$50,000 for each project. Task Orders  
4 providing for more than \$50,000 compensation for one project shall be presented to the City Council for its  
5 consideration.

6 CONSULTANT authorized representative shall be **Shane Rodacker, Vice President**.

7 3. COMPENSATION

8 CONSULTANT shall be compensated, not to exceed \$250,000 per fiscal year for basic  
9 services rendered under Section 1, as more particularly described in authorized Task Orders, in accordance with  
10 the terms and conditions included therein.

11 CONSULTANT may submit monthly statements for services rendered; all statements shall  
12 include adequate documentation demonstrating work performed during the billing period and shall conform to  
13 Federal Funding invoicing requirements, if applicable. It is intended that payments to CONSULTANT will be  
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8 compiled by the CONSULTANT under the Agreement shall be vested in the CITY, none of which shall be  
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10 consent of the CITY. Basic survey notes and sketches, charts, computations, and other data prepared or  
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28                   During the performance of this contract, CONSULTANT agrees as follows:

1           **A. Equal Employment Opportunity.** In connection with the execution of this  
2 AGREEMENT, CONSULTANT shall not discriminate against any employee or applicant for employment  
3 because of race, religion, color, sex, or national origin. Such actions shall include, but not be limited to, the  
4 following: employment, promotion, upgrading, demotion, or transfer; recruitment or recruitment advertising;  
5 layoff or termination; rate of pay or other forms of compensation; and selection for training including  
6 apprenticeship.

7           **B. Nondiscrimination Civil Rights Act of 1964.** CONSULTANT will comply with all  
8 federal regulations relative to nondiscrimination in federally assisted programs.

9           **C. Solicitations for Subcontractors including Procurement of Materials and**  
10 **Equipment.** In all solicitation, either by competitive bidding or negotiations, made by CONSULTANT for  
11 work to be performed under a subcontract including procurement of materials or leases of equipment, each  
12 potential subcontractor, supplier or lessor shall be notified by CONSULTANT of CONSULTANT'S obligation  
13 under this AGREEMENT and the regulations relative to nondiscrimination on the grounds of race, religion,  
14 color, sex, or national origin.

15           11. CONFLICT OF INTEREST

16           A. CONSULTANT covenants and represents that neither it, nor any officer or principal of  
17 its firm, has, or shall acquire any interest, directly or indirectly, which would conflict in any manner with the  
18 interests of CITY or which would in any way hinder CONSULTANT's performance of services under this  
19 Agreement. CONSULTANT further covenants that in the performance of the Agreement, no person having  
20 any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express  
21 written consent of the CITY. CONSULTANT agrees to at all times avoid conflicts of interest, or the  
22 appearance of any conflicts of interest, with the interests of the CITY in the performance of this Agreement.

23           B. CONSULTANT is not a designated employee within the meaning of the Political  
24 Reform Act because CONSULTANT:

25                   (1) Will conduct research and arrive at conclusions with respect to its rendition of  
26 information, advice, recommendation or counsel independent of the control and direction of the CITY or of any  
27 CITY official, other than normal contract monitoring; and

28                   (2) Possesses no authority with respect to any CITY decision beyond the rendition of

1 information, advice, recommendation or counsel. (2 Cal. Code Regs. § 18700(a)(2).)

2 12. INDEPENDENT CONTRACTOR

3 In assuming and performing the services, CONSULTANT is an independent contractor and  
4 shall not be eligible for any benefits, which the CITY may provide its employees, except as expressly provided  
5 for in the AGREEMENT. All persons, if any, hired by CONSULTANT shall be employees or subcontractors of  
6 CONSULTANT and shall not be construed as employees or agents of the CITY in any respect.  
7 CONSULTANT shall have responsibility for and control over the means of providing services under this  
8 AGREEMENT.

9 13. COMPLIANCE WITH LAWS

10 CONSULTANT shall comply with all applicable federal, State of California, and local laws,  
11 rules, and regulations and shall obtain all applicable licenses and permits for the conduct of its business and the  
12 performance of the services.

13 14. CHOICE OF LAW

14 This Agreement shall be construed and interpreted in accordance with the laws of the State of  
15 California, excluding any choice of law rules which may direct the application of the laws of another  
16 jurisdiction. In the event that suit shall be brought by either party hereunder, the parties agree that trial of such  
17 action shall be held exclusively in a state court in the County of Contra Costa, California.

18 15. NON-WAIVER

19 The waiver by either party of any breach of any term, covenant, or condition contained in the  
20 AGREEMENT, or any default in their performance of any obligations under the AGREEMENT shall not be  
21 deemed to be a waiver of any other breach or default of the same or any other term, covenant, condition, or  
22 obligation, nor shall any waiver of any incident of breach of default constitute a continuing waiver of same.

23 16. ENFORCEABILITY; INTERPRETATION

24 In the event that any of the provisions or portions of application of any of the provisions of the  
25 AGREEMENT are held to be illegal or invalid by a court of competent jurisdiction, CITY and CONSULTANT  
26 shall negotiate an equitable adjustment in the provisions of the AGREEMENT with a view toward affecting the  
27 purpose of the AGREEMENT. The illegality or invalidity of any of the provisions or portions of application of  
28 any of the provisions of the AGREEMENT shall not affect the legality or enforceability of the remaining

1 provisions or portions of application of any of the provisions of the AGREEMENT. This Agreement shall be  
2 interpreted as though it was a product of a joint drafting effort and no provisions shall be interpreted against a  
3 party on the ground that said party was solely or primarily responsible for drafting the language to be  
4 interpreted.

5 17. INTEGRATION

6 The AGREEMENT contains the entire AGREEMENT and understanding between the parties  
7 as to the subject matter of this AGREEMENT. It merges and supersedes all prior or contemporaneous  
8 agreements, commitments, representation, writings, and discussions between CONSULTANT and CITY,  
9 whether oral or written.

10 18. SUCCESSORS AND ASSIGNS; NO THIRD PARTY BENEFICIARIES; NO JOINT  
11 VENTURE

12 CITY and CONSULTANT respectively, bind themselves, their successors, assigns, and legal  
13 representatives to the terms and obligations of this Agreement. CONSULTANT shall not assign or transfer any  
14 interest in the Agreement without the CITY's prior written consent, which consent shall be in the CITY's sole  
15 discretion. Any attempted assignment or transfer in breach of this provision shall be void. This Agreement is  
16 not intended and shall not be construed to create any third party benefit. This Agreement is not intended and  
17 shall not be construed to create a joint venture or partnership between the parties. CONSULTANT, its officers,  
18 employees and agents shall not have any power to bind or commit the CITY to any decision.

19 19. FINANCIAL RECORDS

20 Records of CONSULTANT's direct labor costs, payroll costs, and reimbursable expenses  
21 pertaining to this project covered by this AGREEMENT will be kept on a generally recognized accounting  
22 basis and made available to CITY if and when required.

23 20. NOTICES

24 All notices required hereunder shall be in writing and mailed postage prepaid by Certified or  
25 Registered mail, return receipt requested, or by personal delivery to the CITY's address as shown below, or  
26 such other places as CITY or CONSULTANT may, from time to time, respectively, designate in a written  
27 notice given to the other. Notice shall be deemed received three (3) days after the date of the mailing thereof or  
28 upon personal delivery.

1 To CITY

**Robert Ovadia, City Engineer**  
**Community & Economic Development Department**  
**City of Concord**  
**1950 Parkside Drive, MS/40**  
**Concord, CA 94519**  
**Phone: (925) 671-3470**  
**Fax: (925) 798-9692**

2  
3  
4  
5  
6 To CONSULTANT

**Shane Rodacker, Vice President**  
**Geocon Consultants, Inc.**  
**6671 Brisa Street**  
**Livermore, CA 94550**  
**Phone: (925) 371-5900**  
**Fax: (925) 371-5915**

7  
8  
9  
10 21. TERM

11 The term of this AGREEMENT shall be from the date executed above through **June 30<sup>th</sup>**,  
12 **2017**, with the option of one one-year extension upon mutual agreement by both CITY and CONSULTANT.  
13 The City Manager is authorized to approve the extension.

14 22. NON-LIABILITY

15 No member of the CITY and no other officer, employee or agent of the CITY shall be  
16 personally liable to CONSULTANT or otherwise in the event of any default or breach of the CITY, or for any  
17 amount which may become due to CONSULTANT or any successor in interest, or for any obligations directly  
18 or indirectly incurred under the terms of this Agreement.

19 23. EXECUTION

20 Each individual or entity executing this Agreement on behalf of CONSULTANT represents  
21 and warrants that he or she or it is duly authorized to execute and deliver this Agreement on behalf of  
22 CONSULTANT and that such execution is binding upon CONSULTANT.

23 This Agreement may be executed in several counterparts, each of which shall constitute one  
24 and the same instrument and shall become binding upon the parties when at least one copy hereof shall have  
25 been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or  
26 account for more than one such counterpart.

27 **IN WITNESS WHEREOF**, the parties have executed this AGREEMENT in three (3) copies as of the  
28 date and year first written above.

1 **CONSULTANT**

CITY OF CONCORD

2  
3 By: \_\_\_\_\_

By: \_\_\_\_\_

4 Name: Shane Rodacker  
5 Title: Vice President  
6 Address: 6671 Brisa Street  
7 Livermore, CA 94550  
8 Telephone: (925) 371-5900

Name: Valerie Barone  
Title: City Manager  
Address: 1950 Parkside Drive, MS 01  
Concord, CA 94519  
Telephone: (925) 671-3175

9 APPROVED AS TO FORM:

ATTEST:

10 \_\_\_\_\_  
City Attorney

\_\_\_\_\_

11 Date: \_\_\_\_\_, 2015

13 FINANCE DIRECTOR'S CERTIFICATION:

14 Concord, California

15 Date: \_\_\_\_\_, 2015

17 I HEREBY CERTIFY THAT ADEQUATE FUNDS EXIST OR WILL BE RECEIVED  
18 DURING THE CURRENT FISCAL YEARS 2015-16 AND 2016-17 TO PAY THE  
19 ANTICIPATED EXPENSES TO BE INCURRED PURSUANT TO THIS CONTRACT.

20 THE SUM OF **\$250,000.**

21 \_\_\_\_\_  
22 Finance Director's Signature  
23  
24  
25  
26  
27  
28