



TO THE HONORABLE MAYOR AND COUNCIL:

DATE: May 4, 2009

SUBJECT: APPROVE A PROFESSIONAL SERVICES AGREEMENT WITH THEBS CONSULTING, LLC FOR UP TO \$28,800 THROUGH JUNE 30, 2009 AND FOR UP TO \$175,000 PER FISCAL YEAR THROUGH JUNE 30, 2010 WITH TWO ADDITIONAL ONE YEAR RENEWAL OPTIONS FOR INFORMATION TECHNOLOGY SERVER SYSTEM PROJECTS

Report in Brief

Staff recommends that the City Council approve a Professional Services Agreement with Thebs Consulting, LLC for up to \$28,800 through June 30, 2009, and up to \$175,000 per fiscal year through June 30, 2010, with options for two additional one-year extensions at the same rate at the discretion of the Director of Information Technology, for various professional services including Server Systems design, implementation, maintenance and consulting through June 30, 2010 and to authorize the City Manager to execute the agreement.

Matt Bowley, sole proprietor of Thebs Consulting, LLC, has historically provided services to the City of Concord under the multi-year Professional Services Agreement with Robert Half International, Inc. By contracting directly with Matt Bowley, rather than through Robert Half International, Inc., the City can save \$33,150 over the course of a year.

Mr. Bowley supports the Information Technology (IT) Department in day-to-day activities, as well as new implementations like the recent upgrade of the email system, upgrading our Network Appliance storage system and the migration of our physical servers to a virtual host system. The multiple year contract assures the City a continuum of proven expertise, ensures continuity of services and preserves pricing thus reducing costs.

Background

Information Technology is responsible for ongoing operations, support and maintenance of server based systems that support the City's departments and functions, as well as providing technical assistance and support to departments. The department relies on professional consultants for technical professional services and technical support in discharging these responsibilities.

APPROVE A PROFESSIONAL SERVICES AGREEMENT WITH THEBS CONSULTING, LLC FOR UP TO \$28,800 THROUGH JUNE 30, 2009 AND FOR UP TO \$175,000 PER FISCAL YEAR THROUGH JUNE 30, 2010 WITH TWO ADDITIONAL ONE YEAR RENEWAL OPTIONS FOR INFORMATION TECHNOLOGY SERVER SYSTEM PROJECTS

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Discussion

Matt Bowley has worked, through a contract with Robert Half International, Inc., with the City for the last year. In that time period, he has demonstrated the necessary skills required. By contracting directly with Matt Bowley, rather than through Robert Half International, Inc., the City can save \$33,150 over the course of a year. There are no penalties or payments required to contract with him directly.

Under this Professional Services Agreement, staff is authorized to direct the consultant to perform routine support tasks, as well as small projects as they are requested by City users. It is the intent of the Information Technology Department to engage the consultant from one to three years depending on the needs of the department and the fit of the consultant. If these services are no longer desired, the City can terminate the contract with ten days notice.

Fiscal Impact

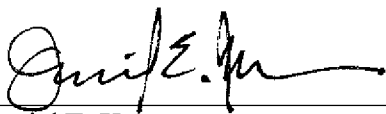
Funding is included in the Information Technology operating budget for Fiscal Year 2008-2009. The contract provides that future years' funding is subject to City Council budget approval during the annual budget process.

Public Contact

Posting of the Council Agenda

Recommendation for Action

Staff recommends the City Council approve a Professional Services Agreement with Thebs Consulting, LLC in the amount of \$28,800 for Fiscal Year 2008-09 and for up to \$175,000 per fiscal year through June 30, 2010, with options for two additional one-year extensions, at the same rate, to provide server systems design, implementation, maintenance and consulting; and to authorize the City Manager to execute the agreement.



Daniel E. Keen
City Manager

Dan.Keen@ci.concord.ca.us

Prepared by: Doug Elloway,
IT Operations Manager
doug.elloway@ci.concord.ca.us

Reviewed by: Ron Puccinelli,
Director of Information Technology
ron.puccinelli@ci.concord.ca.us

Reviewed by: Valerie Barone,
Assistant City Manager
valerie.barone@ci.concord.ca.us

Enclosure: Exhibit A: Professional Services Agreement

1 THIS AGREEMENT ("Agreement") is entered into on May 1, 2009 between the City of
2 Concord (the "CITY") and Thebs Consulting, LLC, 527 Crownpointe Circle, Vacaville, CA 95687
3 (the "CONSULTANT").

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

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

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

10 1. **Effective Date.** The effective date of this Agreement is May 1, 2009.

11 2. **Services.** CONSULTANT shall provide network and infrastructure administration
12 services on an hourly basis at the rate of \$80.00 per hour not to exceed \$28,800 from effective date of
13 this contract through June 30, 2009 and not to exceed \$175,000 per fiscal year from July 1, 2009
14 through June 30, 2010 with the option to renew for two additional one year terms, in order to assist
15 with server system analysis, redesign installation and maintenance, and network and systems
16 administration including, but not limited to, Windows, VMWare and Unix System Administration,
17 NetBackup, Network Appliance, Exchange, Sharepoint, and Active Directory implementation,
18 configuration management, administration and technical support.

19 3. **Authorized Representatives.** Authorized representatives shall represent CITY and
20 CONSULTANT in all matters pertaining to the services to be ordered by CITY or rendered by
21 CONSULTANT under this Agreement except where approval for the City is specifically required by
22 the City Council. All requirements of CITY pertaining to the services to be rendered under this
23 Agreement by CONSULTANT shall be submitted through these representatives and CITY shall
24 cooperate with CONSULTANT in all matters relating to this Agreement in such a manner as will
25 result in the performance of such work without delay.

26 CITY's authorized representative is authorized to execute Purchase Orders on behalf of
27 CITY, providing for CONSULTANT to be compensated not to exceed \$28,800 from effective date of
28 this contract through June 30, 2009 and not to exceed \$175,000 per fiscal year from July 1, 2009

1 throughout the remaining term of the agreement.

2 The CITY authorized representative is Ron Puccinelli, Director of Information Technology.
3 The CONSULTANT authorized representative is Matt Bowley, President.

4 **4. Compensation.** CONSULTANT shall be compensated on a time and materials basis
5 for basic services rendered under Section 2, as more particularly described in authorized Purchase
6 Orders, in accordance with the terms and conditions included therein.

7 CONSULTANT may submit weekly statements for basic and additional services rendered. It
8 is intended that payment to CONSULTANT will be made by CITY within (30) days of receipt of
9 invoice.

10 **5. Term.** The term of this Agreement, subject to termination as set forth in Section 12,
11 shall be from the effective date through June 30, 2010 with the option to renew for two additional one
12 year terms. CITY and CONSULTANT shall negotiate in good faith to establish any change in the
13 hourly rate for the applicable option years.

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

19 **7. Performance by Consultant.** CONSULTANT shall not employ other consultants or
20 contractors without the prior written approval of the City. CONSULTANT hereby designates the
21 CONSULTANT'S representative as the person primarily responsible for the day-to-day performance
22 of CONSULTANT'S work under this Agreement. CONSULTANT shall not change the
23 CONSULTANT'S representative without the prior consent of the City. Unless otherwise expressly
24 agreed by the City, CONSULTANT'S representative shall remain responsible for the quality and
25 timeliness of performance of the services, notwithstanding any permitted or approved delegation
26 hereunder.

27 **8. Ownership and Maintenance of Documents.** All documents furnished by
28 CONSULTANT pursuant to this Agreement are instruments of CONSULTANT's services in respect

1 to this project. They are not intended nor represented to be suitable for reuse by others on extensions
2 of this project or on any other project. Any reuse without specific written verification and adoption by
3 CONSULTANT for the specific purposes intended will be at user's sole risk and without liability or
4 legal exposure and expenses to CONSULTANT, including attorney's fees arising out of such
5 unauthorized reuse.

6 CONSULTANT's records, documents, calculations, and all other instruments of service
7 pertaining to actual project shall be given to CITY at the completion of the project. The City reserves
8 the right to specify the file format that electronic document deliverables are presented to the City. If
9 agreement is terminated per Section 13, deliverables shall be provided based on Section 13
10 requirements.

11 **9. Indemnification.** CONSULTANT agrees to defend, indemnify and hold harmless the
12 City, its officers, agents, employees and volunteers from and against any and all claims, demands,
13 actions, losses, damages, injuries, and liability (including all attorney's fees and other litigation
14 expenses) arising out of the negligent acts or omissions of CONSULTANT in the performance of this
15 Agreement.

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

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

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

26 **C. Compliance with State Workers' Compensation Requirements.** CONSULTANT
27 covenants that it will insure itself against liability for Workers' Compensation pursuant to the
28 provisions of California Labor Code §3700, et seq. CONSULTANT shall, at all times, upon

1 demand of the City Council and properly authorized agents, furnish proof that Workers'
2 Compensation Insurance is being maintained by it in force and effect in accordance with the
3 California Labor Code.

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

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

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

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

20 (4) The aforementioned policies shall be issued by an insurance carrier
21 having a rating of Best A-7 or better which is satisfactory to the City Attorney and
22 shall be delivered to CITY at the time of the execution of this Agreement or as
23 provided below. In lieu of actual delivery of such policies, a Certificate issued by the
24 insurance carrier showing such policy to be in force for the period covered by the
25 Agreement may be delivered to CITY. Such policies and certificates shall be in a form
26 approved by the City Attorney. Except for worker's compensation and professional
27 liability insurance, the policies mentioned in this subsection shall name CITY as an
28 additional insured and provide for thirty (30) days notice of cancellation to CITY. Said

1 policies shall not be canceled earlier than, nor the amount of coverage reduced earlier
2 than, thirty (30) days after the CITY receives notices from the insured of the intent of
3 cancellation or reduction.

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

10 **12. Termination.** CITY may terminate this Agreement for any reason upon ten (10) days
11 written notice to the other party. CITY may terminate the Agreement upon five (5) days written notice
12 if CONSULTANT breaches this Agreement. In the event of termination, CONSULTANT shall
13 promptly deliver to the CITY any reports or other written, recorded, photographic, or visual materials
14 and other deliverables prepared for the CITY prior to the effective date of such termination. After
15 receipt of deliverables, CITY will pay CONSULTANT for the services performed as of the effective
16 date of the termination.

17 **13. Compliance with Civil Rights.** During the performance of this contract,
18 CONSULTANT agrees as follows:

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

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

27 **C. Solicitations for Subcontractors including Procurement of Materials and**
28 **Equipment.** In all solicitation, either by competitive bidding or negotiations, made by

1 CONSULTANT for work to be performed under a subcontract including procurement of
2 materials or leases of equipment, each potential subcontractor, supplier or lessor shall be
3 notified by CONSULTANT of CONSULTANT'S obligation under this Agreement and the
4 regulations relative to nondiscrimination on the grounds of race, religion, color, sex, or
5 national origin.

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

12 **15. Compliance with Laws.** CONSULTANT shall comply with all applicable Federal,
13 State of California, and local laws, rules and regulations and shall obtain all applicable licenses and
14 permits for the conduct of its business and the performance of the services.

15 **16. Choice of Laws.** This Agreement shall be construed and interpreted in accordance
16 with the laws of the State of California, excluding any choice of law rules which may direct the
17 application of the laws of another jurisdiction.

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

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

1 provisions of the Agreement.

2 **19. Integration.** The Agreement contains the entire agreement and understanding between
3 the parties as to the subject matter of this Agreement. It merges and supersedes all prior or
4 contemporaneous agreements, commitments, representation, writings, and discussions between
5 CONSULTANT and CITY, whether oral or written.

6 **20. Successors and Assigns.** CITY and CONSULTANT respectively, bind themselves,
7 their successors, assigns, and legal representatives. CONSULTANT shall not assign or transfer any
8 interest in the Agreement without the City's prior written consent, which consent shall be in the City's
9 sole discretion. Any attempted assignment or transfer in breach of this provision shall be void.

10 **21. Attorney's Fees.** If either party to this Agreement commences any legal action against
11 the other party arising out of this Agreement, the prevailing party shall be entitled to recover its
12 reasonable litigation expenses, including court costs, expert witness fees, discovery expenses, and
13 attorney's fees.

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

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To CITY

**Ron Puccinelli, Director of Information
Technology
Information Technology
City of Concord
1950 Parkside Drive, M/S 05
Concord, CA 94519-2578
Phone: (925) 671-3159
Fax: (925) 671-3198**

To CONSULTANT

**Matt Bowley, President
Thebs Consulting, LLC
527 Crownpointe Circle
Vacaville, CA 95687
Phone: 916-549-1028**

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

CONSULTANT

CITY OF CONCORD

By: _____

By: _____

Name: Matt Bowley
Title: President
Address: 527 Crownpointe Circle
Vacaville, CA 95687
Telephone: 916-549-1028

Name: Daniel E. Keen
Title: City Manager
Address: 1950 Parkside Drive
Concord, CA 94519
Telephone: (925) 671-3150

APPROVED AS TO FORM:

ATTEST:

City Attorney

City Clerk

1 FINANCE DIRECTOR'S CERTIFICATION:

2 Concord, California

3 Date: _____, 2009

4

5 I HEREBY CERTIFY THAT ADEQUATE FUNDS EXIST OR WILL BE RECEIVED
6 DURING THE CURRENT FISCAL YEAR 2008/2009 TO PAY THE ANTICIPATED EXPENSES
7 TO BE INCURRED PURSUANT TO THIS CONTRACT THE SUM OF \$28,800 THROUGH JUNE
8 30, 2009 AND SUBJECT TO CITY COUNCIL APPROVAL DURING ANNUAL BUDGET
9 PROCESS FOR 2009/10 TO PAY THE ANTICIPATED EXPENSES TO BE INCURRED
10 PURSUANT TO THIS CONTRACT THE SUM OF \$ 175,000 PER FISCAL YEAR

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9 Account Code VARIOUS.

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10 _____
11 Finance Director's Signature

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