

**REPORT TO MAYOR AND COUNCIL****TO THE HONORABLE MAYOR AND COUNCIL:**

DATE: June 22, 2009

SUBJECT: APPROVE AGREEMENT FOR PROFESSIONAL SERVICES WITH R-COMPUTER IN AN AMOUNT NOT TO EXCEED \$170,000 FOR INFORMATION TECHNOLOGY DESKTOP SERVICES SUPPORT**Report in Brief**

Staff recommends that the City Council approve the Professional Services Agreement with R-Computer for professional desktop computer services in an amount not to exceed \$170,000 for Fiscal Year 2009-10 and authorize the City Manager to execute the agreement. Services provided through the proposed agreement include support of the City's desktop and laptop computers, and associated equipment including printers and copiers.

Background

The Information Technology Department requires technical expertise in the various desktop computer technologies including preparation, installation, repair and support of 531 City desktop and laptop computers, the installation and support of software (approximately 123 different software applications across the City), and connectivity for printers and copiers and associated equipment. The extreme rate of change in technology, particularly in the desktop computing area, requires a flexibility of skill sets that is most economically obtained through contract services. R-Computer maintains a staff of highly skilled technical professionals that the City can access to meet the needs of the City.

R-Computer has provided professional desktop computer services for the City for the past five years. They have demonstrated proficiency in meeting the City's needs. Security clearance requirements have been satisfied to support the Police Department.

Discussion

Under this Agreement for Professional Services, the Information Technology Customer Service Manager is authorized to direct the consultant to perform routine computer support tasks, as well as small projects as necessary.

The IT Department proposed a more comprehensive approach to providing desktop support services to Council in the May Budget Study Sessions, called "Seat Management," which would have desktop support be provided by a private company. This agreement allows the Department to continue providing desktop services while transitioning to a "Seat Management" approach. R-Computer has a five year track record of providing good service and capable technical staff.

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Fiscal Impact

Funding is included in the Fiscal Year 2009-2010 Information Technology Proposed operating budget and 10-Year Plan.

Public Contact

Posting of the Council Agenda.

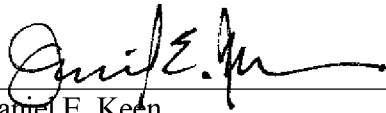
Recommendation for Action

Staff recommends the City Council approve the Professional Services Agreement with R-Computer for professional desktop computer services in an amount not to exceed \$170,000 for Fiscal Year 2009-10 and authorize the City Manager to execute the agreement.

Prepared by: Kathi Amoroso
IT Customer Service Manager
Kathi.Amorosso@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



Daniel E. Keen
City Manager
Dan.Keen@ci.concord.ca.us

Attachment #1: Professional Services Agreement – R Computer

AGREEMENT FOR PROFESSIONAL SERVICES

1 THIS AGREEMENT ("Agreement") is entered into on July 1, 2009 between the City of
2 Concord (the "CITY") and **R Computer, 30 Golf Club Road, Pleasant Hill, CA** (the
3 "CONSULTANT").

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

6 The City desires to contract with **R Computer** and **R Computer** to contract with the City for
7 provision by **R Computer** to the City for professional services as further described herein, upon the
8 terms and conditions hereinafter set forth.

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

11 **1. Effective Date.** The effective date of this Agreement is July 1, 2009.

12 **2. Services.** CONSULTANT shall provide desktop support services at the request of the
13 CITY's authorized representative, on an hourly basis, at the rate of \$70 per hour not to exceed
14 \$170,000 per fiscal year, with options for two additional one-year extensions and only if
15 monies are approved by the City Council in future fiscal year budgets, in order to assist with
16 preparation, installation, repair and support of City desktop and laptop computers, the
17 installation and support of software and connectivity for printers and copiers and associated
18 equipment.

19 **3. Amendment.** If authorized, CONSULTANT shall furnish additional services, which
20 are in addition to the basic services. If additional services are requested by CITY, this Agreement may
21 be amended, modified, or changed by the parties subject to mutual consent by execution of an
22 addendum by authorized representatives of both parties setting forth the additional scope of services to
23 be performed, the performance time schedule, and the compensation for such services.

24 **4. Authorized Representatives.** Authorized representatives shall represent CITY and
25 CONSULTANT in all matters pertaining to the services to be ordered by CITY or rendered by
26 CONSULTANT under this Agreement except where approval for the City is specifically required by
27 the City Council. All requirements of CITY pertaining to the services to be rendered under this
28 Agreement by CONSULTANT shall be submitted through these representatives and CITY shall

1 cooperate with CONSULTANT in all matters relating to this Agreement in such a manner as will
2 result in the performance of such work without delay.

3 CITY's authorized representative is authorized to execute purchase orders on behalf of CITY,
4 up to the total amount of the agreement for each fiscal year.

5 The CITY authorized representative is **Ron Puccinelli, Director of Information Technology**.
6 The CONSULTANT authorized representative is **Ed Roth, President**.

7 **5. Compensation.** CONSULTANT shall be compensated on a time and materials basis
8 for basic services rendered under Section 2 not to exceed \$170,000 for each fiscal year term of
9 this agreement. CONSULTANT may submit weekly statements for basic and additional
10 services rendered. It is intended that payment to CONSULTANT will be made by CITY
11 within (30) days of receipt of invoice.

12 **6. Term.** The term of this Agreement, subject to termination as set forth in Section 13,
13 shall be from the effective date through June 30, 2010, providing that funds are approved by the City
14 Council in future fiscal years' budget.

15 **7. Standard of Performance.** CONSULTANT represents to CITY that the services shall
16 be performed in an expeditious manner and with the degree of skill and care that is required by
17 current, good, and sound procedures and practices. CONSULTANT further agrees that the services
18 shall be in conformance with generally accepted professional standards prevailing at the time work is
19 performed. The CONSULTANT agrees to comply with policies set forth by the CITY regarding the
20 protection of confidential data, including but not limited to Personal Information and Credit Card data.
21 CITY shall make said policies available to the CONSULTANT and CONSULTANT will
22 acknowledge receipt by submitting a signed copy of the policy to the CITY.

23
24 **8. Performance by Consultant** CONSULTANT shall not employ other consultants or
25 contractors to perform City services without the prior written approval of the City. CONSULTANT
26 hereby designates the CONSULTANT'S representative as the person primarily responsible for the
27 day-to-day performance of CONSULTANT'S work under this Agreement. CONSULTANT shall not
28 change the CONSULTANT'S representative without the prior consent of the City. Unless otherwise

1 expressly agreed by the City, CONSULTANT'S representative shall remain responsible for the quality
2 and timeliness of performance of the services, notwithstanding any permitted or approved delegation
3 hereunder.

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

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

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

21 **11. Insurance.** CONSULTANT shall, at its own expense, procure and maintain in full
22 force at all times during 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 two million dollars
25 (\$2,000,000) combined single limit per occurrence or two million dollars (\$2,000,000)
26 aggregate limit for bodily injury, personal 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 Two

1 Million Dollars (\$2,000,000) combined single limit per occurrence for bodily injury, personal
2 injury, and property damage.

3 **C. Professional Liability Coverage.** CONSULTANT shall maintain professional
4 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
6 of this insurance shall be not less than five hundred thousand dollars (\$500,000) on claims
7 made annual aggregate basis or a combined 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
10 provisions of California Labor Code §3700, et seq. CONSULTANT shall, at all times, upon
11 demand of the City Council and properly authorized agents, furnish proof that Workers'
12 Compensation Insurance is being maintained by it in force and effect in accordance with the
13 California Labor Code.

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

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

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

27 (3) Any failure to comply with the reporting provisions of the policy shall
28 not affect the coverage provided to the CITY, its officers, officials, employees, or

1 volunteers.

2 (4) The aforementioned policies shall be issued by an insurance carrier
3 having a rating of Best A-7 or better which is satisfactory to the City Attorney and
4 shall be delivered to CITY at the time of the execution of this Agreement or as
5 provided below. In lieu of actual delivery of such policies, a Certificate issued by the
6 insurance carrier showing such policy to be in force for the period covered by the
7 Agreement may be delivered to CITY. Such policies and certificates shall be in a form
8 approved by the City Attorney. Except for worker's compensation and professional
9 liability insurance, the policies mentioned in this subsection shall name CITY as an
10 additional insured and provide for thirty (30) days notice of cancellation to CITY. Said
11 policies shall not be canceled earlier than, nor the amount of coverage reduced earlier
12 than, thirty (30) days after the CITY receives notices from the insured of the intent of
13 cancellation or reduction.

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

20 **13. Termination.** CITY may terminate this Agreement for any reason upon ten (10) days
21 written notice to the CONSULTANT. CITY may terminate the Agreement upon five (5) days written
22 notice if CONSULTANT breaches this Agreement. In the event of termination, CONSULTANT shall
23 promptly deliver to the CITY any reports or other written, recorded, photographic, visual materials, or
24 electronic/computer data and other deliverables prepared for the CITY prior to the effective date of
25 such termination. After receipt of deliverables, CITY will pay CONSULTANT for the services
26 performed as of the effective date of the termination.

27 **14. Compliance with Civil Rights.** During the performance of this contract,
28 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
3 employment because of race, religion, color, sex, or national origin. Such actions shall include,
4 but not be limited to, the following: employment, promotion, upgrading, demotion, or transfer;
5 recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of
6 compensation; and selection for training including 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
11 CONSULTANT for work to be performed under a subcontract including procurement of
12 materials or leases of equipment, each potential subcontractor, supplier or lessor shall be
13 notified by CONSULTANT of CONSULTANT'S obligation under this Agreement and the
14 regulations relative to nondiscrimination on the grounds of race, religion, color, sex, or
15 national origin.

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

22 **16. Compliance with Laws.** CONSULTANT shall comply with all applicable Federal,
23 State of California, and local laws, rules, and regulations and shall obtain all applicable licenses and
24 permits for the conduct of its business and the performance of the services.

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

28 **18. Non-Waiver.** The waiver by either party of any breach of any term, covenant, or

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

5 **19. Enforceability.** In the event that any of the provisions or portions of application of
6 any of the provisions of the Agreement are held to be illegal or invalid by a court of competent
7 jurisdiction, CITY and CONSULTANT shall negotiate an equitable adjustment in the provisions of
8 the Agreement with a view toward effecting the purpose of the Agreement. The illegality or invalidity
9 of any of the provisions or portions of application of any of the provisions of the Agreement shall not
10 affect the legality or enforceability of the remaining provisions or portions of application of any of the
11 provisions of the Agreement.

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

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

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

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

27 **24. Notices.** All notices required hereunder shall be in writing and mailed postage prepaid
28 by Certified or Registered mail, return receipt requested, or by personal delivery to the City's address

1 as shown below, or such other places as CITY or CONSULTANT may, from time to time,
2 respectively, designate in a written notice given to the other. Notice shall be deemed received three (3)
3 days after the date of the mailing thereof or upon personal delivery.

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To CITY

Ron Puccinelli
Director of Information Technology
City of Concord
1950 Parkside Drive
Concord, CA 94519-2578
Phone: (925) 671-3189
Fax: (925) 671-3198

To CONSULTANT

Ed Roth
President
R Computer
30 Golf Club Road
Pleasant Hill, CA 94523
Phone: 925-798-4884

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: Ed Roth
Title: President
Address: 30 Golf Club Road
Pleasant Hill, CA 94523
Telephone: 925-798-4884

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: _____, 200__

4

5 I HEREBY CERTIFY THAT ADEQUATE FUNDS EXIST OR WILL BE RECEIVED
6 DURING THE FISCAL YEAR 2009/10 TO PAY THE ANTICIPATED
7 EXPENSES TO BE INCURRED PURSUANT TO THIS CONTRACT THE SUM OF
8 \$ 170,000

9 Account Code 634 26251A01-63158.

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9 _____
Finance Director's Signature

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