

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

DATE: June 22, 2009

SUBJECT: APPROVE PROFESSIONAL SERVICES AGREEMENT FOR INFORMATION TECHNOLOGY NETWORK SYSTEM PROJECTS WITH BOTTS STRATEGIC SOLUTIONS FOR UP TO \$185,000 FOR FISCAL YEAR 2009-10, WITH TWO ADDITIONAL ONE YEAR RENEWAL OPTIONS

Report in Brief

Staff recommends that the City Council approve the Professional Services Agreement with Botts Strategic Solutions for up to \$185,000 for Fiscal Year 2009-10, with options for two additional one-year extensions and authorize the City Manager to execute the agreement. Projects performed by Botts Strategic Solutions will include compliance with new Department of Justice and Payment Card Industry security standards and the Telephone System Replacement.

The multi-year contract assures the City a continuity of services and preserves pricing for the term of the agreement. The compensation rate of \$80 per hour reflects a \$5 per hour reduction from this fiscal year, in recognition of the City's financial challenges.

Background

Garris Botts, sole proprietor of Botts Strategic Solutions, has a track record of supporting the City's network infrastructure in day-to-day activities and projects. During the last two years, City projects that Botts was instrumental in supporting included the Computer Aided Dispatch (CAD) implementation, upgrading our Metropolitan Area Network and Mobile Communications for Police Vehicles.

Discussion

The Information Technology (IT) department continues to require technical expertise in CISCO network equipment, such as switches, routers, firewalls, and wireless Access Points. Garris Botts has this expertise.

In addition to on-going support of the network infrastructure, Mr. Botts will have a key role in multiple special projects, including implementation of a replacement telephone system, achieving compliance with Department of Justice and Payment Card Industry security requirements, and securely connecting external vendors' networks to allow the city to contract for application support.

**APPROVE PROFESSIONAL SERVICES AGREEMENT FOR INFORMATION
TECHNOLOGY NETWORK SYSTEM PROJECTS WITH BOTTS STRATEGIC
SOLUTIONS FOR UP TO \$185,000 FOR FISCAL YEAR 2009-10, WITH TWO
ADDITIONAL ONE YEAR RENEWAL OPTIONS**

JUNE 22, 2009

Page 2

Fiscal Impact

Under this Professional Services Agreement, the Director of Information Technology is authorized to direct the consultant to perform routine support tasks, and projects as they are requested by City departments, and may compensate for those requested services, up to \$185,000 in Fiscal Year 09-10. This agreement includes an option for two more years of service dependant upon IT budget approvals and the IT Director's determination that the need for the contract exists.

For the first year of the agreement funding is included in the Fiscal Year 2009-2010 Information Technology Proposed operating budget. Future years' funding is included in the 10-year Plan but remains at Council's discretion as each fiscal year's budget is approved.

Public Contact

Posting of the Council Agenda

Recommendation for Action

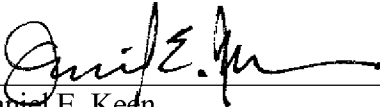
Staff recommends the City Council approve a Professional Services Agreement with Botts Strategic Solutions for up to \$185,000 for Fiscal Year 2009-10, with options for two additional one-year extensions at the same rate, to provide the Network system maintenance and implementations and authorize the City Manager to execute the agreement.

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

Prepared by: Sandi Hildreth
Administrative Analyst
Sandi.Hildreth@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 Agreements

AGREEMENT FOR PROFESSIONAL SERVICES

1 THIS AGREEMENT ("Agreement") is entered into on July 1, 2009 between the City of
2 Concord (the "CITY") and Botts Strategic Solutions, 7405 Greenback Lane, Suite 168, Citrus Heights,
3 CA 95610 (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 July 1, 2009.

11 **2. Services.** CONSULTANT shall provide network infrastructure administration services
12 on an hourly basis at the rate of \$80.00 per hour not to exceed \$185,000 per fiscal year, and only if
13 monies are approved by the City Council in future fiscal year budgets, in order to assist with network
14 system analysis, network system redesign, firewall, security, threat remediation and network
15 infrastructure administration including, but not limited to, monitoring, WiFi and VOIP telephone
16 system implementation.

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

24 CITY's authorized representative is authorized on behalf of CITY, providing for
25 CONSULTANT to be compensated not to exceed \$185,000 per fiscal year throughout the remaining
26 term of the agreement.

27 The CITY authorized representative is Ron Puccinelli, Director of Information Technology.
28 The CONSULTANT authorized representative is Garrison Botts, President.

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

4 CONSULTANT may submit bi-weekly statements for basic and additional services rendered.
5 It is intended that payment to CONSULTANT will be made by CITY within (30) days of receipt of
6 invoice.

7 **5. Term.** The term of this Agreement, subject to termination as set forth in Section 12,
8 shall be from the effective date through June 30, 2010 with the option **by CITY upon 45 days**
9 **written notice to CONSULTANT** to renew for 2 additional one year terms **upon the same terms**
10 **and conditions of the original agreement, and providing** that funds are approved by the City
11 Council in future fiscal years' budget.

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

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

25 **8. Ownership and Maintenance of Documents.** All documents furnished by
26 CONSULTANT pursuant to this Agreement are instruments of CONSULTANT's services in respect
27 to this project. They are not intended nor represented to be suitable for reuse by others on extensions
28 of this project or on any other project. Any reuse without specific written verification and adoption by

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

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

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

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

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

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

24 **C. Compliance with State Workers' Compensation Requirements.** CONSULTANT
25 covenants that it will insure itself against liability for Workers' Compensation pursuant to the
26 provisions of California Labor Code §3700, et seq. CONSULTANT shall, at all times, upon
27 demand of the City Council and properly authorized agents, furnish proof that Workers'
28 Compensation Insurance is being maintained by it in force and effect in accordance with the

1 California Labor Code.

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

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

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

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

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

1 cancellation or reduction.

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

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

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

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

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

25 **C. Solicitations for Subcontractors including Procurement of Materials and**
26 **Equipment.** In all solicitation, either by competitive bidding or negotiations, made by
27 CONSULTANT for work to be performed under a subcontract including procurement of
28 materials or leases of equipment, each potential subcontractor, supplier or lessor shall be

1 notified by CONSULTANT of CONSULTANT'S obligation under this Agreement and the
2 regulations relative to nondiscrimination on the grounds of race, religion, color, sex, or
3 national origin.

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

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

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

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

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

28 **19. Integration.** The Agreement contains the entire agreement and understanding between

1 the parties as to the subject matter of this Agreement. It merges and supersedes all prior or
2 contemporaneous agreements, commitments, representation, writings, and discussions between
3 CONSULTANT and CITY, whether oral or written.

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

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

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

17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

To CITY

**Ron Puccinelli,
Director of Information Technology
City of Concord
1950 Parkside Drive, M/S 05
Concord, CA 94519-2578
Phone: (925) 671-3189
Fax: (925) 671-3198**

To CONSULTANT

**Garrison Botts, President
Botts Strategic Solutions
7405 Greenback Ln. Suite 168
Citrus Heights, CA 95610
Phone: 916 716-2362**

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: Garrison Botts
Title: President
Address: 7405 Greenback Ln. Suite 168
Citrus Heights, CA 95610
Telephone: 916 716-2362

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 2009/10 TO PAY THE ANTICIPATED
7 EXPENSES TO BE INCURRED PURSUANT TO THIS CONTRACT.

8 THE SUM OF \$ 185,000.
9 Account Code 63426151A09-63158.

10

11 _____
12 Finance Director's Signature

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28