

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

DATE: June 22, 2009

**SUBJECT: APPROVE TWO AGREEMENTS BETWEEN THE CITY OF CONCORD AND THE CITY OF CLAYTON TO PROVIDE FOR (1) DISPATCH, COMPUTER AIDED DISPATCH SYSTEM SERVICES, TEMPORARY HOLDING AND DETENTION SERVICES; AND (2) TELEPHONE AND VOICE MAIL SERVICES**

**Report in Brief**

Staff recommends Council approve two agreements with the City of Clayton. The first agreement is for Dispatch, Computer Aided Dispatch (CAD) system services, temporary holding and detention services for a three (3) year term with revenues of \$154,565 plus a 3% CPI increase per fiscal year. The second agreement is for Telephone and Voice Mail Services with a term ending December 31, 2010 and revenues of \$1,867 plus a 3% CPI increase per fiscal year. Both agreements may be adjusted based on the actual CPI for any given year. Staff recommends Council authorize the City Manager to execute the Agreements.

The proposed agreements contain provisions to adjust the fees annually based on the actual systems utilized by Clayton and to reflect any major upgrades and/or replacements to computer and communication systems. The combined revenues over the next three years is \$156,432 per fiscal year plus a CPI each year.

**Background**

The City of Concord has a long history of providing Police Dispatch, Computer Aided Dispatch (CAD) system, temporary holding and detention services, and telephone and voice mail services to the City of Clayton. The annual reimbursement from Clayton for these services has been \$24,000. With the installation of a new and more sophisticated CAD system, Concord staff initiated discussions with Clayton staff to review the features of the new system and to develop a reimbursement plan that would attain cost recovery for Concord. The City Managers for both Cities support the Agreement being presented to Council for approval.

**Discussion**

Below is a discussion of the unique features of each of the two proposed agreements. Both agreements will be subject to an annual CPI adjustment. Staff believes it is appropriate for the Council to enter into these agreements because they provide mutual benefits. Clayton benefits from the provision of the services at a reasonable price. Concord receives compensation for the cost of providing the services, including a modest

**APPROVE TWO AGREEMENTS BETWEEN THE CITY OF CONCORD AND  
THE CITY OF CLAYTON TO PROVIDE FOR (1) DISPATCH, COMPUTER AIDED DISPATCH  
SYSTEM SERVICES, TEMPORARY HOLDING AND DETENTION SERVICES; AND (2)  
TELEPHONE AND VOICE MAIL SERVICES**

June 22, 2009

Page 2

sharing of overhead costs. Both communities benefit from the continued strong relationship between the two communities.

**Dispatch, CAD, Temporary Holding and Detention Services Agreement:** Under the proposed Dispatch Services agreement the Concord Police Department will continue providing Police Dispatch services, including 911 call-taking, for the City of Clayton. Additionally, Clayton Police use the Concord Police voice radio system, Computer Aided Dispatch (CAD) system, Crime Management System and EZ-Writer system to facilitate communications, reporting and records functions. The Information Technology Department will continue to provide the technical support of the systems employed by the Clayton Police Department.

This agreement has a three year term with an option for an additional two-year extension, unless Clayton opts not to renew. Additionally, Clayton may terminate the agreement for any reason with six months written notice.

Many of the Concord police systems used by the Clayton Police Department are planned for significant upgrades or replacement over the term of the agreement. Consequently, the agreement acknowledges there may be increases in the cost to the City of Concord to provide services and both cities must review and agree to any new costs associated with the upgrade or replacement of systems.

**Telephone and Voice Mail Services Agreement:** Under the proposed Telephone and Voice Mail Services Agreement the Information Technology Department will continue providing technical support services for the telephone system and voice mail services utilized by Clayton staff. The agreement has a term of July 1, 2009 through December 31, 2010. Concord will not be able to support the current NEC system (currently Concord's and Clayton's telephone system) beyond December 31, 2010. Concord is currently in the process of updating its telephone system because of its obsolescence. The agreement gives Clayton the option to replace their telephone system with one compatible with Concord's updated telephone system and have Concord continue to provide telephone and voice mail support. Clayton has not yet made a decision on this.

**Fiscal Impact**

The agreements are cost neutral on the City's general fund budget. The cost of providing the service required by the agreement is paid from the general fund; the revenue received from Clayton as payment for services received goes into the City's general fund.

**Public Contact**

Posting of the Council Agenda

**APPROVE TWO AGREEMENTS BETWEEN THE CITY OF CONCORD AND  
THE CITY OF CLAYTON TO PROVIDE FOR (1) DISPATCH, COMPUTER AIDED DISPATCH  
SYSTEM SERVICES, TEMPORARY HOLDING AND DETENTION SERVICES; AND (2)  
TELEPHONE AND VOICE MAIL SERVICES**

June 22, 2009

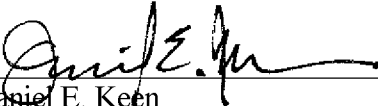
Page 3

**Recommendation for Action**

Staff recommends the City Council approve two (2) three-year agreements with the City of Clayton which authorize the City of Concord to provide the City of Clayton with (1) Dispatch, Computer Aided Dispatch System Services and (2) Telephone and Voice Mail Services in the combined amount of \$156,432 adjusted by actual annual CPI, and a one-time fee of \$13,173 and authorize the City Manager to execute the agreements.

Prepared by: Ron Puccinelli  
Director of Information Technology  
[Ron.Puccinelli@ci.concord.ca.us](mailto:Ron.Puccinelli@ci.concord.ca.us)

Reviewed by: Valerie Barone  
Assistant City Manager  
[Valerie.Barone@ci.concord.ca.us](mailto:Valerie.Barone@ci.concord.ca.us)

  
\_\_\_\_\_  
Daniel E. Keen  
City Manager  
[Dan.Keen@ci.concord.ca.us](mailto:Dan.Keen@ci.concord.ca.us)

Attachment #1 – Agreement for Dispatch, CAD, and Temporary Detention Services

Attachment #2 – Agreement for Telephone and Voice Mail Services



1                   **D.       Electronic Messaging System (E-Mail)**

2                   CONCORD will allow the CLAYTON Police Department to use Concord's e-  
3                   mail system as more specifically set forth in Exhibit "A".

4                   **2.       Detention Services**

5                   CONCORD will accept individuals arrested by CLAYTON into CONCORD's temporary  
6                   holding facility. CONCORD shall apply its detention guidelines. Prisoners not meeting  
7                   CONCORD's guidelines will not be accepted. Charges associated with an arrest and  
8                   housing of a prisoner whose only charge is on a warrant shall be billed based upon Contra  
9                   Costa County policy.

10                  **3.       Term**

11                  The term of this Agreement shall be three (3) years commencing July 1, 2009 and ending  
12                  June 30, 2012 and shall automatically renew for an additional two (2) years unless  
13                  notification of termination is given as provided herein.

14                  **4.       Payment**

15                  A.       CLAYTON shall make monthly payments for the services provided in  
16                  Section 1, as more specifically set forth in Exhibit "B", subject to annual  
17                  adjustment as provided herein. The monthly payment shall be invoiced by  
18                  CONCORD and paid by CLAYTON within thirty (30) days of date received.

19                  B.       For all other services the price shall be determined based on the direct  
20                  incremental cost of provisioning services and support for the various systems.  
21                  This pricing shall be recalculated at such time as any system undergoes  
22                  replacement, extensive modification/addition/subtraction in functionality, or when  
23                  services and/or systems are added or removed from use by CLAYTON. This  
24                  provision is not subject to any caps.  
25  
26  
27  
28

1  
2 **5. Price Adjustment**

3 Each year the price for all services rendered through this Agreement shall be adjusted  
4 using the January to January San Francisco-Oakland-San Jose Consumer Price Index  
5 (CPI) rate (base period 1982). Any such incremental adjustment will not be less than zero  
6 (0%) percent and shall not exceed five (5%) percent. If the CPI exceeds five (5%) percent  
7 in any year this Agreement is in effect, CLAYTON and CONCORD agree to meet and  
8 mutually agree on the annual incremental adjustment and/or revised CPI cap. CONCORD  
9 will provide CLAYTON with the dollar amount of the annual increase by January 31 of  
10 each year. Such notification shall originate from the CONCORD Finance Department and  
11 become effective on July 1<sup>st</sup> of that calendar year.

12 **6. Termination**

13 Either party may terminate this Agreement for any reason including convenience with six  
14 (6) months written notice to the other party.

15 **7. Reopener Provisions.**

16 Either party may request of the other to renegotiate the terms and conditions of this  
17 Agreement upon the occurrence of any one of the events listed below:

- 18 • CLAYTON understands that the CONCORD Police Department intends to replace  
19 the existing Crime Management System (CMS) and EZ-Writer reporting and records  
20 management system. CLAYTON and CONCORD agree to meet and mutually agree  
21 to revise pricing for services provided through this agreement when this system  
22 replacement is undertaken.
  - 23 • CLAYTON understands that CONCORD intends to replace the existing email  
24 system, Exchange 5.5, with a system that is supported and maintained by its  
25 manufacturer. CLAYTON and CONCORD agree to meet and mutually agree to  
26 revise pricing for services provided through this agreement when the email system is  
27 replaced.
- 28

- Either CONCORD or CLAYTON undertakes significant changes to the Dispatch function.
- When services and/or systems are added and/or removed from use by CLAYTON.
- If the stated CPI for any given year exceeds 5%.
- If the cost incurred by CONCORD for obtaining parcel data, street data, aerial pictometry, or any other data supporting any system utilized by CLAYTON increases by more than five percent (5%) or new data is required by a new or existing system.
- If any system utilized by CLAYTON is replaced, upgraded, and/or significantly modified that materially affects or impacts services herein provided by Concord.

**8. Indemnification**

A. CLAYTON shall indemnify, defend, and hold harmless CONCORD, its employees, officers, directors, and agents from and against any and all claims arising from the conduct of CLAYTON's business or from any activity, work, or things done, permitted or suffered by CLAYTON, its agents, officers, contractors, or employees; and from and against any and all claims arising from a breach or default in the performance of this Agreement or arising from any negligence of CLAYTON and from any and all costs, attorneys' fees claim, or any action or proceeding brought thereon; and in case any action or proceeding be brought against CONCORD, CLAYTON shall defend the same at CLAYTON's expense.

B. CONCORD shall indemnify, defend, and hold harmless CLAYTON, its employees, officers, directors, and agents from and against any and all claims arising from the conduct of CONCORD's business or from any activity, work, or things done, permitted or suffered by CONCORD, its agents, officers, contractors, or employees; and from and against any and all claims arising from a breach or

1 default in the performance of this Agreement or arising from any negligence of  
2 CONCORD and from any and all costs, attorneys' fees claim, or any action or  
3 proceeding brought thereon; and in case any action or proceeding be brought  
4 against CLAYTON, CONCORD shall defend the same at CONCORD's expense.  
5

6 **9. Notice**

7 All notices required herein shall be sent via First Class U.S. Mail with postage prepaid  
8 thereon to the parties as follows:  
9

10 CONCORD: Attn: Chief of Police  
11 City of Concord Police Department  
12 1350 Galindo Street  
13 Concord, CA 94520

14 AND Attn: Director of Information Technology  
15 City of Concord  
16 1950 Parkside Drive  
17 MS 05  
18 Concord, CA 94519

19 CLAYTON: Attn: Chief of Police  
20 City of Clayton Police Department  
21 6000 Heritage Trail  
22 Clayton, CA 94517

23 Notices shall be deemed effectively served upon deposit in the United States Mail.

24 **10. Amendment**

25 This Agreement may be amended, modified, or changed by the parties provided that said  
26 amendment, modification or change is in writing and approved by the legislative bodies  
27 of both parties.

28 **11. Entire Agreement**

This Agreement contains the entire agreement between the parties hereto. No promise,  
representation, warranty, or covenant not included in this Agreement has been or is relied  
on by any party hereto.



1 **EXHIBIT A**

2 **AGREEMENT WITH CLAYTON**  
3 **FOR DISPATCH AND CAD SYSTEM SERVICES**

4 **DESCRIPTION OF SERVICES:**

5  
6 **Dispatch Function and Systems Provided to Clayton**

7 Concord Police Department (CPD) is the defined Public Safety Answering Point (PSAP)  
8 for Calls for Clayton Service originating within Clayton City Limits, including cell phone  
9 based calls for service originating on Cell towers assigned by the Cellular carrier to the  
10 Concord PSAP regardless of specific geographic location of the originating call.

- 11 • CPD Dispatch will provide emergency and non-emergency call handling pursuant to  
12 Policies, Procedures, Practices, and Standards employed by CPD Dispatch in  
13 responding to Concord-based calls for service.
  - 14 • Clayton agrees to use and comply with all Concord Police Department Policies,  
15 Procedures, Practices, and Standards associated with the dispatching of Officers  
16 including such amendments as may be deemed necessary by the Concord Police  
17 Department, approved by its Chief of Police, and reviewed in advance with the  
18 Clayton Chief of Police.
  - 19 • Concord will allow and support Clayton Police Department's use of the Computer  
20 Aided Dispatch (CAD) system currently employed by the Concord Police  
21 Department, with the following conditions:
    - 22 • Concord will provide CAD system software and communication software to Clayton,  
23 charging Clayton for the direct incremental costs incurred by Concord associated with  
24 Clayton's use of the system.
- 25  
26  
27  
28

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- Clayton agrees to procure and maintain at its sole expense all computers and associated communication and vehicle location equipment in accordance with the specifications provided by Concord.
  - Clayton agrees to procure and maintain at its sole expense a data communications line between Clayton City Hall and a location designated by Concord for purposes of extending Concord's Law Enforcement network to Clayton. Such communications line shall conform to Department of Justice security requirements including any revisions or amendments as shall be made over time.
  - Clayton may, at its sole discretion, utilize Concord as the source of this equipment and service. Such use will be governed by a separate Agreement/Memorandum of Understanding (MOU) between Clayton and Concord.
  - Concord will procure, install, configure, support, and maintain a CAD for the Concord Police Department. The CAD system is to meet the service level needs of Clayton as well.
  - Concord will procure, install, configure, support, and maintain a Law Enforcement Reporting and Records Management System (RMS) that will meet Clayton needs at a service level determined and agreed to by the Concord Police and Information Technology Departments.

20

21

22

Concord will allow and support Clayton Police Department's use of the RMS currently employed by the Concord Police Department, with the following conditions:

- 23
- 24
- 25
- 26
- 27
- 28
- Concord will provide RMS system software and communication software to Clayton, charging Clayton for the direct incremental costs incurred by Concord associated with Clayton's use of the system.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- Clayton agrees to procure and maintain at its sole expense all computer and associated equipment, software, and licenses in accordance with the specifications provided by Concord.
  - Clayton may, at its sole discretion, utilize Concord as the source of this equipment and service. Such use will be governed by a separate Agreement/Memorandum of Understanding (MOU) between Clayton and Concord.

8

9

10

11

12

Concord will procure, install, configure, support, replace, and maintain an Electronic Messaging system (e-mail). Concord will allow and support Clayton Police Department's use of the e-mail system currently employed by the Concord Police Department, with the following conditions:

- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28
- Concord will provide e-mail system software and communication software and/or licenses to Clayton, charging Clayton for the direct incremental costs incurred by Concord associated with Clayton's use of the system.
  - Clayton agrees to procure and maintain at its sole expense all computer and associated equipment, software, and licenses in accordance with the specifications provided by Concord.
  - Clayton may, at its sole discretion, utilize Concord as the source of this equipment and service. Such use will be governed by a separate Agreement/Memorandum of Understanding (MOU) between Clayton and Concord
  - Clayton understands the need for, and agrees to, periodic system maintenance periods as shall be developed over time to facilitate continued smooth operation of the various systems. Such maintenance periods will be scheduled and noticed in accordance with any service level agreements in place governing the various systems.

- Clayton agrees to comply, at its sole cost, with current California Department of Justice (DOJ) security requirements including any changes, revisions, or amendments as may be made over the term of this agreement.
- Clayton understands and agrees that Concord will function as the point of contact for DOJ for the Clayton Police Department.

**Voice Radio Communications**

- Concord will provide, support, and maintain the transceivers, repeaters, frequency licenses, Dispatch radio consoles, and all related equipment and services to keep the voice radio system operational until such time as the East Bay Regional Communications System (EBRCS) shall be fully operational in the Concord/Clayton area including a reasonable time for transition.
- Concord shall permit Clayton PD's use of Concord radio channels for communicating with Concord Dispatchers and other communications needs incurred in the ordinary course of conducting Police business for the City of Clayton. Clayton agrees to procure and maintain at its sole expense radio subscriber units compatible with Concord's current radio infrastructure. Clayton may, at its sole discretion, utilize Concord as the source of this equipment and service. Such use will be governed by a separate Agreement.
- Clayton agrees to use and comply with all Concord Police Department Policies, Procedures, Practices, and Standards associated with voice radio communications including such amendments as may be deemed necessary by the Concord Police Department, approved by its Chief of Police, and reviewed in advance by the Clayton Chief of Police.
- Each party understands that the other is a participant in the EBRCS and that Concord will dismantle the existing radio infrastructure once the EBRCS is operational and

1 Concord has completed transitioning to the EBRCS. Should Clayton choose to  
2 participate in the EBRCS, Clayton may, at its sole discretion, utilize Concord to  
3 facilitate Clayton's transition to the EBRCS. Such use will be governed by a separate  
4 Agreement/Memorandum of Understanding (MOU) between Clayton and Concord.  
5 Should Clayton ultimately choose NOT to participate in the EBRCS, the Concord  
6 Police Department will be unable to provide Dispatch services to the City of Clayton  
7 effective with the start of Concord's transition to the EBRCS.  
8

9  
10 **Desktop, Vehicle, and Network infrastructure support and maintenance**

- 11 • The City of Concord Information Technology Department shall provide desktop and /  
12 or laptop support, Mobile Data Computer (MCD) support for Motorola MW800 units  
13 mounted in Police vehicles (including the same mobile data connectivity used to  
14 support Concord PD units), and network cabling, routing, and packet switching  
15 support for all Law Enforcement computers connected to the Clayton Police  
16 Department computer network.
- 17 • The aforementioned support will be provided at no additional cost to the Clayton  
18 Police Department, beyond what is specified in Exhibit B, provided that the  
19 computers (PCs and laptops) are no older than four (4) years and MCDs are no older  
20 than six (6) years, or the same model as used by the Concord Police Department. The  
21 City of Clayton shall be responsible for the equipment and monthly recurring costs of  
22 providing mobile data connectivity to Clayton's Police vehicles.
- 23 • Clayton understands that Concord intends to replace the MDCs in Concord PD  
24 vehicles commencing in FY 2009-10 in accordance with Concord's Technology  
25 Replacement program. Concord shall notify Clayton PD when this project becomes  
26 active and will invite Clayton PD to send a representative to any or all of the project  
27 meetings.  
28

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- At Clayton’s sole discretion, Clayton may bundle any desired MDC purchase and installation with Concord’s purchase and installation schedule. Any such arrangement shall be governed by a separate agreement.
  - Clayton retains the right to select any MDC they deem appropriate. Should Clayton opt for a different MDC make, model, or configuration from Concord, Clayton understands Concord IT support staff may not be able to support the MDCs and may not be able to guarantee functionality with existing software, such as the CAD system.

10

11

**Software Licensing and version updates**

- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28
- The software versions (for Microsoft Office, Outlook, etc) shall be licensed by the Clayton Police Department at their sole expense and shall be kept current with the version(s) in use at the Concord Police Department. Support for software used by Clayton Police staff that is different from or in addition to that used by the Concord Police Department shall be on a best effort basis only. Concord IT support staff will spend a maximum of one (1) hour troubleshooting this software. The City of Clayton understands and agrees that final resolution of any incompatibilities in software may necessitate changing to the same software used by the Concord Police Department.
  - The City of Clayton understands that the City of Concord intends to remain within one release version of the most current Microsoft Office Suite which includes Word, Excel, PowerPoint, Outlook, etc, and other manufacturers’ software currently in use by the Concord Police Department. The City of Concord will provide notice to the Clayton Police Department of any planned upgrades to allow the Clayton Police Department to obtain any required licenses. Software that is older than one release previous to the most current version available will be supported on a best effort basis only. Concord IT support staff will spend a maximum of one (1) hour attempting to

1 resolve issues concerning software incompatibility. The City of Clayton understands  
2 and agrees that ultimate resolution of any software incompatibilities may necessitate  
3 Clayton obtaining upgraded software, and that Clayton will obtain any necessary  
4 upgrades at Clayton's sole expense. Clayton may, at its sole discretion, utilize  
5 Concord as the source of any or all software licenses. Such use will be governed by a  
6 separate Agreement/Memorandum of Understanding (MOU) between Clayton and  
7 Concord.  
8

9  
10 **TERMS & CONDITIONS**

- 11 • Clayton and Concord recognize that the anticipated charges set forth in Exhibit B for  
12 labor associated with dispatching, detention and information technology support to  
13 Clayton do not fully recover Concord's full allocated costs. The charge set forth in  
14 Exhibit B for such services, which shall be \$120,000 in FY 2009-10 and adjusted for  
15 inflation annually thereafter, has been negotiated in good faith between the Cities of  
16 Concord and Clayton, and recognizes the complementary benefits of the positive  
17 working relationship established over many years between the cities.
- 18 • For all other services, charges incurred by Clayton shall be determined based on the  
19 direct incremental costs incurred by Concord to provision such services and support  
20 for the various systems utilized by Clayton. This pricing shall be re-calculated at  
21 such time as any system undergoes replacement, extensive  
22 modification/addition/subtraction in functionality, or when services and/or systems  
23 are added or removed from use by Clayton. This provision is not subject to any caps.
- 24 • Clayton understands that systems provided by Concord require periodic replacement  
25 to ensure continued smooth business operations. In recognition of Concord's  
26 agreement to not assess replacement fees to Clayton, Clayton agrees to participate  
27 financially in the funding of replacement systems as the need arises and in accordance  
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

with the Replacement schedule established by Concord. Such financial participation shall be mutually agreed upon prior to Concord commencing work on replacing any system provided to Clayton. Any such agreement shall be documented in a Memorandum of Understanding (MOU) executed between Concord and Clayton.

- Clayton will notify Concord if any of the following events occur:
  - The addition of housing and/or commercial development of 50 or more mailing addresses OR adding five (5) or more streets/courts/alleys/lanes/etc. (whether public or private) in the City of Clayton. This will ensure that the CAD system geo-verification and turn-by-turn driving directions functionality remains current and accurate.
  - Annexation of additional land by the City of Clayton.
  - Construction of new cell towers/sites within Clayton City Limits.

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

**EXHIBIT B**

## AGREEMENT FOR TELEPHONE AND VOICE MAIL SERVICES

**THIS AGREEMENT** entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2009 between the City of Concord, a municipal corporation, (hereinafter CONCORD) and the City of CLAYTON, a municipal corporation, (hereinafter CLAYTON).

**WHEREAS**, Concord and Clayton entered into an agreement in September 28, 1999 and amended on February 27, 2001, wherein the City, among other things, installed certain telecommunications equipment for use by Clayton; and

**WHEREAS**, the parties terminated that agreement and desire to enter into this agreement for telephone and voicemail services.

**NOW, THEREFORE**, in consideration of the mutual promises, covenants and conditions herein contained, the parties agree as follows:

### **1. Services to be Provided.**

Concord will provide telephone and voicemail service and support as more specifically set forth in Exhibit "A" attached hereto and made a part hereof as if fully set forth.

### **2. Term**

- A. NEC PBX System.** The term of this Agreement for on-going technical support services to Clayton's NEC PBX based telephone system shall be through December 30, 2010 or until Clayton replaces its NEC PBX, whichever event comes first.

Clayton understands that Concord intends to replace its NEC PBX based telephone system and that Concord will be unable to provide NEC PBX support services to Clayton after December 31, 2010.

Clayton agrees to provide Concord with written notice no later than July 31, 2010 should Clayton choose to contract with Concord for replacement and on-going operation of Clayton's telephone system.

Should Clayton choose not to replace its telephone system by December 31, 2010 Concord will be unable to deliver voice mail services to Clayton as this service requires the Clayton NEC PBX to be networked with Concord's NEC PBX's and all Concord NEC PBX's will be removed from service by December 31, 2010.

- B. Voicemail System.** Clayton understands that Concord intends to replace its voicemail system by June 30, 2009. There shall not be any charge to Clayton for migrating the existing functionality "as is" to the new voice mail system. The term of this Agreement for providing voice mail services to Clayton shall be through December 30, 2010 or until Clayton replaces its NEC PBX, whichever event comes first.

4. **Payment**

Clayton shall make payments to Concord as provided in section 4 of Exhibit "A".

CLAYTON shall make annual payments for the services provided in "Exhibit A". Concord will invoice Clayton and the annual payment is due by August 1<sup>st</sup> of each year.

5. **Price Adjustment**

Each year the price for services rendered through this Agreement shall be adjusted using the January to January San Francisco-Oakland-San Jose Consumer Price Index (CPI) rate (base period 1982). Any such incremental adjustment will not be less than zero (0%) percent and shall not exceed five (5%) percent. If the CPI exceeds five (5%) percent in any year this Agreement is in effect, CLAYTON and CONCORD agree to meet and mutually agree on the annual incremental adjustment and/or revised CPI cap. CONCORD will provide CLAYTON with the dollar amount of the annual increase by January 31<sup>st</sup> of each year. Such notification shall originate from the CONCORD Finance Department and become effective on July 1<sup>st</sup> of that calendar year.

6. **Termination**

Either party may terminate this Agreement for any reason including convenience with six (6) months written notice to the other party.

7. **Indemnification**

- A. CLAYTON shall indemnify, defend, and hold harmless CONCORD, its employees, officers, directors, and agents from and against any and all claims arising from the conduct of CLAYTON's business or from any activity, work, or things done, permitted or suffered by CLAYTON, its agents, officers, contractors, or employees; and from and against any and all claims arising from a breach or default in the performance of this Agreement or arising from and negligence of CLAYTON and from any and all costs, attorneys' fees claim, or any action or proceeding brought thereon; and in case any action or proceeding be brought against CONCORD, CLAYTON shall defend the same at CLAYTON's expense.
- B. CONCORD shall indemnify, defend, and hold harmless Clayton, its employees, officers, directors, and agents from and against any and all claims arising from the conduct of CONCORD's business or from any activity, work, or things done, permitted or suffered by CONCORD, its agents, officers, contractors, or employees; and from and against any and all claims arising from a breach or default in the performance of this Agreement or arising from and negligence of CONCORD and from any and all costs, attorneys' fees claim, or any action or proceeding brought thereon; and in case any action or proceeding be brought against CLAYTON, CONCORD shall defend the same at CONCORD's expense.

**9. Notice**

All notices required herein shall be sent via First Class U.S. Mail with postage prepaid thereon to the parties as follows:

CONCORD:                   Attn: Ron Puccinelli, Director of Information Technology  
City of Concord  
1950 Parkside Drive  
Concord, CA 94519

CLAYTON:                   City Manager  
City of Clayton  
6000 Heritage Trail  
Clayton, CA 94517

Notices shall be deemed effectively served upon deposit in the United States Mail.

**10. Amendment**

This Agreement may be amended, modified, or changed by the parties provided that said amendment, modification or change is in writing and approved by the legislative bodies of both parties.

**11 Entire Agreement**

This Agreement contains the entire agreement between the parties hereto. No promise, representation, warranty, or covenant not included in this Agreement has been or is relied on by any party hereto.

**In Witness Whereof**, the parties have executed this Agreement the date and year first written above.

**CITY OF CLAYTON**

**CITY OF CONCORD**

By: \_\_\_\_\_  
Name: Gary A. Napper

By: \_\_\_\_\_  
Name: Daniel E. Keen

Title: City Manager

Title: City Manager

**ATTEST:**

**ATTEST:**

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

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

Approved as to Form

Approved as to Form

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

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

## **Attachment A**

### **Telephone and Voice Mail service and support**

1. Telephone system support and service:
  - 1.1. Concord shall continue to provide on-going technical support services to Clayton's NEC PBX based telephone system through December 30, 2010 or until Clayton replaces its NEC PBX, whichever event comes first.
    - 1.1.1. All moves, adds, and changes (MACs) associated with telephone extensions used by Clayton in the regular course of business.
    - 1.1.2. Any regularly scheduled and / or preventative maintenance as may be required by the system manufacturer, NEC.
    - 1.1.3. Repair and / or resolution of any hardware, system software, or other malfunction of the PBX system under the terms and conditions of the maintenance contract with American Telesource Inc. (ATI).
  - 1.2. Replacement of telephone system
    - 1.2.1. Clayton understands that Concord intends to replace its NEC PBX based telephone system and that Concord will be unable to provide NEC PBX support services after December 31, 2010.
      - 1.2.1.1. Clayton may, at its sole discretion, opt to contract with Concord to replace Clayton's NEC PBX based telephone system with the same type of system implemented in Concord and for on-going support services. Any such arrangement shall be handled through a separate agreement or by amending this agreement.
      - 1.2.1.2. Clayton agrees to provide Concord with notice no later than July 31, 2010 should Clayton choose to contract with Concord for replacement and on-going operation of Clayton's telephone system.
      - 1.2.1.3. Should Clayton choose not to replace their telephone system by December 31, 2010 Concord will be unable to deliver voice mail services to Clayton as this service requires the Clayton NEC PBX to be networked with Concord's NEC PBX's and all Concord NEC PBX's will be removed from service by December 31, 2010.

## 2. Voice Mail

2.1. Concord shall continue to providing voice mail services to Clayton using Concord's voice mail system.

2.1.1. This includes all system maintenance, repairs, MACs, etc. necessary to meet Clayton's needs within the constraints of the existing voice mail system.

2.2. Clayton understands that Concord intends to replace the existing voice mail system by June 30, 2009.

2.3. Concord shall ensure that the replacement voice mail is capable of providing the same features, functions, and services to Clayton as the existing voice mail system.

2.3.1. There shall not be any charge to Clayton for migrating the existing functionality "as is" to the new voice mail system.

2.3.1.1. Clayton may, at its sole discretion, request changes in functionality and / or services which may result in additional charges to Clayton.

2.3.2. At its sole discretion and cost, Clayton may opt to enhance the services, features, and functions provided to Clayton within the limitations of the new voice mail system.

2.3.3. Any such services and associated charges shall be handled through a separate agreement or amendments to this agreement.

## 3. Coordination with Telephone service providers

3.1. Clayton shall provide Concord with a Letter of Agency authorizing Concord as the responsible party in dealings with the various telephone service providers including but not limited to Competitive Local Exchange Carrier(s) (CLECs) and AT&T on behalf of Clayton for purposes of providing local and long distance telephone services to the City of Clayton governmental agency.

3.1.1. Any costs associated with these telephone services shall be billed directly to Clayton and Clayton assumes sole financial responsibility for its telephone services provided by any qualified telephone service provider(s).

3.2. From time to time it may become necessary to enroll in or renew enrollment in State provided telecommunications contracts such as CALNET. Clayton expressly authorizes Concord to execute such enrolments on behalf of Clayton.

3.3. Concord shall review all transactions resulting in increased costs with Clayton and receive Clayton's approval prior to committing to the increased costs.

#### 4. Cost for services rendered

##### 4.1. Hardware maintenance costs

4.1.1. Costs for hardware maintenance (PBX and Voice Mail) shall be based on actual vendor charges for each piece of hardware:

4.1.1.1. NEC PBX – Direct costs of the annual maintenance contract cost for Clayton’s PBX hardware on a “per port” basis.

4.1.1.1.1. Clayton’s current port count is 72 ports and the direct cost is \$1.65 per port for a total of \$1,426 per year.

4.1.1.2. Voice Mail

4.1.1.2.1. Clayton currently uses 4.41% of the voice mail system’s capacity as measured by voice mail “boxes”. Clayton’s percentage of the annual maintenance contract for the voice mail system is \$441 (4.41% of \$9,999) per year.

##### 4.2. Moves, Adds, and Changes (MACs) for Telephone and / or Voice Mail

4.2.1. Telephone and / or voice mail MACs of five (5) or less lines or extensions shall be included at no additional cost for the term of the agreement.

4.2.1.1. Should Clayton require MACs of more than five (5) lines at the same time, Clayton shall reimburse Concord for the direct billing costs of engaging the 3<sup>rd</sup> party support provider to perform the work.

4.2.1.2. Requests occurring within five consecutive business days shall be considered to be requested at the same time for purposes of this section.

4.2.2. All MACs shall be performed within Concord’s then current service level commitment with regard to time to complete work.

##### 4.3. Call processing Trees

4.3.1. Should Clayton desire changes, additions, deletions, or modifications to call processing trees, Clayton shall reimburse Concord for the direct billing costs of engaging the 3<sup>rd</sup> party support provider to perform the work.