

PROFESSIONAL SERVICES AGREEMENT
RELATIVE TO
REQUEST FOR PROPOSALS (RFP) NO. 2019-10-IT,
INFORMATION TECHNOLOGY SUPPORT SERVICES

THIS AGREEMENT is made as of the 19th day of December 2019, by and between the SAN MATEO COUNTY HARBOR DISTRICT (hereinafter referred to as "District") and Think Connected (hereinafter referred to as "Consultant").

WHEREAS, the District desires to obtain professional services in connection with Request for Proposals (RFP) No. 2019-10-IT, *Information Technology Support Services*, and

WHEREAS, the District has issued an RFP dated October 23, 2019, a copy of which is attached and incorporated as Exhibit A; and

WHEREAS, the Consultant desires to provide such services and has represented that it is experienced and qualified to perform such services. It has submitted a written proposal, dated November 19, 2019, a copy of which is attached and incorporated as Exhibit B.

WHEREAS, on December 18, 2019, the District's Board of Harbor Commissioners authorized award of the Agreement to the Consultant.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. RENDITION OF SERVICES

The Consultant agrees to provide professional services to the District in accordance with the terms and conditions of this Agreement. In the performance of its work, the Consultant represents that it (1) has and will exercise the degree of professional care, skill, efficiency, and judgment of consultants with special expertise in providing such services; (2) carries all applicable licenses, certificates, and registrations in current and good standing that may be required to perform the work; and (3) will retain all such licenses, certificates, and registrations in active status throughout the duration of this engagement.

2. SCOPE OF SERVICES

The scope of the Consultant's services shall consist of the services set forth in Exhibit A, as supplemented by Exhibit B, except when inconsistent with Exhibit A.

3. TERM

The Consultant shall commence work upon the District's issuance of a written notice to proceed. Unless the Agreement is terminated sooner pursuant to Section 20, the term of this Agreement is for 3 years. At the District's sole discretion, it may extend the term of this Agreement for up to three additional one-year terms. The District will provide notice of its intention to extend the term at least 60 days before expiration of the base term, or of any option term.

4. KEY PERSONNEL

It is understood and agreed by the parties that at all times during the term of this Agreement that Tom Ivers shall serve as the primary staff person of the Consultant to undertake, render and oversee all of the services under this Agreement. Upon written notice by the Consultant and approval by the District, which will not be unreasonably withheld, the Consultant may substitute this person with another person, who shall possess similar qualifications and experience for this position.

5. COMPENSATION

The Consultant agrees to perform all of the tasks described in Exhibits A and B as "Category 1" at the monthly rate of \$4,350.00. The Consultant agrees to perform all of the tasks described in Exhibits A and B as "Category 2" for the lump sum of \$2,175.00. These amounts include labor, materials, taxes, insurance, subcontractor costs, travel expenses, telephone costs, copying costs, profit, administrative and overhead fees, and all other costs and expenses incurred by the Consultant.

In the event the District requests Consultant to perform any additional services, the parties will agree on the cost of such services, either on an agreed-upon lump sum amount, or on a time and materials basis at the hourly rates listed in Exhibit B. The District will pay the Consultant in accordance with Section 13.

6. NOTICES

All communications relating to the day-to-day activities of the project shall be exchanged between the District's Communications Analyst and the Consultant's Desktop Engineer.

All other notices and communications regarding interpretation of the terms of this Agreement and changes thereto shall be given to the other party in writing and may be given by personal delivery to a representative of the parties or by mailing the same postage prepaid, addressed as follows:

District:

San Mateo County Harbor District
504 Ave Alhambra, 2nd Floor
P.O. Box 1449
El Granada, CA 94018
Attention: Director of Administrative Services

Consultant:

Attention: _____

The address to which mailings may be made may be changed from time to time by notice mailed as described above. Any notice given by mail shall be deemed given on the day after that on which it is deposited in the United States Mail as provided above.

7. OWNERSHIP OF WORK

All reports, designs, drawings, plans, photographic images, video and sound recording, specifications, analyses, charts, tables, schedules and all other materials prepared, or in the process of being prepared, for the services to be performed by the Consultant shall be and are the property of the District. The District

shall be entitled access to and copies of these materials during the progress of the work. Any such materials remaining in the hands of the Consultant or in the hands of any subcontractor upon completion or termination of the work shall be immediately delivered to the District. If any materials are lost, damaged or destroyed before final delivery to the District, the Consultant shall replace them at its own expense, and the Consultant assumes all risks of loss, damage or destruction of or to such materials. The Consultant may retain a copy of all material produced under this Agreement for its use in its general business activities.

Any and all rights, title, and interest (including without limitation. patent rights, copyright and any other intellectual-property or proprietary right) to materials prepared under this Agreement are hereby assigned to the District. The Consultant agrees to execute any additional documents which may be necessary to evidence such assignment.

The Consultant represents and warrants that all materials prepared under this Agreement are original or developed from materials in the public domain (or both) and that all materials prepared under and services provided under this Agreement do not infringe or violate any copyright, trademark, patent, trade secret, or other intellectual-property or proprietary right of any third party.

8. CONFIDENTIALITY

Any District materials to which the Consultant has access or materials prepared by the Consultant during the course of this Agreement (“confidential information”) shall be held in confidence by the Consultant, who shall exercise all reasonable precautions to prevent the disclosure of confidential information to anyone except the officers, employees and agents of the Consultant as necessary to accomplish the rendition of services set forth in Section 2 of this Agreement.

The Consultant, its employees, subcontractors, and agents shall not release any reports, information or other materials prepared in connection with this Agreement, whether deemed confidential or not, to any third party without the approval of the District.

9. USE OF SUBCONTRACTORS

The Consultant shall not subcontract any services to be performed by it under this Agreement without the prior written approval of the District, except for service firms engaged in drawing, reproduction, typing, and printing. Any subcontractors must be engaged under written contract with the Consultant with provisions allowing the Consultant to comply with all requirements of this Agreement, including without limitation the “Ownership of Work” provisions in Section 7. The Consultant shall be solely responsible for reimbursing any subcontractors, and the District shall have no obligation to them.

10. CHANGES

The District may, at any time, by written order, make changes within the scope of work and services described in this Agreement. If such changes cause an increase in the budgeted cost of or the time required for performance of the agreed upon work, an equitable adjustment as mutually agreed shall be made in the limit on compensation as set forth in Section 5 or in the time of required performance as set forth in Section 3, or both. In the event that the Consultant encounters any unanticipated conditions or contingencies that may affect the scope of work or services, schedule, or the amount of compensation specified herein, the Consultant shall so advise the District immediately upon notice of such condition or contingency. The written notice shall explain the circumstances giving rise to the unforeseen condition or contingency and shall set forth the proposed adjustment in schedule or compensation. This notice shall be given to the District prior to the time that the Consultant performs work or services related to any

proposed adjustment. The pertinent changes shall be expressed in a written supplement to this Agreement prior to implementation of such changes.

11. RESPONSIBILITY; INDEMNIFICATION

The Consultant shall indemnify, keep and save harmless the District and its Commissioners, officers, agents and employees against any and all suits, claims or actions arising out of any of the following:

- (A) Any injury to persons or property that may occur, or that may be alleged to have occurred, arising from the performance of this Agreement by the Consultant caused by a negligent act or omission or willful misconduct of the Consultant or its employees, subcontractors or agents; or
- (B) Any allegation that materials or services provided by the Consultant under this Agreement infringe or violate any copyright, trademark, patent, trade secret, or any other intellectual-property or proprietary right of any third party.

The Consultant further agrees to defend any and all such actions, suits or claims, with counsel acceptable to the District in its sole discretion and pay all charges of attorneys and all other costs and expenses of defenses as they are incurred. If any judgment is rendered, or settlement reached, against the District, or any of the other individuals enumerated above in any such action, the Consultant shall, at its expense, satisfy and discharge the same. This indemnification shall survive termination or expiration of the Agreement.

12. INSURANCE

(A) Types of Insurance

The Consultant shall not commence work until proper evidence of insurance coverage of the types and amounts specified in this section has been provided to the District. The Consultant shall not violate or permit to be violated any conditions or provisions of said policies of insurance, and at all times shall satisfy the requirements of the insurer for the purpose of maintaining said insurance in effect.

If any claim is made by any third person against the Consultant on account of any incident connected to the Agreement, the Consultant shall promptly report the fact in writing to the District, giving full details of the claim.

Any person, firm, or corporation that the Consultant authorizes to work upon the District's property, including any subcontractor, shall be deemed to be the Consultant's agent and shall be subject to all applicable terms of this Agreement. Prior to the Consultant's start of the work or entry onto the District's property, the Consultant agrees to require its subconsultants to procure and maintain, at the Consultant's (or its subconsultant(s)') sole cost and expense (and to prove to the District's reasonable satisfaction that it remains in effect throughout the performance of the work under this Agreement), the kinds of insurance described below. Such insurance must remain in effect throughout the term of this Agreement and will be at the sole cost and expense of the Consultant (or its subconsultant(s)).

(1) Commercial General Liability Insurance

The Consultant shall, at its own expense, procure and maintain Commercial General Liability insurance providing bodily injury and property damage coverage with a combined limit of at least One Million Dollars (\$1,000,000) each occurrence and a general aggregate limit of at least Two Million Dollars (\$2,000,000). This insurance shall include, but not be limited to, premises and operations, contractual liability covering the indemnity provisions contained in this Agreement, personal injury, products and completed operations, and broad form property damage, and include a Cross Liability endorsement.

Said Policy shall protect the Consultant and the District in the same manner as though a separate policy had been issued to each, but nothing in said policy shall operate to increase the insurance company's liability as set forth in its policy beyond the amount or amounts shown or to which the insurance company would have been liable if only one interest had been named as an insured.

(2) Business Automobile Liability

The Consultant shall, at its own cost and expense, procure and maintain Business Automobile Liability insurance providing bodily injury and property damage with a combined single limit of at least One Million Dollars (\$1,000,000) per occurrence for all owned, non-owned and hired automobiles. This insurance shall provide contractual liability covering all motor vehicles and mobile equipment to the extent coverage may be excluded from general liability insurance.

(3) Workers' Compensation and Employers' Liability Insurance

If the Consultant employs any person to perform work in connection with this Agreement, the Consultant shall procure and maintain at all times during the performance of such work Workers' Compensation Insurance in conformance with the laws of the State of California, and federal laws where applicable. Employers' Liability Insurance shall not be less than One Million Dollars (\$1,000,000) for each accident and One Million Dollars (\$1,000,000) for each disease, with a policy limit of One Million Dollars (\$1,000,000).

The policy shall contain a waiver of subrogation in favor of the District and its officers, directors, employees, volunteers, and agents, while acting in such capacity, and their successors and assignees, as they now or as they may hereafter be constituted, singly, jointly, or severally.

(4) Professional Liability Insurance

The Consultant shall also maintain Professional Liability Insurance covering the Consultant's performance under this Agreement with a limit of liability of One Million Dollars (\$1,000,000) for any one claim. This insurance shall be applicable to claims arising from the work performed under this Agreement. Prior to commencing work under this Agreement, the Consultant shall furnish to the District a Certificate of Insurance or certified copy of the insurance policy if requested, indicating compliance with the requirements of this paragraph. This certificate or policy shall further stipulate that thirty

(30) days' advance written notice of cancellation, non-renewal or reduction in limits shall be given to the District.

(B) General Insurance Requirements

(1) Acceptable Insurance

All policies will be issued by insurers acceptable to the District. This insurance shall be issued by an insurance company or companies authorized to do business in the State of California with minimum "Best's" rating of B+ and with minimum policyholder surplus of Twenty- Five Million Dollars (\$25,000,000) or a company acceptable to the District in its sole discretion. All policies shall be issued in a form satisfactory to the General Manager of the District and shall be issued specifically as primary insurance. Workers' Compensation coverage requirements may be met with the California State Compensation Fund.

(2) Procure and Maintain Insurance

The Consultant must, at its own cost and expense, procure and maintain at all times during the performance of this Agreement, all of the required policies specified above. The failure to procure or maintain the required insurance policies and/or an adequately funded self-insurance program acceptable to the District will constitute a material breach of the Agreement.

(3) Terms of Policies

All insurance specified above shall remain in force until all work to be performed is satisfactorily completed. If the insurance is provided on a claims-made basis, it must remain in force for the entire term of the Agreement and a minimum of three (3) years thereafter.

(4) Self-Insurance

Upon evidence of financial capacity satisfactory to the District and Consultant's agreement to waive subrogation against the District respecting any and all claims that may arise, the Consultant's obligations hereunder may be satisfied in whole or in part by adequately funded self-insurance.

(5) Deductibles and Retentions

The Consultant shall be responsible for payment of any deductible or retention on the Consultant's policies without right of contribution from the District. Deductible and retention provisions shall not contain any restrictions as to how or by whom the deductible or retention is paid. Any deductible or retention provision limiting payment to the Named Insured is unacceptable.

In the event that the policy of the Consultant or any subcontractor contains a deductible or self-insured retention, and in the event that the District seeks coverage under such policy as an additional insured, the Consultant shall satisfy such deductible or self-insured retention to the extent of loss covered by such policy for a lawsuit arising from or connected with any alleged act or omission of the Consultant, subcontractor, or any of

their officers, directors, employees, agents, or suppliers, even if the Consultant or subcontractor is not a named defendant in the lawsuit.

(C) Evidence of Insurance and Endorsements

Prior to commencing work or entering onto the District's property, the Consultant shall file a Certificate of Insurance with the District evidencing the foregoing coverages, including the following endorsements:

- (1) The insurance company(ies) issuing such policy(ies) will provide at least thirty (30) days' notice to the District of cancellation or non-renewal.
- (2) That the policy(ies) is primary insurance and the insurance company(ies) providing such policy(ies) shall be liable thereunder for the full amount of any loss or claim that the Consultant is liable for under this section, up to and including the total limit of liability, without right of contribution from any other insurance maintained or which may be maintained by the District.
- (3) Such insurance shall include as additional insureds the District, and its respective directors, officers, employees, and agents while acting in such capacity, and their successors or assignees, as they now or as they may hereafter be constituted, singly, jointly, or severally.
- (4) The policy must also contain either a Cross Liability endorsement or Severability of Interests Clause and stipulate that inclusion of the District as an additional insured will not in any way affect the District's rights as respects to any claim, demand, suit or judgment made, brought, or recovered against the Consultant. Said policy shall protect the Consultant and the District in the same manner as though a separate policy had been issued to each, but nothing in said policy shall operate to increase the insurance company's liability as set forth in its policy beyond the amount or amounts shown or to which the insurance company would have been liable if only one interest had been named as an insured.

(D) Consequence of Lapse

Should any required insurance not be procured or lapse during the term of this Agreement, requests for payment originating after such lapse will not be processed until the District receives satisfactory evidence of reinstated coverage as required by the Agreement. If insurance is not reinstated, the District, may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

13. MANNER OF PAYMENT

The Consultant shall submit a billing statement at the end of each month. For Category 1 services, the billing statement shall outline the services performed during the billing period and invoice for the lump sum monthly amount described in Exhibit B. For Category 2 services, upon completion of all work and the District's final acceptance, the Consultant shall submit a billing statement describing the work performed and invoice for the total lump sum amount described in Exhibit B. The District shall endeavor to pay approved invoices within thirty (30) days of their receipt.

14. CONSULTANT'S STATUS

Neither the Consultant nor any party contracting with the Consultant shall be deemed to be an agent or employee of the District. The Consultant is and shall be an independent Contractor, and the legal relationship of any person performing services for the Consultant shall be one solely between that person and the Consultant.

15. ASSIGNMENT

The Consultant shall not assign any of its rights nor transfer any of its obligations under this Agreement without the prior written consent of the District.

16. DISTRICT WARRANTIES

The District makes no warranties, representations or agreements, either express or implied, beyond such as are explicitly stated in this Agreement.

17. DISTRICT REPRESENTATIVE

Except when approval or other action is required to be given or taken by the Board of Harbor Commissioners of the District, the General Manager of the District, or such person or persons as he/she shall designate in writing from time to time, shall represent and act for the District.

18. DISPUTE RESOLUTION

The District and Consultant agree to attempt in good faith to resolve all disputes informally. If agreed to by both parties, alternate methods of dispute resolution, such as mediation, may be utilized. Unless otherwise directed by the District, the Consultant shall continue performance under this Agreement while matters in dispute are being resolved.

19. MAINTENANCE, AUDIT AND INSPECTION OF RECORDS

All Consultant and subconsultant costs incurred in the performance of this Agreement will be subject to audit. The Consultant and its subconsultants shall permit the District or its authorized representatives to inspect, examine, make excerpts from, transcribe, and copy the Consultant's books, work, documents, papers, materials, payrolls records, accounts, and any and all data relevant to the Agreement at any reasonable time, and to audit and verify statements, invoices or bills submitted by the Consultant pursuant to this Agreement. The Consultant shall also provide such assistance as may be required in the course of such audit. The Consultant shall retain these records and make them available for inspection hereunder for a period of four (4) years after expiration or termination of the Agreement.

If, as a result of the audit, it is determined by the District's auditor or staff that reimbursement of any costs including profit or fee under this Agreement was in excess of that represented and relied upon during price negotiations or represented as a basis for payment, the Consultant agrees to reimburse the District for those costs within sixty (60) days of written notification by the District.

20. TERMINATION

The District shall have the right to terminate this Agreement at any time for cause or for convenience by giving written notice to the Consultant. Upon receipt of such notice, the Consultant shall not commit itself to any further expenditure of time or resources.

If the Agreement is terminated for any reason other than a breach or default by the Consultant, the District shall pay to the Consultant in accordance with the provisions of Sections 5 and 13 all sums actually due and owing from the District for all services performed and all expenses incurred up to the day written notice of termination is given, plus any costs reasonably and necessary incurred by the Consultant to effect such termination. If the Agreement is terminated for breach or default, the District shall remit final payment to the Consultant in an amount to cover only those services performed and expenses incurred in full accordance with the terms and conditions of this Agreement up to the effective date of termination.

The District shall not in any manner be liable for the Consultant's actual or projected lost profits had the Consultant completed the services required by this Agreement.

21. EQUAL EMPLOYMENT OPPORTUNITY

In connection with the performance of this Agreement, the Consultant shall not discriminate against any employee or applicant for employment because of race, color, religion, citizenship, political activity or affiliation, national origin, ancestry, physical or mental disability, marital status, age, medical condition (as defined under California law), veteran status, sexual orientation, gender identity, gender expression, sex or gender (which includes pregnancy, childbirth, breastfeeding, or related medical conditions), taking or requesting statutorily protected leave, or any other characteristics protected under federal, state, or local laws. The Consultant shall take affirmative actions to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, disability or national origin, or any other characteristic protected under state, federal, or local laws. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Consultant further agrees to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

22. NON-DISCRIMINATION ASSURANCE

The Consultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this agreement. During the performance of this Contract, Consultant and its subconsultant shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of race, color, religion, citizenship, political activity or affiliation, national origin, ancestry, physical or mental disability, marital status, age, medical condition (as defined under California law), veteran status, sexual orientation, gender identity, gender expression, sex or gender (which includes pregnancy, childbirth, breastfeeding, or related medical conditions), taking or requesting statutorily protected leave, or any other characteristics protected under federal, state, or local laws. race, color, national origin, or sex in the performance of this Agreement. Consultant and subconsultants shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Consultant and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

Consultant shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Contract.

23. CONFLICT OF INTEREST

The Consultant warrants and represents that it presently has no interest and agrees that it will not acquire any interest that would present a conflict of interest under California Government Code §§ 1090 et seq. or §§ 87100 et seq. during the performance of services under this Agreement. The Consultant further

covenants that it will not knowingly employ any person having such an interest in the performance of this Agreement. Violation of this provision may result in this Agreement being deemed void and unenforceable.

24. PUBLICITY

The Consultant, its employees, subcontractors, and agents shall not refer to the District, or use any logos, images, or photographs of the District for any commercial purpose, including, but not limited to, advertising, promotion, or public relations, without the District's prior written consent. Such written consent shall not be required for the inclusion of the District's name on a customer list.

25. ATTORNEYS' FEES

If any legal proceeding should be instituted by either of the parties to enforce the terms of this Agreement or to determine the rights of the parties under this Agreement, the prevailing party in said proceeding shall recover, in addition to all court costs, reasonable legal fees.

26. WAIVER

Any waiver of any breach or covenant of this Agreement must be in a writing executed by a duly authorized representative of the party waiving the breach. A waiver by any of the parties of a breach or covenant of this Agreement shall not be construed to be a waiver of any succeeding breach or any other covenant unless specifically and explicitly stated in such waiver.

27. SEVERABILITY

If any provision of this Agreement shall be deemed invalid or unenforceable, that provision shall be reformed and/or construed consistently with applicable law as nearly as possible to reflect the original intentions of this Agreement, and in any event, the remaining provisions of this Agreement shall remain in full force and effect.

28. NO THIRD-PARTY BENEFICIARIES

This Agreement is not for the benefit of any person or entity other than the parties.

29. APPLICABLE LAW

This Agreement, its interpretation and all work performed under it shall be governed by the laws of the State of California.

30. BINDING ON SUCCESSORS

All of the terms, provisions and conditions of this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors, assigns and legal representatives.

31. ENTIRE AGREEMENT; MODIFICATION

This Agreement, including any attachments, constitutes the entire Agreement between the parties with respect to the subject matter hereof and may not be amended except by a written amendment executed by authorized representatives of both parties. In the event of a conflict between the terms and conditions of this Agreement and the attachments, the terms of this Agreement will prevail.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized officers as of the day and year first above written.

FOR THE SAN MATEO COUNTY HARBOR DISTRICT:

By: _____

Title: General Manager

ATTEST:

By: _____

Title: Deputy Secretary of the District

APPROVED AS TO FORM:

By: _____

Title: Attorney for the District

FOR THE CONSULTANT:*

By: _____

Title: _____

By: _____

Title: _____

**If the Consultant is a corporation, this Agreement must be executed by two corporate officers, consisting of: (1) the president, vice president or chair of the board; and (2) the secretary, assistant secretary, chief financial officer or assistant treasurer. In the alternative, this Agreement may be executed by a single officer or a person other than an officer provided that evidence satisfactory to the District is provided demonstrating that such individual is authorized to bind the corporation or LLC (e.g. a copy of a certified resolution from the corporation's or LLC's board or a copy of the corporation's bylaws or LLC's operating agreement).*