

NON-DISCLOSURE AGREEMENT

This confidentiality and non-disclosure agreement (the "Agreement") is made and entered into as of this 5th day of February, 2013 ("Effective Date"), by and between ClientFirst Technology Consulting ("Recipient") and the City of Redlands ("City").

City and Recipient intend to engage in discussions with respect to Recipient's provision of information technology services to City (the "Transaction"). In the course of such discussions, it is anticipated that City will disclose or deliver to Recipient, non-public, confidential or proprietary, technical, business security information. In consideration of the mutual promises and covenants contained in this Agreement, the parties hereto agree as follows:

1. Confidential Information

(a) "Confidential Information" means all information that City furnishes, or otherwise makes available, to Recipient with respect to the Transaction, whether before or after the date of this Agreement, and whether oral, written or electronic, together with any reports, analyses, compilations, memoranda, notes, studies and any other written or electronic materials prepared by or for Recipient. "Confidential Information" includes, without limitation, information relating to City services, City business policies or practices, management and security systems, and information received from others that City is obligated to treat as confidential.

(b) Confidential Information shall not include that information defined as Confidential Information above that Recipient can conclusively establish: (i) is or subsequently becomes publicly available without Recipient's breach of any obligation owed to City; (ii) became known to Recipient prior to City's disclosure of such information to Recipient; (iii) became known to Recipient from a source other than City other than by the breach of an obligation of confidentiality owed to City; or (iv) is independently developed by Recipient.

2. Restrictions

(a) Recipient shall not disclose any Confidential Information to any third parties. However, Recipient may disclose Confidential Information in accordance with judicial or other governmental order, provided Recipient shall give City reasonable notice prior to such disclosure and shall comply with any applicable protective order or equivalent. In the event a protective order or other remedy is not obtained by City, Recipient may only furnish that portion of the Confidential Information which, in the opinion of Recipient's counsel, Recipient is legally compelled to disclose and Recipient will exercise reasonable efforts to obtain reliable assurance that confidential treatment will be accorded any Confidential Information furnished.

(b) Recipient shall take reasonable security precautions, at least as great as the precautions it takes to protect its own confidential information, to keep confidential the Confidential Information. Recipient may disclose Confidential Information only to Recipient's employees on a need-to-know basis. Recipient's employees shall be informed by Recipient of the confidential nature of the Confidential Information and must agree to keep all Confidential Information strictly confidential in accordance with this Agreement.

(c) Confidential Information may be disclosed, reproduced, summarized or distributed only as expressly provided hereunder. Recipient agrees to segregate all such Confidential Information from the confidential information of others in order to prevent commingling.

3. Rights and Remedies

(a) Recipient shall notify City immediately upon discovery of any unauthorized use or disclosure of Confidential Information, or any other breach of this Agreement by City, and will cooperate with City in every reasonable way to help City regain possession of the Confidential Information and prevent its further unauthorized use.

(b) Recipient shall immediately return all originals, copies, reproductions and summaries of Confidential Information at City's request or, at City's option, destroy and certify destruction of the same.

(c) Recipient acknowledges that monetary damages may not be a sufficient remedy for unauthorized disclosure of Confidential Information and that City shall be entitled, without waiving any other rights or remedies, to exercise any right, power or remedy available to City at law or in equity. Such remedies may include, without limitation, the right to sue for specific performance, injunctive relief and/or damages. No forbearance, failure or delay in exercising any such right, power or remedy shall operate as a waiver thereof.

4. Miscellaneous

(a) All Confidential Information is and shall remain the property of City.

(b) The Confidential Information has been prepared for the purpose of Recipient's provision of services to City relating to the Transaction. No representation is made by City as to the accuracy or completeness of such information. City expressly disclaims any and all liability for representations, expressed or implied, contained in, or for omissions from, the Confidential Information and any other written or oral communication transmitted in connection herewith. Nothing contained in the Confidential Information is, or should be relied upon as, a promise or forecast of the future of City. In furnishing the Confidential Information, City does not undertake any obligation to provide access to any additional information or to conduct any further discussions with Recipient.

(c) All notices and other communications required or permitted under this Agreement ("Notices") must be in writing and (a) sent by certified mail, return receipt requested; or (b) delivered by nationally recognized overnight delivery service providing evidence of the date of delivery, with all charges prepaid, addressed to the appropriate party at its address indicated in this Agreement. The Recipient or City each may change from time to time the address to which Notices must be sent, by Notice given in accordance with this paragraph. All Notices given in accordance with this paragraph will be deemed to have been given three (3) Business Days after having been deposited in any mail depository regularly maintained by the United States postal service, if sent by certified mail, or one (1) Business Day after having been deposited with a

nationally recognized overnight delivery service, if sent by overnight delivery. "Business Day" is defined as any day, other than a Saturday, a Sunday, a federal holiday.

(d) The parties each acknowledge that nothing herein (i) requires the disclosure of any Confidential Information, which information shall be disclosed, if at all, in the sole and absolute discretion of City, or (ii) requires either party to proceed with the Transaction except as may otherwise be agreed in writing.

(e) This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and merges all prior discussions between them as Confidential Information. It shall not be modified except by a written agreement dated subsequent to the date of this Agreement and signed by both parties. None of the provisions of this Agreement shall be deemed to have been waived by any act or acquiescence on the part of City, its agents, or employees, but only by an instrument in writing signed by an authorized officer of City. No waiver of any provision of this Agreement shall constitute a waiver of any other provision(s) or of the same provision on another occasion.

(f) If either City or Recipient employs attorneys to enforce any rights arising out of or relating to this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees. This Agreement shall be construed and controlled by the laws of the State of California, and Recipient further consents to jurisdiction by the state and federal courts sitting in the State of California. Process may be served on either party by U.S. Mail, postage prepaid, certified or registered, return receipt requested, or by such other method as is authorized by the California law.

(g) Subject to the limitations set forth in this Agreement, this Agreement will inure to the benefit of and be binding upon the parties, their successors and assigns.

(h) If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

CITY OF REDLANDS

By: 
Pete Aguilar, Mayor

Attest: 
Sam Irwin, City Clerk

City of Redlands
P.O. Box 3005
Redlands, CA 92373-1505

CLIENTFIRST TECHNOLOGY
CONSULTING

By: 
David Krout, Principal

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