

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement ("Agreement") is dated _____, 2016 ("Effective Date") and is between the City of Manhattan Beach, a California municipal corporation ("City") and Nexlevel Information Technology, Inc., a California corporation ("Contractor"). City and Contractor are sometimes referred to herein as the "Parties", and individually as a "Party".

RECITALS

A. City issued Request for Proposals No. 1053-16 on September 22, 2015, seeking proposals for the provision of Enterprise Resource Planning (ERP) software consulting services.

B. Contractor submitted a proposal dated April 12, 2016 in response to the RFP.

C. City desires to utilize the services of Contractor as an independent contractor to provide professional technology consultant to assess and make recommendations regarding the City's integrated Financial and Human Resources management software needs.

D. Contractor represents that it is fully qualified to perform such services by virtue of its experience and the training, education and expertise of its principals and employees.

E. City desires to retain Contractor and Contractor desires to serve City to perform these services in accordance with the terms and conditions of this Agreement.

The Parties therefore agree as follows:

1. Contractor's Services.

A. Scope of Services. Contractor shall perform the services described in the Scope of Services (the "Services"), attached as **Exhibit A**. City may request, in writing, changes in the Scope of Services to be performed. Any changes mutually agreed upon by the Parties, and any increase or decrease in compensation, shall be incorporated by written amendments to this Agreement.

B. Party Representatives. For the purposes of this Agreement, the City Representative shall be the City Manager, or such other person designated in writing by the City Manager (the "City Representative"). For the purposes of this Agreement, the Contractor Representative shall be Terry Hackelman, Managing Principal (the "Contractor Representative"). The Contractor Representative shall directly manage Contractor's Services under this Agreement. Contractor shall not change the Contractor Representative without City's prior written consent.

C. Time for Performance. Contractor shall commence the Services on the Effective Date and shall perform all Services in conformance with the project timeline attached hereto as **Exhibit C**.

D. Standard of Performance. Contractor shall perform all Services under this Agreement in accordance with the standard of care generally exercised by like professionals under similar circumstances and in a manner reasonably satisfactory to City.

E. Personnel. Contractor has, or will secure at its own expense, all personnel required to perform the Services required under this Agreement. All of the Services required under this Agreement shall be performed by Contractor or under its supervision, and all personnel engaged in the work shall be qualified to perform such Services.

F. Compliance with Laws. Contractor shall comply with all applicable federal, state and local laws, ordinances, codes, regulations and requirements.

G. Permits and Licenses. Contractor shall obtain and maintain during the Agreement term all necessary licenses, permits and certificates required by law for the provision of Services under this Agreement, including a business license.

2. Term of Agreement. The term of this Agreement shall be from the Effective Date and shall terminate when the work is completed, unless sooner terminated as provided in Section 12 of this Agreement or extended.

3. Compensation.

A. Compensation. As full compensation for Contractor's Services provided under this Agreement, City shall pay Contractor the total sum of Fifty Seven Thousand Nine Hundred and Fifteen Dollars (\$57,915) (the "Maximum Compensation"), as set forth in the Approved Fee Schedule attached hereto as **Exhibit B**.

B. Expenses. City shall only reimburse Contractor for those expenses expressly set forth in **Exhibit B**. In no event shall reimbursable expenses collectively exceed the total sum of Three Thousand Five Hundred Dollars (\$3,500).

C. Additional Services. City shall not allow any claims for additional Services performed by Contractor, unless the City Council or City Representative, if applicable, and the Contractor Representative authorize the additional Services in writing prior to Contractor's performance of the additional Services or incurrence of additional expenses. Any additional Services or expenses authorized by the City Council or City Representative shall be compensated at the rates set forth in **Exhibit B**, or, if not specified, at a rate mutually agreed to by the Parties. City shall make payment for additional Services and expenses in accordance with Section 4 of this Agreement.

4. Method of Payment.

A. Invoices. Contractor shall submit to City an invoice, on a monthly basis for the Services performed pursuant to this Agreement. Each invoice shall itemize the Services rendered during the billing period, hourly rates charged, if applicable, and the amount due. City shall review each invoice and notify Contractor in writing within ten (10) business days of receipt of any disputed invoice amounts.

B. Payment. City shall pay all undisputed invoice amounts within thirty (30) calendar days after receipt up to the maximum compensation set forth in Section 3 of this Agreement. City does not pay interest on past due amounts. City shall not withhold federal payroll, state payroll or other taxes, or other similar deductions, from payments made to Contractor.

C. Audit of Records. Contractor shall make all records, invoices, time cards, cost control sheets and other records maintained by Contractor in connection with this Agreement available during Contractor's regular working hours to City for review and audit by City.

5. Independent Contractor. Contractor is, and shall at all times remain as to City, a wholly independent contractor. Contractor shall have no power to incur any debt, obligation, or liability on behalf of City. Neither City nor any of its agents shall have control over the conduct of Contractor or any of Contractor's employees, except as set forth in this Agreement. Contractor shall not, at any time, or in any manner, represent that it or any of its officers, agents or employees are in any manner employees of City.

6. Information and Documents.

A. Contractor covenants that all data, reports, documents, discussion, or other information (collectively "Data") developed or received by Contractor or provided for performance of this Agreement are deemed confidential and shall not be disclosed or released by Contractor without prior written authorization by City. City shall grant such authorization if applicable law requires disclosure. Contractor, its officers, employees, agents, or subcontractors shall not without written authorization from the City Manager or unless requested in writing by the City Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement or relating to any project or property located within the City. Response to a subpoena or court order shall not be considered "voluntary," provided Contractor gives City notice of such court order or subpoena.

B. Contractor shall promptly notify City should Contractor, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed thereunder or with respect to any project or property located within the City. City may, but has no obligation to, represent Contractor or be present at any deposition, hearing or similar proceeding. Contractor agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Contractor. However, City's right to review

any such response does not imply or mean the right by City to control, direct or rewrite the response.

C. All Data required to be furnished to City in connection with this Agreement shall become City's property, and City may use all or any portion of the Data submitted by Contractor as City deems appropriate. Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files containing data generated for the Services, surveys, notes, and other documents prepared in the course of providing the Services shall become City's sole property and may be used, reused or otherwise disposed of by City without Contractor's permission. Contractor may take and retain copies of the written products as desired, but the written products shall not be the subject of a copyright application by Contractor.

D. Contractor's covenants under this Section 6 shall survive the expiration or termination of this Agreement.

7. Conflicts of Interest. Contractor and its officers, employees, associates and subcontractors, if any, shall comply with all conflict of interest statutes of the State of California applicable to Contractor's Services under this Agreement, including the Political Reform Act (Gov. Code § 81000, *et seq.*) and Government Code Section 1090. During the term of this Agreement, Contractor may perform similar Services for other clients, but Contractor and its officers, employees, associates and subcontractors shall not, without the City Representative's prior written approval, perform work for another person or entity for whom Contractor is not currently performing work that would require Contractor or one of its officers, employees, associates or subcontractors to abstain from a decision under this Agreement pursuant to a conflict of interest statute. Contractor shall incorporate a clause substantially similar to this Section 7 into any subcontract that Contractor executes in connection with the performance of this Agreement.

8. Indemnification.

A. Indemnities for Third Party Claims.

1) To the fullest extent permitted by law, Contractor shall, at its sole cost and expense, defend, hold harmless and indemnify City and its elected officials, officers, attorneys, agents, employees, designated volunteers, successors, assigns and those City agents serving as independent contractors in the role of City officials (collectively "Indemnitees"), from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, expenses, judgments, penalties, liens, and losses of any nature whatsoever, including fees of accountants, attorneys, or other professionals and all costs associated therewith and the payment of all consequential damages (collectively "Liabilities"), in law or equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of Contractor, its officers, agents, servants, employees, subcontractors, materialmen, contractors or their officers, agents, servants or employees (or any entity or individual that Contractor shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees' active or

passive negligence, except for Liabilities arising from the sole negligence or willful misconduct of the Indemnitees, as determined by final arbitration or court decision or by the agreement of the Parties. Contractor shall defend the Indemnitees in any action or actions filed in connection with any Liabilities with counsel of the Indemnitees' choice, and shall pay all costs and expenses, including all attorneys' fees and experts' costs actually incurred in connection with such defense. Contractor shall reimburse the Indemnitees for any and all legal expenses and costs incurred by Indemnitees in connection therewith.

2) Contractor shall pay all required taxes on amounts paid to Contractor under this Agreement, and indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Contractor shall fully comply with the workers' compensation law regarding Contractor and Contractor's employees. Contractor shall indemnify and hold City harmless from any failure of Contractor to comply with applicable workers' compensation laws. City may offset against the amount of any fees due to Contractor under this Agreement any amount due to City from Contractor as a result of Contractor's failure to promptly pay to City any reimbursement or indemnification arising under this subparagraph A. 2).

3) Contractor shall obtain executed indemnity agreements with provisions identical to those in this Section 8 from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Contractor in the performance of this Agreement. If Contractor fails to obtain such indemnity obligations, Contractor shall be fully responsible and indemnify, hold harmless and defend the Indemnitees from and against any and all Liabilities at law or in equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of Contractor's subcontractor, its officers, agents, servants, employees, subcontractors, materialmen, contractors or their officers, agents, servants or employees (or any entity or individual that Contractor's subcontractor shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees' active or passive negligence, except for Liabilities arising from the sole negligence or willful misconduct of the Indemnitees, as determined by final arbitration or court decision or by the agreement of the Parties.

B. Workers' Compensation Acts not Limiting. Contractor's indemnifications and obligations under this Section 8, or any other provision of this Agreement, shall not be limited by the provisions of any workers' compensation act or similar act. Contractor expressly waives its statutory immunity under such statutes or laws as to City, its officers, agents, employees and volunteers.

C. Insurance Requirements not Limiting. City does not, and shall not, waive any rights that it may possess against Contractor because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement. The indemnities in this Section 8 shall apply regardless of whether or not any insurance policies are determined to be applicable to the Liabilities, tax, assessment, penalty or interest asserted against City.

D. Survival of Terms. Contractor's indemnifications and obligations under this Section 8 shall survive the expiration or termination of this Agreement.

9. Insurance.

A. Minimum Scope and Limits of Insurance. Contractor shall procure and at all times during the term of this Agreement carry, maintain, and keep in full force and effect, insurance as follows:

1) Commercial General Liability Insurance with a minimum limit of Two Million Dollars (\$2,000,000) per occurrence for bodily injury, personal injury and property damage and a general aggregate limit of Two Million Dollars (\$2,000,000) per project or location. If Contractor is a limited liability company, the commercial general liability coverage shall be amended so that Contractor and its managers, affiliates, employees, agents and other persons necessary or incidental to its operation are insureds.

2) Automobile Liability Insurance for any owned, non-owned or hired vehicle used in connection with the performance of this Agreement with a combined single limit of Two Million Dollars (\$2,000,000) per accident for bodily injury and property damage. If Contractor does not use any owned, non-owned or hired vehicles in the performance of Services under this Agreement, Contractor shall obtain a non-owned auto endorsement to the Commercial General Liability policy required under subparagraph A. 1) of this Section 9.

3) Workers' Compensation Insurance as required by the State of California and Employer's Liability Insurance with a minimum limit of One Million Dollars (\$1,000,000) per accident for bodily injury or disease. If Contractor has no employees while performing Services under this Agreement, workers' compensation policy is not required, but Contractor shall execute a declaration that it has no employees.

B. Acceptability of Insurers. The insurance policies required under this Section 9 shall be issued by an insurer admitted to write insurance in the State of California with a rating of A:VII or better in the latest edition of the A.M. Best Insurance Rating Guide. Self insurance shall not be considered to comply with the insurance requirements under this Section 9.

C. Additional Insured. The commercial general and automobile liability policies shall contain an endorsement naming City, its officers, employees, agents and volunteers as additional insureds.

D. Primary and Non-Contributing. The insurance policies required under this Section 9 shall apply on a primary non-contributing basis in relation to any other insurance or self-insurance available to City. Any insurance or self-insurance maintained by City, its officers, employees, agents or volunteers, shall be in excess of Contractor's insurance and shall not contribute with it.

E. Contractor's Waiver of Subrogation. The insurance policies required under this Section 9 shall not prohibit Contractor and Contractor's employees, agents or

subcontractors from waiving the right of subrogation prior to a loss. Contractor hereby waives all rights of subrogation against City.

F. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by City. At City's option, Contractor shall either reduce or eliminate the deductibles or self-insured retentions with respect to City, or Contractor shall procure a bond guaranteeing payment of losses and expenses.

G. Cancellations or Modifications to Coverage. Contractor shall not cancel, reduce or otherwise modify the insurance policies required by this Section 9 during the term of this Agreement. The commercial general and automobile liability policies required under this Agreement shall be endorsed to state that should the issuing insurer cancel the policy before the expiration date, the issuing insurer will endeavor to mail thirty (30) days' prior written notice to City. If any insurance policy required under this Section 9 is canceled or reduced in coverage or limits, Contractor shall, within two (2) business days of notice from the insurer, phone, fax or notify City via certified mail, return receipt requested, of the cancellation of or changes to the policy.

H. City Remedy for Noncompliance. If Contractor does not maintain the policies of insurance required under this Section 9 in full force and effect during the term of this Agreement, or in the event any of Contractor's policies do not comply with the requirements under this Section 9, City may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, City may, but has no duty to, take out the necessary insurance and pay, at Contractor's expense, the premium thereon. Contractor shall promptly reimburse City for any premium paid by City or City may withhold amounts sufficient to pay the premiums from payments due to Contractor.

I. Evidence of Insurance. Prior to the performance of Services under this Agreement, Contractor shall furnish City's Risk Manager with a certificate or certificates of insurance and all original endorsements evidencing and effecting the coverages required under this Section 9. The endorsements are subject to City's approval. Contractor may provide complete, certified copies of all required insurance policies to City. Contractor shall maintain current endorsements on file with City's Risk Manager. Contractor shall provide proof to City's Risk Manager that insurance policies expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Contractor shall furnish such proof at least two (2) weeks prior to the expiration of the coverages.

J. Indemnity Requirements not Limiting. Procurement of insurance by Contractor shall not be construed as a limitation of Contractor's liability or as full performance of Contractor's duty to indemnify City under Section 8 of this Agreement.

K. Subcontractor Insurance Requirements. Contractor shall require each of its subcontractors that perform Services under this Agreement to maintain insurance coverage that meets all of the requirements of this Section 9.

10. Mutual Cooperation.

A. City's Cooperation. City shall provide Contractor with all pertinent Data, documents and other requested information as is reasonably available for Contractor's proper performance of the Services required under this Agreement.

B. Contractor's Cooperation. In the event any claim or action is brought against City relating to Contractor's performance of Services rendered under this Agreement, Contractor shall render any reasonable assistance that City requires.

11. Records and Inspections. Contractor shall maintain complete and accurate records with respect to costs, expenses, receipts and other such information required by City that relate to the performance of the Services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Contractor shall provide free access to City, its designees and representatives at reasonable times, and shall allow City to examine and audit the books and records, to make transcripts therefrom as necessary, and to inspect all work, data, documents, proceedings and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

12. Termination of Agreement.

A. Right to Terminate. City may terminate this Agreement at any time, at will, for any reason or no reason, after giving written notice to Contractor at least five (5) calendar days before the termination is to be effective. Contractor may terminate this Agreement at any time, at will, for any reason or no reason, after giving written notice to City at least sixty (60) calendar days before the termination is to be effective.

B. Obligations upon Termination. Contractor shall cease all work under this Agreement on or before the effective date of termination specified in the notice of termination. In the event of City's termination of this Agreement due to no fault or failure of performance by Contractor, City shall pay Contractor based on the percentage of work satisfactorily performed up to the effective date of termination. In no event shall Contractor be entitled to receive more than the amount that would be paid to Contractor for the full performance of the Services required by this Agreement. Contractor shall have no other claim against City by reason of such termination, including any claim for compensation.

13. Force Majeure. Contractor shall not be liable for any failure to perform its obligations under this Agreement if Contractor presents acceptable evidence, in City's sole judgment, that such failure was due to strikes, lockouts, labor disputes, embargoes, acts of God, inability to obtain labor or materials or reasonable substitutes for labor or materials, governmental restrictions, governmental regulations, governmental controls, judicial orders, enemy or hostile governmental action, civil commotion, fire or other casualty, or other causes beyond Contractor's reasonable control and not due to any act by Contractor.

14. Default.

A. Contractor's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Contractor is in default for cause under the terms of this Agreement, City shall have no obligation or duty to continue compensating Contractor for any work performed after the date of default.

B. If the City Manager or his delegate determines that Contractor is in default in the performance of any of the terms or conditions of this Agreement, City shall serve Contractor with written notice of the default. Contractor shall have ten (10) calendar days after service upon it of the notice in which to cure the default by rendering a satisfactory performance. In the event that Contractor fails to cure its default within such period of time, City may, notwithstanding any other provision of this Agreement, terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

15. Notices. Any notice, consent, request, demand, bill, invoice, report or other communication required or permitted under this Agreement shall be in writing and conclusively deemed effective: (a) on personal delivery, (b) on confirmed delivery by courier service during Contractor's and City's regular business hours, or (c) three business days after deposit in the United States mail, by first class mail, postage prepaid, and addressed to the Party to be notified as set forth below:

If to City:
Attn: Sanford Taylor/IT Director
City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, California 90266
Telephone: (310) 802-5067
Email: staylor@citymb.info

If to Contractor:
Attn: Terry Hackelman
Nexlevel Information Technology, Inc.
6829 Fair Oaks Boulevard, Suite 100
Telephone: (916) 692-2000, ext. 201
Email: Terry.hackelman@nexlevelit.com

With a courtesy copy to:

Quinn M. Barrow, City Attorney
1400 Highland Avenue
Manhattan Beach, CA 90266
Telephone: (213) 626-8484
Email: qbarrow@citymb.info

16. Non-Discrimination and Equal Employment Opportunity. In the performance of this Agreement, Contractor shall not discriminate against any employee, subcontractor or applicant for employment because of race, color, religious creed, sex, gender, gender identity, gender expression, marital status, national origin, ancestry, age, physical disability, mental disability, medical condition, genetic information, sexual orientation or other basis prohibited by law. Contractor will take affirmative action to ensure that subcontractors and applicants are employed, and that employees are treated during employment, without regard to their race, color, religious creed, sex, gender, gender identity, gender expression, marital status, national origin, ancestry,

age, physical disability, mental disability, medical condition, genetic information or sexual orientation.

17. Prohibition of Assignment and Delegation. Contractor shall not assign any of its rights or delegate any of its duties under this Agreement, either in whole or in part, without City's prior written consent. City's consent to an assignment of rights under this Agreement shall not release Contractor from any of its obligations or alter any of its primary obligations to be performed under this Agreement. Any attempted assignment or delegation in violation of this Section 17 shall be void and of no effect and shall entitle City to terminate this Agreement. As used in this Section 17, "assignment" and "delegation" means any sale, gift, pledge, hypothecation, encumbrance or other transfer of all or any portion of the rights, obligations, or liabilities in or arising from this Agreement to any person or entity, whether by operation of law or otherwise, and regardless of the legal form of the transaction in which the attempted transfer occurs.

18. No Third Party Beneficiaries Intended. This Agreement is made solely for the benefit of the Parties to this Agreement and their respective successors and assigns, and no other person or entity may have or acquire a right by virtue of this Agreement.

19. Waiver. No delay or omission to exercise any right, power or remedy accruing to City under this Agreement shall impair any right, power or remedy of City, nor shall it be construed as a waiver of, or consent to, any breach or default. No waiver of any breach, any failure of a condition, or any right or remedy under this Agreement shall be (1) effective unless it is in writing and signed by the Party making the waiver, (2) deemed to be a waiver of, or consent to, any other breach, failure of a condition, or right or remedy, or (3) deemed to constitute a continuing waiver unless the writing expressly so states.

20. Final Payment Acceptance Constitutes Release. The acceptance by Contractor of the final payment made under this Agreement shall operate as and be a release of City from all claims and liabilities for compensation to Contractor for anything done, furnished or relating to Contractor's work or services. Acceptance of payment shall be any negotiation of City's check or the failure to make a written extra compensation claim within ten (10) calendar days of the receipt of that check. However, approval or payment by City shall not constitute, nor be deemed, a release of the responsibility and liability of Contractor, its employees, sub-contractors and agents for the accuracy and competency of the information provided and/or work performed; nor shall such approval or payment be deemed to be an assumption of such responsibility or liability by City for any defect or error in the work prepared by Contractor, its employees, sub-contractors and agents.

21. Corrections. In addition to the above indemnification obligations, Contractor shall correct, at its expense, all errors in the work which may be disclosed during City's review of Contractor's report or plans. Should Contractor fail to make such correction in a reasonably timely manner, such correction may be made by City, and the cost thereof shall be charged to Contractor. In addition to all other available remedies, City may deduct the cost of such correction from any retention amount held by City or may

withhold payment otherwise owed Contractor under this Agreement up to the amount of the cost of correction.

22. Non-Appropriation of Funds. Payments to be made to Contractor by City for services preformed within the current fiscal year are within the current fiscal budget and within an available, unexhausted fund. In the event that City does not appropriate sufficient funds for payment of Contractor's services beyond the current fiscal year, the Agreement shall cover payment for Contractor's services only to the conclusion of the last fiscal year in which City appropriates sufficient funds and shall automatically terminate at the conclusion of such fiscal year.

23. Exhibits. Exhibits A, B, and C constitute a part of this Agreement and are incorporated into this Agreement by this reference. If any inconsistency exists or arises between a provision of this Agreement and a provision of any exhibit, or between a provision of this Agreement and a provision of Contractor's proposal, the provisions of this Agreement shall control.

24. Entire Agreement and Modification of Agreement. This Agreement and all exhibits referred to in this Agreement constitute the final, complete and exclusive statement of the terms of the agreement between the Parties pertaining to the subject matter of this Agreement and supersede all other prior or contemporaneous oral or written understandings and agreements of the Parties. No Party has been induced to enter into this Agreement by, nor is any Party relying on, any representation or warranty except those expressly set forth in this Agreement. This Agreement may not be amended, nor any provision or breach hereof waived, except in a writing signed by both Parties.

25. Headings. The headings in this Agreement are included solely for convenience of reference and shall not affect the interpretation of any provision of this Agreement or any of the rights or obligations of the Parties to this Agreement.

26. Word Usage. Unless the context clearly requires otherwise, (a) the words "shall," "will" and "agrees" are mandatory and "may" is permissive; (b) "or" is not exclusive; and (c) "includes" or "including" are not limiting.

27. Time of the Essence. Time is of the essence in respect to all provisions of this Agreement that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a Party of the benefits of any grace or use period allowed in this Agreement.

28. Governing Law and Choice of Forum. This Agreement, and any dispute arising from the relationship between the Parties to this Agreement, shall be governed by and construed in accordance with the laws of the State of California, except that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in interpreting this Agreement. Any dispute that arises under or relates to this Agreement (whether contract, tort or both) shall be resolved in a municipal, superior or federal court with geographic jurisdiction over the City of Manhattan Beach.

29. Attorneys' Fees. In any litigation or other proceeding by which a Party seeks to enforce its rights under this Agreement (whether in contract, tort or both) or seeks a declaration of any rights or obligations under this Agreement, the prevailing Party shall be awarded actual attorneys' fees together with any costs and expenses in addition to all other relief to which that Party may be entitled.

30. Severability. If a court of competent jurisdiction holds any provision of this Agreement to be illegal, invalid or unenforceable for any reason, the validity of and enforceability of the remaining provisions of this Agreement shall not be affected and continue in full force and effect.

31. Counterparts. This Agreement may be executed in multiple counterparts, all of which shall be deemed an original, and all of which will constitute one and the same instrument.

32. Corporate Authority. The persons executing this Agreement on behalf of the Parties warrant that they are duly authorized to execute this Agreement on behalf of the Parties and that by their execution, the Parties are formally bound to the provision of this Agreement.

[SIGNATURE PAGE FOLLOWS]

The Parties, through their duly authorized representatives are signing this Agreement on the date stated in the introductory clause.


City:

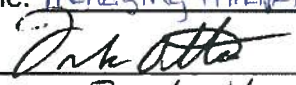
City of Manhattan Beach,
a California municipal corporation

By: _____
Name: _____
Title: _____

Contractor:

Nexlevel Information Technology, Inc.,
a California Corporation

By:  _____
Name: Terry Hackelman
Title: Managing Principal / CEO

By:  _____
Name: Frank Otto
Title: Managing Principal

ATTEST:

By: _____
Name: Liza Tamura
Title: City Clerk

APPROVED AS TO FORM:

By:  _____
Name: Quinn M. Barrow
Title: City Attorney

APPROVED AS TO CONTENT:

By: _____
Name: Bruce Moe
Title: Finance Director

EXHIBIT A SCOPE OF SERVICES

Needs Assessment

1. Consultant will conduct a series of on-site interviews with designated staff to:
 - a. Understand the City's current financial management and human resources workflow processes, and identify the inefficiencies and limitations due to the current software.
 - b. Understand the budgeting, tracking, reporting, scheduling, purchasing, human resource and reconciling needs of each department and the City as a whole.
 - c. Determine the ability or inability of the City's stand-alone software systems to effectively integrate into a new ERP software solution.
 - d. Determine the effectiveness of existing hardware and/or network infrastructure in supporting a new ERP software solution.
2. Consultant will work in tandem with the Selection Committee and include in the process time for the Committee to contact, survey and/or visit selected agencies as part of the evaluation/selection process. (Optional for Consultant to attend potential site visits.)

Recommendations to be Made

1. Recommend ERP software system options that will provide effective solutions and increased efficiencies.
2. Provide an analysis of ERP software system options including, but not limited to: increased efficiencies; solutions to issues identified in the assessment process; pros and cons; ability or inability to integrate with current stand-alone software systems; and, as needed, recommendations for new software systems to replace stand-alone software systems.
3. Facilitate demonstrations of the recommended ERP software options to the Software Selection Committee and appropriate managers.

4. Identify any new or upgraded hardware and/or network infrastructure needed to support the recommended options.

5. Provide contact information of agencies that are using recommended software systems or components of the systems for the City Software Selection Committee to contact or visit.

Figure 2 provides an overview of the phases, tasks, and deliverables for our proposed plan.

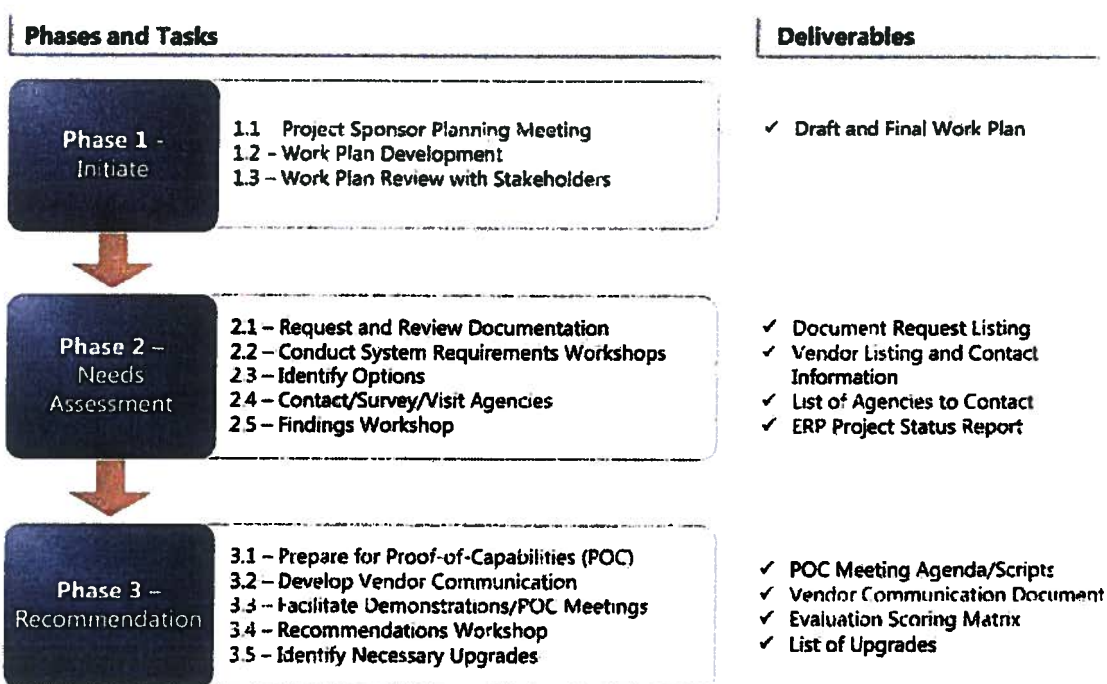


Figure 2 - Project Overview

Phase Description

Phase 1 - Initiate

The purpose of the Initiate phase is to prepare for, and initiate, the project under a well-defined work plan. This phase includes confirming our understanding, as well as the

understanding of the stakeholders, regarding the scope of work and the process for accomplishing the overall objectives of the project.

The following table provides a detailed discussion of what each task will entail.

1.1 Project Sponsor Planning Meeting
NexLevel will meet on-site with the City's Project Sponsor and other key staff to complete a detailed review of the scope of work, project timeline, deliverables, project status methods, project participants (i.e. sponsor, subject matter experts, technical resources, etc.), and other items to ensure a well-planned project. During this meeting, NexLevel will discuss the tools and templates that will be leveraged.
1.2 Work Plan Development
NexLevel will publish a Work Plan that identifies the project approach, methods, tasks, activities, resources, schedule, budget, deliverables, issue and risk management, and major milestones. DELIVERABLE: Draft Work Plan
1.3 Work Plan Review with Stakeholders
NexLevel will facilitate an on-site meeting with the Project Stakeholder(s) and key project staff to review and obtain feedback on the proposed Work Plan. The goal of this meeting will be to obtain consensus on the work plan and a commitment to support the work plan. DELIVERABLE: Final Work Plan

Phase 2 – Needs Assessment

This phase will allow NexLevel to develop an accurate and clear understanding of the current environment, as this provides the initial baseline from which alternatives will be evaluated to determine the next course of action. In addition, during this phase it is necessary to identify and prioritize future system features and functions that need to be met. A key success factor to selecting a best fit solution is having a comprehensive understanding of the City's true needs and requirements.

The following table provides a detailed discussion of what each task will entail.

Table 9 - Requirements Phase Tasks and Deliverables

2.1 Request and Review Documentation
<p>NexLevel understands that City staff has limited time to dedicate to this project. Consequently, we will make all efforts to be as prepared as possible before asking for staff time. To accomplish this, NexLevel will request documentation to familiarize ourselves with the current environment, processes, procedures, policies, transaction levels, organizational responsibilities, reports, technical documentation, etc. It is not NexLevel's intent to create work for the staff with this task - if requested documentation doesn't exist, it should not be created at this time.</p> <p>DELIVERABLE: Documentation Request Listing</p>
2.2 Conduct System Requirements Workshops
<p>1. NexLevel will conduct a series of on-site interviews with designated staff to:</p> <ul style="list-style-type: none"> a. Understand the City's current financial management workflow processes, and identify the inefficiencies and limitations due to the current software. b. Understand the budgeting, tracking, reporting, scheduling, purchasing, human resource and reconciling needs of each department and the City as a whole. c. Determine the ability or inability of the City's stand-alone software systems to effectively integrate into a new ERP software solution. d. Determine the effectiveness of existing hardware and/or network infrastructure in supporting a new ERP software solution.
2.3 Identify Options
<p>NexLevel will provide an analysis of ERP software system options including, but not limited to: increased efficiencies; solutions to issues identified in the assessment process; pros and cons; ability or inability to integrate with current stand-alone software systems; and, as needed, recommendations for new software systems to replace stand-alone software systems.</p> <p>DELIVERABLE: Vendor Listing and Contact Information</p>
2.4 Contact/Survey/Visit Agencies

NexLevel will work in tandem with the City Software Selection Committee and include in the process time for the Committee to contact, survey and/or visit selected agencies as part of the evaluation/selection process. NexLevel is experienced at helping clients prepare for site visits and can be available to attend site visits if desired.

DELIVERABLE: List of agencies to survey/contact/visit, with contact information.

2.5 Findings Workshop

NexLevel will facilitate a workshop with City staff to review the project status. This ensures that the City stakeholders agree with the results of the work that has been done, and that the plan moving forward is agreed upon by all parties.

DELIVERABLE: ERP Project Status Report

Phase 3 – Recommendation

During this phase, NexLevel will work with the City to prepare a Vendor Communication document which will be sent to potential vendors. This document will outline the City's needs objectives and processes. Vendors who are interested in working with the client will schedule demonstrations called "proof of capabilities" (POC) meetings, where they will demonstrate the capabilities of their products utilizing the scripts developed by NexLevel and City personnel. Once POC meetings have been completed, NexLevel will guide the City through the process of deciding upon an ERP vendor. For more information about each step of this phase, please see Table 10 below.

Table 10 – Recommendation Phase Tasks and Deliverables

3.1 Prepare for Proof-of-Capabilities

Conducting proof-of-capabilities (POC) sessions with short listed vendors is a key component of the selection process. This provides the vendors with the opportunity to fully demonstrate their solutions using City provided demonstration scenarios and scripts. As part of this task, NexLevel will develop the POC meeting agenda, scenarios, and scripts for the City's review. In addition, NexLevel can facilitate interaction between the City and the vendors to help ensure the vendor is adequately prepared to complete the POC. The POC provides valuable input and helps clarify risk areas for special consideration.

DELIVERABLE: POC Meeting Agenda and Scripts
3.2 Develop Vendor Communication
Develop a vendor communication that outlines the City's needs, objectives, and processes. This communication will also incorporate the POC scripts. Once completed and approved, this document will be sent to the vendors with whom demonstrations are to be scheduled.
DELIVERABLE: Vendor Communication Document
3.3 Facilitate Demonstrations/POC Meetings
NexLevel will facilitate the POC sessions to keep vendors on schedule and ensure all POC scripts are completed. At the conclusion of each vendor POC session, NexLevel will facilitate a debrief meeting with the evaluators to capture feedback and update the evaluation scoring matrix accordingly. This information will be used in the final selection report.
DELIVERABLE: Evaluation Scoring Matrix
3.4 Recommendation Workshop
NexLevel will facilitate a selection workshop with the City's proposal evaluation committee. NexLevel will use a multi-step facilitation process that encourages evaluator participation and helps drive a consensus on the vendor(s) that appear to be the best fit for the City.
DELIVERABLE: Updated Evaluation Scoring Matrix
3.5 Identify Necessary Upgrades
Identify any new or upgraded hardware and/or network infrastructure needed to support the recommended options.
DELIVERABLE: List of required and recommended upgrades

Table 11 - Methodology Roadmap to RFP's Scope of Services maps the City's RFP Scope of Work with NexLevel's proposed methodology. The column on the left contains all of the tasks identified in the Scope of Work from the City's RFP (page8). The column on the right lists the task from NexLevel's scope of work which addresses the task from

the City's scope, as well as any deliverables which NexLevel will produce as part of that task.

Table 11 - Methodology Roadmap to RFP's Scope of Services

Task from RFP Scope of Work	NexLevel Proposal Scope of Work
Needs Assessment	Task
<p>1. Consultant will conduct a series of on-site interviews with designated staff to:</p> <ul style="list-style-type: none"> a. Understand the City's current financial management workflow processes, and identify the inefficiencies and limitations due to the current software. b. Understand the budgeting, tracking, reporting, scheduling, purchasing, human resource and reconciling needs of each department and the City as a whole. c. Determine the ability or inability of the City's stand-alone software systems to effectively integrate into a new ERP software solution. d. Determine the effectiveness of existing hardware and/or network infrastructure in supporting a new ERP software solution. 	<p>2.2 Conduct System Requirements Workshops</p> <p>NexLevel will work with the City to identify staff who should participate in the System Requirements Workshops. NexLevel will conduct workshops on-site, utilizing a discussion / interview format, and will provide participants with information prior to the workshops to help them prepare for the discussions.</p> <p>The purpose of the workshops is for NexLevel to gain a full understanding of the City's current financial management workflow processes, along with the budgeting, tracking, reporting, scheduling, purchasing, human resource and reconciling needs of each department and the City as a whole. In addition, the workshops will help NexLevel determine whether or not the City's standalone software systems can effectively integrate into a new ERP software solution, and determine the effectiveness of the City's existing hardware and network infrastructure in supporting a new ERP software solution.</p>
Task from RFP Scope of Work	NexLevel Proposal Scope of Work
Recommendations to be Made	Task

<p>2. Consultant will work in tandem with the Selection Committee and include in the process time for the Committee to contact, survey and/or visit selected agencies as part of the evaluation/selection process. (Optional for Consultant to attend potential site visits.)</p>	<p>2.4 Contact/Survey/Visit Agencies</p> <p>NexLevel will work in tandem with the Software Selection Committee and allow time for the Committee to contact survey and/or visit selected agencies as part of the evaluation/selection process.</p> <p>During the execution of this task, NexLevel will generate a list of agencies to survey/contact/visit, with contact information.</p>
<p>1. Recommend ERP software system options that will provide effective solutions and increased efficiencies.</p>	<p>3.4 Recommendation Workshop</p> <p>NexLevel will facilitate a selection workshop with the City's proposal evaluation committee. NexLevel will use a multi-step facilitation process that encourages evaluator participation and helps drive a consensus on the vendor(s) that appear to be the best fit for the City.</p> <p>During this task, the Evaluation Scoring Matrix which was generated before the demonstrations will be updated.</p>
<p>2. Provide an analysis of ERP software system options including, but not limited to: increased efficiencies; solutions to issues identified in the assessment process; pros and cons; ability or inability to integrate with current stand-alone software systems; and, as needed, recommendations for new software systems to replace stand-alone software systems.</p>	<p>2.3 Identify Options</p> <p>NexLevel will provide an analysis of ERP software system options including, but not limited to: increased efficiencies; solutions to issues identified in the assessment process; pros and cons; ability or inability to integrate with current stand-alone software systems; and, as needed, recommendations for new software systems to replace stand-alone software systems.</p> <p>During this task, NexLevel will develop a list of vendors with systems capable of meeting the City's needs.</p>
<p>Task from RFP Scope of Work</p>	<p>NexLevel Proposal Scope of Work</p>

<p>3. Facilitate demonstrations of the recommended ERP software options to the Selection Committee and appropriate managers.</p>	<p>3.3 Facilitate Demonstrations/Proof of Capabilities Meetings</p> <p>NexLevel will facilitate the POC sessions to keep vendors on schedule and ensure all POC scripts are completed. At the conclusion of each vendor POC session, NexLevel will facilitate a debrief meeting with the evaluators to capture feedback and update the evaluation scoring matrix accordingly. This information will be used in the final selection report.</p> <p>As part of this task, NexLevel will develop an Evaluation Scoring Matrix which will allow City stakeholders to more efficiently determine whether or not the systems being demonstrated meets City needs.</p>
<p>4. Identify any new or upgraded hardware and/or network infrastructure needed to support the recommended options.</p>	<p>3.5 Identify Necessary Upgrades</p> <p>NexLevel will identify any hardware and/or network infrastructure which has to be purchased or upgraded to support the recommended system.</p> <p>As part of this task, a list of required and recommended upgrades will be generated.</p>
<p>5. Provide contact information of agencies that are using recommended software systems or components of the systems for the City Software Selection Committee to contact or visit.</p>	<p>2.4 Contact/Survey/Visit Agencies</p> <p>NexLevel will work in tandem with the Software Selection Committee and provide time for the Committee to contact survey and/or visit selected agencies as part of the evaluation/selection process.</p> <p>As part of this task, NexLevel will provide the City with a list of agencies to survey/contact/visit, with contact information.</p>

**EXHIBIT B
APPROVED FEE SCHEDULE**

Cost

Provided in Table 11 is the cost to perform the scope of work, broken out by each of the three phases delineated in our proposal. NexLevel will bill the City monthly for work performed in the previous month, and will invoice according to the City's specifications contained in the RFP. NexLevel agrees to a not-to-exceed arrangement, whereby the City will be billed for the actual hours worked in the previous month, and will not be billed beyond the amount of \$57,915. This arrangement provides the City with a maximum budget amount.

Table 12 - Cost Summary

Phase	Level of Effort (Hours)	Cost
Phase 1 - Initiate	24	\$ 3,960
Phase 2 - Needs Assessment	207	\$ 34,155
Phase 3 - Recommendation	120	\$ 19,800
Total Cost	351	\$ 57,915

Travel Expenses

In addition to the Cost Summary provided in Table 11, NexLevel anticipates incurring expenses related to travel, including mileage, meals, and lodging during the Needs Assessment phase of the project, along with airfare for Mr. Hackelman. For purposes of budgeting, NexLevel agrees to a not-to-exceed amount of \$3,500 for travel. NexLevel will bill for actual travel expenses incurred as a part of its monthly billing for work performed, will adhere to the allowable contractor expenses delineated in the City's RFP, and will substantiate travel billings with actual receipts.

EXHIBIT C PROJECT TIMELINE

NexLevel shall begin the project within 10 business days of notification of award. NexLevel has developed a proposed timeline based on our experience and knowledge of the City. The timeline assumes key City staff will be available on a timely basis, and that deliverables are reviewed and approved by the City within 7 business days. Figure 5 below provides the proposed timeline for the entire project. The timeline is based on our experience with similar projects.

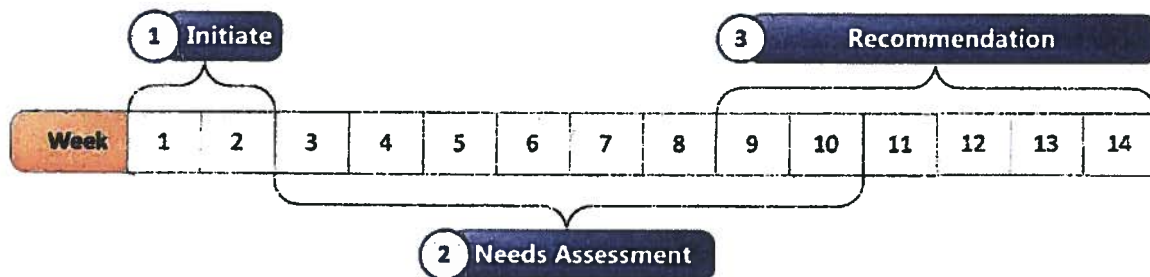


Figure 5 - Project Timeline

Note that the timeline above is based on the information we have available to us at this time. Software vendor availability and City obligations may impact this timeline.

One of the initial tasks in the proposed scope of work will be to meet with the City to develop and finalize a detailed work plan. The work plan will include a detailed timeline that identifies each task and resource that will participate in the project. Once approved by both Parties, that timeline will replace this Exhibit C.