

PROFESSIONAL SERVICES AGREEMENT FOR DEVELOPMENT OF AN INFORMATION SYSTEMS MASTER PLAN

THIS AGREEMENT ("Agreement") is made and entered into on this 20th day of November, 2012, by and between the City of Manhattan Beach, a municipal corporation ("City") and NexLevel Information Technology, Inc., a California corporation ("Contractor") (collectively, the "Parties").

RECITALS

A. On September 14, 2012, the City released Request for Proposals #898-13 (the "RFP"), seeking a qualified consultant to develop a five-year Information Systems Master Plan.

B. In response to the RFP, Contractor submitted that certain Information Systems Master Plan Proposal (the "Proposal") dated October 10, 2012.

C. Contractor represents that it is qualified and able to perform the requested services.

AGREEMENT

NOW, THEREFORE, in consideration of the Parties' performance of the promises, covenants, and conditions stated herein, the Parties hereto agree as follows:

1. **Term of Agreement.** The term of this Agreement shall commence on November 21, 2012, and continue until the date services are completed or June 30, 2013 whichever occurs first, unless earlier terminated as provided below.

1.1 **Termination.** City and Contractor shall have the right to terminate this Agreement, without cause, by giving thirty (30) days' written notice. Upon receipt of a termination notice, Contractor shall:

(1) Promptly discontinue all services affected (unless the notice directs otherwise); and

(2) Promptly deliver all data, reports, estimates, summaries, and such other information and materials as may have been accumulated by Contractor in performing the Agreement to City, whether completed or in progress. Contractor shall be entitled to reasonable compensation for the services it performs up to the date of termination.

2. **Services to be Provided.** The services to be provided hereunder shall be those set forth in the Proposal, attached hereto as Exhibit A.

3. **Compensation.** Contractor shall be compensated as follows:

3.1 Amount. City shall pay Contractor in accordance with the detailed breakdown set forth on page 17 of Exhibit A. In no event shall City pay Contractor more than \$60,760 for all services rendered.

3.2 Payment. Contractor shall submit to City monthly invoices for all services rendered pursuant to this Agreement. Such invoices shall be submitted within fifteen (15) days of the end of the month during which the services were rendered and shall describe in detail the services rendered during the period. City will pay Contractor within thirty (30) days of receiving Contractor's invoice. City will not withhold any applicable federal or state payroll and other required taxes, or other authorized deductions from payments made to Contractor.

3.3 Additional Services. City shall not pay Contractor for any services not specified in this Agreement, without the prior, written authorization by City's City Manager. If authorized, City will pay the hourly rates set forth on page 17 of Exhibit A for such additional services.

3.4 Expenses. City shall reimburse Contractor for actual and necessary travel expenses not to exceed \$2,500 within thirty (30) days of the City's receipt of invoices supported by actual receipts. City shall not reimburse Contractor for any other expenses.

4. Professional Standards. Contractor shall maintain or exceed the level of competency presently maintained by other similar practitioners in the State of California, for professional and technical soundness, accuracy and adequacy of all work, advice, and materials furnished under this Agreement.

5. Time of Performance. Contractor shall complete all services required hereunder as and when directed by City. However, City in its sole discretion, may extend the time for performance of any service.

6. Employees and Subcontractors. Contractor may, at Contractor's sole cost and expense, employ other persons as may, in the opinion of Contractor, be needed to comply with the terms of this Agreement, if each person possesses the necessary qualifications to perform such services. If a person is employed to perform a portion of the scope of work, the engagement of such person shall be subject to the prior approval of the City.

7. Insurance Requirements.

7.1 Commencement of Work. Contractor shall not commence work under this Agreement until it has obtained City approved insurance. Before beginning work hereunder, during the entire period of this Agreement, for any extensions hereto, and for periods after the end of this Agreement as indicated below, Contractor must have and maintain in place, all of the insurance coverages required in this Section 7. Contractor's insurance shall comply with all items specified by this Agreement. Any subcontractors shall be subject to all of the requirements of this Section 7 and Contractor shall be

responsible to obtain evidence of insurance from each subcontractor and provide it to City before the subcontractor commences work.

All insurance policies used to satisfy the requirements imposed hereunder shall be issued by insurers authorized to do business in the State of California. Insurers shall have a current A.M. Best's rating of not less than A-VII unless otherwise approved by City.

7.2 Coverages, Limits and Policy Requirements. Contractor shall maintain the types of coverages and limits indicated below:

(1) **COMMERCIAL GENERAL LIABILITY INSURANCE:** A policy for occurrence coverage, including all coverages provided by and to the extent afforded by Insurance Services Office Form CG 0001 ed. 11/88 or 11/85, with no special limitations affecting City. The limit for all coverages under this policy shall be no less than one million dollars (\$1,000,000) per occurrence. City, its employees, officials and agents, shall be added as additional insureds by endorsement to the policy. The insurer shall agree to provide the City with thirty (30) days prior written notice of any cancellation, non-renewal or material change in coverage. The policy shall contain no provision that would make this policy excess over, contributory with, or invalidated by the existence of any insurance, self-insurance or other risk financing program maintained by City. In the event the policy contains such an "other insurance" clause, the policy shall be modified by endorsement to show that it is primary for any claim arising out of the work performed under this Agreement. The City of Manhattan Beach Insurance Endorsement Form No. 1 (General Liability) must be executed by the applicable insurance underwriters.

(2) **COMMERCIAL AUTO LIABILITY INSURANCE:** A policy including all coverages provided by and to the extent afforded by Insurance Services Office form CA 0001, ed. 12/93, including Symbol 1 (any auto) with no special limitations affecting the City. The limit for bodily injury and property damage liability shall be no less than one million dollars (\$1,000,000) per accident. City, its employees, officials and agents, shall be added as additional insureds by endorsement to the policy. The insurer shall agree to provide the City with thirty (30) days prior written notice of any cancellation, non-renewal or material change in coverage. The policy shall contain no provision that would make this policy excess over, contributory with, or invalidated by the existence of any insurance, self-insurance or other risk financing program maintained by City. In the event the policy contains such an "other insurance" clause, the policy shall be modified by endorsement to show that it is primary for any claim arising out of the work performed under this Agreement. The City of Manhattan Beach Insurance Endorsement Form No. 2 (Auto) must be executed by the applicable insurance underwriters.

(3) **WORKERS' COMPENSATION INSURANCE:** A policy which meets all statutory benefit requirements of the Labor Code, or other applicable law, of the State of California. The minimum coverage limits for said insurance shall be no less

than one million dollars (\$1,000,000) per claim. The policy shall contain, or be endorsed to include, a waiver of subrogation in favor of City.

(4) **PROFESSIONAL ERRORS & OMISSIONS:** A policy with minimum limits of two million dollars (\$2,000,000) per claim and aggregate. This policy shall be issued by an insurance company which is qualified to do business in the State of California and contain a clause that the policy may not be canceled until thirty (30) days written notice of cancellation is mailed to City.

7.3 **Additional Requirements.** The procuring of such required policies of insurance shall not be construed to limit Contractor's liability hereunder, or to fulfill the indemnification provisions and requirements of this Agreement. There shall be no recourse against City for payment of premiums or other amounts with respect thereto. City shall notify Contractor in writing of changes in the insurance requirements. If Contractor does not deposit copies of acceptable insurance policies with City incorporating such changes within sixty (60) days of receipt of such notice, Contractor shall be deemed in default hereunder.

Any deductibles or self-insured retentions must be declared to and approved by City. Any deductible exceeding an amount acceptable to City shall be subject to the following changes:

(1) Either the insurer shall eliminate, or reduce, such deductibles or self-insured retentions with respect to City and its officials, employees and agents (with additional premium, if any, to be paid by Contractor) ; or

(2) Contractor shall provide satisfactory financial guarantee for payment of losses and related investigations, claim administration, and defense expenses.

7.4 **Verification of Compliance.** Contractor shall furnish City with original endorsements effecting coverage required by this Agreement, in substantially the form attached as Exhibit B. The endorsements are to be signed by a person authorized by the insurer to bind coverage on its behalf. All endorsements are to be received and approved by City before work commences. Not less than fifteen (15) days prior to the expiration date of any policy of insurance required by this Agreement, Contractor shall deliver to City a binder or certificate of insurance with respect to each renewal policy, bearing a notation evidencing payment of the premium therefor, or accompanied by other proof of payment satisfactory to City.

8. **Non-Liability of Officials and Employees of the City.** No official or employee of City shall be personally liable for any default or liability under this Agreement.

9. **Non-Discrimination.** Contractor covenants there shall be no discrimination based upon race, color, creed, religion, sex, marital status, age, handicap, national origin, or ancestry, in any activity pursuant to this Agreement.

10. **Independent Contractor.** It is agreed that Contractor shall act and be an independent Contractor and not an agent or employee of City, and shall obtain no rights to any benefits which accrue to City's employees. Contractor expressly acknowledges and agrees that City has no obligation to pay or withhold state or federal taxes or to provide workers' compensation or unemployment insurance or other employee benefits and that any person employed by Contractor shall not be in any way an employee of the City. As such, Contractor shall have the sole legal responsibility to remit all federal and state income and social security taxes and to provide for his/her own workers compensation and unemployment insurance and that of his/her employees or subcontractors. Neither City nor any of its agents shall have control over the conduct of Contractor or any of Contractor's employees. Contractor shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of City. Contractor shall indemnify and hold harmless City and its elected officials, officers and employees, servants, designated volunteers, and agents serving as independent Contractors in the role of City officials, from any and all liability, damages, claims, costs and expenses of any nature to the extent arising from Contractor's personnel practices. City shall have the right to 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 Section.

11. **Compliance with Law.** Contractor shall comply with all applicable laws, ordinances, codes, and regulations of the federal, state, and local government.

12. **Ownership of Work Product.** All documents or other information created, developed or received by Contractor shall, for purposes of copyright law, be deemed works made for hire for City by Contractor as City's employee(s) for hire and shall be the sole property of City. Contractor shall provide City with copies of these items upon demand and in any event, upon termination or expiration of the term of this Agreement.

13. **Conflict of Interest and Reporting.** Contractor shall at all times avoid conflict of interest, or appearance of conflict of interest, in performance of this Agreement.

14. **Notices.** All notices shall be personally delivered or mailed to the below listed addresses. These addresses shall be used for delivery of service of process.

If to City: City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, California 90266
Attn: Leilani Emnace

If to Contractor: NexLevel Information Technology, Inc.
6829 Fair Oaks Boulevard
Suite 100
Carmichael, California 95608
Attn: Terry Hackelman

City Attorney
City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, California 90266

15. **Contractor's Proposal.** This Agreement shall include Contractor's proposal. In the event of any inconsistency between the terms of the proposal and this Agreement, this Agreement shall govern.

16. **Licenses, Permits, and Fees.** Contractor shall obtain a Manhattan Beach Business License, all permits, and licenses as may be required by this Agreement.

17. **Familiarity with Work.** By executing this Agreement, Contractor warrants that:

(1) It has investigated the work to be performed;

(2) It has investigated the site of the work and is aware of all conditions there; and

(3) It understands the difficulties and restrictions of the work under this Agreement. Should Contractor discover any conditions materially differing from those inherent in the work or as represented by City, it shall immediately inform City and shall not proceed, except at Contractor's risk, until written instructions are received from City.

18. **Time of Essence.** Time is of the essence in the performance of this Agreement.

19. **Limitations Upon Subcontracting and Assignment.** This Agreement, or any portion, shall not be assigned by Contractor without prior written consent of City.

20. **Authority to Execute.** The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute this Agreement.

21. **Indemnification.** Contractor shall indemnify, defend, and hold harmless City and its elective or appointive boards, officers, agents, attorneys and employees from any and all claims, liabilities, expenses, or damages of any nature (collectively "Claim"), including attorneys' fees arising out of, or in any way connected with performance of, the Agreement by Contractor, Contractor's agents, officers, employees, subcontractors, or independent Contractors hired by Contractor, except for such Claim arising from the sole negligence of the City, as determined by final arbitration or court decision or by the agreement of the parties. Contractor shall defend City, with counsel of City's choice, at Contractor's own cost, expense, and risk and shall pay and satisfy any judgment, award, or decree that may be rendered against City. Contractor shall reimburse City for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contractor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Contractor or City. All duties of Contractor under this Section shall survive termination of this Agreement. This indemnity shall apply to all claims and liability regardless of whether any insurance

policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Contractor.

22. **Modification.** This Agreement constitutes the entire agreement between the parties and supersedes any other agreements, oral or written. No promises, other than those included in this Agreement, shall be valid. This Agreement may be modified only by a written agreement executed by City and Contractor.

23. **California Law.** This Agreement shall be construed in accordance with the laws of the State of California. Any action commenced about this Agreement shall be filed in the appropriate branch of the Los Angeles County Municipal or Superior Court.

24. **Interpretation.** This Agreement shall be interpreted as though prepared by both parties.

25. **Preservation of Agreement.** Should any provision of this Agreement be found invalid or unenforceable, the decision shall affect only the provision interpreted, and all remaining provisions shall remain enforceable.

26. **Entire Agreement.** This Agreement supersedes any and all other agreements, either oral or in writing, between the parties with respect to the subject matter herein. Each party to this Agreement acknowledges that representations by any party not embodied herein, and any other agreements, statements, or promises concerning the subject matter of this Agreement, not contained in this Agreement, shall not be valid and binding. Any modification of this Agreement will be effective only if it is in writing signed by the parties. Any issue with respect to the interpretation or construction of this Agreement is to be resolved without resorting to the presumption that ambiguities should be construed against the drafter.

27. **Exhibits.** All exhibits referenced in this Agreement are hereby incorporated into the Agreement as if set forth in full herein.

28. **Attorneys' Fees.** In the event that legal action is necessary to enforce the provisions of the Agreement, or to declare the rights of the parties hereunder, the parties agree that the prevailing party in the legal action shall be entitled to recover all attorneys' fees, expert witness fees and court costs incurred in such action from the opposing party.

IN WITNESS THEREOF, the parties hereto have executed this Agreement on the day and year first shown above.

CONTRACTOR

By

CITY OF MANHATTAN BEACH

By

ATTEST:

City Clerk

APPROVED AS TO FORM:

Tom Bauer
City Attorney