

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (“Agreement”) is entered into and effective as of the last date of execution below (“Effective Date”) and is between the City of Manhattan Beach, a California municipal corporation (“City”) and Insight Public Sector, Inc., an Illinois corporation (“Consultant”). City and Consultant are sometimes referred to herein as the “Parties”, and individually as a “Party”.

RECITALS

A. City desires to utilize the services of Consultant as an independent contractor to provide an enterprise storage area network solution including related support and professional services.

B. Consultant 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.

C. City desires to retain Consultant and Consultant 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. Consultant’s Services.

A. Scope of Services. Consultant shall perform the services described in the Scope of Services (the “Services”) for providing an enterprise storage area network solution and related support/professional services, attached as **Exhibit A**. City may request, in writing, changes in the Scope of Services to be performed. Any changes to the scope or cost of work must be in writing and mutually agreed upon by the Parties.

B. Party Representatives. For the purposes of this Agreement, the City Representative shall be the City Manager, or the City Information Technology Director and/or his designee (the “City Representative”). For the purposes of this Agreement, the Consultant Representative shall be Damien Tran, Account Executive (the “Consultant Representative”). The Consultant Representative shall directly manage Consultant’s Services under this Agreement. Consultant shall not change the Consultant Representative without City’s prior written consent.

C. Time for Performance. Consultant shall commence the Services on the Effective Date and shall perform all Services by the deadline established by the City Representative or, if no deadline is established, with reasonable diligence.

D. Standard of Performance. Consultant 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. Consultant 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 Consultant or under its supervision, and all personnel engaged in the work shall be qualified to perform such Services.

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

G. Permits and Licenses. Consultant 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 through the completion of the Services in accordance with the schedule agreed upon by the Parties, unless sooner terminated as provided in Section 12 of this Agreement or extended.

3. Compensation.

A. Compensation. As full compensation for Services satisfactorily rendered, City shall pay Consultant at the hourly rates set forth in the Approved Fee Schedule attached hereto as **Exhibit B**. In no event shall Consultant be paid more than \$132,641.55 (the "Maximum Compensation") for such Services.

B. Expenses. City shall not reimburse Consultant for any expenses.

C. Unauthorized Services and Unanticipated Expenses. City will not pay for any services not specified in the Scope of Services, unless the City Council or the City Representative, if applicable, and the Consultant Representative authorize such services in writing prior to Consultant's performance of those services or incurrence of additional expenses. Any additional services authorized by the City Council, or (where authorized) the City Manager shall be compensated at the rates set forth in **Exhibit B**, or, if not specified, at a rate mutually agreed to by the Parties. At the request of the Consultant, the City Council may, in writing, reimburse Consultant for an unanticipated expense at its actual cost. City shall make payment for additional services and expenses in accordance with Section 4 of this Agreement.

4. Method of Payment.

A. Invoices. Consultant shall submit to City an invoice, on a monthly basis, for the Services performed pursuant to this Agreement. Invoices must be submitted to Accounts Payable email address at ap@manhattanbeach.gov and/or mailing address City of Manhattan Beach City Hall, 1400 Highland Avenue, Manhattan Beach, CA 90266,

Attn: Accounts Payable c/o Information Technology Department. 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 Consultant in writing within ten Business days of receipt of any disputed invoice amounts.

B. Payment. City shall pay all undisputed invoice amounts within 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 Consultant. Notwithstanding the preceding sentence, if Consultant is a nonresident of California, City will withhold the amount required by the Franchise Tax Board pursuant to Revenue and Taxation Code Section 18662 and applicable regulations.

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

5. Independent contractor. Consultant is, and shall at all times remain as to City, a wholly independent contractor. Consultant 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 Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant 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. Consultant covenants that all data, reports, documents, discussion, or other information (collectively "Data") developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed or released by Consultant without prior written authorization by City. City shall grant such authorization if applicable law requires disclosure. Consultant, 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. A response to a subpoena or court order shall not be considered "voluntary," provided Consultant gives City notice of such court order or subpoena.

B. Consultant shall promptly notify City should Consultant, 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 Consultant or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant. 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 Consultant 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 Consultant's permission. Consultant 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 Consultant.

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

7. Conflicts of Interest. Consultant affirms that it presently has no interest and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of the Services contemplated by this Agreement. Consultant and its officers, employees, associates and subcontractors, if any, shall comply with all conflict of interest statutes of the State of California applicable to Consultant'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, Consultant may perform similar Services for other clients, but Consultant 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 Consultant is not currently performing work that would require Consultant or one of its officers, employees, associates or subcontractors to abstain from a decision under this Agreement pursuant to a conflict of interest statute. Consultant shall incorporate a clause substantially similar to this Section into any subcontract that Consultant executes in connection with the performance of this Agreement.

8. Indemnification, Hold Harmless, and Duty to Defend.

A. Indemnities.

1) To the fullest extent permitted by law, Consultant 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 Consultant, its officers, agents, servants, employees, subcontractors, materialmen, consultants or their officers, agents, servants or employees (or any entity or individual that Consultant 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 court decision or by the agreement of the Parties. Consultant 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. Consultant shall reimburse the Indemnitees for any and all legal expenses and costs incurred by Indemnitees in connection therewith.

2) Consultant shall pay all required taxes on amounts paid to Consultant 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.

3) Consultant shall fully comply with the workers' compensation law regarding Consultant and Consultant's employees. Consultant shall indemnify and hold City harmless from any failure of Consultant to comply with applicable workers' compensation laws.

4) City may offset against the amount of any fees due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant's failure to promptly pay to City any reimbursement or indemnification arising under this subparagraph A.2).

5) Consultant shall obtain executed indemnity agreements with provisions identical to those in this Section from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. If Consultant fails to obtain such indemnity obligations, Consultant 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 Consultant's subcontractor, its officers, agents, servants, employees, subcontractors, materialmen, consultants or their officers, agents, servants or employees (or any entity or individual that Consultant'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 court decision or by the agreement of the Parties.

B. Workers' Compensation Acts not Limiting. Consultant's indemnifications and obligations under this Section, or any other provision of this Agreement, shall not be limited by the provisions of any workers' compensation act or similar act. Consultant 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 Consultant 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 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. Consultant's indemnifications and obligations under this Section shall survive the expiration or termination of this Agreement.

9. Insurance.

A. Minimum Scope and Limits of Insurance. Consultant 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 \$2,000,000.00 per occurrence for bodily injury, personal injury and property damage and a general aggregate limit of \$2,000,000.00 per project or location. If Consultant is a limited liability company, the commercial general liability coverage shall be amended so that Consultant 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 \$2,000,000.00 per accident for bodily injury and property damage. If Consultant does not use any owned, non-owned or hired vehicles in the performance of Services under this Agreement, Consultant shall obtain a non-owned auto endorsement to the Commercial General Liability policy required under subparagraph A.1) of this Section.

3) Workers' Compensation Insurance as required by the State of California and Employer's Liability Insurance with a minimum limit of \$1,000,000.00 per accident for bodily injury or disease. If Consultant has no employees while performing Services under this Agreement, workers' compensation policy is not required, but Consultant shall execute a declaration that it has no employees.

4) Technology Professional Liability/Errors and Omissions Insurance appropriate to the Consultant's profession and work hereunder, with minimum limits of not less than \$2,000,000 per occurrence. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by the Consultant in this agreement and shall include, but not be limited to, claims involving infringement of intellectual property, copyright, trademark, invasion of privacy violations, information theft, release of private information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.

a) The policy shall include, or be endorsed to include, property damage liability coverage for damage to, alteration of, loss of, or destruction of electronic data and/or information "property" of the City in the care, custody, or control of the Consultant. If not covered under the Consultant's liability policy, such "property" coverage of the City may be endorsed onto the Consultant's Cyber Liability Policy as covered property as follows:

b) Cyber Liability coverage in an amount sufficient to cover the full replacement value of damage to, alteration of, loss of, or destruction of electronic data and/or information "property" of the City that will be in the care, custody, or control of Consultant.

B. Acceptability of Insurers. The insurance policies required under this Section shall be issued by an insurer authorized or 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.

C. Additional Insured. The commercial general and automobile liability policies shall contain an endorsement naming City and its elected and appointed officials, officers, employees, agents and volunteers as additional insureds. This provision shall also apply to any excess/umbrella liability policies.

D. Primary and Non-Contributing. The insurance policies required under this Section 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 elected and appointed officials, officers, employees, agents or volunteers, shall be in excess of Consultant's insurance and shall not contribute with it.

E. Consultant's Waiver of Subrogation. The insurance policies required under this Section shall not prohibit Consultant and Consultant's employees, agents or subcontractors from waiving the right of subrogation prior to a loss. Consultant 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, Consultant shall

either reduce or eliminate the deductibles or self-insured retentions with respect to City, or Consultant shall procure a bond guaranteeing payment of losses and expenses.

G. Cancellations or Modifications to Coverage. Consultant shall not cancel, reduce or otherwise modify the insurance policies required by this Section 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 30 days' prior written notice to City. If any insurance policy required under this Section is canceled or reduced in coverage or limits, Consultant shall, within two 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 Consultant does not maintain the policies of insurance required under this Section in full force and effect during the term of this Agreement, or in the event any of Consultant's policies do not comply with the requirements under this Section, 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 Consultant's expense, the premium thereon. Consultant shall promptly reimburse City for any premium paid by City or City may withhold amounts sufficient to pay the premiums from payments due to Consultant.

I. Evidence of Insurance. Prior to the performance of Services under this Agreement, Consultant 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. The endorsements are subject to City's approval. Consultant may provide complete, certified copies of all required insurance policies to City. Consultant shall maintain current endorsements on file with City's Risk Manager. Consultant 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. Consultant shall furnish such proof at least two weeks prior to the expiration of the coverages.

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

K. Broader Coverage/Higher Limits. If Consultant maintains broader coverage and/or higher limits than the minimums required above, City requires and shall be entitled to the broader coverage and/or the higher limits maintained by Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

L. Subcontractor Insurance Requirements. Consultant 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.

10. Mutual Cooperation.

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

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

11. Records and Inspections. Consultant shall maintain complete and accurate records with respect to time, costs, expenses, receipts, correspondence, 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. Consultant 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 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 Consultant at least five calendar days before the termination is to be effective. Consultant may terminate this Agreement at any time, at will, for any reason or no reason, after giving written notice to City at least 60 calendar days before the termination is to be effective.

B. Obligations upon Termination. Consultant 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 Consultant, City shall pay Consultant based on the percentage of work satisfactorily performed up to the effective date of termination. In no event shall Consultant be entitled to receive more than the amount that would be paid to Consultant for the full performance of the Services required by this Agreement. Consultant shall have no other claim against City by reason of such termination, including any claim for compensation.

13. Force Majeure. Consultant shall not be liable for any failure to perform its obligations under this Agreement if Consultant presents acceptable evidence, in City's sole judgment, that such failure was due to acts of God, embargoes, inability to obtain

labor or materials or reasonable substitutes for labor or materials, governmental restrictions, judicial orders, enemy or hostile governmental action, fire or other casualty, or other causes beyond Consultant's reasonable control and not due to any act by Consultant.

14. Default.

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

B. In addition to the right to terminate pursuant to Section 12, if the City Manager determines that Consultant is in default in the performance of any of the terms or conditions of this Agreement, City shall serve Consultant with written notice of the default. Consultant shall have ten calendar days after service upon it of the notice in which to cure the default by rendering a satisfactory performance. In the event that Consultant 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 Consultant'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: Information Technology
City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, California 90266
Telephone: (310) 802-5067
Email: pgriffin@manhattanbeach.gov

If to Consultant:

Attn: Damien Tran
Insight Public Sector Inc.
2701 E Insight Way
Chandler, AZ 85286-1930
damien.tran@insight.com

With a courtesy copy to:

Quinn M. Barrow, City Attorney
1400 Highland Avenue
Manhattan Beach, California 90266
Telephone: (310) 802-5061
Email: qbarrow@rwglaw.com

16. Non-Discrimination and Equal Employment Opportunity. In the performance of this Agreement, Consultant 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. Consultant 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. Consultant 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 Consultant 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 shall be void and of no effect and shall entitle City to terminate this Agreement. As used in this Section, "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 Consultant 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 Consultant for anything done, furnished or relating to Consultant'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 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 Consultant, its employees, subcontractors 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 Consultant, its employees, subcontractors and agents.

21. Corrections. In addition to the above indemnification obligations, Consultant shall correct, at its expense, all errors in the work which may be disclosed during City's review of Consultant's report or plans. Should Consultant 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 Consultant. 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 Consultant under this Agreement up to the amount of the cost of correction.

22. Non-Appropriation of Funds. Payments to be made to Consultant by City for services performed 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 Consultant's services beyond the current fiscal year, this Agreement shall cover payment for Consultant'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 and B 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 Consultant'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. Business Days. “Business days” means days Manhattan Beach City Hall is open for business.

29. 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 superior court with geographic jurisdiction over the City of Manhattan Beach.

30. 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 entitled to recover all attorneys’ fees, experts’ fees, and other costs actually incurred in connection with such litigation or other proceeding, in addition to all other relief to which that Party may be entitled.

31. 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.

32. 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.

33. Corporate Authority. Each person executing this Agreement on behalf of his or her Party warrants that he or she is duly authorized to execute this Agreement on behalf of that Party and that by such execution, that Party is formally bound to the provisions of this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized representatives as of the Effective Date.

City:

City of Manhattan Beach,
a California municipal corporation

Consultant:

Insight Public Sector, Inc.,
an Illinois corporation

By: _____
Name: Bruce Moe
Title: City Manager

DocuSigned by:
By: Erica Falchetti 8/29/2023
Name: Erica Falchetti
Title: Director, Public Sector

ATTEST:

By: _____
Name: _____
Title: _____

By: _____
Name: Liza Tamura
Title: City Clerk

**PROOF OF AUTHORITY TO BIND
CONTRACTING PARTY REQUIRED**

APPROVED AS TO FORM:

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

APPROVED AS TO FISCAL IMPACT:

By: _____
Name: Julie Bondarchuk
Title: Acting Finance Director

APPROVED AS TO CONTENT:

DocuSigned by:
By: Patrick Griffin, Interim Information Technology Director 8/29/2023
Name: Patrick Griffin
Title: Interim Information Technology
Director

EXHIBIT A SCOPE OF SERVICES

Insight will provide the City with the following:

- NetApp Storage Area Network system (hardware and software)
- Premium prepaid support - 60 Months (5 years) of extended hardware and software support
 - SupportEdge Advisor's major support features include:
 - Remote tech support 24/7/365 issue reporting and technical response based on the issue severity (Priority 1: 30 minutes on a 24/7 basis; Priority 2: 2 hours on a 24/7 basis; Priority 3: Next business day; Priority 4: Next business day);
 - Replacement parts delivery target: Next Business Day – NetApp professional installation included;
 - On-site support and troubleshooting;
 - Software support – access to all patches and features;
 - Remedial software upgrades;
 - NetApp Active IQ Digital Advisor to maximize and optimize performance across the data fabric with AI-powered analytics;
 - Cloud Insights integration
 - NetApp Unified Support – if NetApp determines a problem resides with a third-party product, then, upon request, NetApp will assist the customer in opening a case and facilitate response and resolution with the third-party supplier;
- NetApp prepaid deployment services standard (installation and configuration) – NetApp will perform the services as identified below

NetApp Professional Services

The professional services are performed remotely or onsite during standard business hours, Monday through Friday, 7:30 am to 5:30 pm unless the City requests different hours.

Phase 1: Planning and Design Overview

NetApp and the City will plan and design the installation requirements for NetApp Storage Area Network system at the location selected by the City.

Deliverables

Site Prep documentation completed by NetApp including all details needed for a successful implementation

Phase 2: Installation and Configuration Overview

NetApp will install and configure the NetApp AFF C250 system for the City.

Prerequisites

- Delivery of the NetApp hardware

Deliverables

Installation and configuration documentation completed with all details for implementation

Completion Criteria

Fully functional NetApp AFF C250

Phase 3: Documentation and Knowledge Transfer Overview

NetApp will deliver a knowledge transfer session to the City.

Prerequisites

- Completion of Phase 1 and 2
- A date and time to provide the knowledge transfer session

Tasks

- Provide a knowledge transfer session to the City

Deliverables

Knowledge transfer session

Completion Criteria

The deliverables stated above to be provided to the City.

Methodology and Work Plan

NetApp will deliver the products and provide the services as described in the Scope of Services and designate a Project Manager to conduct a kick-off meeting to define roles and responsibilities. The Project Manager will work with the City and technical resources to develop the initial project schedule and manage the completion of tasks as defined in the schedule in alignment with the scope of services.

Project Management

NetApp will provide overall planning of the project and will coordinate with the City to accomplish the project scope. NetApp will coordinate the installation following the defined planning, implementation, and closure tasks over the course of the project.

Project Management Activities and Deliverables

Manage and coordinate the resources necessary for project completion, including:

- Conduct a Kick-off meeting to define roles and responsibilities
- Develop an initial project schedule including critical milestones

- Assign NetApp resources and manage the completion of tasks as defined in the Project Schedule
- Provide Project Coordination
- Provide a Project Closure Form to the City at the completion of the Project

Having a project management team will ensure the appropriate tools and methods are used to reduce risk while increasing efficiency. Five processes will be taken to ensure the project is successful i.e. project initiating, planning, executing, monitoring/controlling, and closing.

1. Project Initiating
 - a) Identify project objective(s), key stakeholders, critical dates, and project expectations
2. Planning
 - a) Implement a management plan to ensure the scope, schedule, and cost remain on track
3. Executing
 - a) Include quality assurance and stakeholder engagement; secure and build the team
4. Monitoring
 - a) Monitor the project scope and expectations, identify and manage project risks, track and process change requests as well as status and overall project progress (project manager)
5. Closing
 - a) Deliver the project closure document for sign off to the City

EXHIBIT B APPROVED FEE SCHEDULE

All provided professional services, hardware, software, and support will be billed according to Section 4 of this Agreement. For clarification purposes, the payment schedule is as follows:

- Hardware and Software – paid in 30 days after the delivery to the City designated location
- Support – 5 years of support for the NetApp hardware and software paid in 30 days after proof of completion is provided to the City designated contact i.e. the IT Director and/or his/her designee(s)
 - SupportEdge Advisor's major support features include:
 - Remote tech support 24/7/365 issue reporting and technical response based on the issue severity (Priority 1: 30 minutes on a 24/7 basis; Priority 2: 2 hours on a 24/7 basis; Priority 3: Next business day; Priority 4: Next business day);
 - Replacement parts delivery target: Next Business Day – NetApp professional installation included;
 - On-site support and troubleshooting;
 - Software support – access to all patches and features;
 - Remedial software upgrades;
 - NetApp Active IQ Digital Advisor to maximize and optimize performance across the data fabric with AI-powered analytics;
 - Cloud Insights integration
 - NetApp Unified Support – if NetApp determines a problem resides with a third-party product, then, upon request, NetApp will assist the customer in opening a case and facilitate response and resolution with the third-party supplier;
- Professional Services – prepaid and due within 30 days after receiving an invoice for the services from Insight

NetApp Storage Area Network system price breakdown

**Insight Public Sector's pricing is based on Omnia Partners (Cobb County) IT Products and Services Contract No. 23-6692-03 (cooperative purchasing contract).*

Part No.	Qty	Description	Unit Price	Ext. Price	Tax Y/N
AFF-C250	1 Unit	AFF-C250	\$0.00	\$0.00	Y
AFF-C250A-001	2 Units	AFF C250 HA SYSTEM	\$2,050.75	\$4,101.50	Y
AFF-C250-000-C	1 Unit	AFF C250, 8X15.3TB, NVME, SED, CF, NO PSU, -C	\$17,582.55	\$17,582.55	Y

X66250-5-N-C	8 units	NetApp network cable - 5 m	\$0.01	\$0.08	Y
X66240A-05-N-C	2 units	NetApp 25GBase-CU direct attach cable - 1.6 ft	\$0.01	\$0.02	Y
X1152-N-C	2 units	NetApp - network adapter - Mezzanine Card - 25 Gigabit Ethernet x 4	\$840.56	\$1,681.12	Y
X4020B-CF-2-B-C	4 units	NetApp - Drive Pack - 2x 15.3 TB - NVMe – SED - CF - Base	\$3,726.96	\$14,907.84	Y
X5532A-N-C	1 unit	NetApp - rack rail	\$0.01	\$0.01	Y
X6589-N-C	8 units	NetApp - SFP+ transceiver module - 10 GigE	\$0.01	\$0.08	Y
DOC-AFF-C250-C	1 unit	NetApp AFF C250 - System documentation	\$0.01	\$0.01	
DATAATRESTENCRYPT	2 units	DATA AT REST ENCRYPTION CAPABLE	\$0.01	\$0.02	
X737A-C	2 units	POWER SUPPLY,1600W,-C	\$0.01	\$0.02	Y
X800-42U-R6-C	2 units	NetApp - power cable	\$0.01	\$0.02	Y
SW-ONTAPO-CF-C02-C	2,448 units	NetApp Software Ontap One Package - Per-0.1TB,CF,C02,-C	\$13.19	\$32,289.12	
Services					
PSDEPLOYSTANDAFL	1	NetApp Deployment Services Standard Deployment - installation/configuration	\$7,937.31	\$7,937.31	
Hardware & Software Support					
CSNBDELIVERYINCC	1	NetApp - extended service agreement – shipment Coverage: 5 Years (2023 – 2028) Next Business Day Parts Delivery Included	\$0.01	\$0.01	
CS-G1C-SE-ADVISOR	1	NetApp SupportEdge Advisor - Remote technical support Coverage: 5 Years (2023 – 2028) Next Business Day Parts Delivery Included	\$49,722.35	\$49,722.35	

SWSMIRRORCLDONTA	1	SW-SMIRROR-CLD-ONTAP-ONE Coverage: 5 Years (2023 – 2028)	\$0.01	\$0.01	
SW-S3-SM-ONTAP-ONE	1	SW-S3-SM-ONTAP-ONE Coverage: 5 Years (2023 – 2028)	\$0.01	\$0.01	
Product Subtotal				\$70,562.39	
Services Subtotal				\$57,659.69	
Shipping				\$783.51	
Sales Tax				\$3,635.96	
Total Cost				\$132,641.55	