## PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement ("Agreement") is dated _____, 2018("Effective Date") and is between the City of Manhattan Beach, a California municipal corporation ("City") and Nth Generation Computing, 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. 1154-18 on January 10, 2018, seeking proposals for the provision of Hewlett Packard (HP) server / Storage Area Network (SAN) Enterprise Virtual Array (storage) hardware and engineering services professional services. Contractor submitted a proposal dated February 13, 2018 in response to the RFP.

B.     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.

C.     City desires to retain Contractor as an independent 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.     <u>Scope of Services</u>. 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.     <u>Party Representatives</u>. 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 Casey Burke, Enterprise Account Manager (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.     <u>Time for Performance</u>. Contractor 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.     <u>Standard of Performance</u>. 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 begin on the Effective Date and shall remain in effect for 3 years, unless sooner terminated as provided in Section 12 of this Agreement or extended.  The City Manager has the option, in his sole discretion, to extend the term for up to two additional one-year periods.

**3.    Compensation.**

A.    Compensation.  As full compensation for Services satisfactorily rendered, City shall pay Contractor at the hourly rates and discount structure for any applicable HP hardware set forth in the Approved Fee Schedule attached hereto as **Exhibit B**.  In no event shall Contractor be paid more than $60,000 annually (the "Maximum Compensation").

B.    Expenses.  The amount set forth in paragraph 3.A. above shall include reimbursement for all actual and necessary expenditures reasonably incurred in the performance of this Agreement.

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 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 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,

-3-

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 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

-4-

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 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 $1,000,000.00 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 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 $300,000.00 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 $1,000,000.00 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.

4)     Professional Liability [Errors and Omissions] Insurance with minimum limits of $2,000,000.00 per claim and in aggregate.

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 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 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 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 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.  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 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 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 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 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
City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, California  90266
Telephone:  (310) 802-5067
Email: staylor@citymb.info

With a courtesy copy to:

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

If to Contractor:

Attn: Casey Burke
Nth Generation Computing
17055 Camino San Bernardo
San Diego, CA 92127
858-451-2383

**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 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 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 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** 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 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.    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 or federal 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 actual attorneys' fees, experts' fees, and other costs, 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]*

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: Bruce Moe
    Title: City Manager

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: Steve S. Charelian
    Title: Acting Finance Director

Contractor:

Nth Generation Computing, Inc.,
A California corporation

By: _Joyce Russell_
    Name: _Joyce Russell_
    Title: _EVP/CFO_

By: _Richard Baldwin_
    Name: _Richard Baldwin_
    Title: _Founder, CSO_

PROOF OF AUTHORITY TO BIND CONTRACTING PARTY REQUIRED

**EXHIBIT A**
**SCOPE OF SERVICES**

## 1. Methodology and Work Plan

Nth Generation Computing, Inc. ("Nth") has the expertise and staff to support the City by providing design, installation, configuration, migration, testing, integration and knowledge transfer for complex data center infrastructure, network/storage architecture and security solutions. Nth has an account team to support the City that consists of an Enterprise Account Manager, Inside Sales Representatives, Pre-Sales Support and Solution Architects, Solution Engineers and Project Managers. Nth's level of expertise allows us to deliver the services required in the professional, timely and efficient manner.

### Certified Project Managers
All of Nth's Project Managers have achieved and are currently maintaining Project Manager Professional ("PMP") certifications directly from the Project Management Institute (PMI). The Nth Project Managers assigned to this project bring decades of combined experience in managing the successful delivery of enterprise-level IT projects that vary from software implementations to hardware and services for on premise or off-premise solutions.

### Account Management
In addition to a PMI-certified project management, a dedicated account management team will be made available to the City and will consist of an account manager, inside sales representative and pre-sales solutions architect. This team will be responsible for all pre-sales efforts, including but not limited to on-site meetings, conference calls, quotes, configurations, bids, and all customer facing activities. The combined industry average experience of Nth account management team exceeds 20 years.

### Pre-Sales Support
The City's dedicated account executive, inside sales representative and solution architects are ready to support the City on this and future projects relating to data & information management, security, server, storage, networking, mobility, big data, cloud and general computing solutions. Nth solution architects can assist the City in preparing solutions, configurations and budgetary quotes as well as presenting these solutions as needed or requested.

### Sales / Technical / Operations Staff
The City will have a dedicated account management team to work with City staff on a regular basis. Nth has pre-sales and post-sales resources, who will perform on-site

meetings, conference calls and joint manufacturer meetings, to help the City design solutions to its IT challenges or answer general questions the City may have. In addition, Nth can perform demos in our Solutions Lab as well as remote demos.

Nth's Implementation Services take time, risk and worry out of the deployment process - and free in-house IT staff to focus on running City business. Nth highly trained professionals help ensure rapid, trouble-free deployments.

Nth excels in the non-disruptive implementation of enterprise IT solutions, particularly in 7X24, mission- critical datacenter environments. Whether the solution involves server or storage virtualization, introduction of high availability computing, enterprise backup and recovery, or Information Lifecycle Management, Nth's Implementation Services provides the skill and expertise to ensure a successful project.

### Services Planning- Project Management

A PMP-certified Nth Project Manager (PM) will coordinate this service with the City, Nth Engineer and HPE Services team. The PM will schedule the respective services once all the prerequisites have been met.

- Coordinate with customer on configuration requirements and plan all the necessary activities, including identifying any prerequisites and schedule the services delivery

- Provide the customer with installation checklist before services work begins. Work with customer to make sure all items are understood and that required info is available to begin implementation

- Provide detailed installation plan before the implementation begins

- Establish cadence for meeting of technical resources and knowledge transfer

- Verify that all Hardware, Software and licenses available before going onsite

Having a project management team of certified project management professionals (PMP) 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; project initiation, planning, executing, monitoring and controlling, and closing.

- **Project Initiation** - This is an important process as it sets the tone as the project moves forward. We take the time to spend with our clients to learn their

A-2

objectives and goals to provide the best solution which will ultimately meet the clients overall strategic road map. This will involve identifying key stakeholders, critical dates, and setting client expectations early in the project.

- **Planning** - By evaluating the project and its level of overall complexity we will implement various management plans to ensure the scope, schedule, and cost remain on track. This will also cover the resource load plan, quality, and procurement plans. These plans will provide the project team with processes and policies of how to handle various pieces of the project.
- **Executing** - The execution process will involve the actual directing of the project. This will include quality assurance, any procurement, and the engagement of stakeholders. We will also secure and build the team; in this case we have secured HPE, which has vast experience in implementing email archiving and eDiscovery solutions, as well as Nth own resources for the hardware implementation.
- **Monitoring** - The Project Manager will monitor the project scope and expectations, identify and manage project risks, track and process change requests as well as status and overall project progress. The Project Manager will provide weekly status updates along with documentation and meeting minutes as applicable. The Project Manager will act as the main point of contact and ensure timelines, dependencies and communication requirements are met within the project lifecycle.
- **Closing** - The Project Manager ensure all contracts/SOWS have been fully executed and will create a final close out package including all meeting notes, project plan, risk register, and all other applicable documentation from the project. The closure document will be distributed for sign off from stakeholders.

The processes outlined above will serve as guidelines and allow our project management team to apply the best methods as needed. Nth Generation will also use its organization process assets, such as the PMO, to leverage its ability to provide timely metrics and ensure communications are consistently open to capture stakeholder concerns and potential risk. As with any project, this project will be approached by providing the best project management practices based on our expertise and experience to deliver a successful solution.

## 2.    Staff Qualifications and Experience

Nth does not anticipate utilizing subcontractors for the services provided to the City under this Scope of Work. Below is the Nth team anticipated to deliver services for the City.

## Resource Skill Matrix:

| Name | Resource type | Qualifications | Credentials |
|---|---|---|---|
| Brandon Hughey | Server and Virtualization, VDI Engineer ; Veeam | HPE Blades/Servers and VMware, OneView, Synergy, Veeam | HPE ASE certified, VMware VCP certified, Microsoft MCSEI, Partner Ready Certified in OneView and Synergy, Veeam Certified |
| Jason Walker | Server, Data Protection Engineer | HPE Blades/Servers, Microsoft Hyper-V, Commvault, Networking, OneView, Synergy | HPE APT HPN network certified, Microsoft MCSEI, Nutanix NPP, Commvault Simpana, Aruba Networks, Partner Ready Certified inOneView and Synergy |
| John Stahl | Storage, SANS | HPE 3PAR, MSA and Servers, Nimble | HPE Master ASE storage, MCSEI, Nimble Implementation Certification |
| Bob Williams | Storage, SANS, Backup | HPE 3PAR, MSA and servers, Commvault Simpana, Nimble, Veeam | HPEPartnerReady3PAR, MSA, MSL, SANcertified, Nimble Implementation Certification |
| Richard Tengdin | Server, Storage, Data Protection Architect | HPE Server, Storage, Commvault Simpana, Veeam, VMware, Nimble | HPEMasterASEStorage, Commvault Simpana, Veeam, Aruba networks, VMware VTSP |
| Jim Westover | Server, Virtualization, Cloud Architect | HPE Blades/Server, VMware, Hyper-V. Cloud | HPE ASE Cloud, Server specialist, VMWARE VSP |
| Jim Russ | Server, Storage, Data Protection Architect | HPE Server, Storage, Networking, VMware, Commvault Simpana, Nimble | HPE Master ASE storage, Commvault Simpana, VMware VTSP |
| Mouis Yafeh | Server, Storage, Virtuafization, Security, Network, Unix | HPE Server, Storage, Networking, Data Protection, Networking, VMware, Splunk, Nimble | Splunk SE1, Aruba networks |
| Jerry Craft | Security, Data Protection, Firewall | HPE Arcsight, Fortinet, Splunk, CyberArk, Palo Alto, FS, AIO, Varonis | CISSP, GSEC, GPEN, GCFE |
| Jeromie Jackson | Security, Data protection, Data Analytics, Firewall | HPE Vertica, Software, CyberArk, Varonis, Palo Alto, F5, AIO | CISSP, CISM, COBIT, ITIL, Varonis, HPE Vertica |
| Christine Stubbs | Project Management | Commvault | PMP |

## Nth's Talented Team of Professionals

Nth's team of professionals provides decades of experience in the disciplines required to manage and grow a successful, service-oriented enterprise. Each individual brings a wealth of skills and accomplishments united toward a common purpose: To provide the best mission-critical IT service and solutions to our customers every day. The City's dedicated enterprise account manager, Casey Burke, is available via email and cell from 7:00 am to 7:00 pm and Nth's quote turn-around time averages between 24-48 hours, depending upon solution complexity.

**Nth's Team Contacts for the City:**

### Casey Burke, Enterprise Account Manager
Casey Burke joined Nth Generation Computing in 1999 and during his time at Nth he has built a strong following of clients throughout Southern California. Casey is a seasoned and reputable enterprise account manager with nearly 26 years of experience in IT sales and account management. Based out of Nth's Irvine offices, Casey has provided account management services for fortune 500, large enterprise, and mid-sized businesses.

### Richard Tengdin, Enterprise Solution Architect
Richard has been working with networked computers since 1986 and PCs since 1982. He started as a technical user, managed a four node Apollo workstation cluster, and managed the Pathworks environment for 600 PCs and 800 users at Rocketdyne. After moving to a small ISV he got his first Microsoft certifications and completed his MCSE on NT 4.0. Richard came to NTH Generation in December 1999 and has been working as an Implementation Engineer and Solutions Architect. He is an HP Master ASE -StorageWorks Solutions, HP Networking ASC and ASP, MCSE on Windows Server 2003, Brocade Certified Fabric Administrator, Network Engineer and SAN Designer, VMware VCP and is certified by Xiotech, CommVault, Emulex, HPE 3PAR, HPE Nimble, and Veeam on their products. Richard has been involved with backup issues for many years, both designing and troubleshooting backup environments. He has experience with backup environments running CommVault Galaxy and Simpana, Data Protector, Backup Exec, ArcServe, NetBackup and Networker. Richard also has a BS from Penn State, and he served in the US Navy. He also remembers playing the ancestral version of Angry Birds on a GE mainframe computer, just don't ask him when.

### Ferdl Tatad, Manager Services Solutions & Customer Advocate, PMO Manager
Ferdi Tatad has been with Nth for over 9 years. He joined Nth following a 23 year career at Hewlett Packard (formerly DEC, then Compaq) where he held a number of different positions, including Field Engineer, Unit Manage, and Project Manager. Currently, Ferdi is responsible for targeted focus on

understanding and meeting client requirements, building long-term relationships, and serving as the primary point of contact for clients for service related matters. Ferdi also manages Nth's Technical Editing team, as well as oversees all technical escalations, working with each of Nth's partner manufacturers, as applicable. Lastly, Ferdi also manages Nth's extensive reach of technical certifications, ensuring all needed certifications are assigned, attained and maintained, as applicable. Ferdi holds a BS degree in Business Management.

### Lisa Byers,Technical Sales & Support Specialist, Inside Sales Representative

Lisa is responsible for the technical and administrative support of the enterprise sales and business development teams. Provide excellent customer service through generating sales quotations, configuring, pricing, sourcing complex enterprise infrastructure solutions and sales administration tasks for Nth and our partners. Lisa has been with Nth since 2006 and has worked with Nth's sales team to grow Nth's government and educations business. She manages the quote and sales proposal process by coordination the sales teams, customers, manufacturers, operations and technical resources. She also manages special pricing programs with Nth's partners and vendors. Lisa consistently meets or exceeds both internal and external customer expectations. Lisa has a double major: BA degrees in Law and Psychology. She is a Member of the Academy of Technology, Math and Science. Lisa is a senior member of our inside sales team with extensive experience working with our solution architects and customers on complex server and storage quotes.

### John Stahl, Sr. Storage and SAN Solutions Engineer

John is a long time member of the Nth post-sales engineering team. He has worked in the computer industry since the early 1980's and since the early 1990's with focus on storage. John has been with NTH Generation's engineering department deploying enterprise class storage for more than 15 years. His focus since the late 1990's has been Storage Area Networks and he is skilled in many areas of SAN deployment including SAN virtualization, upgrades, architecture, Fibre Channel switched networks, data migration, data replication for Disaster Recovery, clustering, and DR clusters. John holds many certifications including Microsoft MCSE, MCP, HP Master ASE SAN Architect, Brocade Certified Professional, VMware VCP, HPE 3PAR, HPE Nimble and more.

### Bob "Rambo" Williams, Solutions Engineer

Rambo came to Nth after many years with HPE and Compaq. Rambo has an outstanding knowledge of SAN based storage and backup hardware and has proven to always place the customer first. He is familiar with several OS' from Unix to Widows and is working on his VMware certification. He also has an in-depth knowledge of ISCSI,

HPE 3PAR, LeftHand networks, Quantum STORnext File system, Dell Compellent Storage Veeam, Nimble and X-10 to name a few. Rambo's knowledge and out of the box thinking has helped many customers come up with a storage solution that best meets their needs, including but not limited to Warner Bros, GE medical, Behr Products and The Irvine company.

### Brandon Hughey, Sr. Solutions Engineer

Brandon Hughey has over 16 years of computer experience, MCSE 2003, Master ASE SAN Architect and Master ASE Proliant High Availability and Clustering Solutions. Brandon has accomplished ASE HPE BladeSystem, AIS BladeSystem, VMware Certified Professional (VCP), VDM Jumpstart Accreditation, Health Check Accreditation, Business Continuity Accreditation, P2v Service Accreditation, Veeam and Virtualization skills and accreditations.

### Jason Walker, Sr. Solutions Engineer

Jason is an Information Technology professional with over 14 years in the field as a Microsoft Systems Engineer/Consultant and Backup Systems Administrator. With over 7 years of professional services deployments focused primarily on CommVault, HPE Server & Storage Technology, Server Virtualization (ESX and Hyper-V) and Microsoft System Center, he has experience in a wide variety of customer environments.

Joining Nth Generation in January of 2007, Jason has helped with developing the engineering team by furthering his skills required for successful engagements with new technology. His extensive background with administering backup products and specific CommVault skill set has added value to the team's overall ability to competently deliver complex data management solutions. He continues to work on career development with the Microsoft System Center product suite as well as keeping up with CommVault and HPE related technologies.

### HPE Authorizations and Certifications

Nth has the highest level of HPE Partnership - Platinum Partner (formerly Elite Partner). Nth is also HPE Partner Ready/ PointNext certified. Please see the Nth Certification List for additional details.

# Nth Certifications List

## HPE Partner One Certifications

- Platinum Converged Infrastructure Specialist
- Gold Storage Specialist
- Gold Networking Specialist
- Gold Server Specialist
- Gold ServiceOne Specialist
- Gold Cloud Builder Specialist
- Gold ArcSigh t Specialist
- Qualified Software Authorization
- BCS Product Authorization
- Storage Product Authorization
- Networking Product Authorization
- Silver IT Software Management

## HPE Technical Certifications

- 4- HPE MASE -Master SAN Architects (MASE)
- HPE Master certification in Network Infrastructure
- HPE ASE- Server Solutions Architect v2
- HPE ASE-Data Center and Cloud Architect v2
- HPE Arcsight Certified
- HPE AIS- Server Automations v9
- HPE ATP- DataProtector

## HPE Partner Ready Partner

- HPE 3PAR StoreServ
- HPE Nimble
- HPE StoreSure
- HPE StoreOnce
- HPE c-Class Blade systems
- HPE-StoreEa sy

- HPE StoreVirtual
- HPE OneView
- HPE Synergy

## VMware- Solutions Provider- Premier Level

- VMware Premier Enterprise Partner
- VMware certified in the following Competencies: Data Management, Application Modernization, Infrastructure Virtualization, Management, Desktop Virtualization, Business Continuity, Virtualization of Business Critical Apps, and Cloud IaaS, SDN
- S VCPs, 6 VTSP, 19 VSP VMware certified professionals

## Hyper-Converged

- Nutanix Partner
- HPE Hyper-converged System Partner

## Commvault

- National Partner and Service Advantage Partner
- 2- Simpana 10 CVCSA Certified Commvault Engineers
- Commvault Certified Instructor

## Veeam

- Gold Partner
- VMSP- Sales certification
- VMTSP- Pre-Sales Technical
- VMCE- Technical Certification

## DELL

- Authorized Reseller
- Compellent Authorized Installation Professional

## Microsoft- Silver Partner in Management and Virtualization and Messaging Competencies

- Seven Microsoft Certified MCTIP/MCP/MCSE Engineers

### RedHat
- Red Hat Linux Advanced Business Partner

### Networks
- Palo Alto Networks certified
- FS Networks Product and System Engineer certified
- A10 Networks certified
- Silver Peak Partner

### Security
- Certified Information System Security Professional (CISSP)
- Certified Information Security Manager (CISM)
- Certified Control Objectives for IT {COBIT)
- GIAC Certified as Penetration Tester, Security Essentials, Forensic Examiner

### Other Notable certs
- ITIL Certified
- Project Management Certified Professionals {PMP)
- Brocade Elite Fabric and BCNE Partner

**Hourly rates are determined relevant to services performed - see below:**

| Service | Hourly Rate | Daily Pricing |
|---|---|---|
| Remote Monitoring | $58.00 | $464.00 |
| Project Management | $160.00 | $1,280.00 |
| Project Management - SR | $225.00 | $1,800.00 |
| Microsoft | $230.00 | $1,840.00 |
| Server/ Virtualization | $300.00 | $2,400.00 |
| CommVault/ Veeam / Backup & Data Management | $300.00 | $2,400.00 |
| Storage | $300.00 | $2,400.00 |
| Networking | $300.00 | $2,400.00 |
| Security | $375.00 | $3,000.00 |

## Pricing

Vendor is to provide the discount structure for any applicable HP hardware that may be required throughout the duration of this Agreement. During any occasion when vendor has the opportunity to provide the City of Manhattan Beach with greater discounts than listed, vendor shall do so.

| Equipment Category | Percentage Discount from List Price |
|---|---|
| HPE Rackmount Servers | 36-43% off |
| HPE Blade Servers | 36-43% off |
| HPE 3PAR | 48-55% off |
| EVA | 48-55% off |
| Networking | 38-50% off |
| Nimle | 48-55% off |

Discounted pricing based on the following contract(s): NASPO or NASPO Indirect or better.

No additional or travel costs are associated with fulfilling the requirements included in Exhibit A Scope of Work.