

**PROFESSIONAL SOFTWARE SERVICES AGREEMENT  
BETWEEN THE CITY OF SAN BERNARDINO  
AND INSIGHT PUBLIC SECTOR INC.**

**1. PARTIES AND DATE.**

This Agreement is made and entered into this 2<sup>nd</sup> day of October, 2024 (“Effective Date”), by and between the City of San Bernardino, a charter city and municipal corporation (“City”), and Insight Public Sector Inc., an Illinois corporation with its principal place of business at 6820 S. Harl Avenue, Tempe, AZ., 85283 (“Vendor”). Vendor is registered with the State of California and permitted to conduct the types of sales and business services included in this Agreement. City and Vendor are sometimes individually referred to as “Party” and collectively as “Parties.”

**2. RECITALS.**

2.1 City. City is a public agency of the State of California and is in need of professional software services for the following project:

Microsoft Enterprise License Subscription and Services (hereinafter referred to as “the Project”)

2.2 Vendor. Vendor desires to perform and assume responsibility for the provision of certain professional services including, but not limited to, software programming and on-going maintenance services as required by the City on the terms and conditions set forth in this Agreement. Vendor represents that it is experienced in providing Microsoft Licensing Solutions Enterprise cloud-based and server based projects to public agency clients, is licensed in the State of California, and is familiar with the computing environment of the City.

2.3 Grant of License. Vendor hereby represents and warrants to City that Vendor is the owner of the Application Software, as defined herein, or otherwise has the right to grant to City the rights to use of the Application Software, as set forth in this Agreement and the attached License Agreement.

2.4 Project. City desires to engage Vendor to render such services for the Microsoft Enterprise License Subscription and Services project (“Project”) as set forth in this Agreement.

2.5 Hardware Specifications. The Parties acknowledge and agree that the City has or will be purchasing certain hardware necessary for the proper operation of the System, defined below, in reliance on the recommendations and specifications to be provided by Vendor.

**3. DEFINITIONS**

3.1 Acceptance. The term Acceptance as used in this Agreement shall refer to a thirty (30) day period following notification by the Vendor that the Application Software or any component or element thereof is ready for use. During this period, the City will test the System and if no Defects are reported, that component or element of the Application Software will be deemed Accepted. If Defects are reported, the Vendor will correct the Defect and a new Acceptance period will begin once the City has been notified by the Vendor.

3.2 Application Software. The term Application Software as used in this Agreement shall refer to the collection of software programs (i.e. executable code) provided to the City by Vendor that will perform the set of functions described in the Exhibit "B".

3.3 Custom Software. The term Custom Software is computer programs developed under this Agreement that extends the functionality of the Application Software to include features specified or required as part of this Project and under this Agreement not originally part of the Vendor's baseline or prior version of the Application Software.

3.4 Defect. The term Defect as used in this Agreement shall refer to any error or malfunction in the operation of the System under this Agreement that prevents the City or its agents or employees from using the Application Software to perform the features and functions proposed in Exhibit "B".

3.5 Delivery. The term Delivery related to software shall mean the transfer and receipt (electronically) of the Application Software to the designated, City approved computing environment. Delivery of professional Services, as used in this Agreement, shall mean that the City's designated agent under this Agreement has signed off on a given task or work order.

3.6 Final Acceptance. The term Final Acceptance as used in this Agreement shall be used to refer to the thirty (30) day period following the complete Acceptance and operation in productive use of all the components and elements of the System that is free of Defects. If Defects are reported by the City, the Vendor will correct the Defect(s) and notify the City after which a new Final Acceptance period will begin.

3.7 Installation. The term Installation as used in this Agreement shall refer to the loading of executable code necessary for the operation of the Application Software on one of the computing environments designated herein with the Platform Software.

3.8 License Agreement. The term License Agreement as used in this Agreement shall mean the license agreement(s) for the Application Software attached hereto as Exhibit "F".

3.9 On-going Maintenance and Support Services. The term On-going Maintenance and Support Services as used in this Agreement shall mean those Services required for on-going Application Software maintenance and support.

3.10 Platform Software. The term Platform Software shall mean all of the server and client operating systems, utilities, objects, database software, and any 3<sup>rd</sup> Party software necessary to operate the Application Software as required by this Agreement.

3.11 Project. The term Project as used in this Agreement shall refer to all of the materials, labor and Services required to deliver the System.

3.12 Project Deliverables. The term Products as used in this Agreement shall refer to, collectively, the Application Software, Custom Software, Platform Software, Updates, Source Code and any other products, including intellectual property, provided by Vendor under this Agreement, as more specifically set forth in Exhibit "B".

3.13 Project Services. The term Project Services as used in this Agreement shall mean those Services to be provided by Vendor in order to complete the Project, through Final Acceptance.

3.14 Services. The term Services as used in this Agreement shall mean, collectively, the Project Services and the On-going Maintenance and Support Services.

3.15 Source Code. The term Source Code as used in this Agreement shall refer to all programming language code, objects, stored procedures, utilities, and compilers necessary to generate executable code for all of the Application Software and Custom Software provided under this Agreement, including all user, technical and system documentation necessary for a reasonable person to understand how to operate all elements of the System.

3.16 System. The term System shall be used in this Agreement to refer to the collection of software, firmware, operating system, database system, hardware and peripherals necessary to operate the Application Software to perform the functions specified in Exhibit "B".

3.17 Update. The term Update shall be used in this Agreement to refer to any bug fix, patch, enhancement, error correction, revision, performance improvement, new version, added features to or replacement of the Application Software, or any component or element thereof, designed to perform the same functions as the Application Software on any Platform Software or computing environment.

#### **4. TERMS.**

4.1 Incorporation of Documents and Recitals; Order of Precedence. The attached exhibits and the recitals set forth above are incorporated into this Agreement by reference as though fully set forth herein.

##### **4.2 Scope of Services and Term.**

4.2.1 General Scope of Services. Vendor promises and agrees to furnish to the City all labor (technical consulting, training, programming, etc.), software,

materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply Microsoft Enterprise License Subscription and Services necessary for the Project. The Project is more particularly described in Exhibit "A" (Statement of Work) attached hereto and incorporated herein by reference including definitions required for interpreting the services described. The Project shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

4.2.2 On-Going Maintenance and Support Services. Vendor further promises and agrees to furnish to the City all labor (technical consulting, training, programming, etc.), software, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the On-going Maintenance Services as required hereunder. The On-going Maintenance and Support Services are more particularly described in Exhibit "G" (On-going Maintenance Services Statement of Work) attached hereto and incorporated herein by reference including, if applicable, definitions required for interpreting the services described. The On-going Maintenance and Support Services shall be subject to, and performed in accordance with, the applicable provisions of this Agreement and the attached exhibits, and all applicable local, state and federal laws, rules and regulations.

#### 4.2.3 Term.

4.2.3.1 License Agreement. The term of the License Agreement shall continue in perpetuity, regardless of any termination of this Agreement or the provision by Vendor of On-going Maintenance and Support Services, as further set forth in the License Agreement.

4.2.3.2 On-going Maintenance and Support Services. The term of this Agreement as relates to the provision of On-going Maintenance and Support Services shall commence upon Final Acceptance and shall remain in effect for up to three (3) successive one (1) year periods, to be renewed annually in the City's sole discretion.

4.2.3.3 Project Services. The term of this Agreement, as relates to the Project Services, shall commence on the Effective Date and shall terminate on the date of Final Acceptance. Notwithstanding the foregoing, the indemnification and warranty provisions of this Agreement shall remain in full force and effect as to such Services.

#### 4.3 Responsibilities of Vendor.

4.3.1 Control and Payment of Subordinates; Independent Contractor. The Project Deliverables and Services shall be provided by Vendor or under its supervision. Vendor will determine the means, methods and details of performing Project subject to the requirements of this Agreement. City retains Vendor on an independent contractor basis and not as an employee. Vendor retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel

performing the Services under this Agreement on behalf of Vendor shall also not be employees of City and shall at all times be under Vendor's exclusive direction and control. Vendor shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Vendor shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

4.3.2 Schedule of Services. Vendor shall perform the Project Services expeditiously, within the term of this Agreement, and in accordance with the Project Plan, attached hereto as Exhibit "D" and incorporated herein by this reference. Vendor shall perform the On-Going Maintenance and Support Services in accordance with the schedule therefor included in Exhibit "G". Vendor represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Vendor's conformance with the foregoing schedules, City shall respond to Vendor's submittals in a timely manner.

4.3.3 Conformance to Applicable Requirements. All work prepared and Services performed by Vendor shall be subject to the approval of City.

4.3.4 Warranty. Vendor warrants that the Application Software shall perform as proposed and represented in Exhibit "B". In addition, Vendor represents and warrants that, at Final Acceptance, the Application Software shall perform all of the functions specified in Exhibit "B".

4.3.5 Substitution of Key Personnel. Vendor has represented to City that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Vendor may substitute other personnel of at least equal competence upon written approval of City. In the event that City and Vendor cannot agree as to the substitution of key personnel, City shall be entitled to terminate this Agreement for cause. As discussed below, any personnel who fail or refuse to perform the Services in a manner acceptable to the City, or who are determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be promptly removed from the Project by the Vendor at the request of the City. The key personnel for performance of this Agreement are as follows: Faith Anderson and Chris Robertson.

4.3.6 Coordination of Services. Vendor agrees to work closely with City staff in the performance of Services and shall be available to City's staff, Vendors and other staff at all reasonable times.

4.3.7 Standard of Care; Performance of Employees. Vendor shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Vendor represents and maintains that it is skilled in the professional calling necessary to perform the Services. Vendor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the

Services assigned to them. Finally, Vendor represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, including a City Business License, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Vendor shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Vendor's failure to comply with the standard of care provided for herein. Any employee of the Vendor or its sub-Vendors who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from the Project or from the provision of On-Going Maintenance and Support Services by the Vendor and shall not be re-employed to perform any of the Services or to work on the Project.

4.3.8 Regulatory Compliance. Vendor shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project and the On-Going Maintenance and Support Services, including all federal and state requirements, and shall give all notices required by law. Any and all Application Software provided under this Agreement shall be compliance with all relevant federal and state laws and regulations including, but not limited to IRS, Social Security, Federal Trade Commission, Homeland Security, California Public Employees Retirement System (CalPERS), and California Franchise Tax Board. Vendor shall be liable for all violations of such laws and regulations in connection with delivery of Products and Services under this Agreement. If the Vendor performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the City, Vendor shall be solely responsible for all costs arising therefrom. Vendor shall defend, indemnify and hold City, its officials, directors, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

4.3.9 Additional Provisions Related to On-going Maintenance and Support Services.

4.3.9.1 Defect Remediation. Vendor shall correct any reported Defects in a timely manner. Defects that result in the City's inability to conduct its normal business operations may incur financial penalties as further described below.

4.3.9.2 Penalties. If Vendor cannot resolve the problem of a reported Defect within 48 hours, the Vendor shall pay the City \$500 per day (24 hours) until the Defect is remedied and the City is able to resume its normal business operations.

4.3.9.3 Updates/Platform Protection. Vendor expressly agrees that the continuous payment for On-going Maintenance and Support Services hereunder shall entitle the City to all Updates released by Vendor (or the Application Software manufacturer), at no additional cost to the City, regardless of the operating system or

database platform on which the Updates operate. Vendor shall, on a quarterly basis, make the City aware of any available Updates. Updates shall be installed only after completion, to City's satisfaction, of reasonable testing in a City test environment. The City shall only be responsible for data conversion and/or training costs associated with the Update, which shall be at the Vendor's then current standard rates charged to similar customers for similar services, and as shall be agreed upon in writing, in advance by the Parties.

#### 4.4 Party Representatives.

4.4.1 City's Representative. The City hereby designates the Director of the Information Technology Department or his or her designee, to act as its representative for the performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for all purposes under this Contract. Vendor shall not accept direction or orders from any person other than the City's Representative or his or her designee.

4.4.2 Vendor's Representative. Vendor hereby designates Faith Anderson and Chris Robertson, or his or her designee, to act as its representative for the performance of this Agreement ("Vendor's Representative"). Vendor's Representative shall have full authority to represent and act on behalf of the Vendor for all purposes under this Agreement. The Vendor's Representative shall supervise and direct the Services, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

#### 4.5 Insurance.

4.5.1.1 Time for Compliance. Vendor shall not commence the Project under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under this section. In addition, Vendor shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to the City that the subcontractor has secured all insurance required under this section.

4.5.1.2 Additional Insured. The City of San Bernardino, its officials, officers, employees, agents, and volunteers shall be named as additional insureds on Vendor's and its subvendors' policies of commercial general liability and automobile liability insurance using the endorsements and forms specified herein or exact equivalents.

#### 4.5.1.3 Commercial General Liability

(A) The Vendor shall take out and maintain, during the performance of all work under this Agreement, in amounts not less than specified herein, Commercial General Liability Insurance, in a form and with insurance companies acceptable to the City.

(B) Coverage for Commercial General Liability insurance shall be at least as broad as the following: Insurance Services Office Commercial General Liability coverage (Occurrence Form CG 00 01) or exact equivalent.

(C) Commercial General Liability Insurance must include coverage for the following:

- (a) Bodily Injury and Property Damage
- (b) Personal Injury/Advertising Injury
- (c) Premises/Operations Liability
- (d) Products/Completed Operations Liability
- (e) Aggregate Limits that Apply per Project
- (f) Explosion, Collapse and Underground
- (g) Contractual Liability with respect to this
- (h) Broad Form Property Damage
- (i) Independent Vendors Coverage

(UCX) exclusion deleted

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(D) The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; (3) products/completed operations liability; or (4) contain any other exclusion contrary to the Agreement.

(E) The policy shall give City, its elected and appointed officials, officers, employees, agents, and City-designated volunteers additional insured status using ISO endorsement forms CG 20 10 10 01 and 20 37 10 01, or endorsements providing the exact same coverage.

(F) The general liability program may utilize either deductibles or provide coverage excess of a self-insured retention, subject to written approval by the City, and provided that such deductibles shall not apply to the City as an additional insured.

#### 4.5.1.4 Automobile Liability.

(A) At all times during the performance of the work under this Agreement, the Vendor shall maintain Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non-owned and hired vehicles, in a form and with insurance companies acceptable to the City.



(B) Coverage for automobile liability insurance shall be at least as broad as Insurance Services Office Form Number CA 00 01 covering automobile liability (Coverage Symbol 1, any auto).

(C) The policy shall give City, its elected and appointed officials, officers, employees, agents and City designated volunteers additional insured status.

(D) Subject to written approval by the City, the automobile liability program may utilize deductibles, provided that such deductibles shall not apply to the City as an additional insured, but not a self-insured retention.

#### 4.5.1.5 Workers' Compensation/Employer's Liability.

(A) Vendor certifies that he/she is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and he/she will comply with such provisions before commencing work under this Agreement.

(B) To the extent Vendor has employees at any time during the term of this Agreement, at all times during the performance of the work under this Agreement, the Vendor shall maintain full compensation insurance for all persons employed directly by him/her to carry out the work contemplated under this Agreement, all in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any acts amendatory thereof, and Employer's Liability Coverage in amounts indicated herein. Vendor shall require all subvendors to obtain and maintain, for the period required by this Agreement, workers' compensation coverage of the same type and limits as specified in this section.

4.5.1.6 Professional Liability (Errors and Omissions). At all times during the performance of the work under this Agreement the Vendor shall maintain professional liability or Errors and Omissions insurance appropriate to its profession, in a form and with insurance companies acceptable to the City and in an amount indicated herein. This insurance shall be endorsed to include contractual liability applicable to this Agreement and shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the Vendor. "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend.

4.5.1.7 Privacy/Network Security (Cyber). At all times during the performance of work under this Agreement, the Designer shall maintain privacy/network security insurance, in a form and with insurance companies acceptable to the City, for: (1) privacy breaches, (2) system breaches, (3) denial or loss of service, and (4) the introduction, implantation or spread of malicious software code.

4.5.1.8 Minimum Policy Limits Required.

(A) The following insurance limits are required for the Agreement:

	<u>Combined Single Limit</u>
Commercial General Liability	\$2,000,000 per occurrence/\$4,000,000 aggregate for bodily injury, personal injury, and property damage
Automobile Liability	\$1,000,000 per occurrence for bodily injury and property damage
Employer's Liability	\$1,000,000 per occurrence
Professional Liability	\$1,000,000 per claim and aggregate (errors and omissions)
Cyber Liability	\$1,000,000 per occurrence limit

(B) Defense costs shall be payable in addition to the limits.

(C) Requirements of specific coverage or limits contained in this section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance. Any available coverage shall be provided to the parties required to be named as Additional Insured pursuant to this Agreement.

4.5.1.9 Evidence Required. Prior to execution of the Agreement, the Vendor shall file with the City evidence of insurance from an insurer or insurers certifying to the coverage of all insurance required herein. Such evidence shall include original copies of the ISO CG 00 01 (or insurer's equivalent) signed by the insurer's representative and Certificate of Insurance (Acord Form 25-S or equivalent), together with required endorsements. All evidence of insurance shall be signed by a properly authorized officer, agent, or qualified representative of the insurer and shall certify the names of the insured, any additional insureds, where appropriate, the type and amount of the insurance, the location and operations to which the insurance applies, and the expiration date of such insurance.

4.5.1.10 Policy Provisions Required.

(A) Vendor shall provide the City at least thirty (30) days prior written notice of cancellation of any policy required by this Agreement, except that the Vendor shall provide at least ten (10) days prior written notice of cancellation of any such policy due to non-payment of the premium. If any of the required coverage is cancelled or expires during the term of this Agreement, the Vendor shall deliver renewal

certificate(s) including the General Liability Additional Insured Endorsement to the City at least ten (10) days prior to the effective date of cancellation or expiration.

(B) The Commercial General Liability Policy and Automobile Policy shall each contain a provision stating that Vendor's policy is primary insurance and that any insurance, self-insurance or other coverage maintained by the City or any named insureds shall not be called upon to contribute to any loss.

(C) The retroactive date (if any) of each policy is to be no later than the effective date of this Agreement. Vendor shall maintain such coverage continuously for a period of at least three years after the completion of the work under this Agreement. Vendor shall purchase a one (1) year extended reporting period A) if the retroactive date is advanced past the effective date of this Agreement; B) if the policy is cancelled or not renewed; or C) if the policy is replaced by another claims-made policy with a retroactive date subsequent to the effective date of this Agreement.

(D) All required insurance coverages, except for the professional liability coverage, shall contain or be endorsed to provide waiver of subrogation in favor of the City, its officials, officers, employees, agents, and volunteers or shall specifically allow Vendor or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Vendor hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subvendors.

(E) The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Further the limits set forth herein shall not be construed to relieve the Vendor from liability in excess of such coverage, nor shall it limit the Vendor's indemnification obligations to the City and shall not preclude the City from taking such other actions available to the City under other provisions of the Agreement or law.

#### 4.5.1.11 Qualifying Insurers.

(A) All policies required shall be issued by acceptable insurance companies, as determined by the City, which satisfy the following minimum requirements: each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and admitted to transact in the business of insurance in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.

#### 4.5.1.12 Additional Insurance Provisions.

(A) The foregoing requirements as to the types and limits of insurance coverage to be maintained by Vendor, and any approval of said insurance by the City, is not intended to and shall not in any manner limit or qualify the

liabilities and obligations otherwise assumed by the Vendor pursuant to this Agreement, including, but not limited to, the provisions concerning indemnification.

(B) If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Vendor or City will withhold amounts sufficient to pay premium from Vendor payments. In the alternative, City may cancel this Agreement.

(C) The City may require the Vendor to provide complete copies of all insurance policies in effect for the duration of the Project.

(D) Neither the City nor the City Council, nor any member of the City Council, nor any of the officials, officers, employees, agents or volunteers shall be personally responsible for any liability arising under or by virtue of this Agreement.

4.5.1.13 Subvendor Insurance Requirements. Vendor shall not allow any subcontractors or subvendors to commence work on any subcontract until they have provided evidence satisfactory to the City that they have secured all insurance required under this section. Policies of commercial general liability insurance provided by such subcontractors or subvendors shall be endorsed to name the City as an additional insured using ISO form CG 20 38 04 13 or an endorsement providing the exact same coverage. If requested by Vendor, City may approve different scopes or minimum limits of insurance for particular subcontractors or subvendors.

4.5.2 Safety. Vendor shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Vendor shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed.

#### 4.6 Responsibilities of City.

4.6.1 City Support of Vendor. City shall furnish to the Vendor priority access to the System for the period of time reasonably required by the Vendor for Installation, testing, training, diagnostics, etc. City shall provide the following resources for Vendor's use in fulfillment of this Agreement:

- (a) City personnel upon reasonable request of Vendor to answer questions and advise Vendor on City's facilities, operations and requirements.

- (b) Input data in accordance with the agreed upon test and Acceptance procedures for use by the Vendor in Acceptance Testing.
- (c) Conversion format and procedures that the Vendor shall complete at its expense.
- (d) Upon completion of Installation and preliminary training, and following Final Acceptance, City shall be responsible for the operation and management of the System, exclusive of hardware maintenance and/or On-going Maintenance and Support Services, which shall be the responsibility of Vendor.

#### 4.7 Fees and Payments.

4.7.1 Compensation for Project Services. The Parties agree that the payment schedule is a performance based payment schedule. Vendor shall receive compensation, including authorized reimbursements, for all Project Services and License Agreements rendered under this Agreement at the rates and in accordance with the compensation schedule set forth in Exhibit "C" attached hereto and incorporated herein by reference. The total compensation for Project Services shall not exceed **\*\*\*INSERT WRITTEN DOLLAR AMOUNT\*\*\*** (\$**\*\*\*INSERT NUMERICAL DOLLAR AMOUNT\*\*\***) without written approval of City's Representative.

4.7.2 Compensation for On-going Maintenance and Support Services. Vendor shall receive compensation, including authorized reimbursements, for all On-going Maintenance and Support Services rendered under this Agreement at the rates set forth in Exhibit "C". Notwithstanding any other provision of this Agreement, the Parties agree that payment for the first year of On-going Maintenance and Support Services shall be covered under the warranty for the System, included as part of the payment specified in Section 4.7.1 above, and no additional payment by the City shall be made for such services.

4.7.3 Process for Payment of Compensation; Itemized Statements. Vendor shall submit to City a monthly itemized statement which indicates work completed and hours of Services rendered by Vendor. The statement shall describe the nature and amount of Services provided; and shall clearly reflect charges against the items described in the "Compensation" set forth in Exhibit "C" since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. Statements not in conformance with the foregoing, or statements containing questions or ambiguities, shall be returned to the Vendor for correction. City shall, within forty-five (45) days of receiving a statement in conformance with the requirements contained herein, review the statement and process for payment all approved and undisputed charges thereon.

4.7.4 Partial Delivery. In the event that the Vendor fails to deliver all of the Application Software elements and Services included in the Project Deliverables, the City, at its sole option, may determine the value of the missing elements and withhold that amount from any payment due to Vendor. Alternatively, or in addition, as required to cover the value of the missing elements, Vendor shall submit to the City a cashier's check for said amount and present it to the City, to be held as a "Project Bond" until the missing elements have been satisfactorily delivered and Accepted. Upon Acceptance of the missing elements, the City shall return the cashier's check along with any withheld payment amounts, as applicable. If the Vendor fails to satisfactorily deliver the missing elements, the City may cash the cashier's check and use the withheld monies to complete the outstanding deliverables with its own forces, or through any other available vendor or consultant.

4.7.5 Reimbursement for Expenses. Vendor shall not be reimbursed for any expenses unless included in Exhibit "C", Exhibit "D", or authorized in writing and in advance by City.

4.7.6 Modification of Scope. The City may, at any time, request a modification to the Project, or the Statement of Work for the Project Services or the On-going Maintenance and Support Services by submitting written notice to Vendor specifying the desired modifications. Vendor shall provide a written quote for the increased, changed or decreased Services within five (5) working days of receipt of City's written request. Vendor shall suspend any Services following receipt of the City's written request until final written agreement is reached on the requested modification. The Parties shall then negotiate in good faith any increased or decreased charges related to the requested modification. No request for modification shall be effective until a final agreement between the Parties has been reached, and either a written amendment to this Agreement, or a change order is executed by both Parties. No oral request for modification of Services shall be binding on either Party.

4.7.7 Discounts. Vendor shall identify applicable discounts and discount time periods from published list prices for any future Application Software or additional copies of purchased Application Software.

#### 4.8 Accounting Records.

4.8.1 Maintenance and Inspection. Vendor shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Vendor shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Vendor shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

#### 4.9 General Provisions.

#### 4.9.1 Termination of Agreement.

4.9.1.1 Grounds for Termination. City may, by written notice to Vendor, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Vendor of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Vendor shall be compensated only for those Services which have been adequately rendered to City, and Vendor shall be entitled to no further compensation. Vendor may not terminate this Agreement except for cause.

4.9.1.2 Effect of Termination. If this Agreement is terminated as provided herein, City may require Vendor to provide all finished or unfinished Documents & Data, as defined herein, and other information of any kind prepared by Vendor in connection with the performance of Services under this Agreement. Vendor shall be required to provide such documents and other information within fifteen (15) days of the request.

4.9.1.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

4.9.2 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective Parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

##### **City**

City of San Bernardino  
Vanir Tower, 290 North D Street  
San Bernardino, CA 92401  
Attn: Rochelle Clayton, Acting City  
Manager or  
Rolland Kornblau, IT Director

##### **Vendor**

Insight Public Sector, Inc.  
6820 S. Hart Avenue  
Tempe, AZ. 85283  
Attn: Faith Anderson or  
Chris Robertson

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the Party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

#### 4.9.3 Ownership of Materials and Confidentiality.

4.9.3.1 Documents & Data; Licensing of Intellectual Property. Excluding materials and data already owned by the Vendor prior to this Agreement, this Agreement creates a non-exclusive, irrevocable, and perpetual license for City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, software programming, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of

expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on digital media, including, without limitation, any Computer Aided Design and Drafting ("CADD") data, which are prepared or caused to be prepared by Vendor under this Agreement ("Documents & Data"). Vendor shall require all subcontractors to agree in writing that City is granted a non-exclusive, irrevocable, and perpetual license for any Documents & Data, and Custom Software solutions the subcontractor prepares under this Agreement. Vendor represents and warrants that Vendor has the legal right to license any and all Documents & Data. Vendor makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Vendor or provided to Vendor by the City. City shall not be limited in any way in its use of the Documents & Data or Custom Software at any time, provided that any such use not within the purposes intended by this Agreement shall be at City's sole risk. Any CADD data delivered to City shall not include the professional stamp or signature of an engineer, architect, or any other licensed professional, but shall be followed with a hard copy with such stamp or signature.

4.9.3.2 Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents & Data either created by or provided to Vendor in connection with the performance of this Agreement shall be held confidential by Vendor. Such materials shall not, without the prior written consent of City, be used by Vendor for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Vendor which is otherwise known to Vendor or is generally known, or has become known, to the related industry shall be deemed confidential. Vendor shall not use City's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of City.

4.9.3.3 Intellectual Property Indemnification. Vendor shall defend, indemnify, and hold harmless City, officials, officers, employees, volunteers and agents against any and all claims against City based upon allegations that Vendor has wrongfully utilized Intellectual Property of others in performing work pursuant to this Agreement or that City has wrongfully used Intellectual Property developed by Vendor pursuant to this Agreement.

4.9.4 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

4.9.5 Attorney's Fees. If either Party commences an action against the other Party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and all other costs of such action.



4.9.6 Indemnification. To the extent permitted by law, Vendor shall defend, indemnify and hold the City, its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any negligent acts or omissions or willful misconduct of Vendor, its officials, officers, employees, agents, Vendors and contractors arising out of or in connection with the performance of the Services, the Project or this Agreement, including without limitation the payment of all damages and attorneys' fees and other related costs and expenses. Vendor shall defend, at Vendor's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against City, its directors, officials, officers, employees, agents or volunteers. Vendor shall pay and satisfy any such judgment, award or decree that may be rendered against City or its directors, officials, officers, employees, agents or volunteers, in any such suit, action or other legal proceeding. Vendor shall reimburse City and its directors, officials, officers, employees, agents and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Vendor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City, its directors, officials, officers, employees, agents or volunteers

4.9.7 Entire Agreement. This Agreement contains the entire Agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both Parties. If there are any conflicts in language in referenced or related agreements, the language in this Agreement shall prevail. Exhibits to this Agreement will include (if not provided for in the main Agreement) the following:

Exhibit A – Statement of Work

Exhibit B – Project Deliverables

Exhibit C – Compensation

Exhibit D – Project Plan

Exhibit E – Escrow Agreement

Exhibit F – Software License Agreement(s)

Exhibit G – Scope of Ongoing Maintenance

4.9.8 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in San Bernardino County.

4.9.9 Time of Essence. Time is of the essence for each and every provision of this Agreement.

4.9.10 City's Right to Employ Other Vendors. City reserves the right to employ other Vendors in connection with this Project.

4.9.11 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the Parties.

4.9.12 Assignment or Transfer. Vendor shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the City. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

4.9.13 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Vendor include all personnel, employees, agents, and subcontractors of Vendor, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

4.9.14 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

4.9.15 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

4.9.16 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

4.9.17 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

4.9.18 Prohibited Interests. Vendor warrants that it has not employed nor retained any company or person, other than a bona fide agent of the Vendor, to solicit or secure this Agreement. Further, Vendor warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Vendor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of City,

during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

4.9.19 Equal Opportunity Employment. Vendor represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

4.9.20 Authority to Enter Agreement. Vendor has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

4.9.21 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

#### 4.10 Subcontracting.

4.10.1 Prior Approval Required. Vendor shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

4.11 Electronic Signature. Each Party acknowledges and agrees that this Agreement may be executed by electronic or digital signature, which shall be considered as an original signature for all purposes and shall have the same force and effect as an original signature.

**SIGNATURE PAGE FOR PROFESSIONAL SERVICES AGREEMENT  
BETWEEN THE CITY OF SAN BERNARDINO  
AND INSIGHT PUBLIC SECTOR INS.**

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement as of the date first written above.

**LICENSOR**

**LICENSEE**

**CITY OF SAN BERNARDINO**

**INSIGHT PUBLIC SECTOR, INC.**

APPROVED BY:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
**Rochelle Clayton**  
Acting City Manager

\_\_\_\_\_  
Name

ATTESTED BY:

\_\_\_\_\_  
**Genoveva Rocha, CMC**  
City Clerk

\_\_\_\_\_  
Title

APPROVED AS TO FORM:

\_\_\_\_\_  
Best Best & Krieger LLP  
City Attorney

**EXHIBIT "A"**  
**STATEMENT OF WORK**

**Services provided shall include all requirements specified in the Project Bid.**

**\*\*\*INSERT SERVICES\*\*\***

**EXHIBIT “B”  
PROJECT DELIVERABLES**

**This will be the list(s) of specific software features and functions requested.**

**[\*\*\*INSERT PROJECT DELIVERABLES\*\*\*]**

**EXHIBIT “C”  
COMPENSATION**

**[\*\*INSERT RATES OF COMPENSATION\*\*]**

**EXHIBIT “D”  
PROJECT PLAN**

**[\*\*INSERT SCHEDULE OF SERVICES\*\*]**



**EXHIBIT “E”  
ESCROW AGREEMENT**

If applicable, this will include any Escrow Agreement for the management of source code associated with this Agreement. **\*\*\*DELETE EXHIBIT IF ESCROW NOT USED\*\*\***

## EXHIBIT "F"

### SOFTWARE LICENSE AGREEMENTS

This will include all related software license agreements for the Application Software and Platform Software, if applicable.

1. License in Perpetuity. The license to use all the Application Software shall be irrevocable and in perpetuity and shall not require an annual license fee for continued use after the initial warranty period, and shall survive any termination of this Agreement or the provision of On-going Maintenance and Support Services.

2. Right to Grant License; Remedies for Breach. Vendor represents and warrants to City that Vendor is the owner of the Application Software, or otherwise has the right to grant to City the rights to use of the Application Software. In the event of any breach or threatened breach of the foregoing representation and warranty, City may, at its sole discretion, require Vendor to: i) procure, at Vendor's expense, the right to use the Application Software, ii) replace the Application Software or any part thereof that is in breach and replace it with software of comparable functionality, as determined by the City, that does not cause any breach, or iii) refund to City the full amount paid by the City for the Project upon the return of the Application Software and all copies thereof to Vendor.

3. Application Software Licensing Provisions

3.1 Source Code Escrow. Source code licensed for use under this License Agreement shall be protected and maintained in a source code escrow account that is kept current with all software releases, technical and user documentation so that in the event the Vendor is unable to perform according to the terms of this License Agreement by reason of bankruptcy, acquisition, or termination of the line of business operations for any other reason, the City shall be entitled to all of the then current source code, technical and user documentation so that it may continue operational use of the Application Software without Vendor restrictions. **\*\*\*DELETE IF ESCROW WILL NOT BE USED\*\*\***

3.2 Disabling Code. The Vendor stipulates that there is no disabling code contained in the Application Software that would render the System unusable if certain events or actions do not occur.

3.3 Backup/Disaster Recovery. The City shall have the rights to install the Application Software on a backup/disaster recovery computer environment for the purposes of dynamic or static replication at a hotsite or backup data center. In the event the primary data center at which the Application Software is hosted is inoperable or otherwise unavailable, the City may use the backup version without additional licensing or other charges until the primary site is available again.

3.4 Development and Test Environments. The City shall be entitled to install and configure the Application Software on additional computing environments (servers, hosts, clients) for the purpose of development and/or testing.

4. Updates/Platform Protection. Vendor expressly agrees that the continuous payment for On-going Maintenance and Support Services hereunder shall entitle the City to all Updates released by Vendor (or the Application Software manufacturer), at no additional cost to the City, regardless of the operating system or database platform on which the Updates operate. Vendor shall, on a quarterly basis, make the City aware of any available Updates. Updates shall be installed only after completion, to City's satisfaction, of reasonable testing in a City test environment. The City shall only be responsible for data conversion and/or training costs associated with the Update, which shall be at the Vendor's then current standard rates charged to similar customers for similar services, and as shall be agreed upon in writing, in advance by the Parties.

**EXHIBIT “G”  
SCOPE OF ONGOING-MAINTENANCE**

**[\*\*INSERT SCOPE OF ON-GOING MAINTENANCE SERVICES\*\*]**