

13. Renewal of all necessary contracts associated with Microsoft O365 Enterprise License Subscription and Services (All Wards)

Recommendation:

It is recommended that the Mayor and City Council of the City of San Bernardino, California authorize the City Manager to execute the Microsoft Volume Licensing Enterprise Enrollment; and the Professional Software Service Agreement with Insight Public Sector Inc., for a term of 36-months.



CONSENT CALENDAR

City of San Bernardino Request for Council Action

Date: September 18, 2024

To: Honorable Mayor and City Council Members

From: Rochelle Clayton, Acting City Manager;
Rolland Kornblau, Director of Information Technology

Department: Information Technology

Subject: **Renewal of all necessary contracts associated with Microsoft O365 Enterprise License Subscription and Services (All Wards)**

Recommendation:

It is recommended that the Mayor and City Council of the City of San Bernardino, California authorize the City Manager to execute the Microsoft Volume Licensing Enterprise Enrollment; and the Professional Software Service Agreement with Insight Public Sector Inc., for a term of 36-months.

Executive Summary

The City's Mayor and Council passed Resolution No. 2021-229 authorizing a contract with Insight Public Sector, Inc. for Microsoft Office 365 cloud-based licenses. This move has enhanced document collaboration and resolved compatibility issues. The staff is now seeking approval to renew this contract due to the management benefits of enterprise volume licensing. Renewal promises continued access to the government cloud unavailable with individual license purchases, increasing security and simplifying software management while ensuring licensing compliance. Additionally, it supports flexible software deployment, essential for the city's operational adaptability.

Background

On September 15, 2021, the Mayor and City Council approved Resolution No. 2021-229, which granted the city authorization to engage in a professional software service agreement with Insight Public Sector, Inc. By leveraging the County of Riverside's volume licensing agreement, through this contract, the city was able to achieve significant cost reductions for Microsoft Subscriptions and Services. Additionally, this agreement facilitated the standardization of software versions throughout the city's departments, resolving compatibility issues and enhancing collaborative efforts on document editing, which in turn improved overall workflow efficiency.

Discussion

Staff is requesting authorization to renew the professional software service agreement with Insight Public Sector Inc., The renewal terms include a rate of \$234.06 per user per year, with a 10% contingency allowance for potential price adjustments due to the onboarding of new staff, ensuring the total does not surpass our annual IT software support budget. Current license count is 938. Additionally, the execution of the enterprise volume licensing agreement with Microsoft for their Subscriptions and Services. Enterprise volume licensing offers cost savings from \$265 Business Pricing. Continuing our agreement will enable us to maintain access to discounts and management that are not offered with the purchase of single licenses. This approach not only reduces overall expenses but also streamlines software management and allows for flexibility in software deployment, which is crucial for adapting to the evolving needs of the city.

2021-2025 Strategic Targets and Goals

Authorization of the ongoing purchase orders aligns with Key Target No. 2: Focused, Aligned, Leadership and Unified Community. Software and hardware applications are maintained to achieve operational efficiencies and supports operational efficiency and long-term technological growth.

Fiscal Impact

There is no fiscal impact associated with the recommended action of this item. Budget has been allocated in FY 2024/2025.

Conclusion

It is recommended that the Mayor and City Council of the City of San Bernardino, California authorize the City Manager to execute the Microsoft Volume Licensing Enterprise Enrollment; and the Professional Software Service Agreement with Insight Public Sector Inc., for a term of 36-months.

Attachments

Attachment 1 Microsoft Volume Licensing
Attachment 2 Insight Public Sector - PSSA 2024

Ward:

All Wards

Synopsis of Previous Council Actions:

September 15, 2021	Mayor and City Council adopted Resolution No. 2021-229, authorizing a professional software service agreement with Insight Public Sector, Inc., for Microsoft O365 software services.
August 17, 2022	Mayor and City Council approved additional Microsoft Licenses as needed for new employees.

Program Signature Form

MBA/MBSA number

5-0000011914155

Agreement number

8084445

Note: Enter the applicable active numbers associated with the documents below. Microsoft requires the associated active number be indicated here, or listed below as new.

For the purposes of this form, “Customer” can mean the signing entity, Enrolled Affiliate, Government Partner, Institution, or other party entering into a volume licensing program agreement.

This signature form and all contract documents identified in the table below are entered into between the Customer and the Microsoft Affiliate signing, as of the effective date identified below.

Contract Document	Number or Code
Enterprise Enrollment (Indirect)	X20-10636
Enterprise Amendment	M97 / New
Product Selection Form	2720397.002_PSF

By signing below, Customer and the Microsoft Affiliate agree that both parties (1) have received, read and understand the above contract documents, including any websites or documents incorporated by reference and any amendments and (2) agree to be bound by the terms of all such documents.

Customer
Name of Entity (must be legal entity name)* City of San Bernardino
Signature*
Printed First and Last Name*
Printed Title
Signature Date*
Tax ID

* indicates required field

Microsoft Affiliate
Microsoft Corporation
Signature Printed First and Last Name Printed Title Signature Date (date Microsoft Affiliate countersigns)
Agreement Effective Date (may be different than Microsoft's signature date)

Optional 2nd Customer signature or Outsourcer signature (if applicable)

Customer
Name of Entity (must be legal entity name)* Signature* Printed First and Last Name* Printed Title Signature Date*

** indicates required field*

Outsourcer
Name of Entity (must be legal entity name)* Signature* _____ Printed First and Last Name* Printed Title Signature Date*

** indicates required field*

If Customer requires additional contacts or is reporting multiple previous Enrollments, include the appropriate form(s) with this signature form.

After this signature form is signed by the Customer, send it and the Contract Documents to Customer's channel partner or Microsoft account manager, who must submit them to the following address. When the signature form is fully executed by Microsoft, Customer will receive a confirmation copy.

Microsoft Corporation
 Dept. 551, Volume Licensing
 6880 Sierra Center Parkway
 Reno, Nevada 89511
 USA

Enterprise Enrollment

State and Local

Enterprise Enrollment number
(Microsoft to complete)

50517887

Framework ID
(if applicable)

Previous Enrollment number
(Reseller to complete)

81451442

This Enrollment must be attached to a signature form to be valid.

This Microsoft Enterprise Enrollment is entered into between the entities as identified in the signature form as of the effective date. Enrolled Affiliate represents and warrants it is the same Customer, or an Affiliate of the Customer, that entered into the Enterprise Agreement identified on the program signature form.

This Enrollment consists of: (1) these terms and conditions, (2) the terms of the Enterprise Agreement identified on the signature form, (3) the Product Selection Form, (4) the Product Terms, (5) any Supplemental Contact Information Form, Previous Agreement/Enrollment form, and other forms that may be required, and (6) any order submitted under this Enrollment. This Enrollment may only be entered into under a 2011 or later Enterprise Agreement. By entering into this Enrollment, Enrolled Affiliate agrees to be bound by the terms and conditions of the Enterprise Agreement.

All terms used but not defined are located at <http://www.microsoft.com/licensing/contracts>. In the event of any conflict the terms of this Agreement control.

Effective date. If Enrolled Affiliate is renewing Software Assurance or Subscription Licenses from one or more previous Enrollments or agreements, then the effective date will be the day after the first prior Enrollment or agreement expires or terminates. If this Enrollment is renewed, the effective date of the renewal term will be the day after the Expiration Date of the initial term. Otherwise, the effective date will be the date this Enrollment is accepted by Microsoft. Any reference to “anniversary date” refers to the anniversary of the effective date of the applicable initial or renewal term for each year this Enrollment is in effect.

Term. The initial term of this Enrollment will expire on the last day of the month, 36 full calendar months from the effective date of the initial term. The renewal term will expire 36 full calendar months after the effective date of the renewal term.

Terms and Conditions

1. Definitions.

Terms used but not defined in this Enrollment will have the definition in the Enterprise Agreement. The following definitions are used in this Enrollment:

“Additional Product” means any Product identified as such in the Product Terms and chosen by Enrolled Affiliate under this Enrollment.

“Community” means the community consisting of one or more of the following: (1) a Government, (2) an Enrolled Affiliate using eligible Government Community Cloud Services to provide solutions to a Government or a qualified member of the Community, or (3) a Customer with Customer Data that is subject to Government regulations for which Customer determines and Microsoft agrees that the use of Government Community Cloud Services is appropriate to meet Customer’s regulatory requirements.

Membership in the Community is ultimately at Microsoft's discretion, which may vary by Government Community Cloud Service.

"Enterprise Online Service" means any Online Service designated as an Enterprise Online Service in the Product Terms and chosen by Enrolled Affiliate under this Enrollment. Enterprise Online Services are treated as Online Services, except as noted.

"Enterprise Product" means any Desktop Platform Product that Microsoft designates as an Enterprise Product in the Product Terms and chosen by Enrolled Affiliate under this Enrollment. Enterprise Products must be licensed for all Qualified Devices and Qualified Users on an Enterprise-wide basis under this program.

"Expiration Date" means the date upon which the Enrollment expires.

"Federal Agency" means a bureau, office, agency, department or other entity of the United States Government.

"Government" means a Federal Agency, State/Local Entity, or Tribal Entity acting in its governmental capacity.

"Government Community Cloud Services" means Microsoft Online Services that are provisioned in Microsoft's multi-tenant data centers for exclusive use by or for the Community and offered in accordance with the National Institute of Standards and Technology (NIST) Special Publication 800-145. Microsoft Online Services that are Government Community Cloud Services are designated as such in the Use Rights and Product Terms.

"Industry Device" (also known as line of business device) means any device that: (1) is not useable in its deployed configuration as a general purpose personal computing device (such as a personal computer), a multi-function server, or a commercially viable substitute for one of these systems; and (2) only employs an industry or task-specific software program (e.g. a computer-aided design program used by an architect or a point of sale program) ("Industry Program"). The device may include features and functions derived from Microsoft software or third-party software. If the device performs desktop functions (such as email, word processing, spreadsheets, database, network or Internet browsing, or scheduling, or personal finance), then the desktop functions: (1) may only be used for the purpose of supporting the Industry Program functionality; and (2) must be technically integrated with the Industry Program or employ technically enforced policies or architecture to operate only when used with the Industry Program functionality.

"Managed Device" means any device on which any Affiliate in the Enterprise directly or indirectly controls one or more operating system environments. Examples of Managed Devices can be found in the Product Terms.

"Qualified Device" means any device that is used by or for the benefit of Enrolled Affiliate's Enterprise and is: (1) a personal desktop computer, portable computer, workstation, or similar device capable of running Windows Pro locally (in a physical or virtual operating system environment), or (2) a device used to access a virtual desktop infrastructure ("VDI"). Qualified Devices do not include any device that is: (1) designated as a server and not used as a personal computer, (2) an Industry Device, or (3) not a Managed Device. At its option, the Enrolled Affiliate may designate any device excluded above (e.g., Industry Device) that is used by or for the benefit of the Enrolled Affiliate's Enterprise as a Qualified Device for all or a subset of Enterprise Products or Online Services the Enrolled Affiliate has selected.

"Qualified User" means a person (e.g., employee, consultant, contingent staff) who: (1) is a user of a Qualified Device, or (2) accesses any server software requiring an Enterprise Product Client Access License or any Enterprise Online Service. It does not include a person who accesses server software or an Online Service solely under a License identified in the Qualified User exemptions in the Product Terms.

"Reseller" means an entity authorized by Microsoft to resell Licenses under this program and engaged by an Enrolled Affiliate to provide pre- and post-transaction assistance related to this agreement;

"Reserved License" means for an Online Service identified as eligible for true-ups in the Product Terms, the License reserved by Enrolled Affiliate prior to use and for which Microsoft will make the Online Service available for activation.

"State/Local Entity" means (1) any agency of a state or local government in the United States, or (2) any United States county, borough, commonwealth, city, municipality, town, township, special purpose district, or other similar type of governmental instrumentality established by the laws of Customer's state and located within Customer's state's jurisdiction and geographic boundaries.

"Tribal Entity" means a federally recognized tribal entity performing tribal governmental functions and eligible for funding and services from the U.S. Department of Interior by virtue of its status as an Indian tribe.

"Use Rights" means, with respect to any licensing program, the use rights or terms of service for each Product and version published for that licensing program at the Volume Licensing Site and updated from time to time. The Use Rights include the Product-Specific License Terms, the License Model terms, the Universal License Terms, the Data Protection Terms, and the Other Legal Terms. The Use Rights supersede the terms of any end user license agreement (on-screen or otherwise) that accompanies a Product.

"Volume Licensing Site" means <http://www.microsoft.com/licensing/contracts> or a successor site.

2. Order requirements.

- a. Minimum order requirements.** Enrolled Affiliate's Enterprise must have a minimum of 250 Qualified Users or Qualified Devices. The initial order must include at least 250 Licenses for Enterprise Products or Enterprise Online Services.
 - (i) Enterprise commitment.** Enrolled Affiliate must order enough Licenses to cover all Qualified Users or Qualified Devices, depending on the License Type, with one or more Enterprise Products or a mix of Enterprise Products and the corresponding Enterprise Online Services (as long as all Qualified Devices not covered by a License are only used by users covered with a user License).
 - (ii) Enterprise Online Services only.** If no Enterprise Product is ordered, then Enrolled Affiliate need only maintain at least 250 Subscription Licenses for Enterprise Online Services.
- b. Additional Products.** Upon satisfying the minimum order requirements above, Enrolled Affiliate may order Additional Products.
- c. Use Rights for Enterprise Products.** For Enterprise Products, if a new Product version has more restrictive use rights than the version that is current at the start of the applicable initial or renewal term of the Enrollment, those more restrictive use rights will not apply to Enrolled Affiliate's use of that Product during that term.
- d. Country of usage.** Enrolled Affiliate must specify the countries where Licenses will be used on its initial order and on any additional orders.
- e. Resellers.** Enrolled Affiliate must choose and maintain a Reseller authorized in the United States. Enrolled Affiliate will acquire its Licenses through its chosen Reseller. Orders must be submitted to the Reseller who will transmit the order to Microsoft. The Reseller and Enrolled Affiliate determine pricing and payment terms as between them, and Microsoft will invoice the Reseller based on those terms. Throughout this Agreement the term "price" refers to reference price. Resellers and other third parties do not have authority to bind or impose any obligation or liability on Microsoft.
- f. Adding Products.**
 - (i) Adding new Products not previously ordered.** New Enterprise Products or Enterprise Online Services may be added at any time by contacting a Microsoft Account Manager or Reseller. New Additional Products, other than Online Services, may be used if an order is placed in the month the Product is first used. For Additional Products that are Online Services, an initial order for the Online Service is required prior to use.

- (ii) **Adding Licenses for previously ordered Products.** Additional Licenses for previously ordered Products other than Online Services may be added at any time but must be included in the next true-up order. Additional Licenses for Online Services must be ordered prior to use, unless the Online Services are (1) identified as eligible for true-up in the Product Terms or (2) included as part of other Licenses.
- g. **True-up requirements.** Enrolled Affiliate must submit an annual true-up order that accounts for any changes since the initial order or last order. If there are no changes, then an update statement must be submitted instead of a true-up order.
- (i) **Enterprise Products.** For Enterprise Products, Enrolled Affiliate must determine the number of Qualified Devices and Qualified Users (if ordering user-based Licenses) at the time the true-up order is placed and must order additional Licenses for all Qualified Devices and Qualified Users that are not already covered by existing Licenses, including any Enterprise Online Services.
- (ii) **Additional Products.** For Additional Products that have been previously ordered under this Enrollment, Enrolled Affiliate must determine the maximum number of Additional Products used since the latter of the initial order, the last true-up order, or the prior anniversary date and submit a true-up order that accounts for any increase.
- (iii) **Online Services.** For Online Services identified as eligible for true-up in the Product Terms, Enrolled Affiliate may place a reservation order for the additional Licenses prior to use and payment may be deferred until the next true-up order. Microsoft will provide a report of Reserved Licenses ordered but not yet invoiced to Enrolled Affiliate and its Reseller. Reserved Licenses will be invoiced retrospectively to the month in which they were ordered.
- (iv) **Subscription License reductions.** Enrolled Affiliate may reduce the quantity of Subscription Licenses at the Enrollment anniversary date on a prospective basis if permitted in the Product Terms, as follows:
- 1) For Subscription Licenses that are part of an Enterprise-wide purchase, Licenses may be reduced if the total quantity of Licenses and Software Assurance for an applicable group meets or exceeds the quantity of Qualified Devices and Qualified Users (if ordering user-based Licenses) identified on the Product Selection Form, and includes any additional Qualified Devices and Qualified Users added in any prior true-up orders. Step-up Licenses do not count towards this total count.
 - 2) For Enterprise Online Services in a given Product pool that are not a part of an Enterprise-wide purchase, Licenses can be reduced as long as (a) the initial order minimum requirements are maintained and (b) all then-active users of each Online Service are included the total quantity of Licenses remaining after the reduction. An Enrolled Affiliate may reduce Licenses for Online Services on or before the Enrollment anniversary date and place a reservation order for such licenses within 90 days after the anniversary date; however, any licenses ordered as described in this section will be invoiced to the Enrolled Affiliate for the time period the licenses were made available.
 - 3) For Additional Products available as Subscription Licenses, Enrolled Affiliate may reduce the Licenses. If the License count is reduced to zero, then Enrolled Affiliate's use of the applicable Subscription License will be cancelled.
- Invoices will be adjusted to reflect any reductions in Subscription Licenses at the true-up order Enrollment anniversary date and effective as of such date.
- (v) **Update statement.** An update statement must be submitted instead of a true-up order if, since the initial order or last true-up order, Enrolled Affiliate's Enterprise: (1) has not changed the number of Qualified Devices and Qualified Users licensed with Enterprise Products or Enterprise Online Services; and (2) has not increased its usage of Additional

Products. This update statement must be signed by Enrolled Affiliate's authorized representative.

- (vi) **True-up order period.** The true-up order or update statement must be received by Microsoft between 60 and 30 days prior to each Enrollment anniversary date. The third-year true-up order or update statement is due within 30 days prior to the Expiration Date, and any license reservations within this 30 day period will not be accepted. Enrolled Affiliate may submit true-up orders more often to account for increases in Product usage, but an annual true-up order or update statement must still be submitted during the annual order period.
- (vii) **Late true-up order.** If the true-up order or update statement is not received when due, Microsoft may invoice Reseller for all Reserved Licenses not previously invoiced and Subscription License reductions cannot be reported until the following Enrollment anniversary date (or at Enrollment renewal, as applicable).
- h. **Step-up Licenses.** For Licenses eligible for a step-up under this Enrollment, Enrolled Affiliate may step-up to a higher edition or suite as follows:
 - (i) For step-up Licenses included on an initial order, Enrolled Affiliate may order according to the true-up process.
 - (ii) If step-up Licenses are not included on an initial order, Enrolled Affiliate may step-up initially by following the process described in the Section titled "Adding new Products not previously ordered," then for additional step-up Licenses, by following the true-up order process.
- i. **Clerical errors.** Microsoft may correct clerical errors in this Enrollment, and any documents submitted with or under this Enrollment, by providing notice by email and a reasonable opportunity for Enrolled Affiliate to object to the correction. Clerical errors include minor mistakes, unintentional additions and omissions. This provision does not apply to material terms, such as the identity, quantity or price of a Product ordered.
- j. **Verifying compliance.** Microsoft may, in its discretion and at its expense, verify compliance with this Enrollment as set forth in the Enterprise Agreement.

3. **Pricing.**

- a. **Price Levels.** For both the initial and any renewal term Enrolled Affiliate's Price Level for all Products ordered under this Enrollment will be Level "D" throughout the term of the Enrollment.
- b. **Setting Prices.** Unless otherwise expressly agreed to by the parties and except for Online Services designated in the Product Terms as being exempt from fixed pricing, Enrolled Affiliate's prices for each Product or Service will be established by its Reseller. As long as Enrolled Affiliate continues to qualify for the same price level, Microsoft's prices for Resellers for each Product or Service ordered will be fixed throughout the applicable initial or renewal Enrollment term. Microsoft's prices to Resellers are reestablished at the beginning of the renewal term.

4. **Payment terms.**

For the initial or renewal order, Microsoft will invoice Enrolled Affiliate's Reseller in three equal annual installments. The first installment will be invoiced upon Microsoft's acceptance of this Enrollment and remaining installments will be invoiced on each subsequent Enrollment anniversary date. Subsequent orders are invoiced upon acceptance of the order and Enrolled Affiliate may elect to pay annually or upfront for Online Services and upfront for all other Licenses.

5. **End of Enrollment term and termination.**

- a. **General.** At the Expiration Date, Enrolled Affiliate must immediately order and pay for Licenses for Products it has used but has not previously submitted an order, except as otherwise provided in this Enrollment.
- b. **Renewal option.** At the Expiration Date of the initial term, Enrolled Affiliate can renew Products by renewing this Enrollment for one additional 36-month term or by signing a new Enrollment. Microsoft must receive a Renewal Form, Product Selection Form, and renewal order prior to or at the Expiration Date. Microsoft will not unreasonably reject any renewal. Microsoft may make changes to this program that will make it necessary for Customer and its Enrolled Affiliates to enter into new agreements and Enrollments at renewal.
- c. **If Enrolled Affiliate elects not to renew.**
 - (i) **Software Assurance.** If Enrolled Affiliate elects not to renew Software Assurance for any Product under its Enrollment, then Enrolled Affiliate will not be permitted to order Software Assurance later without first acquiring a new License with Software Assurance.
 - (ii) **Online Services eligible for an Extended Term.** For Online Services identified as eligible for an Extended Term in the Product Terms, the following options are available at the end of the Enrollment initial or renewal term.
 - 1) **Extended Term.** Licenses for Online Services will automatically expire in accordance with the terms of the Enrollment. An extended term option that allows Online Services to continue month-to-month ("Extended Term") is available. During the Extended Term, Online Services will be invoiced monthly at the then-current published price as of the Expiration Date plus a 3% administrative fee for up to one year. If Enrolled Affiliate wants an Extended Term, Enrolled Affiliate must submit a request to Microsoft at least 30 days prior to the Expiration Date.
 - 2) **Cancellation during Extended Term.** At any time during the first twelve months of the Extended Term, Enrolled Affiliate may terminate the Extended Term by submitting a notice of cancellation to Microsoft for each Online Service. Thereafter, Microsoft may condition the continued use of each Online Service on the acceptance of new terms by the Enrolled Affiliate. Enrolled Affiliate will be notified in writing of any new terms at least 60 days before any such changes take effect. Enrolled Affiliate acknowledges and agrees that after the notice described in this section, its continued use of each Online Service after the effective date provided in the notice will constitute its acceptance of the new terms. If Enrolled Affiliate does not agree to the new terms, it must stop using the Online Services and terminate the Extended Term as provided in this section. Enrolled Affiliate's termination under this section will be effective at the end of the month following 30 days after Microsoft has received the notice.
 - (iii) **Subscription Licenses and Online Services not eligible for an Extended Term.** If Enrolled Affiliate elects not to renew, the Licenses will be cancelled and will terminate as of the Expiration Date. Any associated media must be uninstalled and destroyed and Enrolled Affiliate's Enterprise must discontinue use. Microsoft may request written certification to verify compliance.
- d. **Termination for cause.** Any termination for cause of this Enrollment will be subject to the "Termination for cause" section of the Agreement. In addition, it shall be a breach of this Enrollment if Enrolled Affiliate or any Affiliate in the Enterprise that uses Government Community Cloud Services fails to meet and maintain the conditions of membership in the definition of Community.
- e. **Early termination.** Any early termination of this Enrollment will be subject to the "Early Termination" Section of the Enterprise Agreement.

For Subscription Licenses, in the event of a breach by Microsoft, or if Microsoft terminates an Online Service for regulatory reasons, Microsoft will issue Reseller a credit for any amount paid in advance for the period after termination.

6. Government Community Cloud.

- a. Community requirements.** If Enrolled Affiliate purchases Government Community Cloud Services, Enrolled Affiliate certifies that it is a member of the Community and agrees to use Government Community Cloud Services solely in its capacity as a member of the Community and, for eligible Government Community Cloud Services, for the benefit of end users that are members of the Community. Use of Government Community Cloud Services by an entity that is not a member of the Community or to provide services to non-Community members is strictly prohibited and could result in termination of Enrolled Affiliate's license(s) for Government Community Cloud Services without notice. Enrolled Affiliate acknowledges that only Community members may use Government Community Cloud Services.
- b.** All terms and conditions applicable to non-Government Community Cloud Services also apply to their corresponding Government Community Cloud Services, except as otherwise noted in the Use Rights, Product Terms, and this Enrollment.
- c.** Enrolled Affiliate may not deploy or use Government Community Cloud Services and corresponding non-Government Community Cloud Services in the same domain.
- d. Use Rights for Government Community Cloud Services.** For Government Community Cloud Services, notwithstanding anything to the contrary in the Use Rights:
 - (i)** Government Community Cloud Services will be offered only within the United States.
 - (ii)** Additional European Terms, as set forth in the Use Rights, will not apply.
 - (iii)** References to geographic areas in the Use Rights with respect to the location of Customer Data at rest, as set forth in the Use Rights, refer only to the United States.

Enrollment Details

1. Enrolled Affiliate's Enterprise.

Identify which Agency Affiliates are included in the Enterprise. (Required) Enrolled Affiliate's Enterprise must consist of entire offices, bureaus, agencies, departments or other entities of Enrolled Affiliate, not partial offices, bureaus, agencies, or departments, or other partial entities. Check only one box in this section. If no boxes are checked, Microsoft will deem the Enterprise to include the Enrolled Affiliate only. If more than one box is checked, Microsoft will deem the Enterprise to include the largest number of Affiliates:

☒ Enrolled Affiliate only

☐ Enrolled Affiliate and the following Affiliate(s):

Unless specifically identified above, all Affiliates of Customer, either existing at the execution of this Enrollment or created or acquired after the execution of this Enrollment, will be excluded from the Enterprise. To request that an additional Affiliate be included in Customer's Enterprise, Customer must identify an Affiliate to Microsoft in writing and provide any required documentation. Microsoft will reasonably review requests under this paragraph and may approve the inclusion of an Affiliate in Customer's Enterprise in its sole discretion.

2. Contact information.

Each party will notify the other in writing if any of the information in the following contact information page(s) changes. The asterisks (*) indicate required fields. By providing contact information, Enrolled Affiliate consents to its use for purposes of administering this Enrollment by Microsoft, its Affiliates, and other parties that help administer this Enrollment. The personal information provided in connection with this Enrollment will be used and protected in accordance with the privacy statement available at <https://www.microsoft.com/licensing/servicecenter>.

- a. **Primary contact.** This contact is the primary contact for the Enrollment from within Enrolled Affiliate's Enterprise. This contact is also an Online Administrator for the Volume Licensing Service Center and may grant online access to others. The primary contact will be the default contact for all purposes unless separate contacts are identified for specific purposes

Name of entity (must be legal entity name)* City of San Bernardino

Contact name: First* Rolland **Middle** **Last*** Kornblau

Contact email address* Kornblau_Ro@sbcity.org

Street address* 290 North D Street

City* San Bernardino

State* CA

Postal code* 92401-1734 -

(Please provide the zip + 4, e.g. xxxxx-xxxx)

Country* United States

Phone* 909.384.5947 xt3017

Tax ID

** indicates required fields*

- b. **Notices contact and Online Administrator.** This contact (1) receives the contractual notices, (2) is the Online Administrator for the Volume Licensing Service Center and may grant online access to others, and (3) is authorized to order Reserved Licenses for eligible Online Services, including adding or reassigning Licenses and stepping-up prior to a true-up order.

☐ Same as primary contact (default if no information is provided below, even if the box is not checked).

Contact name: First* Rolland **Middle** **Last*** Kornblau

Contact email address* Kornblau_Ro@sbcity.org

Street address* 290 North D Street

City* San Bernardino

State* CA

Postal code* 92401-1734 -

(Please provide the zip + 4, e.g. xxxxx-xxxx)

Country* United States

Phone* 909.384.5947 xt3017

Language preference. Choose the language for notices. English

☐ This contact is a third party (not the Enrolled Affiliate). Warning: This contact receives personally identifiable information of the Customer and its Affiliates.

** indicates required fields*

- c. **Online Services Manager.** This contact is authorized to manage the Online Services ordered under the Enrollment and (for applicable Online Services) to add or reassign Licenses and step-up prior to a true-up order.

☐ Same as notices contact and Online Administrator (default if no information is provided below, even if box is not checked)

Contact name: First* Rolland **Middle** **Last*** Kornblau

Contact email address* Kornblau_Ro@sbcity.org

Phone* 909.384.5947 xt3017

☐ This contact is from a third party organization (not the entity). Warning: This contact receives personally identifiable information of the entity.

** indicates required fields*

- d. **Reseller information.** Reseller contact for this Enrollment is:

Reseller company name* Insight Direct USA, Inc.

Street address (PO boxes will not be accepted)* 2701 E. Insight Way

City* Chandler

State* AZ

Postal code* 85286-1930

Country* United States

Contact name* Software *Contract Support

Phone* 800-624-0503

Contact email address* contractsupport@insight.com

** indicates required fields*

By signing below, the Reseller identified above confirms that all information provided in this Enrollment is correct.

Signature* *Software *Contract Support*

Printed name* Software *Contract Support

Printed title*

Date*

** indicates required fields*

Changing a Reseller. If Microsoft or the Reseller chooses to discontinue doing business with each other, Enrolled Affiliate must choose a replacement Reseller. If Enrolled Affiliate or the Reseller intends to terminate their relationship, the initiating party must notify Microsoft and the other party using a form provided by Microsoft at least 90 days prior to the date on which the change is to take effect.

- e. If Enrolled Affiliate requires a separate contact for any of the following, attach the Supplemental Contact Information form. *Otherwise, the notices contact and Online Administrator remains the default.*

- (i) Additional notices contact
- (ii) Software Assurance manager
- (iii) Subscriptions manager
- (iv) Customer Support Manager (CSM) contact

3. *Financing elections.*

Is a purchase under this Enrollment being financed through MS Financing? ☐ Yes, ☒ No.

If a purchase under this Enrollment is financed through MS Financing, and Enrolled Affiliate chooses not to finance any associated taxes, it must pay these taxes directly to Microsoft.

Previous Enrollment(s)/Agreement(s) Form

Entity Name: City of San Bernardino

Contract that this form is attached to: State Local Government

For the purposes of this form, "entity" can mean the signing entity, Customer, Enrolled Affiliate, Government Partner, Institution, or other party entering into a volume licensing program agreement.

Please provide a description of the previous Enrollment(s), Agreement(s), Purchasing Account(s), and/or Affiliate Registration(s) being renewed or consolidated into the new contract identified above.

- a. Entity may select below any previous contract(s) from which to transfer MSDN subscribers to this new contract. Entity shall ensure that each MSDN subscriber transferred is either properly licensed under the new contract or is removed.
- b. Entity may select below only one previous contract from which to transfer the Software Assurance (SA) Benefit contact details, i.e., benefits contact (*not* the SA manager) and the program codes, to this new contract.
- c. An Open License cannot be used to transfer either the SA Benefit details or MSDN subscribers.
- d. The date of the earliest expiring Enrollment/Agreement that contains SA or Online Services will be the effective date of the new contract (or SA coverage period for Select Plus).
- e. Please insert the number of the earliest expiring Enrollment/Agreement with SA or Online Services in the appropriate fields of the new contract.

Enrollment/Agreement/ Purchasing Account/Affiliate Registration Description	Enrollment/Agreement/ Purchasing Account/Affiliate Registration Public Customer Number	Transfer SA Benefit Contact	Transfer MSDN Subscribers
Standard Enrollment	81451442	X	X

Amendment to Contract Documents

Enrollment Number

5-0000011914155

This amendment ("Amendment") is entered into between the parties identified on the attached program signature form. It amends the Enrollment or Agreement identified above. All terms used but not defined in this Amendment will have the same meanings provided in that Enrollment or Agreement.

Enterprise Enrollment Invoice for Quoted Price Amendment ID M97

The price quoted to Enrolled Affiliate is a fixed price based on an estimated order submission date. Microsoft will invoice Enrolled Affiliate based on this fixed price quote. If this order is submitted later than the estimated order submission date, Enrolled Affiliate will be charged for net new Monthly Subscriptions (including Online Services) for the period during which these services were not provided. For Indirect models, Pricing to Enrolled Affiliate is agreed between Enrolled Affiliate and Enrolled Affiliate's Reseller.

SKU Number	SKU Description	Existing Quantity	Incremental quantities
U4S-00002	O365 G1 GCC Sub Per User	60	0
AAA-11894	O365 G3 GCC Sub Per User	871	0
P3U-00001	Visio P2 GCC Sub Per User	8	0
MQN-00001	Entra ID P2 Gov Sub Per User	1	0
3NS-00003	Exchange Online P2 GCC Sub Per User	200	0
NYH-00001	Teams AC with Dial Out US/CA GCC Sub Add-on	841	90

Except for changes made by this Amendment, the Enrollment or Agreement identified above remains unchanged and in full force and effect. If there is any conflict between any provision in this Amendment and any provision in the Enrollment or Agreement identified above, this Amendment shall control.

This Amendment must be attached to a signature form to be valid.

Microsoft Internal Use Only:

(M97)EnrAmend(Ind)(InvoiceforQuotedPrice)(WW)(ENG)(Jan2023)v2(IU).docx		M97	B
--	--	-----	---



Proposal ID

2720397.002

Enrollment Number

Language: English (United States)

Enrolled Affiliate's Enterprise Products and Enterprise Online Services summary for the initial order:

Profile	Qualified Devices	Qualified Users	Device / User Ratio	CAL Licensing Model
Enterprise	931	931	1.0	User Licenses

Products	Enterprise Quantity
Office 365 Plans	
O365 G1 GCC	60
O365 G3 GCC	871

Enrolled Affiliate's Product Quantities:

Price Group	1	2	3	4
Enterprise Products	Office Professional Plus + M365 Apps for Enterprise + Office 365 (Plans E3 and E5) + Microsoft 365 Enterprise	Client Access License + Office 365 (Plans E1, E3 and E5) + Microsoft 365 Enterprise	Client Access License + Windows Intune + EMS USL + Microsoft 365 Enterprise	Win E3 + Win E5 + Win VDA + Microsoft 365 Enterprise
Quantity	871	931	0	0

Enrolled Affiliate's Price Level:

Product Offering / Pool	Price Level
Enterprise Products and Enterprise Online Services USLs: Unless otherwise indicated in associated contract documents, Price level set using the highest quantity from Groups 1 through 4.	D
Additional Product Application Pool: Unless otherwise indicated in associated contract documents, Price level set using quantity from Group 1.	D
Additional Product Server Pool: Unless otherwise indicated in associated contract documents, Price level set using the highest quantity from Group 2 or 3.	D
Additional Product Systems Pool: Unless otherwise indicated in associated contract documents, Price level set using quantity from Group 4.	D

Notes

Unless otherwise indicated in the associated contract documents, the price level for each Product offering / pool is set as described above, based upon the quantity to price level mapping below:

Quantity of Licenses and Software Assurance	Price Level
2,399 and below	A
2,400 to 5,999	B
6,000 to 14,999	C
15,000 and above	D
Note 1: Enterprise Online Services may not be available in all locations. Please see the Product List for a list of locations where these may be purchased.	
Note 2: If Enrolled Affiliate does not order an Enterprise Product or Enterprise Online Service associated with an applicable Product pool, the price level for Additional Products in the same pool will be price level "A" throughout the term of the Enrollment. Refer to the Qualifying Government Entity Addendum pricing provision for more details on price leveling.	

**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 2nd 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 3rd 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

Contract\

(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**]**