RESOLUTION NO. ________

A RESOLUTION OF THE CUPERTINO CITY COUNCIL APPROVING AN ECONOMIC DEVELOPMENT AND SALES TAX SHARING AGREEMENT WITH INSIGHT DIRECT WORLDWIDE, INC., OR AN AFFILIATED INSIGHT ENTITY, MAKING FINDINGS UNDER GOVERNMENT CODE SECTION 53083, FINDING THAT THE AGREEMENT IS NOT AN ECONOMIC DEVELOPMENT SUBSIDY TO A WAREHOUSE DISTRIBUTION CENTER, AND AUTHORIZING EXECUTION AND IMPLEMENTATION OF THE AGREEMENT

WHEREAS, the City of Cupertino ("City") is a California general law city duly organized and existing under the laws of the State of California; and

WHEREAS, Insight Direct Worldwide, Inc, and/or one or more affiliated Insight entities, including without limitation Insight Direct USA, Inc., Insight Public Sector, Inc., or such other affiliated Insight entity approved by the City Manager for purposes of the Agreement described below, conduct business activities involving transactions that may be subject to California sales and use taxes; and

WHEREAS, the City and Insight Direct Worldwide, Inc., or related Insight entities, previously entered into agreements relating to the assessment, creation, retention, and allocation of local sales and use tax revenues derived from Insight-related taxable transactions; and

WHEREAS, Insight has represented that it desires to continue maintaining a business location in the City at 10050 N. Wolfe Road, Ste. 281, Cupertino, CA 95014 ("Cupertino Facility") pursuant to a new potential lease, lease amendment, or lease extension with a term of not less than three years, commencing on or about December 1, 2026 and expiring no earlier than December 1, 2029, together with additional potential extensions ("Lease"); and

WHEREAS, the Agreement is intended to encourage Insight to maintain the Cupertino Facility, continue business activities within the City, preserve and potentially increase local sales and use tax revenues lawfully allocated to the City, and generate economic and fiscal benefits for the City without a commensurate burden on City services; and

WHEREAS, payments under the Agreement are payable only from Eligible Local Tax Revenues, as defined in the Agreement, actually allocated, distributed, and paid to the City by the California Department of Tax and Fee Administration ("CDTFA") as a result of taxable transactions involving Insight for which the Cupertino Facility is the CDTFA-determined place of sale, or for which allocation to the City is otherwise lawful under applicable CDTFA rules, guidance, and determinations; and

WHEREAS, the Agreement does not require or encourage any unlawful allocation, reallocation, diversion, or reporting of sales or use tax revenues, and the Agreement conditions payments on revenues being lawfully allocated, distributed, and paid to the City; and

WHEREAS, Government Code section 53083 requires that, before approving an economic development subsidy, a local agency provide specified information in written form available to the public and through its website, if applicable, and provide public notice and a hearing regarding the economic development subsidy; and

WHEREAS, before approving the Agreement, the City prepared and made available to the public the information required by Government Code section 53083, including the name and address of the beneficiary, the start and end dates and schedule for the subsidy, a description of the subsidy, the estimated total amount of public funds expended or revenue lost, the public purpose of the subsidy, projected tax revenue to the City, and the estimated number of jobs created or retained, to the extent such information is applicable and available; and

WHEREAS, the City provided public notice of the hearing on the Agreement and the economic development subsidy contemplated by the Agreement, and the City Council held a public hearing at a regular meeting to consider the Agreement, the information required by Government Code section 53083, and any written or oral testimony presented; and

WHEREAS, based on information provided to the City, the Cupertino Facility is not a warehouse distribution center, and the Agreement is not an economic development subsidy to a warehouse distribution center within the meaning of Government Code section 53083.1; and

WHEREAS, based on Insight's representations and information available to the City, the Agreement is not intended to violate Government Code section 53084.5 because the Agreement is not intended to reduce Bradley-Burns local sales and use tax revenues that, in the absence of the Agreement, would be received by another California local agency while the applicable retailer continues to maintain a physical presence in that other local agency's jurisdiction; and

WHEREAS, Revenue and Taxation Code section 7213 and applicable CDTFA regulations and guidance require local agencies to report and publish specified information regarding tax revenue sharing agreements involving Bradley-Burns local sales and use tax revenues; and

WHEREAS, the Agreement requires Insight to cooperate with the City in connection with the City's reporting, publication, and posting obligations under Revenue and Taxation Code section 7213 and applicable CDTFA regulations and guidance; and

WHEREAS, the Agreement is expressly conditioned on Insight or an approved Insight affiliate executing and delivering evidence reasonably satisfactory to the City Manager of the required three-year lease, lease amendment, or lease extension for the Cupertino Facility, and no revenue sharing payment pursuant the Agreement ("Revenue Sharing Payment") will accrue, be due, or be payable unless and until that lease condition is satisfied; and

WHEREAS, if the lease condition is timely satisfied, Eligible Local Tax Revenues received by the City for the period beginning July 1, 2026 may be included in calculating Revenue Sharing Payments under the Agreement, subject to all limitations, exclusions, offset rights, reconciliation rights, withholding rights, and repayment obligations set forth in the Agreement; and

WHEREAS, if the lease condition is not timely satisfied, the Agreement will automatically terminate and be of no further force or effect without further action by either party, the City will have no obligation to calculate, accrue, or make any Revenue Sharing Payment, and Insight will have no right to receive any payment or compensation under the Agreement for any period; and

WHEREAS, the City Council finds that the Agreement serves valid public purposes, including lease retention, preservation and potential enhancement of local tax revenues, economic development, support for local business activity, support for employment and business presence in the City, and protection of the City's fiscal interests; and

WHEREAS, the City Council further finds that the public benefits anticipated from the Agreement are adequate consideration for the limited sharing of Eligible Local Tax Revenues under the Agreement and that approval of the Agreement does not constitute an unlawful gift of public funds; and

WHEREAS, the City Council has considered the staff report, the Agreement, the information required by Government Code section 53083, all written materials submitted to the City Council, all oral and written public testimony, and the full record before it.

NOW, THEREFORE, BE IT RESOLVED that the City Council does hereby:

1. Find that the foregoing recitals are true and correct and incorporated into this Resolution.

2. Approve the Economic Development and Sales Tax Sharing Agreement with Insight Direct Worldwide, Inc, or such other affiliated Insight entity as is the tenant under the Lease and approved by the City Manager, in substantially the form presented to the City Council, together with such final administrative, clerical, conforming, and non-substantive revisions as may be approved by the City Manager and City Attorney.

3. Find that the City has satisfied the applicable requirements of Government Code section 53083 before approving the Agreement, including making available the information required by Government Code section 53083 and providing public notice and a public hearing regarding the economic development subsidy contemplated by the Agreement.

4. Find that the Agreement serves valid and substantial public purposes, including encouraging Insight's continued lease and business presence in the City, preserving and potentially increasing local sales and use tax revenues lawfully allocated to the City, supporting employment and business activity in the City, and advancing the City's economic development and fiscal objectives.

5. Find, based on the information provided to the City, that the Cupertino Facility is not a warehouse distribution center and that the Agreement is not an economic development subsidy to a warehouse distribution center within the meaning of Government Code section 53083.1.

6. Find, based on Insight's representations and information available to the City, that the Agreement is not intended to violate Government Code section 53084.5, and further find that the Agreement includes safeguards allowing the City to suspend payments or terminate the Agreement if the City determines that the Agreement would violate Government Code section 53084.5 or other applicable law.

7. Direct City staff to comply with applicable reporting, publication, and website posting requirements under Revenue and Taxation Code section 7213 and applicable CDTFA regulations and guidance, and to maintain records reasonably necessary to document compliance with such requirements.

8. Approve the Agreement subject to the lease condition set forth in the Agreement. No Revenue Sharing Payment shall accrue, be due, or be payable unless and until Insight or an approved Insight affiliate executes and delivers to the City evidence reasonably satisfactory to the City Manager of a binding lease, lease amendment, or lease extension for the Cupertino Facility satisfying the requirements of the Agreement.

9. Authorize the City Manager to execute the Agreement on behalf of the City, subject to final approval as to form by the City Attorney, and to take all actions reasonably necessary or appropriate to implement the Agreement, including confirming satisfaction of the lease condition, approving affiliated Insight entities for purposes of the Agreement, calculating and making Revenue Sharing Payments in accordance with the Agreement, withholding or offsetting payments as permitted by the Agreement, requesting certifications and information from Insight, and administering the Agreement in accordance with its terms.

10. Provide that any extension of the Agreement shall be subject to the extension provisions of the Agreement and to any public notice, hearing, reporting, posting, or other legal requirements then applicable, including Government Code section 53083 and Revenue and Taxation Code section 7213, to the extent applicable.

BE IT FURTHER RESOLVED that this Resolution is not a project under the requirements of the California Environmental Quality Act, together with related State CEQA Guidelines (collectively, "CEQA"), because it has no potential for resulting in physical change in the environment. In the event that this Resolution is found to be a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guidelines section 15061(b)(3) because it can be seen with certainty to have no possibility that the action approved may have a significant effect on the environment. CEQA applies only to actions which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. In this circumstance, the proposed action approves an economic development and sales tax sharing agreement and does not approve any physical development, change in land use, construction activity, or other activity that would result in a physical change in the environment. The foregoing determination is made by the City Council in its independent judgment.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Cupertino this 21st day of July, 2026, by the following vote:

Members of the City Council

AYES:
NOES:
ABSENT:
ABSTAIN:

SIGNED: ______________________________ Kitty Moore, Mayor City of Cupertino	 _________________________ Date
ATTEST: ________________________________ Lauren Sapudar, City Clerk	 _________________________ Date