

**FIRST AMENDED AND RESTATED
AGREEMENT FOR
CONSULTATION SERVICES**

WHEREAS, Insight Consulting Services, a limited liability company organized under the laws of the State of Arizona, as consultant (the "Consultant"), and the City of Cupertino, a general law city duly incorporated and existing under the laws of the State of California (the "City"), have previously entered into an Agreement for Consultation Services (the "Original Agreement"), pursuant to which, among other things, the Consultant has provided certain consulting services regarding the assessment and creation of new sales and use tax revenue sources for the City derived from the Consultant and its affiliated companies, including without limitation Insight Direct USA, Inc., Insight Public Sector, Inc., and other affiliated companies as identified from time to time (collectively, "Insight"), and engaging in transactions subject to California sales and use taxes (collectively, "Taxable Transactions"); and

WHEREAS, the City and the Consultant desire to continue Consultant's services to the City under the Original Agreement, and hereby affirm their intent that it remain in full force and effect as amended and restated by this First Amended and Restated Agreement for Consultation Services (collectively, this "Agreement"), with the provisions of this Agreement as so amended and restated to be effective from and after the beginning of the City's Fiscal Year that commenced July 1, 2011 (the "Effective Date"); and

WHEREAS, by its authorization and approval of this Agreement and the execution and delivery hereof, the City Council of the City has found and determined that this Agreement continues to promote the health, safety and welfare of the City and its inhabitants by providing incentives to Insight to engage in Taxable Transactions that cause significant new local sales and use tax revenues to be allocated and paid to the City without a commensurate need for or burden upon services of the City; and

WHEREAS, the City and the Consultant hereby affirm their intent that payment for Consultant's services under this Agreement and the expense of its administration be funded solely from incremental local sales and use tax revenues irrevocably allocated and paid to the City by the California State Board of Equalization (the "Board") as a result of Taxable Transactions involving Insight which the City would not otherwise realize (collectively, "Revenues");

NOW, THEREFORE, IT IS HEREBY AFFIRMED AND AGREED AS FOLLOWS:

1. Affirmation and Continuation of Original Agreement. The Original Agreement, as affirmed, amended and restated by this Agreement, shall remain in full force and effect pursuant to the terms hereof. Except for provisions of this Agreement which take effect as of the Effective Date, the provisions of the Original Agreement shall be performed and administered in accordance with the terms of the Original Agreement. For all purposes of this Agreement, in the event of any conflict between any provision of this Agreement and any provision of the Original Agreement, the provisions of this Agreement shall control and supersede such provision of the Original Agreement.

2. Services To Be Performed by Consultant.

For each Fiscal Year of the City during the term of this Agreement (each, a "Fiscal Year"), Consultant shall continue to perform the services as provided in the Original Agreement (collectively, the "Services") under this Agreement, including the following:

- (a) assess and detail the current local sales and use tax revenue allocated to and received by the City from the State Board of Equalization related to Taxable Transactions involving Insight;
- (b) recommend new or adapted methodologies to increase Revenues through corporate or business expansion efforts involving Insight; and
- (c) provide to City a detailed analysis and description of Revenues, including without limitation any pro forma reports or projections that may be reflected in Insight's reports to the Board.

3. Compensation for Services of Consultant.

At least quarterly in each Fiscal Year, the City and the Consultant shall cooperate in determining the amount of Revenues with respect to which the Consultant's compensation for Services in such Fiscal Year shall be calculated. Unless and until the amount of Revenues so determined in a given Fiscal Year exceeds Two Hundred Fifty Thousand Dollars (\$250,000), the Consultant shall not be entitled to any compensation for Services performed by the Consultant in such Fiscal Year. If and when the amount of Revenues so determined in a given Fiscal Year exceeds Two Hundred Fifty Thousand Dollars (\$250,000), the City shall be obligated to make one or more payments from such Revenues to the Consultant as compensation for all Services performed by the Consultant in such Fiscal Year in an aggregate amount not exceeding the amounts determined under the following schedule:

- (a) If, for any Fiscal Year during the term covered by this Agreement, the amount of Revenues exceeds Two Hundred Fifty Thousand Dollars (\$250,000) but is less than Five Hundred Thousand Dollars (\$500,000), then Consultant shall receive as compensation with respect to such Fiscal Year the sum of Sixty-Two Thousand Five Hundred Dollars (\$62,500) plus an amount equal to twenty-five percent (25%) of Revenues between Two Hundred Fifty Thousand Dollars (\$250,000) and Five Hundred Thousand Dollars (\$500,000).
- (b) If, for any Fiscal Year during the term covered by this Agreement, the amount of Revenues exceeds Five Hundred Thousand Dollars (\$500,000) but is less than One Million Dollars (\$1,000,000), then Consultant shall receive as compensation with respect to such Fiscal Year an amount equal to the sum of (i) One-Hundred Twenty-Five Thousand Dollars (\$125,000) plus (ii) an amount equal to forty percent (40%) of Revenues between Five Hundred Thousand Dollars (\$500,000) and One Million Dollars (\$1,000,000).

- (c) If, for any Fiscal Year during the term covered by this Agreement, the amount of Revenues exceeds One Million Dollars (\$1,000,000), then Consultant shall receive as compensation with respect to such Fiscal Year an amount equal to the sum of (i) Three Hundred Sixty-Two Thousand Five Hundred Dollars (\$362,500) plus (ii) an amount equal to fifty percent (50%) of Revenues in excess of One Million Dollars (\$1,000,000).

4. Sole and Full Compensation.

Both the City and the Consultant expressly acknowledge and agree that the Consultant will receive no compensation for any Services rendered under this Agreement other than as expressly provided under Paragraph 3 of this Agreement, nor shall Consultant be entitled to any reimbursement from the City for any costs or expenses incurred by Consultant in performing or preparing to perform any Services under and pursuant to this Agreement.

5. Payments and Administration.

The City and the Consultant hereby affirm their intent that payments by the City under this Agreement shall be due and payable not later than thirty (30) days after the Board releases its quarterly sales tax allocation statements, except as the City and the Consultant may otherwise agree from time to time in writing. Such payments shall be applicable to compensation determined pursuant to the provisions of Paragraph 3 of this Agreement; provided, however, that in any Fiscal Year the City may withhold and offset against any such payments to the extent that any Revenues applicable to compensation paid or to be paid to the Consultant are or become subject to assessment by and repayment to the Board or to allocation or payment to any governmental entity other than the City, unless, until and to the extent that a final and irrevocable allocation and payment to the City of such Revenues has occurred; and provided further, that the Consultant shall promptly refund to the City any payment made by the City to the Consultant hereunder when and to the extent that the City is unable to withhold or offset against such payments in an amount sufficient to reimburse the City for its payments with respect to such Revenues. In administering and applying the provisions of this Paragraph 5, it is the express intent of the City and the Consultant that any risk of loss or diminution of Revenues be borne by the Consultant and not by the City; provided, however, that the City and the Consultant shall cooperate in any proceeding to prevent or mitigate any loss or diminution of Revenues or to recover any Revenues so lost or diminished. In no event shall the City have any obligation to make payments under this Agreement from any source other than Revenues.

6. Term.

The City and the Consultant hereby affirm their intent that the term of this Agreement shall be extended from time to time as they may agree in writing. Without limitation on the foregoing, this Agreement as amended and restated as of the Effective Date shall

apply to each Fiscal Year of the City ending June 30 of the following years: 2012, 2013, 2014, 2015 and 2016; provided, however, that:

- (a) in the event of any irrevocable termination of this Agreement pursuant to the provisions of Paragraph 11 hereof, this Agreement shall not apply from and after the last date of any fiscal quarter in any Fiscal Year ending prior to the date as of which such termination shall become irrevocable under the provisions of Paragraph 11; and
- (b) unless and until the term of this Agreement shall be extended further as effected by the City and the Consultant in writing, the term of this Agreement shall expire on June 30, 2016, and shall have no further force or effect; provided, however, that:
 - (i) Consultant shall be entitled to be paid any compensation due to it under this Agreement as provided in Paragraph 5 with respect to any fiscal quarter ended as of the earlier of (A) June 30, 2016, or (B) the last date of the last fiscal quarter ended prior to the irrevocable termination of this Agreement pursuant to the provisions of Paragraph 11; and
 - (ii) under all circumstances, the provisions of Paragraph 8 shall survive any expiration or termination of this Agreement.

7. Fiscal Years.

For all purposes of this Agreement, each Fiscal Year of the City shall begin July 1 of each calendar year and end June 30 of the succeeding calendar year.

8. Indemnification.

The Consultant agrees to indemnify, defend (if so requested by the City, and with counsel of the Consultant's choice but reasonably acceptable to the City), and hold the City, its officers, employees, agents and assigns (severally and collectively, any "Indemnatee"), harmless from any loss, expense or other cost (including, without limitation, attorneys' fees) related to any claim, action, lawsuit or other proceeding, whether administrative, at law or in equity, brought or maintained by or on behalf of any person or entity (other than the Consultant or any Indemnatee) against any Indemnatee as a result of any conduct of the Consultant or the City in performing, observing or administering any obligation or provision arising under or pursuant to this Agreement, except to the extent that any such claim, action, lawsuit or other proceeding caused by any Indemnatee's negligence or the willful misconduct of any Indemnatee. The Consultant shall also defend (if so requested by the City, and with counsel of Consultant's choice but reasonably acceptable to the City) any Indemnatee from any legal action challenging the validity of this Agreement or any provision of this Agreement. Without limitation on the foregoing provisions, and notwithstanding any other provision of this Agreement, if any court or administrative body of competent jurisdiction orders the return to the City of funds paid to the Consultant as compensation for the Consultant's performance of the Services under this Agreement, the Consultant shall hold any Indemnatee harmless from any such claims the Consultant may have for reimbursement or contribution with respect to any such funds.

9. Integration Clause; Modification of Agreement.

Except as expressly provided herein with respect to the Original Agreement: (a) the provisions of this Agreement contain the entire understanding of the City and the Consultant related to the subject matter of this Agreement and (b) no oral agreements, understandings, promises made or course of conduct by the parties or their agents which are not contained in this Agreement are binding. This Agreement may be modified only by a written agreement executed by the City and the Consultant.

10. Miscellaneous.

Neither this Agreement nor any provision hereof shall inure to the benefit of any person or entity other than the City and the Consultant, and no right or obligation arising under or by virtue of this Agreement may be assigned, transferred or pledged to any person or entity without the prior written consent of both the City and the Consultant. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

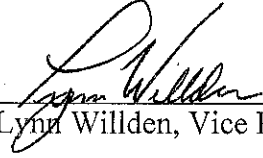
11. Termination.

- (a) This Agreement may be terminated after not less than 90 days' prior written notice by either party if the State Board of Equalization issues a final decision reallocating Revenues or any portion thereof pursuant to 18 Cal. Code of Regs. Section 1807 from the City to any other jurisdiction.
- (b) From and after the date the City sends any notice pursuant to subparagraph (a) of this Paragraph 11 (a "City Termination Notice"), but not more than 30 days after such date, the Consultant may deliver to the City any documentation regarding any remediation or mitigation of any decision described in said subparagraph (a) that is relevant to the applicable City Termination Notice. Within 30 days after the City's receipt of any such documentation, and if and only if the City in its sole and absolute discretion shall determine that any remediation or mitigation and the documentation thereof are sufficient for the purposes of this Agreement, the City, by written notice of the City's determination sent to the Consultant, may elect to withdraw the applicable City Termination Notice, whereupon this Agreement shall remain in full force and effect notwithstanding such City Termination Notice. Subject to the foregoing provisions, if the City does not elect to withdraw a City Termination Notice as described above, such City Termination Notice shall be deemed irrevocably effective as of the date the City sent the City Termination notice.

IN WITNESS WHEREOF, the Consultant and the City have executed this Agreement by their duly authorized representatives, on the dates set forth below, to be effective as provided above.

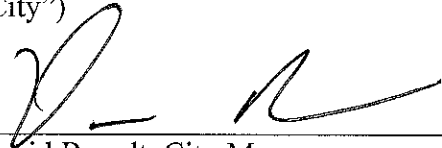
INSIGHT CONSULTING SERVICES, LLC
(the "Consultant")

Date: September 10, 2012

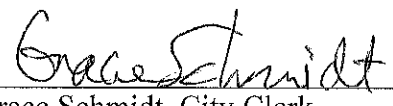
By: _____
Lynn Willden, Vice President, Tax

CITY OF CUPERTINO
(the "City")

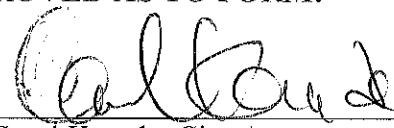
Date: OCT. 4, 2012

By: _____
David Brandt, City Manager

Date: Oct. 8, 2012

By: _____
Grace Schmidt, City Clerk

APPROVED AS TO FORM:

_____
By: Carol Korade, City Attorney