

**CONSULTING SERVICES AGREEMENT BETWEEN
THE CITY OF SAN LEANDRO AND
CONVERGEONE, INC.
FOR
CISCO FIREWALL UPGRADE PROJECT**

THIS AGREEMENT for consulting services is made by and between the City of San Leandro ("City") and ConvergeOne, Inc. ("Consultant" or "Contractor") (together sometimes referred to as the "Parties") as of July 16, 2018 (the "Effective Date").

Section 1. PRODUCTS AND SERVICES. Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to City the products and services described in the Scope of Work ("SOW") attached as Exhibit A at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

- 1.1 Term of Services.** The term of this Agreement shall begin on the Effective Date and shall end on September 31, 2018 the date of completion specified in Exhibit A, and Consultant shall complete the work described in Exhibit A on or before that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as referenced in Section 8.
- 1.2 Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged.
- 1.3 Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons, provided that Consultant shall not be in breach of this Agreement for any delays caused by City's request to reassign Consultant personnel.
- 1.4 Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Subsection 1.2 above and to satisfy Consultant's obligations hereunder.
- 1.5 City of San Leandro Living Wage Rates.** This contract may be covered by the City of San Leandro Living Wage Ordinance (LWO). Bidder's attention is directed to the San Leandro Municipal Code, Title 1, Chapter 6, Article 6. Successful Bidder must submit completed self-certification form and comply with the LWO if covered.
- 1.6 Product and Services Warranty.** Contractor is a reseller of certain manufacturers' products and services and warrant that Contractor is authorized to sell the products and services provided to City pursuant to this Agreement. City will receive the manufacturer's original warranty on the products purchased pursuant to this Agreement and Contractor

provides no other actual or implied product warranty of any kind. Subject to the manufacturer's warranty and the applicable services warranty provided by Contractor below, the product is provided as is. The warranty period for time and materials, implementation, installation and/or professional services deliverables will be thirty (30) days from the date on which Contractor informs City that the work is functionally complete. If City purchased full service Maintenance Service at the time of the original sale, then labor will be provided at no extra charge during the contract period, otherwise Contractor then current labor charges will apply.

- 1.7 **City's Responsibility.** City is responsible for the manner in which it uses the products and services provided pursuant to this Agreement, including the maintenance and security of City facilities; choice of equipment; software; related services; and all other matters related to how City uses such products and services. In the event that the products contain manufacturer's software, City shall not resell the software or provide access to the software either directly or indirectly to third parties unless authorized to do so in an order from Contractor. City will provide Contractor with all necessary access to the equipment and facilities subject to City's normal security policies and pursuant to this Agreement. City will allow Contractor technicians to conduct a comprehensive operation and performance evaluation of any equipment provided, installed, serviced, or maintained by a vendor other than Contractor. During evaluation, City will make all equipment and services intended for use with the products and services available to Contractor technicians, including computers, auxiliary audio and video sources, and all network and telecommunications services (ex: LAN, IP and ISDN).

Section 2. COMPENSATION. City hereby agrees to pay Consultant a sum not to exceed \$104,000.00 notwithstanding any contrary indications that may be contained in Consultant's proposal, for products and services to be performed and reimbursable costs incurred under this Agreement. In the event of a conflict between this Agreement and Consultant's proposal, attached as Exhibit B, regarding the amount of compensation, the Agreement shall prevail. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Consultant for product delivered and services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City in writing, Consultant shall not bill City for duplicate services performed by more than one person.

Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Consequently, the Parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

- 2.1 Invoices.** City agrees to pay an amount equal to fifty percent (50%) of the total charge for product, and fifty percent (50%) of total charge for services upon execution of this Agreement. The remaining balance of product charges, shipping, plus applicable taxes, is due upon delivery of product pursuant to this Agreement. The remaining balance of charges for services, plus applicable taxes, is due upon final invoice. Risk of loss of the product will pass to City upon shipment and City is responsible for providing and maintaining insurance against loss for the full replacement value of the products. Title to the products will pass to City when Contractor receives full payment for the products. Recurring charges for Maintenance Services are invoiced in advance. City must pay all applicable taxes when invoiced. Invoices are due within thirty (30) days of the date of invoice. For past due invoices, City agrees to pay late payment charges of one and one-half percent (1.5%) of the overdue amount per month, or the maximum lawful amount, whichever is less. In the event of a disputed invoice, City agrees to pay the entire undisputed amount of such invoice by the due date and to include with the remittance sufficient detail for Contractor to ascertain what amount is in dispute and why. The Parties shall use good faith efforts to reconcile the disputed amount within thirty (30) days of receiving notification of any dispute. After one hundred and twenty (120) days any disputes unresolved at that time shall be referred to a collection agency at Contractor discretion.
- 2.2 Total Payment.** City shall pay for the products and services to be rendered by Consultant pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement.
- In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment.
- 2.3 Hourly Fees.** Fees for work performed by Consultant on an hourly basis shall not exceed the amounts shown on the compensation schedule attached hereto as Exhibit B.
- 2.4 Reimbursable Expenses.** Reimbursable expenses are specified in Exhibit B, and shall not exceed \$0.00. Expenses not listed in Exhibit B are not chargeable to City. Reimbursable expenses are included in the total amount of compensation provided under this Agreement that shall not be exceeded.
- 2.5 Payment of Taxes.** Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.
- 2.6 Payment upon Termination.** In the event that the City or Consultant terminates this Agreement pursuant to Section 8, the City shall compensate the Consultant as follows:

Product. If City cancels a product order, all product must be returned in resalable condition which means it is undamaged, factory sealed in the original manufacturers' packaging, and is complete with all manuals, cables, etc. Prior to returning the product, City must request a Return Material Authorization ("RMA") through Consultant's customer service department. City is responsible for shipping the product(s) back to Consultant. If after receiving and inspecting the product, Consultant finds it meets the requirements above, Consultant will credit City account the applicable value of the returned product less a restocking fee of fifteen percent (15%). Restocking fee shall not be charged if product was deficient and not in proper working order. If Consultant determines that the product is not resalable, Consultant will send the product back to City and no credit will apply. If product is sub-standard and not in proper working order, Consultant shall keep product and credit the City for the deficient product. Licenses and all other special order items are non-returnable.

Services. City agrees to pay for time and material services rendered up to and through the effective date of cancellation as per section 8.1. City may terminate installation, implementation and/or professional services upon ten (10) days advance written notification sent to Consultant's address in section 10.10 and payment of the fees specified in Exhibit B for such service(s) up to and through the effective date of termination plus all non-refundable out-of-pocket expenses.

Maintenance. If City purchases Maintenance Services, the termination charge to cancel the order before the term is over is an amount equal to the payments for the remaining term, therefore City would not be entitled to a refund of any pre-paid amounts.

- 2.7 Authorization to Perform Services.** The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the Contract Administrator.

Section 3. FACILITIES AND EQUIPMENT. Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. City shall make available to Consultant only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein. Consultant shall make a written request to City to use facilities or equipment not otherwise listed herein.

- 3.1 Safety Requirements.** In accordance with generally accepted construction practices and state law, Contractor shall be solely and completely responsible for conditions on the jobsite, including safety of all persons and property during performance of the work. This requirement shall apply continuously and not be limited to normal working hours.

Contractor shall take all necessary precautions and provide all necessary safeguards to prevent personal injury and property damage. Contractor shall provide protection for all persons including, but not limited to, its employees and employees of its subcontractors;

members of the public; and employees, agents, and representatives of the City and regulatory agencies that may be on or about the work.

The services of the City in conducting review and inspection of Contractor's performance is not intended to include review of the adequacy of Contractor's work methods, equipment, bracing or scaffolding, or safety measures, in, on, or near any Contractor jobsite.

All work and materials shall be in strict accordance with all applicable state, city, county, and federal rules, regulations and codes, with specific attention to the United States Department of Labor Occupational Health and Safety Administration (OSHA) requirements. Contractor shall be solely responsible for compliance with all city, county, and state explosive transport, storage, and blasting requirements and for any damages caused by such operations.

Contractor is hereby informed that work on City property could be hazardous. Contractor shall carefully instruct all personnel working on City property that all conditions of the property are potentially hazardous work areas as to potential dangers and shall provide such necessary safety equipment and instructions as are necessary to prevent injury to personnel and damage to property. Special care shall be exercised relative to work underground.

In addition to complying with all other safety regulations, Contractor shall abide by any and all other City requirements contained in any specifications, special conditions or manuals, which shall be made available by City upon request.

Contractor shall provide and maintain all necessary safety equipment such as fences, barriers, signs, lights, walkways, guards, and fire prevention and fire-fighting equipment and shall take such other action as is required to fulfill its obligations under this section. It is the intent of the City to provide a safe working environment under normal conditions. CONTRACTOR IS ADVISED THAT CITY'S OPERATIONS AND PROPERTY ARE INHERENTLY HAZARDOUS BECAUSE OF CONDITIONS SUCH AS CONFINED SPACES, POTENTIALLY EXPLOSIVE ATMOSPHERES, AND POSSIBLE EXPOSURE TO PATHOGENS.

Contractor shall maintain all portions of the jobsite in a neat, clean, and sanitary condition at all times.

Contractor shall keep adequate first aid facilities and supplies available and instruction in first aid for its employees shall be given.

Section 4. INSURANCE REQUIREMENTS. Before fully executing this Agreement, Consultant, at its own cost and expense, unless otherwise specified below, shall procure the types and amounts of insurance listed below against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant and its agents, representatives, employees, and subcontractors. Consistent with the following provisions, Consultant shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of

insurance satisfactory in all respects, and that such insurance is in effect prior to beginning work to the City. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of such insurance shall be included in the Consultant's bid. Consultant shall not allow any subcontractor to commence work on any subcontract until Consultant has obtained all insurance required herein for the subcontractor(s) and provided evidence that such insurance is in effect to City. VERIFICATION OF THE REQUIRED INSURANCE SHALL BE SUBMITTED AND MADE PART OF THIS AGREEMENT PRIOR TO EXECUTION. Consultant shall maintain all required insurance listed herein for the duration of this Agreement.

4.1 Workers' Compensation.

4.1.1 General Requirements. Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than \$1,000,000 per accident. In the alternative, Consultant may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the California Labor Code shall be solely in the discretion of the Contract Administrator.

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the entity for all work performed by the Consultant, its employees, agendas, and subcontractors.

4.1.2 Submittal Requirements. To comply with Subsection 4.1, Consultant shall submit the following:

- a. Certificate of Liability Insurance in the amounts specified in the section; and
- b. Waiver of Subrogation Endorsement as required by the section.

4.2 Commercial General and Automobile Liability Insurance.

4.2.1 General Requirements. Contractor, at its own cost and expense, shall maintain commercial general liability insurance for the term of this Agreement in an amount not less than \$1,000,000 and automobile liability insurance for the term of this Agreement in an amount not less than \$1,000,000 per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection

against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

4.2.2 Minimum Scope of Coverage. Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (most recent edition) covering comprehensive General Liability on an “occurrence” basis. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001, Code 1 (any auto). No endorsement shall be attached limiting the coverage.

4.2.3 Additional Requirements. Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:

- a. The Insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- b. City, its officers, officials, employees, and volunteers are to be covered as additional insureds as respects: liability arising out of work or operations performed by or on behalf of the Consultant; or automobiles owned, leased, hired, or borrowed by the Consultant.
- c. Consultant hereby agrees to waive subrogation which any insurer or contractor may require from vendor by virtue of the payment of any loss. Consultant agrees to obtain any endorsements that may be necessary to affect this waiver of subrogation.
- d. For any claims related to this Agreement or the work hereunder, the Consultant’s insurance covered shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Consultant’s insurance and shall not contribute with it.

4.2.4 Submittal Requirements. To comply with Subsection 4.2, Consultant shall submit the following:

- a. Certificate of Liability Insurance in the amounts specified in the section;
- b. Additional Insured Endorsement as required by the section;
- c. Waiver of Subrogation Endorsement as required by the section; and
- d. Primary Insurance Endorsement as required by the section.

4.3 Professional Liability Insurance.

4.3.1 General Requirements. Consultant, at its own cost and expense, shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than \$1,000,000 covering the licensed professionals' errors and omissions. Any deductible or self-insured retention shall not exceed \$150,000 per claim.

4.3.2 Claims-Made Limitations. The following provisions shall apply if the professional liability coverage is written on a claims-made form:

- a. The retroactive date of the policy must be shown and must be before the date of the Agreement.
- b. Insurance must be maintained and evidence of insurance must be provided for at least 5 years after completion of the Agreement or the work, so long as commercially available at reasonable rates.
- c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant shall purchase an extended period coverage for a minimum of 5 years after completion of work under this Agreement.
- d. A copy of the claim reporting requirements must be submitted to the City for review prior to the commencement of any work under this Agreement.

4.3.3 Additional Requirements. Contractual liability shall be included in the policy.

4.3.4 Submittal Requirements. To comply with Subsection 4.3, Consultant shall submit the Certificate of Liability Insurance in the amounts specified in the section.

4.4 All Policies Requirements.

4.4.1 Acceptability of Insurers. All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A:VII.

4.4.2 Verification of Coverage. Prior to beginning any work under this Agreement, Consultant shall furnish City with complete copies of all Certificates of Liability Insurance delivered to Consultant by the insurer, including complete copies of all endorsements attached to the policies. All copies of Certificates of Liability Insurance and certified endorsements shall show the signature of a person authorized by that insurer to bind coverage on its behalf. If the City does not receive the required insurance documents prior to the Consultant beginning work, it shall not waive the Consultant's obligation to provide them. The City reserves the right to require complete copies of all required insurance policies at any time.

- 4.4.3 Deductibles and Self-Insured Retentions.** Consultant shall disclose to and obtain the written approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, employees, and volunteers; or the Consultant shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- 4.4.4 Wasting Policies.** No policy required by this Section 4 shall include a “wasting” policy limit (i.e. limit that is eroded by the cost of defense).
- 4.4.5 Endorsement Requirements.** Each insurance policy required by Section 4 shall be endorsed to state that coverage shall not be canceled by either party, except after 30 days’ prior written notice has been provided to the City.
- 4.4.6 Subcontractors.** Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

4.5 Remedies. In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Consultant’s breach:

- Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or
- Terminate this Agreement.

Section 5. **INDEMNIFICATION AND CONSULTANT’S RESPONSIBILITIES.** Refer to the attached Exhibit C, which is incorporated herein and made a part of this agreement.

Section 6. **STATUS OF CONSULTANT.**

6.1 Independent Contractor. At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. City shall have the right to control Consultant only insofar as the results of Consultant’s services rendered pursuant to this Agreement and assignment of personnel pursuant to Subsection 1.3; however, otherwise City shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this

Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.

- 6.2 Consultant Not an Agent.** Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

- 7.1 Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws and regulations applicable to the performance of the work hereunder, including but not limited to, the California Building Code, the Americans with Disabilities Act, and any copyright, patent or trademark law. Consultant's failure to comply with any law(s) or regulation(s) applicable to the performance of the work hereunder shall constitute a breach of contract.
- 7.3 Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.
- 7.4 Licenses and Permits.** Consultant represents and warrants to City that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Consultant represents and warrants to City that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid Business Licenses from City.
- 7.5 Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this

Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

Consultant shall include the provisions of this Subsection in any subcontract approved by the Contract Administrator or this Agreement.

Section 8. TERMINATION AND MODIFICATION.

8.1 Termination. City may cancel this Agreement at any time and without cause upon ten (10) days written notification to Consultant's address in section 10.10.

Consultant may cancel this Agreement upon ten (10) days' written notice to City and shall include in such notice the reasons for cancellation.

In the event of termination, Consultant shall be entitled to compensation in accordance with Section 2 of the Agreement Consultant will deliver to City all deliverables (whether complete or incomplete) and any other City materials provided to Consultant or prepared for Consultant by the City in connection with this Agreement.

8.2 Extension. City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. Consultant understands and agrees that, if City grants such an extension, City shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the Contract Administrator, City shall have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period.

8.3 Amendments. The Parties may amend this Agreement only by a writing signed by all the Parties.

8.4 Assignment and Subcontracting. City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the Contract Administrator. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the Contract Administrator.

8.5 Survival. All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.

8.6 **Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, City's remedies shall include, but are not limited to, the following:

8.6.1 Immediately terminate the Agreement;

8.6.2 Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement;

8.6.3 Retain a different consultant to complete the work described in Exhibit A not finished by Consultant;

Section 9. KEEPING AND STATUS OF RECORDS.

9.1 **Records Created as Part of Consultant's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies specifications, records, files, or any other documents or materials, in electronic or any other form, excluding Consultant intellectual property that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. City and Consultant agree that, until final approval by City, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of both Parties. Consultant is a reseller of certain manufacturers' products. The ownership of software associated with the products shall remain with the manufacturer of such software, and the City agrees to fully comply with the manufacturer's end user license for such software at all times. Each party reserves all rights, including, but not limited to, ownership, title, intellectual property rights and all other rights and interest in and to any intellectual property that it makes available to the other party as is necessary for the other party's performance under this Agreement. In addition, Consultant will own any intellectual property that it develops, creates, or otherwise acquires, excluding City's intellectual property, while performing the services, unless otherwise mutually agreed to and expressly set forth in Exhibit A. For services that are purchased, developed, or created under this Agreement, upon receipt of City's payment for such services, Consultant hereby grants City a perpetual, non-exclusive, non-transferable, fully-paid license to use and reproduce the services as originally configured and deployed for the limited purpose of conducting City internal business. Consultant reserves all other intellectual property rights not expressly granted herein

9.2 **Consultant's Books and Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of 3 years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.

- 9.3 **Inspection and Audit of Records.** Any records or documents that Subsection 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon prior written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds \$10,000.00, the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of 3 years after final payment under the Agreement. Consultant will not be obligated to supply City proprietary information about its costs or confidential information of its customers or suppliers except where such information is required to verify unexpected or non-recurring costs included in an invoice to City.

Section 10. MISCELLANEOUS PROVISIONS.

- 10.1 **Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 10.2 **Venue.** In the event that either party brings any action against the other under this Agreement, the Parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Alameda or in the United States District Court for the Northern District of California.
- 10.3 **Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 10.4 **No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 **Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the Parties.
- 10.6 **Use of Recycled Products.** Consultant shall use commercially reasonable efforts to prepare and submit all reports, written studies and other printed material on recycled paper to the extent such paper is available, and at equal or less cost than virgin paper.
- 10.7 **Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Consultant shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Section 1090 *et seq.*

Consultant hereby warrants that it is not now, nor has it been in the previous 12 months, an employee, agent, appointee, or official of the City. If Consultant was an employee, agent, appointee, or official of the City in the previous 12 months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of California Government Code Section 1090 *et seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the City for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of California Government Code Section 1090 *et seq.*, and, if applicable, will be disqualified from holding public office in the State of California.

- 10.8 **Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.
- 10.9 **Contract Administration.** This Agreement shall be administered by Anton D. Batalla ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator or his or her designee.
- 10.10 **Notices.** Any written notice to Consultant shall be sent to:

ConvergeOne, Inc.
Attn: Legal Department
3344 Highway 149
Eagan, MN 55121

Any written notice to City shall be sent to:
Anton D. Batalla
Information Technology Division
835 East 14th Street
San Leandro, CA 94577

With a copy to:
City of San Leandro
Department of Finance
c/o Purchasing Technician
835 East 14th Street
San Leandro, CA 94577

10.11 Integration. This Agreement, including the scope of work attached hereto and incorporated herein as Exhibits A, B, and C represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.

<u>Exhibit A</u>	Scope of Services
<u>Exhibit B</u>	Compensation Schedule & Reimbursable Expenses
<u>Exhibit C</u>	Indemnification

10.12 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

10.13 Certification per Iran Contracting Act of 2010. In the event that this contract is for one million dollars (\$1,000,000.00) or more, by Consultant's signature below Consultant certifies that Consultant, and any parent entities, subsidiaries, successors or subunits of Consultant are not identified on a list created pursuant to subdivision (b) of Section 2203 of the California Public Contract Code as a person engaging in investment activities in Iran as described in subdivision (a) of Section 2202.5, or as a person described in subdivision (b) of Section 2202.5 of the California Public Contract Code, as applicable.

10.14 Force Majeure. Neither party shall have any liability for delays, failure in performance, or damages due to: fire, explosion, power failures, pest damage, lightning or power surges, strikes, or labor disputes, water, acts of God, the elements, war, civil disturbances, acts of civil or military authorities or the public enemy, manufacturer caused equipment or part shortages, transportation facilities, fuel or energy shortages, unavailability of communications services or network facilities, or other causes beyond either party's control whether or not similar to the foregoing.

SIGNATURES ON FOLLOWING PAGE

The Parties have executed this Agreement as of the Effective Date. The persons whose signatures appear below certify that they are authorized to sign on behalf of the respective Party.

CITY OF SAN LEANDRO

CONVERGEONE, INC.

Chris Zapata, City Manager

Rui M. Goncalves, General Counsel

Attest:

Tamika Greenwood, City Clerk

Approved as to Fiscal Authority:

David Baum, Finance Director

688-13-121-7410

Account Number

Approved as to Form:

Richard D. Pio Roda, City Attorney

Per Section 10.7:

Form 700 Not Required

Form 700 Required

Anton Batalla
Information Technology Manager

1969630.2 (2015)

EXHIBIT A

SCOPE OF SERVICES

Project Overview

This Statement of Work (“SOW”) is made and entered into between ConvergeOne, Inc. (“ConvergeOne”) and City of Leandro (“Customer”).

This SOW defines the services and deliverables that ConvergeOne shall provide to Customer pursuant to the Solution Summary. The terms of this SOW are limited to the scope of this SOW and shall not be applicable to any other SOWs, which may be executed and attached to the Agreement.

The scope and pricing of this SOW are valid for 30 days from the **Effective Date of 06/08/2018**. After 30 days, the information contained in the SOW is no longer valid and will need to be re-assessed which could lead to an increase in cost of services and delay in execution of the project.

Known Details, Discovery, Planning, Design and Execution Services

This section identifies the work that will be performed as part of this project. Below is an initial, high-level list of tasks and assumptions for the project. This schedule may change depending on the Customer’s business requirements and other factors. Also, depending on the schedule finally agreed upon at the kickoff meeting, the days worked may not be contiguous. ConvergeOne will conduct a meeting with the Customer to review and finalize the technical approach, constraints and project schedule. This meeting is intended to ensure that all parties are operating under like-expectations for the project.

Known Details

The Security solution will be designed around the following:

- Existing ASA 5585-X with no Firepower

Recommended Licensing Quantity:

- 2X Firepower Threat and Malware and URL Licenses
- 25 User Anyconnect RA VPN License

Recommended Design

- HA FTD 2140 to Replace ASA 5585

- 1x FMC 1000 Management Server

Locations included in this engagement:

- One Customer site and Remote

Discovery

- Perform inventory of all hardware and software components, as defined in project scope and related
- Infrastructure.
- Identify and understand devices and associated dependencies
- Identify business, IT Policy and Customer's internal SLA requirements
- Identify the existing Edge/Core LAN network environment
- Identify Edge and WAN routing
- Circuit and third party connection
- Summarize and validate discovery findings with Customer
- Review existing Radius Servers and settings

Planning and Design

- Conduct interactive sessions to understand Customer's business and strategic information technology ("IT") objectives and potential challenges.
- Review current LAN/ WAN, Routing
- Request current configuration files in scope of this project
- Review Core , Firewall configurations
- Review proxy setting
- Review current endpoints
- Determine project deadlines
- Schedule maintenance windows
- Determine if proper pre-requisites are in place or ordered
- Gather most current configurations of all devices to be refreshed or migrated

- Design Firewall setup
 - Zones
 - VPN
 - Policies for Firepower IPS and AMP Policies
 - URL Policies (up to 5 Policies)
 - Employees
 - Guest
 - Whitelist
 - Blacklist
 - Other
- Design Remote access and Third party connection
- Split or full tunnel
- Third party Zones
- Develop HLD and review with Customer
- Discuss and collaborate with Mechanics on network changes required by new design
- Request and document network configuration requirements:
 - SNMP strings and IP addresses
 - NTP
 - DNS
 - DHCP
 - AAA
 - Syslog

Pre-Migration/Refresh

- Unbox hardware
- Power up hardware
- Test for DOA
- Hardware diagnostics (Show Version, Show Inventory etc.)
- Install modules on Routers/Firewall/Switches if applicable
- Upgrade IOS if required
- Review existing Firewall configuration
 - Review L2L VPN
 - Review NAT and VPN exemptions
 - Objects
 - Services Groups
 - Access Rules
 - Zones and interfaces
- Install licenses as needed
- Burn-in

Execution

This section of the Statement of Work covers the work that will be performed during the Execution phase of this project.

Configuration and Implementation Tasks

This section details the Configuration and Implementation Tasks of the project.

Firewall Migration

In-scope: 2x 2140

Tasks:

- Basic Configuration
- Hostname
- IP addressing
- Build HA configuration
- Configure Failover
- Basic routing
 - Dynamic or Static as discussed on design phase
- Management Settings
- Create and build objects in FMC
 - Build NAT, Objects, Services Groups and ACL
 - Apply IPS and AMP Policies as discussed on design phase
- Prepare new firewall configuration for internet edge
- Create Zones as discussed in design and Plan phase
- Create Access policies
- Register devices with FMC
- Publish Anyconnect image on ASA
- Build RA configuration
 - 1x Tunnel Group and GP

- Enable Group policy setting as discussed in Design and Plan phase
 - DNS
 - DHCP
 - Tunneling
- Clear ARP cache on upstream router if required
- Test
 - Internet
 - Email
 - Inbound NAT
 - Application access
 - IPS Policies and AMP Policies and URL Policies
 - Firewall health check
 - VPN
- Troubleshoot as needed
- Save Configuration

FMC Installation and Configuration

In-scope: 1x1000 FMC

Tasks:

- Session into FMC
- Backup existing configuration
- Configure FMC
 - Apply IP/GW/DNS/NTP
- Install licenses
 - Threat
 - Malware
 - URL
- Setup system rules to automate
 - Rules Updates
 - Geolocation Updates
- Setup System Policy
 - Configure email notification (Customer will provide mail relay host and email address)
 - Configure Banner (Customer will provide banner)
 - Configure Time Synchronization (Sensor will point to FMC)

- Setup Health Policy
 - Enable/disable monitoring base on policy usage
- Setup Object Management
 - Define Network Object
 - Define Variable Set (Customer will provide RFC1918 for their internal LAN)
 - Define Security Zones
- Setup Security Intelligence
 - Network List and Feeds
 - DNS List and Feeds
 - URL List and Feeds
- Setup Sinkhole (If applicable)
- Setup Device Management
- Integrate FSM with AD (Requires AD agent to be installed on Windows 2008+ DC or member 2008+ Server)
- Initial configuration of Firepower IPS
- Initial configuration for AMP
- Join sensors to FMC
- Set the sensors in discovery mode for one week minimum

Optimization (After one week)

- Configure IPS with Firepower Recommendation rules
- Configure AMP policy
- Configure access control policy
 - Build four standard rules and use IPS and AMP policy
- Enable Security Intelligence
- Create local account for FP management
- View logs in FSM for one weeks
- Identify false positives
- Fine tune IPS policies
- Use Geo based policies to block traffic from regions perceived as threats.
- Test Firepower policies
 - IPS
 - AMP
- Change mode for SFR module to Inline mode
- Configure FSM for alerting
 - IPS impact flags
 - AMP alert
- Discovery alert (if applicable)
- Setup scheduling to automate the following
 - Reports

- Firepower Recommended Rules
- Install Latest Update (Vulnerability Database only)
- Setup backup

Support

- 1 business day support after go live

Knowledge Transfer

- FMC configuration
 - GUI Navigation
 - Creating new IPS and AMP policy
 - Creating URL Policy
 - Monitoring
 - Generating report
 - Creating L2/L3 interfaces on FTD

Execution Deliverables

ConvergeOne may provide the following execution deliverables as part of the deployment:

- HLD Design
- LLD Firewall Design
- Updated configuration files for all devices in Scope of Work
- User guide for Firepower Umbrella with screen shots of
 - Management access
 - Policy configuration
 - Alerts and logs
 - Creating a new policy
 - Editing an existing policy

Project Closeout

At the conclusion of the project, ConvergeOne and the Customer will conduct a project closeout meeting. Below are the items that will be covered in the meeting:

- Review of the project deliverables, major milestones and accomplishments
- Review of quality results
- Review of key lessons learned
- Review of any outstanding issues or Customer dissatisfaction
- Discussion of any further steps required by either the Customer or ConvergeOne

Project Management

ConvergeOne assumes the following project management responsibilities:

- Designate a ConvergeOne Project Manager to be the Customer's primary point of contact for all project activities
- Coordinate with the Customer and ConvergeOne project personnel to facilitate the project
- Regularly review ConvergeOne project activities, any checkpoint meetings and overall schedule for the project activities
- Ensure ConvergeOne employees and any ConvergeOne subcontractors conform to the Customer's reasonable workplace policies, conditions and safety regulations that are consistent with ConvergeOne's obligations herein. Customer will provide a written list of these obligations to ConvergeOne in writing prior to commencement of the Services. ConvergeOne personnel or subcontractors shall not be required to sign individual agreements with the Customer or waive any personal rights
- Confirm the Customer's business goals and review items to be completed prior to the installation or deployment date(s)

Project Assumptions

This SOW, and the service pricing herein, was prepared based partly on the following key assumptions (“Assumptions”). Any deviations from these Assumptions that arise during the project shall be managed through the Change Management procedures as defined herein. Customer agrees that any changes in the Assumptions may result in an adjustment in the Service Pricing.

General Assumptions

- Delays caused by the lack of completed site preparation or the Customer’s failure to meet any responsibilities specified in this SOW may be billed at ConvergeOne T&M rates and may include reasonable travel and other expenses
- This SOW exclusively defines the scope of the services that ConvergeOne shall provide to the Customer. This SOW shall not apply to any purchase of product or maintenance, which must be purchased separately, under terms outside the scope of this SOW
- A new SOW will be required for any additional project services following the completion of the activities under this SOW or in support of any other services requested by the Customer outside the scope of this SOW
- ConvergeOne may require a lead-time of up to 30 days from acceptance of a Purchase Order from the Customer to begin work
- The Customer shall designate a person to whom all ConvergeOne communications may be addressed and who has the authority to act on all aspects of this SOW
- The Customer retains overall responsibility for any business process impact and any Customer-internal change management procedures and communications
- The Customer will provide accurate information about the network infrastructure in its current state, identifying any significant problems in the current voice and data environments and ensuring pre-requisite hardware, software, network and connectivity configurations are acquired and available
- The Customer is responsible for all licenses and software associated to this project. Any delays due to lack of proper licenses and or software may incur additional costs
- The Customer is responsible for all hardware, software, and service maintenance contracts. ConvergeOne may choose to not fulfill items within the scope of this SOW if maintenance contracts are not valid and up to date
- ConvergeOne is not responsible for cable management
- ConvergeOne is not responsible for any Microsoft Active Directory, Windows, and/or Exchange administration
- Post-installation design modifications, systems consulting and design, and engineer design and development that are not defined in this SOW are out of scope and can be provided on a T&M or other paid contractual basis upon Customer’s request

Personnel

ConvergeOne follows a skills-based implementation philosophy. Based on a project's needs, individuals with specific skill sets may be engaged at various phases of this project. This allows ConvergeOne to provide the Customer with a specialized team to accomplish a successful implementation. The ConvergeOne Project Manager is responsible for assigning and scheduling engineers as needed.

Project Schedule

Project duration and end date are dependent upon ConvergeOne and Customer availability, Customer readiness, and the actual start date. ConvergeOne will use commercially reasonable efforts to commence delivery of services defined in this SOW within four (4) weeks from the date of the Customer's approved purchase order and signed and submitted SOW.

Project work required beyond the term of the Estimated Project Duration specified in this section may require a ConvergeOne Change Request Form signed by both parties in accordance with the Project Change Management procedures defined herein. Any extension of the project's duration for any reason other than delays caused solely by ConvergeOne may require an increase in SOW pricing.

Change Management

It may become necessary to amend this SOW for reasons including, but not limited to, the following:

- The Customer requires changes to the scope of work to be performed and/or specifications of design or services
- Non-availability or change in availability of resources which are beyond either party's control
- Environmental or architectural impediments or omissions not previously identified

In the event either party desires to change this SOW, the following procedures will apply:

- The party requesting the change (either the Customer or ConvergeOne) will deliver a Change Request document to the other party. The Change Request will describe the nature of the change; the reason for the change and the effect the change will have on the scope of work, which may include changes to the deliverables, and the schedule. The parties will evaluate the Change Request and negotiate in good faith the changes to the Services and the additional charges, if any, required to implement the Change Request. If both parties agree to implement the Change Request, the appropriate authorized representatives of the parties will sign the Change Request, indicating the acceptance of the changes by the parties.

- Upon execution of the Change Request, said Change Request will be incorporated into, and made a part of this SOW.
- Whenever there is a conflict between the terms and conditions set forth in a fully executed Change Request and those set forth in the original SOW, or previous fully executed Change Request, the terms and conditions of the most recent fully executed Change Request shall prevail.

Completion

ConvergeOne project personnel will be considered to have completed the services under this SOW when they have completed the Planning, Design and Execution Services as described herein.

In order to refuse acceptance of the services performed, Customer must immediately provide written notification to ConvergeOne, describing why the Customer is rejecting the services performed. ConvergeOne shall have ten (10) business days after the receipt of such notice to remedy the error, given it is within ConvergeOne' scope and reasonable ability to do so. Such time period to correct the error may be extended by mutual consent of Customer and ConvergeOne.

EXHIBIT B

COMPENSATION SCHEDULE & REIMBURSABLE EXPENSES

City of San Leandro

835 East 14th Street
San Leandro, CA 94577

Tony Batalla
510-577-3385

DATE 5/23/2018
QUOTE# 05232018JDB

**Cisco 2140 Firepower Appliance
1 Year Option**

	Qty	Part Number	Description	MSRP	Unit Price	Total
SYSTEMS	2	FPR2140-NGFW-K9	Cisco Firepower 2140 NGFW Appliance, 1U, 1 x NetMod Bay	\$64,995.00	\$23,775.00	\$47,550.00
	1	FMC1000-K9	Cisco Firepower Management Center 1000 Chassis	\$16,076.65	\$7,842.00	\$7,842.00
	Total Systems					\$55,392.00
PERIPH						
	Total Peripherals					\$0.00
INSTAL	1		Professional Services - See Attached SoW		\$19,258.50	\$19,258.50
	Total Installations					\$19,258.50
SERVICES	2	CON-SNT-FPR2140N	SNTC-8X5XNBD Cisco Firepower 2140 NGFW Appliance, 1U,	\$5,200.00	\$5,200.00	\$10,400.00
	1	CON-SNT-FMC1000K	SNTC-8X5XNBD Cisco Firepower Management Center 1000 C	\$2,879.00	\$2,879.00	\$2,879.00
	2	L-FPR2140T-TMC-1Y	Cisco FPR2140 Threat Defense Threat, Malware and URL 1Y Subs	\$24,862.50	\$7,880.00	\$15,760.00
	25	L-AC-PLS-1Y-S1	Cisco AnyConnect Plus Term License, Total Authorized Users	\$6.00	\$2.95	\$73.75
Total Maintenance Services					\$29,112.75	

All Purchase Orders must be issued to the following:
ConvergeOne
300 Littleton Road, Suite 200
Parsippany, NJ 07054

Total Hardware \$55,392.00
Total Installation \$19,258.50
Total Service \$29,112.75
GRAND TOTAL \$103,763.25

Due and Payable upon shipment: \$84,504.75
50% of ProServices Due at Project Initiation: \$9,629.25
50% of ProServices Due at Project Completion: \$9,629.25

Applicable freight and taxes not included in the GRAND TOTAL of this quote
By either issuing C1 a Purchase Order, or by signing this document you hereby accept
the ConvergeOne Purchase Terms & Conditions as stated at:
<https://www.convergeone.com/online-general-terms-and-conditions>

EXHIBIT C

INDEMNIFICATION

Consultant shall indemnify, defend with counsel acceptable to City, and hold harmless City and its officers, elected officials, employees, agents and volunteers from and against any and all liability, loss, damage, claims, expenses, and costs (including without limitation, attorney's fees and costs and fees of litigation) (collectively, "Liability") of every nature arising out of or in connection with Consultant's performance of the services called for or its failure to comply with any of its obligations contained in this Agreement, except such Liability caused by the active negligence or willful misconduct of City.

Notwithstanding the forgoing, to the extent this Agreement is a "construction contract" as defined by California Civil Code Section 2782, as may be amended from time to time, such duties of Consultant to indemnify shall not apply when to do so would be prohibited by California Civil Code Section 2782.

The Consultant's obligation to defend and indemnify shall not be excused because of the Consultant's inability to evaluate Liability or because the Consultant evaluates Liability and determines that the Consultant is not liable to the claimant. The Consultant must respond within 30 days to the tender of any claim for defense and indemnity by the City. If the Consultant fails to accept or reject a tender of defense and indemnity within 30 days, in addition to any other remedy authorized by law, so much of the money due the Consultant under and by virtue of this Agreement as shall reasonably be considered necessary by the City, may be retained by the City until disposition has been made of the claim or suit for damages, or until the Consultant accepts or rejects the tender of defense, whichever occurs first.

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