

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

**THIS AGREEMENT** (the "Agreement") for consulting services is made by and between the City of San Leandro ("City") and ConvergeOne, Inc. ("Consultant") (together sometimes referred to as the "Parties") as of May 17, 2021 (the "Effective Date").

**Section 1. SERVICES.** Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to City the services described in the Scope of Work attached as Exhibit A at the time and place and in the manner specified therein (the "Services"). 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 the date of completion, if any, specified in Exhibit A, and Consultant shall complete the work described in Exhibit A on or before that specified 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.
- 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). Consultant's attention is directed to the San Leandro Municipal Code, Title 1, Chapter 6, Article 6. Consultant 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 the sum set forth in Exhibit B, notwithstanding any contrary indications that may be contained in Consultant's proposal, for 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 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. 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.

- 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. 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 or proposal. 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 to City that such insurance is in effect. 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 these 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, agents, 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.** Consultant, 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 effect this waiver of subrogation.
- d. For any claims related to this Agreement or the work hereunder, the Consultant's insurance coverage 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.** A certified endorsement to include 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 Cyber Liability Insurance.**

**4.4.1 General Requirements.** Consultant, at its own cost and expense, shall maintain cyber liability insurance for the term of this Agreement in an amount not less than \$1,000,000.00 per occurrence. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Consultant in this Agreement and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress; invasion of privacy violations; information theft; damage to or destruction of electronic information; release of private information; alteration of electronic information; extortion; and network security. The policy shall provide coverage for liabilities for financial loss resulting or arising from acts, errors, or omissions, in rendering technology Services:

- Violation or infringement of any right of privacy, including breach of security and breach of security/privacy laws, rules or regulations globally, now or hereinafter constituted or amended;
- Data theft, damage, unauthorized disclosure, destructions, or corruption, including without limitation, unauthorized access, unauthorized use, identity theft, theft of personally identifiable information or confidential City information in whatever form, transmission of a computer virus or other type of malicious code; and participation in a denial of service attack on third party computer systems;
- Loss or denial of service;
- No cyber terrorism exclusion;



Such coverage must include technology/professional liability including breach of contract, privacy and security liability, privacy regulatory defense and payment of civil fines, payment of credit card provider penalties, and breach response costs, including without limitation, notification costs, forensic analysis, credit protection services, call center services, identity theft protection services, and crisis management/public relations services.

**4.4.2 Claims-Made Limitations.** The following provisions shall apply if the cyber 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.

**4.4.3 Additional Requirements.** A certified endorsement to include contractual liability shall be included in the policy.

**4.4.4 Submittal Requirements.** To comply with Subsection 4.4, Consultant shall submit the Certificate of Liability Insurance in the amounts specified in the section.

#### **4.5 All Policies Requirements.**

**4.5.1 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.

**4.5.2 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.

**4.5.3 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.

**4.5.4 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).

**4.5.5 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.

**4.5.6 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.

**4.6 Submittal of Proof of Insurance Coverage.** All certificates of insurance and original endorsements effecting coverage required in this Section 4 must be electronically submitted through the City’s online insurance document management program, PINS Advantage. Contractor shall comply with all requirements provided by City related to the PINS Advantage program.

**4.7 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:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- 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 oral or 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.

**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 prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available 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.

At City's sole discretion, Consultant may be required to file with the City a Form 700 to identify and document Consultant's economic interests, as defined and regulated by the California Fair Political Practices Commission. If Consultant is required to file a Form 700, Consultant is hereby advised to contact the San Leandro City Clerk for the Form 700 and directions on how to prepare it.

- 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 for the City by Michael Hamer ("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  
10900 Nesbitt Avenue South  
Bloomington, MN 55437

Any written notice to City shall be sent to:  
Michael Hamer  
Information Technology Division  
835 East 14<sup>th</sup> Street  
San Leandro, CA 94577  
[mhamer@sanleandro.org](mailto:mhamer@sanleandro.org)

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

**10.11 Integration.** This Agreement, including the scope of work attached hereto and incorporated herein as Exhibits A, B, C, and D 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
<u>Exhibit D</u>	COVID-19 Compliance Requirements

**10.13 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.

**10.14 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.

## **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.

\_\_\_\_\_  
Frances Robustelli, City Manager

\_\_\_\_\_  
Adam Petrovksy, Regional Vice President

Attest:

\_\_\_\_\_  
Leticia I. Miguel, City Clerk

Budget Approved:

Approved as to Fiscal Authority:

\_\_\_\_\_  
Susan Hsieh, Finance Director

\_\_\_\_\_  
688-13-121-7410  
Account Number

Approved as to Form:

\_\_\_\_\_  
Richard D. Pio Roda, City Attorney

Per Section 10.7: Form 700 Required

\_\_\_\_\_  
Michael Hamer, Assistant IT Manager

## EXHIBIT A

### SCOPE OF SERVICES

#### 1. INTENTIONALLY OMITTED

#### 2. SCOPE OF WORK - TERMS AND CONDITIONS

This SOW (and any documents attached thereto and incorporated therein by reference) (collectively, this "Order") is subject to the of the Consulting Services Agreement (the "Agreement") between ConvergeOne, Inc. and/or its subsidiaries and affiliates (collectively, "ConvergeOne" or "Seller") and City of San Leandro ("Customer").

Customer's signature on this Order (or Customer's issuance of a purchase order in connection with this Order) shall represent Customer's agreement with each document in this Order.

This Order may include the sales of any of the following to Customer: (a) any hardware, third-party software, and/or Seller software (collectively, "Products"); any installation services, professional services, and/or third-party provided support services that are generally associated with the Products and sold to Customers by Seller ("Professional Services"); any Seller-provided vendor management services, software release management services, remote monitoring services and/or, troubleshooting services (collectively, "Managed Services"); and/or any Seller-provided maintenance services ordered by Customer to maintain and service Supported Products or Supported Systems at Supported Sites to ensure that they operate in conformance with their respective documentation and specifications ("Maintenance Services"). For ease of reference only, Professional Services, Managed Services, and Maintenance Services may be referred to collectively as "Services." Unless otherwise defined herein, capitalized terms used herein will have the same meanings as set forth in the Agreement.

Any dates and/or time intervals listed in this Order are approximate and for planning purposes only. ConvergeOne will use commercially reasonable efforts to accommodate any requested dates; provided, however, project milestones will be fully discussed and mutually agreed upon between ConvergeOne and Customer after project kickoff.

Products and/or Services not specifically itemized are not provided herein. Any additional applications, technologies, integrations, or other Products and/or Services not specified herein, are not included in this SOW and may result in additional charges at any time during the project.

The outline of deliverables for this Order follows below.

### 3. PROJECT TIMELINE EXPECTATIONS

Approximately 5 business days after signed acceptance of this SOW, ConvergeOne will assign a project manager that will make contact and start planning a project kick-off meeting. The project kick-off may not take place immediately. Project start times depend on the availability of ConvergeOne and Customer resources.

The expected duration of this project has been budgeted at one (1) weeks from the time of kick-off to completion. If the project exceeds this timeframe, a project change order may be required to extend the engagement, resulting in additional fees.

### 4. PROJECT OVERVIEW

Thank you for the opportunity to work with you on the Dell EMC PowerStore 1000T (2) project. This document describes the work to be performed during this engagement and covers the assumptions as the basis for this agreement, the responsibilities of ConvergeOne personnel, and the responsibilities of the Customer.

#### 4.1. Project Location(s)

Below is a list of the location(s) that should be included in this project.

*Table 4-1*

Site Name	Site Address
City of San Leandro	835 E 14th St San Leandro, CA 94577-3767

### 5. PROJECT SCOPE OF 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 working with consistent expectations for the project.

#### 5.1. 3rd Party Tasks

##### ProDeploy Plus Scope of Service

The Service provides for deployment activities of a Dell server, storage, or networking device during the hours outlined in the Service Hours section. The Scope of this Service is defined and limited to the description in the Service purchased as set forth

more specifically in the corresponding Service Features and Service Feature Activities sections.

A Dell representative will contact the Customer to schedule this Service, allowing for at least a ten business day lead time prior to the start of the Service, based upon a mutually agreed to resource availability.

Note: A scheduled outage window will be required in case of an offline hardware upgrade.

#### Service Features

The following is a list and brief description of the Service Features included. Please note that the Service Features listed in this section may have a more detailed list of activities which can be found in the Service Feature Activities section in Exhibit A.

#### Onsite hardware installation

Technicians physically install hardware onsite according to customer specifications or Dell preferred practices.

#### Packaging materials disposal

Move used packaging materials to onsite trash and recycling facility or other designated onsite location.<sup>3</sup> ProDeploy Plus for Enterprise Service Description | v1.17a | October 31, 2019

#### Project management

The assigned Project Manager will guide you through the deployment process-from tracking your equipment through the factory to ensuring your site is prepared through transitioning you past deployment and into the support process.

#### Site readiness review and implementation planning

Project Manager reviews multi-point check list with customer to ensure overall site readiness and schedules deployment project. Examples of items include: confirming equipment delivery, power requirements, network connections are made, and verifying project timelines and site contacts.

#### Install and configure system software

Install operating system, drivers, firmware, virtualization software, hypervisors and Dell SupportAssist set up. Feature not tied to application workloads or enterprise software products.

#### System testing and verification

System deployment and configuration is tested by Dell and verified against documented requirements.

#### Configuration detail transfer to Dell technical support

Dell will capture all pertinent technical and configuration details from the newly deployed components and preload that information into Dell's technical support systems. In case of issues, this detail will enable Dell Technical Support services to more quickly identify root causes and speed problem resolution.

#### Product Orientation

The Delivery Engineer will complete a verbal product orientation session with the customer at the conclusion of the deployment. Product Orientation includes a basic review of product features and how to perform common tasks.

#### Project documentation

The Project Manager will provide close of engagement documents at the conclusion of the deployment. These documents include "as deployed" documentation and deployment verification report.

#### Technical Account Manager engagement for ProSupport Plus systems

For customers with ProSupport Plus, the assigned Technical Account Manager is engaged throughout the deployment project.

#### Tool driven environment reporting

Dell tools gather Customer environment details and generate reports with key insights into the environment. The report provides the customer and Dell a comprehensive overview of the environment.

Data Migration analysis and recommendation Delivers a high-level overview of the target environment, including target source array details. Feature includes:

- Assessment of an inventory of up to 8 physical systems plus 1 storage system.
- Includes analysis of available migration methods, estimated transfer time and outage requirements.

Provides recommendation on tools to mitigate risk and a high-level task and timeline for migration Multivendor integration testing and switch replacement for networking

Provides easy transition from old network to new network and ensures new switches are integrated to existing 3rd party infrastructure such as Cisco, Broadcom, or HPE.

Engineers with knowledge of both Dell and competitor's products perform interoperability testing to ensure all equipment works together seamlessly- integrating and operating within your heterogeneous network environment. As part of this feature, engineers may:

- Perform network discovery of Ethernet or Fibre Channel switches to analyze configuration settings
- Review multi-vendor topology and determine any incompatibilities that exist
- Redistribute protocols on newly installed devices, if required (e.g. Cisco EIGRP protocol to OSPF/BGP)

- Provide onsite cutover support, afterhours or on weekends, to mitigate risk during network transition
  - Implement changes to remediate any incompatibilities
  - Perform communication test between Dell and multi-vendor devices
- 4 ProDeploy Plus for Enterprise Service Description | v1.17a | October 31, 2019

Configuration assistance for up to 30 days after deployment For up to 30 days after the deployment date, Dell will provide remote configuration assistance for the purchased

Supported Products (as defined below) and components included with this Service. If you have configuration questions after the Dell deployment team has left your site, call Dell technical support for initial assistance. If more in-depth assistance is needed, Dell technical support will engage the appropriate team to schedule time to assist you with configuration support.

Training credits for Dell Education Services

As applicable, Dell provides you with training credits that can be used for classes with Dell Education Services

(10) Data Migration Services: Remote File Migration 10-50 TB

(10) Data Migration Services: Remote Virtual V2V Migration 10-50 VMs

## 6. PROJECT MANAGEMENT

ConvergeOne will provide Project Management Services to help you effectively manage the project and control risks in the deployment. ConvergeOne will designate a Project Manager who will act as the single point of accountability for all ConvergeOne contract deliverables for the duration of the Project. ConvergeOne follows the Project Management Body of Knowledge (PMBOK) for project delivery. The PMBOK is an adaptable approach that enables technology project success by aligning business and technology goals. Key elements include an iterative delivery process, clear project metrics, proactive risk management, and effective response to change.

### 6.1. Project Coordinator

The ConvergeOne Project Coordinator (PC) shall work with the Customer to coordinate the project timeline and all ConvergeOne resources. The PC shall be the single point of contact for all non-technical communications including changes in project scope, timelines, and deliverables. The Project Coordinator shall perform the following:

- Lead kickoff meeting with the Customer to determine logistics and project timelines.
- Schedule design sessions and other project meetings as requested.

- Facilitate project and deliverable acceptance.
- Manage the project change orders as required.
- Third-party vendor coordination.

## 7. CHANGE ORDER PROCESS

Despite good project planning, design, and review, project plans often require some degree of change at some point. These changes are handled using change order requests, which must be agreed upon by all parties to the contract before such work can be performed.

Either ConvergeOne or the Customer may initiate a change order for any deliverable, work requirement, assumption, or dependency that is part of the project. All requests must be in writing and handled by the ConvergeOne Project Manager. ConvergeOne will review the change and provide pricing as applicable before proceeding. The ConvergeOne Project Manager may also engage project team members to assess the impact of the change. Agreed changes must be approved in writing by an authorized representative of the Customer, via email, or modified purchase order.

## 8. MILESTONE AND/OR PROJECT ACCEPTANCE

Upon completion of the Services described in this SOW, ConvergeOne shall provide Customer with an Acceptance Form. Upon delivery of the Acceptance Form, Customer has five (5) working days to review and accept. Failure to respond within the designated five (5) day period, signifies the completion of the milestone or project. In order to refuse acceptance, Customer must both indicate non-acceptance with written notification to ConvergeOne within the five (5) day period noted above and describe why it was not accepted. ConvergeOne shall have up to ten (10) days after the receipt of such notice to correct the error given it is within ConvergeOne scope and control to do so. Such time period to correct the error may be extended by mutual consent.

## 9. CUSTOMER RESPONSIBILITIES

**9.1.** Provide a single point of contact that will be responsible for:

- Understanding the business process impact and technical requirements and who has the authority to make binding decisions on Customer's behalf.
- Working with ConvergeOne Project Manager to develop mutually agreed project schedule, including outside of Normal Business Hours test and cutover windows (if applicable).

- Ensuring all Customer responsibilities are completed in accordance with the project schedule.
- Reasonable notification of schedule and changes for the installation work.
- Attending all project status meetings.

#### **9.2. Site Preparation:**

- Ensure equipment room is ready, including all electrical, wiring, grounding, lighting, racks, and HVAC required to maintain equipment within operating conditions specified by the equipment manufacturer.
- Provide required cable/patch panels that meet all requirements for Category 5e, racks, and network connectivity.
- Accept receipt of equipment and store in a secure area. Retain shipping documentation, inventory shipments by box count, and report any obvious external damage to the ConvergeOne Project Manager.
- Provide floor plans for equipment room configuration and related locations if applicable.
- Ensure that existing Customer network is configured, connected, and operating within the manufacturer's specifications.
- Customer will provide QOS on all their network equipment to the WAN-based upon Supplier's guidelines and requirements if carrying voice.

#### **9.3. Ensure availability of appropriate Customer resources that will:**

- Assist in the development and execution of applicable test plans.
- Provide accurate documentation for all existing systems and networks.
- Provide all necessary IP addresses, subnet masks, and default gateways.
- Provide VPN or other mutually agreed upon remote access. WebEx and similar screen-sharing tools are not acceptable remote access methods.
- Provide a qualified Network Administrator with working knowledge of Customer requirements.
- Provide information on planned changes in the network.

## **10. PROFESSIONAL SERVICES ASSUMPTIONS**

The following assumptions were made to create this Statement of Work. Should any of these assumptions prove to be incorrect or incomplete then ConvergeOne may modify the price, scope of work, or milestones. Any such modifications shall be managed by the Change Order Procedure.



## 10.1. General Assumptions

- All non-service impacting work described in this scope will be performed during U.S. normal business hours defined as 8:00 AM to 5:00 PM local (Pacific) time; Monday through Friday, excluding ConvergeOne designated holidays. "Cutover" for the sites will be completed during business hours unless otherwise stated in this scope of work.
- VPN access or remote desktop sharing services will be provided to ConvergeOne resources to allow for work to be accomplished remotely when applicable. If remote access to the Customer network cannot be provided additional charges may be required for on-site support.
- The Customer must identify any specific requirements for maintenance windows and change control. The Customer retains overall responsibility for any business process impact and any Customer-internal change management procedures and communications.
- ConvergeOne will install specific software versions agreed upon at time of project kickoff. Upgrades to software are not included in the SOW. ConvergeOne may choose to install an upgrade if required by the manufacturer or to resolve a problem.
- The Customer is responsible for the underlying data infrastructure including network and virtualization. Systems must be capable of supporting the proposed solution. ConvergeOne can supply consulting and remediation Services to ensure successful implementation, if not included in this scope, through a change order and billed at an additional fee.
- The Customer is responsible for all communications and scheduling of any contractors or vendors not managed by the ConvergeOne Project Manager.
- Any product or service delivery dates communicated outside of this SOW or the Project Plan, are not to be considered valid or binding.
- If the project extends beyond the timeline specified in the Project Plan due to delays caused by parties other than ConvergeOne and its subcontractors, ConvergeOne may invoice for service performed to date.
- The Customer is responsible to verify and arrange installation of all applicable network connections and provide a functional network for application deployment.
- Projects requiring multiple site visits and/or intervals of inactivity between events must be noted as such prior to acceptance of this SOW.
- The Customer is responsible for removal and disposal of any previously installed Customer-owned equipment or cabling unless specifically agreed otherwise herein.
- The Customer is responsible to notify ConvergeOne if the site requires any specialized access for personnel and/or Union trades for any tasks associated with

this SOW. Notification of requirements must take place prior to quote. Any and all additional costs for post-quote changes or additional site restrictions requiring specialized training or Union Labor shall be chargeable to the Customer.

- The Customer is responsible for managing all 3rd Parties not outlined in this SOW.
- Services not specifically called out in this SOW will be deemed out of scope.

## **10.2. Technical Assumptions**

- Unless specifically called out, above, no IP address changes are included in the SOW. If requested, additional charges may apply.
- The Customer is responsible to have current licensing, maintenance, and support on the components of the servers, database, storage, and network infrastructure including hardware, software (including operating systems), and any associated costs.
- The Customer is responsible for any operating system patches and anti-virus software installation and support.
- The Customer is responsible to ensure the existing network is free of layer 3 protocol and broadcast errors.
- The Customer is responsible for the cost and acquisition of any 3rd party security certificates necessary for successful deployment. ConvergeOne can provide Services for Security Audits and Certificate deployment which can be billed at an additional fee.
- The Customer is responsible for resolving interoperability issues with other vendors not acting as a sub-contractor to ConvergeOne.
- The Customer is responsible for any firmware updates to re-used circuit packs, media modules, or cards not specifically identified within this SOW. ConvergeOne can provide Services for the firmware updates through a change order and billed at an additional fee.

## **11. PROFESSIONAL SERVICES PRICING AND BILLING SCHEDULE**

Billing terms for this project supersede any MSA in place and are only applicable to the Services stated in this scope of work. Invoices are due within thirty (30) days from the date of the invoice unless otherwise previously agreed between Customer and ConvergeOne credit department. Any change to the Project Pricing and Payment schedule will be managed through the Change Order procedures specified herein. All stated prices are exclusive of any taxes, fees and duties or other amounts, however designated, and including without limitation value added and withholding taxes which are levied or based upon such charges, or upon this SOW (other than taxes based on the net income of ConvergeOne). The Customer shall pay any taxes

related to Services purchased or licensed pursuant to this SOW or the Customer shall present an exemption certificate acceptable to the taxing authorities. Applicable taxes shall be billed as a separate item on the invoice.

#### **11.1. Project Price and Milestone Billing Schedule**

The fixed fee price for this Services engagement is below and will be billed with the following milestone schedule:

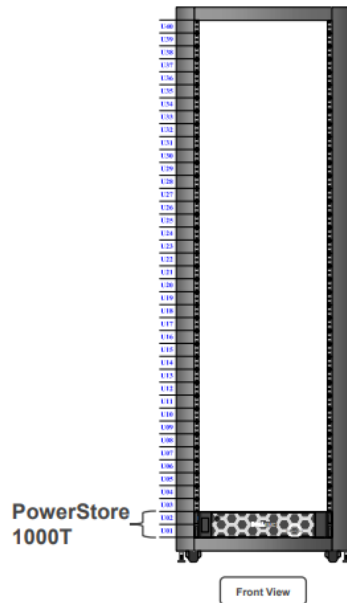
**Total Price: \$16,829.00**

- Milestone 1 (50%) - Project Initiation - Kick Off Meeting, Resource Assignment, Design Completion
- Milestone 2 (50%) - Final Customer Acceptance of the Project

#### **11.2. Project Expenses:**

There are no anticipated project related expenses expected for this project above the price included in this SOW. In the event that the need for additional expense arise, a Change Order will be presented by the Project Manager for approval by the Customer in advance. ConvergeOne will make reasonable effort to minimize expenses and will ensure sufficient time is built into the project schedule to maximize efficiency when scheduling site visits.

## Proposed Solution – City Hall



### Dell EMC PowerStore 1000 T

**Hard Drives:**  
11 x 1.92TB SSD NVMe drives

**Network:**  
1x 10GBE OPTICAL 4 PORT CARD PAIR, total 8 ports

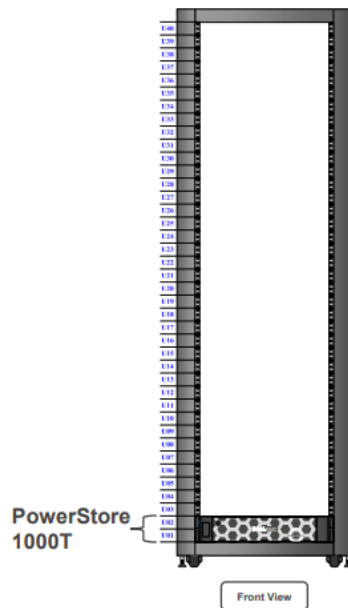
**Power Supply / Cords:**  
Dual 1800W (200-240V) Power Supply, includes C13/C14 Power Cords

Storage Information	
Effective Capacity	42.38 TiB
Usable Capacity	14.13 TiB
Raw Capacity	19.21 TiB
Data Reduction Ratio	3:1
Total Drive Count	11

Performance Information	
Performance	3.8 K IOPS / 118.75 MiB/s
Max Performance	28.877 K IOPS / 902.42 MiB/s
Storage Performance Saturation	13.16%

Dell Technologies

## Proposed Solution – Police Dept



### Dell EMC PowerStore 1000 T

**Hard Drives:**  
11 x 1.92TB SSD NVMe drives

**Network:**  
1x 10GBE OPTICAL 4 PORT CARD PAIR, total 8 ports

**Power Supply / Cords:**  
Dual 1800W (200-240V) Power Supply, includes C13/C14 Power Cords

Storage Information	
Effective Capacity	42.38 TiB
Usable Capacity	14.13 TiB
Raw Capacity	19.21 TiB
Data Reduction Ratio	3:1
Total Drive Count	11

Performance Information	
Performance	3.8 K IOPS / 118.75 MiB/s
Max Performance	28.877 K IOPS / 902.42 MiB/s
Storage Performance Saturation	13.16%

Dell Technologies

# ProDeploy Enterprise Suite

## FEATURE COMPARISON

		Basic Deployment	ProDeploy	ProDeploy Plus
Pre-deployment	Single point of contact for project management		•	• In-region
	Site readiness review		•	•
	Implementation planning		•	•
	Technology Service Manager (TSM) engagement for ProSupport Plus entitled devices			•
Deployment	Deployment service hours	Business hours	24x7	24x7
	Onsite hardware installation*	•	•	•
	Packaging materials disposal	•	•	•
	Install and configure system software		Remote	Onsite
	Project documentation with knowledge transfer		•	•
Post-deployment	Deployment verification		•	•
	Configuration data transfer to Dell EMC technical support		•	•
	30-days of post-deployment configuration assistance			•
	Training credits for Dell EMC Education Services			•

\* Hardware installation not applicable on select software products

## ProSupport

	Basic	ProSupport	ProSupport Plus
Remote technical support	9x5	24x7	24x7
Covered products	Hardware	Hardware Software	Hardware Software
Onsite hardware support	Next business day	Next business day or 4hr mission critical	Next business day or 4hr mission critical
Automated issue detection and case creation		•	•
Self-service case initiation and management		•	•
Access to software updates		•	•
Priority access to specialized support experts			•
3rd party software support			•
Assigned Technology Service Manager			•
Personalized assessments and recommendations			•
Semiannual systems maintenance			•

## EXHIBIT B

### COMPENSATION SCHEDULE & REIMBURSABLE EXPENSES

#### Solution Summary

##### Dell EMC PowerStore 1000T - Qty 2 (Migration Services Included)

<b>Customer:</b> City of San Leandro	<b>Primary Contact:</b> Tony Batalla
<b>Ship To Address:</b> 835 E 14th St San Leandro, CA 94577-3767	<b>Email:</b> tbatalla@sanleandro.org
<b>Bill To Address:</b> 835 E 14th St San Leandro, CA 94577-3767	<b>Phone:</b> 510-577-3385
<b>Customer ID:</b> SPSCITSAN0003	<b>National Account Manager:</b> John Brownfield
<b>Customer PO:</b>	<b>Email:</b> JBrownfield@convergeone.com
	<b>Phone:</b> +14083530352

Solution Summary	Current Due	Next Invoice	Due	Remaining	Total Project
Hardware	\$133,142.86		One-Time		\$133,142.86
Professional Services	\$16,829.00		One-Time		\$16,829.00
<b>Project Subtotal</b>	<b>\$149,971.86</b>				<b>\$149,971.86</b>
Estimated Tax	\$7,297.50				
Estimated Freight	\$248.78				
<b>Project Total</b>	<b>\$157,518.14</b>				<b>\$157,518.14</b>

#### Solution Quote

#	Item Number	Description	Term	Qty	Unit Price	Extended Price
<b>Dell Technologies</b>						
1	DELLSTORAGE	Dell EMC PowerStore 1000T		1	\$60,752.23	\$60,752.23
2	DELLSTORAGE	Dell EMC PowerStore 1000T		1	\$72,390.63	\$72,390.63
3	Professional Services	Professional Services				\$16,829.00

This contract is based on the National Association of State Procurement Officials (NASPO) Contract #MNWNC-109, a cooperative purchasing agreement for Dell Technologies equipment and services available to public agencies within the state of California. ConvergeOne is an approved supplier for this contract. More information is available here: <https://www.delltechnologies.com/en-us/emcwsca/data-storage/california/index.htm>

#### Dell EMC PowerStore 1000 T - AMER

Description	QTY
PowerStore 1000T BASE ENC. FLD INST	2
384GB Appliance DIMM 192GB Per Node	2
Thank you for choosing Dell EMC	2
P1 25X2.5 NVME SED SSD 1.92TB	22
PowerStore Base SW	2
10GBE OPTICAL 4 PORT CARD PAIR	2
Dual 1800W (200-240V) Power Supply, includes C13/C14 Power Cords	2
BASE UNIT CONFIG KIT	2
Thank you for buying Dell EMC	4
ISG Product (info)	2
Dell Hardware Limited Warranty Plus On Site Service	2
ProSupport: Mission Critical 4-Hour 7x24 On-Site Service with Emergency Dispatch 1 Year	2
ProSupport: Mission Critical 4-Hour 7x24 On-Site Service with Emergency Dispatch 4 Years Extended	2
ProSupport: Mission Critical 7x24 HW/SW Tech Support and Assistance 5 Years	2
Dell Hardware Limited Warranty Plus On Site Service Extended Year	2
Thank you choosing Dell ProSupport. For tech support, visit <a href="http://www.dell.com/support">//www.dell.com/support</a> or call 1-800- 941	2
ProSupport: Mission Critical 4-Hour 7x24 On-Site Low Capacity SSD Add-On, 5 Years	22
ProDeploy Plus Training Credits 800 Redeem at <a href="http://education.dell.com">education.dell.com</a> Expires 1Yr from Order Date	2
ProDeploy Plus for PowerStore 1XXX T	2
US Order	2
Data Migration Services: Remote File Migration 10-50 TB	10
Data Migration Services: Remote Virtual V2V Migration 10-50 VMs	10

#### Dell EMC AppSync for PowerStore - AMER

Description	QTY
AppSync for PowerStore	2
AppSync Str Pk for PowerStore=CB	2
On-Site Installation Declined	2
ProSupport Mission Critical for AppSync Starter Pack Software Support Maintenance 5 Years	2
Storage Software Info	2
Thank you for Your Order	2
Thank you for Your Order	2
ProSupport Mission Critical for AppSync Starter Pack Software Support Contract 5 Years	2

## 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 sole 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.

Consultant shall also indemnify, defend and hold harmless the City from all suits or claims for infringement of any patent rights, copyrights, trade secrets, trade names, trademarks, service marks, or any other proprietary rights of any person or persons because of the City or any of its officers, employees, volunteers, or agents use of articles, products things, or Services supplied in the performance of Consultant's Services under this Agreement, however, the cost to defend charged to Consultant shall not exceed Consultant's proportionate percentage fault.



## EXHIBIT D

The novel coronavirus ("COVID-19") has been declared a worldwide pandemic by the World Health Organization. The City of San Leandro is currently in a local emergency and state of emergency due to the COVID-19 pandemic.

COVID-19 is extremely contagious, and is believed to spread mainly from person-to-person contact, through touched surfaces, and in airborne particles. As a result, federal, state, and local governments, including the City of San Leandro, and federal, state, county, and local health agencies recommend social distancing and additional cleaning protocols to limit the spread of the disease. The City has taken steps and put in place preventative measures recommended by federal, state, and local health agencies to reduce the spread of COVID-19. These measures include steps each person must take to prevent the spread of COVID-19 and include, but are not limited to, requiring face coverings, frequent hand washing and/or use of hand sanitizer, social distancing where possible, limiting of person-to-person contact, frequent cleanings of high-touch surfaces, and avoiding entering any building if they have COVID-19 symptoms.

Consultant shall obey all local orders and abide by all applicable preventative measures recommended by federal, state, county, and local health agencies and any preventative measures specifically implemented by the City. Consultant agrees that when entering any City buildings, Consultant will follow all COVID-19 related signage, wear a face covering, follow all social distancing protocols, and abide by any other COVID-19 preventative measure that are in place when performing the Services described in this Agreement. Consultant shall also adhere to any subsequently communicated COVID-19 preventative measures as directed by City staff. The COVID-19 preventative measures are subject to change over time, and Consultant shall maintain knowledge of and adhere to the current COVID-19 preventative measures when interacting with City employees, officials, volunteers, agents, and representatives, and when entering City buildings.