



**AGREEMENT
FOR CONTRACT SERVICES FOR
CITY OF CORONADO**

IMPEX TECHNOLOGIES, INC.

CONTRACT NO. 25-GS-IT-867

THIS AGREEMENT FOR CONTRACT SERVICES (“AGREEMENT”) is made and entered by and between the CITY OF CORONADO, a California municipal corporation, hereinafter referred to as “CITY,” and Impex Technologies, Inc., a California Corporation, hereinafter referred to as “PROVIDER.”

RECITALS

The CITY requires the product and services from a certified Nutanix vendor and an authorized seller of subscriptions for Nutanix Cloud Infrastructure (NCI) Pro Software License and Production Software Support Services (“Subscription”). These required services are described in detail in ATTACHMENT A: Scope of Services.

On August 1, 2024, the City sent out a Request for Bid (“RFB”) for this Agreement in accordance with Chapter 8.04 of the Coronado Municipal Code (“CMC”) and the California Public Contract Code. The City received two (2) responsive bids. PROVIDER was the most qualified bidder.

PROVIDER warrants and represents itself as possessing the necessary experience, skills and qualifications to provide the services required by CITY and to ensure that all work is performed in a professional manner and the final product is of a high quality.

PROVIDER warrants and represents that it has the necessary staff to deliver the services within the time frame herein specified and is fully qualified to perform those services within the specified time frame in accordance with the highest standards of PROVIDER’S profession.

The Director Administrative Services shall serve as CITY'S "CONTRACT OFFICER" for this AGREEMENT and has the authority to direct the PROVIDER, approve actions, request changes, and approve additional services. Any obligation of the CITY shall be the responsibility of the CONTRACT OFFICER.

NOW THEREFORE, in consideration of these recitals and the mutual covenants contained herein, CITY and PROVIDER (individually "Party" and collectively "Parties") agree as follows:

1.0 TERMS OF AGREEMENT

1.1 This AGREEMENT shall be effective on and from the day, month and year of the execution of this document by the Parties. This AGREEMENT shall be in effect for a term of five (5) years beginning on the contract execution date, during which time the PROVIDER shall commence and complete all of the services required pursuant to this AGREEMENT within pursuant to Section 1.3 herein.

1.2 This AGREEMENT is a firm, fixed-price contract for all labor and materials including, but not limited to the Subscription, Nutanix Cloud Infrastructure (NCI) Pro Software License & Production Software Support Services, as described in Attachment A. All tasks to be performed are to be completed, or this AGREEMENT is otherwise terminated. Prices shall remain firm upon execution of this AGREEMENT. **The agreement shall not exceed Five Hundred Thousand Dollars and no cents (\$500,000.00).**

1.3 PROVIDER shall commence work under this AGREEMENT within the time period specified in Section 1.1. Time is of the essence in the performance of all obligations under this AGREEMENT, and all timing requirements shall be strictly adhered to unless otherwise modified in writing by the CITY. Failure to meet the schedule contained in this AGREEMENT is a default by the PROVIDER.

1.4 PROVIDER shall, without additional compensation, correct or revise any services performed or product pursuant to this AGREEMENT that do not meet the specifications and/or professional standards required of the PROVIDER.

2.0 PRODUCT AND SERVICES (ATTACHMENT A)

2.1 PROVIDER shall provide CITY with the services and product documents described in ATTACHMENT A, which is attached hereto and incorporated herein by this reference as though fully set forth at length and is hereinafter referred to as the "SERVICES."

2.2 The general manner in which the PROVIDER shall render the SERVICES is set forth in ATTACHMENT A. While CITY is, in general, concerned with the manner in which the SERVICES are rendered, under this AGREEMENT, as represented by PROVIDER, it is not concerned with, nor shall it direct, the specific means and methods of operations on the part of PROVIDER in the performance of its SERVICES under this AGREEMENT. PROVIDER shall

provide all labor, materials, equipment, tools and services required by and shall perform all work described in this AGREEMENT.

3.0 FEE SCHEDULE/GENERAL INFORMATION (ATTACHMENT B)

3.1 PROVIDER is hired to render the SERVICES and any payments made to PROVIDER are compensation, fully, for such services.

3.2 Payment to PROVIDER to render the SERVICES is set forth in ATTACHMENT B, which is attached hereto and incorporated herein by this reference as though fully set forth at length.

3.3 PROVIDER shall comply with all applicable Federal, State and local laws pertaining to the subject matter hereof or in any way regulating the activities undertaken by PROVIDER or any subcontractor hereunder.

4.0 CHANGES TO SCOPE OF WORK

PROVIDER shall not perform work in excess of the SERVICES without the prior written approval of the CONTRACT OFFICER. All requests for extra work shall be by written change order submitted to, and approved by, the CONTRACT OFFICER prior to the commencement of such work.

5.0 SUBCONTRACTING (RESERVED)

6.0 ENTIRE AGREEMENT

6.1 This AGREEMENT and the incorporated attachments set forth the entire understanding of the Parties with respect to the subject matters herein. If there are any inconsistencies between the incorporated attachments and this AGREEMENT, the terms of this AGREEMENT control. There are no other understandings, terms or other agreements expressed or implied, oral or written, except as set forth herein. No change, alteration, amendment, or modification of the terms or conditions of this AGREEMENT, and no verbal understanding of the Parties, their officers, officials, agents, representatives, or employees shall be valid unless agreed to in writing by both Parties.

7.0 TERMINATION OF AGREEMENT

7.1 In the event of PROVIDER'S failure to prosecute, deliver, or perform the SERVICES, CITY may terminate this AGREEMENT immediately by notifying PROVIDER by certified mail of said termination. Thereupon, PROVIDER shall cease work and, within two (2) working days, place all work in progress in a safe and protected condition. The City Manager of CITY shall make a determination of the percentage of work that PROVIDER performed that is usable and of worth to CITY. Based upon that finding, CITY shall determine any final payment due to PROVIDER.

7.2 This AGREEMENT may be terminated by the CITY, without cause, upon the giving of fifteen (15) business days' written notice to the PROVIDER. Prior to the fifteenth (15th) day following the giving of the notice, the PROVIDER shall assemble the completed work product to date and put the same in order for proper filing and closing, and deliver said product to the CITY. The PROVIDER shall be entitled to just and equitable compensation for any satisfactory work completed. The CONTRACT OFFICER and PROVIDER shall endeavor to agree upon a percentage complete of the contracted work if fees are fixed, or an agreed dollar sum based on services performed if hourly, and terms of payment for services and reimbursable expenses. PROVIDER hereby expressly waives any and all claims for damages or compensation arising under this AGREEMENT except as set forth herein.

8.0 [RESERVED]

9.0 COVENANT AGAINST CONTINGENT FEES

9.1 PROVIDER represents and warrants that it has not employed or retained any company or person, other than a bona fide employee working for PROVIDER, to solicit or secure this AGREEMENT, and that PROVIDER has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon, or resulting from, the award or making of this AGREEMENT. For breach or violation of this representation and warranty, CITY shall have the right to terminate this AGREEMENT without liability or, at CITY'S sole discretion, to deduct from the AGREEMENT price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

10.0 STATUS OF PROVIDER

10.1 PROVIDER shall perform the SERVICES in a manner of PROVIDER'S own choice, as an independent PROVIDER and in pursuit of PROVIDER'S independent calling, and not as an employee of CITY. PROVIDER shall be under control of CITY only as to the result to be accomplished and the personnel assigned to the project. However, PROVIDER shall confer with CITY prior to implementing any changes proposed to the SERVICES. Neither PROVIDER nor PROVIDER'S employees shall be entitled in any manner to any employment benefits, including but not limited to, employer-paid payroll taxes, Social Security, retirement benefits, health benefits, or any other benefits, as a result of this AGREEMENT. It is the intent of the Parties that neither PROVIDER nor its employees are to be considered employees of CITY, whether "common law" or otherwise, and PROVIDER shall indemnify, defend and hold CITY harmless from any such obligations on the part of its officers, employees, representatives and agents.

11.0 ASSIGNMENT OF CONTRACT

11.1 This AGREEMENT and any portion thereof shall not be assigned or transferred, nor shall any of the PROVIDER's duties be delegated or sub-contracted, without the prior express written consent of the CITY.

12.0 INDEMNITY – HOLD HARMLESS

12.1 To the fullest extent permitted by law, PROVIDER agrees that CITY and its elected and appointed boards, officials, officers, agents, employees, representatives and volunteers (individually and collectively, "CITY Indemnitees") shall have no liability to PROVIDER or any other person for, and PROVIDER shall indemnify, defend and hold harmless CITY Indemnitees from and against, any and all liabilities, claims, demands, actions, causes of action, proceedings, suits, damages, judgments, liens, levies, costs and expenses, including reasonable attorneys' fees and disbursements, (collectively "Claims") that arise out of, pertain to, or relate to this AGREEMENT or any act or omission of PROVIDER or its officers, directors, representatives, employees, agents or subconsultants (collectively "PROVIDER'S PERSONNEL") in connection with this AGREEMENT, including, but not limited to, performance of or failure to perform the SERVICES.

12.2 PROVIDER's obligation herein does not extend to liability for damages for death or bodily injury to persons, injury to property, or other loss, damage or expense arising from the sole negligence or willful misconduct by the CITY or its elected and appointed boards, officials, officers, agents, employees, representatives or volunteers.

12.3 PROVIDER shall provide a defense (with counsel acceptable to CITY) to the CITY's Indemnitees, or at the CITY's sole option, reimburse the CITY's Indemnitees for all costs, attorneys' fees, expenses and liabilities (including judgment or portion thereof) incurred with respect to any litigation in which the PROVIDER is obligated to indemnify, defend and hold harmless the CITY pursuant to this AGREEMENT.

12.4 **PERS Eligibility Indemnification.** In the event that any of PROVIDER's PERSONNEL is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS of the CITY, PROVIDER shall indemnify, defend (with counsel acceptable to CITY), and hold harmless CITY for the payment of any employer and employee contributions for PERS benefits on behalf of PROVIDER's PERSONNEL as well as for payment of any penalties and interest on such contributions which would otherwise be the responsibility of the CITY.

Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, PROVIDER's PERSONNEL providing service under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation and benefit including but not limited to eligibility to enroll in PERS as an employee of CITY and entitlement to any contributions to be paid by CITY for employer contributions and/or employee contributions for PERS benefits.

12.5 **Limitation of CITY Liability.** The payment made to PROVIDER pursuant to this contract shall be the full and complete compensation to which PROVIDER and PROVIDER's PERSONNEL are entitled for performance of any work under this contract. Neither PROVIDER nor PROVIDER's PERSONNEL are entitled to any salary or wages, or retirement, health, leave or other fringe benefits applicable to employees of the CITY. The CITY will not make any federal

or state tax withholdings on behalf of PROVIDER. The CITY shall not be required to pay any workers' compensation insurance on behalf of PROVIDER.

12.6 Indemnification for Employee Payments. PROVIDER agrees to defend (with counsel acceptable to CITY), and indemnify and hold harmless the CITY for and against any obligation, claim, suit or demand for tax, retirement contribution including any contribution to the Public Employees Retirement System (PERS), social security, salary or wages, overtime payment, or workers' compensation payment which the CITY may be required to make on behalf of PROVIDER or PROVIDER's PERSONNEL for work done under this AGREEMENT.

12.6.1 Prevailing Wage. PROVIDER is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects ("Prevailing Wage Laws"). If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, PROVIDER agrees to fully comply with such Prevailing Wage Laws. PROVIDER shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the PROVIDER and all subPROVIDERs to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of PROVIDERs and subPROVIDERs (Labor Code Section 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

12.7 The provisions of this Section 12 shall not be limited by any provision of insurance coverage that the PROVIDER may have in effect, or may be required to obtain and maintain, during the term of this AGREEMENT. The provisions of this Section 12 shall survive expiration or termination of this AGREEMENT.

12.8 City shall timely notify the PROVIDER of the receipt of any third-party claim relating to the AGREEMENT, and the City shall be entitled to recover its reasonable costs incurred in providing the notification.

12.9 Responsibility For Equipment Notwithstanding anything in this AGREEMENT to the contrary, CITY shall not be responsible nor held liable for any damage whatsoever, including, but not limited to, persons or property resulting from or arising out of the use, misuse or failure of any equipment used by PROVIDER or any of its agents, employees or subconsultants, even if such equipment has been furnished, rented or loaned to PROVIDER by CITY. Any and all equipment furnished, rented or loaned to PROVIDER by CITY is provided on an "as is" basis. CITY MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING ITS

EQUIPMENT, AND HEREBY EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. The acceptance or use of any CITY equipment by PROVIDER or its agents, employees, or subconsultants shall be with all faults and shall be construed to mean that PROVIDER accepts full responsibility for and agrees to defend, indemnify and hold harmless CITY from and against any and all claims for any damage whatsoever resulting from the use, misuse or failure of such equipment. PROVIDER HEREBY RELEASES, WAIVES, DISCHARGES AND COVENANTS NOT TO SUE CITY FOR ANY AND ALL LIABILITY FROM ANY AND ALL CLAIMS RELATING TO ANY CITY EQUIPMENT.

13.0 INSURANCE

13.1 PROVIDER, and its subconsultants, shall procure and maintain for the duration of this AGREEMENT insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the SERVICES and the results of that work by PROVIDER'S PERSONNEL. Insurance shall be placed with insurers with a current A.M. Best's rating of no less than "A" and "VII" unless otherwise approved in writing by the CITY's Risk Manager.

13.2 PROVIDER shall obtain, and during the term of this AGREEMENT shall maintain, policies of general liability, automobile liability, contractual liability and property damage insurance from an insurance company or companies authorized to be in business in the State of California, in an insurable amount of not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate or the limits specified below, whichever are greater. The insurance policies shall provide that the policies shall remain in full force during the full term of this AGREEMENT and shall not be canceled, terminated, or allowed to expire or not be renewed without thirty (30) days prior written notice to CITY from the insurance company, and shall contain a blanket waiver of subrogation. Statements that the carrier "will endeavor" and "failure to mail such notice shall impose no obligation or liability upon the company, its agents or representatives," will not be acceptable on insurance certificates. Maintenance of specified insurance coverage is a material element of this AGREEMENT.

13.3 **Types and Amounts Required.** PROVIDER shall maintain, at minimum, the following insurance coverage for the duration of this AGREEMENT:

13.3.1 **Commercial General Liability (CGL).** PROVIDER shall maintain CGL Insurance written on an ISO Occurrence form or equivalent providing coverage at least as broad as CG 00 01 which shall cover liability arising from any and all personal injury or property damage, including ongoing and completed operations, in the amount no less than \$1,000,000.00 per occurrence and subject to an annual aggregate of \$2,000,000.00. If limits apply separately to this project (CG 25 03 or 25 04) the general aggregate limit shall not apply. There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy. If PROVIDER maintains higher limits than the limits shown above, the CITY shall be entitled to coverage for the higher limits maintained by the PROVIDER. Any available insurance proceeds

in excess of the specified minimum limits of insurance and coverage shall be available to the CITY. Any excess or umbrella policies being used to meet the required limits of insurance will be evaluated separately and must meet the same qualifications as the PROVIDER's primary policy.

13.3.2 Commercial Automobile Liability. PROVIDER shall maintain Commercial Automobile Liability Insurance for all of the PROVIDER's automobiles, including owned, hired and non-owned automobiles, automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage for a combined single limit of no less than \$1,000,000.00 per occurrence. Insurance certificate shall reflect coverage for any automobile (any auto).

13.3.3 Workers' Compensation. PROVIDER shall maintain Worker's Compensation insurance for all of PROVIDER's PERSONNEL who are subject to this AGREEMENT and to the extent required by applicable state or federal law, a Workers' Compensation policy providing at minimum \$1,000,000.00 employers' liability coverage. The PROVIDER shall provide an endorsement that the insurer waives the right of subrogation against the CITY and its respective elected officials, officers, employees, agents and representatives.

13.3.4 Cyber Liability Insurance. PROVIDER shall maintain cyber liability insurance with limits not less than \$2,000,000 per occurrence or claim. Coverage shall be sufficiently broad to respond to the duties and obligations as are undertaken by PROVIDER in this AGREEMENT and shall include claims involving infringement of intellectual property, 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 breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to such obligations. All defense costs shall be outside the limits of the policy.

13.4 The CITY and its elected officials, officers, employees, agents, representatives and volunteers shall be named as additional insureds on the required liability policies with respect to liability arising out of work or operations performed by or on behalf of the PROVIDER including materials, parts, or equipment furnished in connection with such work or operations. The CITY's additional insured status must be reflected on additional insured endorsement form (20 10 1185 or 20 10 1001 and 20 37 1001), which shall be submitted to the CITY.

13.5 All policies shall contain a provision stating that the PROVIDER'S policies are primary insurance and that insurance (including self-retention) of the CITY or any named insured shall not be called upon to contribute to any loss, as reflected in an endorsement at least as broad as CG 20 01 04 13, which shall be submitted to the CITY. This provision shall apply regardless of any language of the policy maintained by the PROVIDER during the term of this AGREEMENT.

13.6 Before PROVIDER shall employ any person or persons in the performance of the AGREEMENT, PROVIDER shall procure a policy of Workers' Compensation Insurance as required by the Labor Code of the State of California or shall obtain a certificate of self-insurance from the Department of Industrial Relations.

13.7 Prior to commencement of work under this AGREEMENT, PROVIDER shall furnish to the CONTRACT OFFICER proof of the insurance required in this section. Failure by the CONTRACT OFFICER to object to the contents of the certificate and/or policy endorsement or the absence of same shall not be deemed a waiver of any and all rights held by the CITY. Failure on the part of PROVIDER to procure or maintain in full force the required insurance shall constitute a material breach of contract under which the CITY may exercise any rights it has in law or equity including, but not limited to, terminating this AGREEMENT pursuant to Paragraph 7.1 above.

13.8 The CITY reserves the right to review the insurance requirements of this section during the effective period of the AGREEMENT and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon economic conditions, recommendation of professional insurance advisors, changes in statutory law, court decisions or other relevant factors. The PROVIDER agrees to make any reasonable request for the deletion, revision, or modification of particular insurance policy terms, conditions, limitations, or exclusions (except where those policy provisions are established by law, or are established by regulations that are binding upon either party to the contract, or are binding upon the underwriter to the contract). Upon request by CITY, PROVIDER shall exercise reasonable efforts to accomplish such changes in policy coverages and shall pay the cost thereof.

13.9 Any deductibles or self-insured retentions are the responsibility of PROVIDER and must be declared to and approved by the CITY. At the CITY's option, the PROVIDER shall demonstrate financial capability for payment of such deductibles or self-insured retentions.

13.10 PROVIDER hereby grants to CITY a waiver of any right to subrogation that any insurer of said PROVIDER may acquire against the CITY by virtue of the payment of any loss under such insurance. This provision applies regardless of whether or not the CITY has requested or received a waiver of subrogation endorsement from the insurer.

14.0 DISPUTES

14.1 If a dispute should arise regarding the performance of this AGREEMENT, the following procedures shall be used to address the dispute:

a. If the dispute is not resolved informally, then, within five (5) working days thereafter, the PROVIDER shall prepare a written position statement containing the party's full position and a recommended method of resolution and shall deliver the position statement to the CONTRACT OFFICER.

b. Within ten working (10) days of receipt of the position statement, the CONTRACT OFFICER shall prepare a response statement containing the CITY's full position and a recommended method of resolution and shall deliver the response statement to the PROVIDER.

c. After the exchange of statements, if the dispute is not resolved within ten working (10) days, the PROVIDER and the CONTRACT OFFICER shall deliver the statements to the City Manager who shall make a determination within ten working (10) days.

14.2 If the dispute remains unresolved for ten working (10) days following the City Manager's determination, and the parties have exhausted the procedures of this section, the parties may then seek resolution by mediation or such other remedies available to them by law or in equity.

15.0 NOTICES

15.1 Any notices to be given under this AGREEMENT, or otherwise, shall be served by certified mail.

15.2 For the purposes hereof, unless otherwise provided in writing by the Parties hereto, the address of the Parties and the proper person to receive any notice on each Party's behalf is:

For CITY:

City of Coronado
Director of Administrative Services
1825 Strand Way
Coronado, CA 92118
Tel. No. (619) 522-7300

For PROVIDER:

Rajiv Shah
President/CEO/CFO
Impex Technologies, Inc.
880 Apollo Street, Suite 315
El Segundo, CA 90245

15.4 PROVIDER represents and warrants that its employer's identification number is [95-4671710].

16.0 PROVIDER'S CERTIFICATION OF AWARENESS OF IMMIGRATION REFORM AND CONTROL ACT OF 1986

16.1 PROVIDER certifies that PROVIDER is aware of the requirements of the Immigration Reform and Control Act of 1986 (8 USC §§ 1101-1525) and has complied and will comply with these requirements including, but not limited to, verifying the eligibility for employment of all agents, employees, subconsultants and consultants before they perform any SERVICES under this AGREEMENT.

17.0 GENERAL PROVISIONS

17.1 **Accounting Records.** PROVIDER shall keep records of the direct reimbursable expenses pertaining to the SERVICES and the records of all accounts between the PROVIDER and any subconsultants. PROVIDER shall keep such records on a generally recognized accounting basis.

These records shall be made available to the CONTRACT OFFICER, or the CONTRACT OFFICER's authorized representative, at mutually convenient times, for a period of three (3) years from the completion of the SERVICES.

17.2 Contract Officer. The Director of Administrative Services shall serve as the CITY's "CONTRACT OFFICER" for this AGREEMENT and has the authority to direct the PROVIDER, approve actions, request changes, and approve additional services within her/his authority. Any obligation of the CITY shall be the responsibility of the CONTRACT OFFICER. Excepting the provisions pertaining to dispute resolution, no other person shall have any authority under this AGREEMENT unless specifically delegated in writing.

17.3 Governing Law. This AGREEMENT and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this AGREEMENT shall be held exclusively in a state court in the County of San Diego. PROVIDER hereby irrevocably consents to service outside the State of California and to the personal jurisdiction of and exclusive venue in the state and federal courts in the County of San Diego, California and waives any objection to such jurisdiction or venue. PROVIDER hereby waives the right to remove any action from San Diego County as is otherwise permitted by California Code of Civil Procedure Section 394.

17.4 Business Certificate. PROVIDER and its subconsultants, if any, are required to obtain and maintain a City Business Certificate during the duration of this AGREEMENT. Possession of a City Business Certificate itself shall not confer any rights or entitlements to PROVIDER.

17.5 Compliance with Law. The PROVIDER shall be responsible for complying and ensuring its subconsultants comply with all local, state, and federal laws, rules, regulations, orders, policies, protocols and guidance, whether or not said laws are expressly stated or referred to herein, including, but not limited to, complying with COVID-19 sanitation protocols, health orders and guidance.

17.6 Bonds. (Reserved)

17.7 Responsibility for Others. PROVIDER shall be responsible to the CITY for its services and the services of its subconsultants. PROVIDER shall not be responsible for the acts or omissions of other parties engaged by the CITY nor for their construction means, methods, techniques, sequences, or procedures, or their health and safety precautions and programs.

17.8 Drafting Ambiguities. The Parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this AGREEMENT, and the decision of whether or not to seek advice of counsel with respect to this AGREEMENT is a decision that is the sole responsibility of each Party. This AGREEMENT shall not be construed in favor of or against either Party by reason of the extent to which each Party participated in the drafting of the AGREEMENT.

17.9 Conflicts between Terms. If an apparent or actual conflict or inconsistency exists between the main body of this AGREEMENT and the Attachments, the main body of this AGREEMENT

shall control. If a conflict exists between an applicable federal, state, or local law, rule, regulation, order, or code and this AGREEMENT, the law, rule, regulation, order, or code shall control. Varying degrees of stringency among the main body of this AGREEMENT, the Exhibits, and laws, rules, regulations, orders, or codes are not deemed conflicts, and the most stringent requirement shall control. Each Party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this AGREEMENT and shall cooperate in good faith to resolve the same.

17.10 Non-Discrimination. PROVIDER shall not discriminate against any employee or applicant for employment because of sex, race, color, age, religion, ancestry, national origin, disability, military or veteran status, medical condition, genetic information, gender expression, marital status, or sexual orientation. PROVIDER shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their sex, race, color, age, religion, ancestry, national origin, disability, military or veteran status, medical condition, genetic information, gender expression, marital status, or sexual orientation and shall make reasonable accommodation to qualified individuals with disabilities or medical conditions. Such action shall include, but not be limited to the following: employment, upgrading, demotion, transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. PROVIDER agrees to post in conspicuous places available to employees and applicants for employment any notices provided by CITY setting forth the provisions of this non-discrimination clause.

17.7 Rights Cumulative. All rights, options, and remedies of the CITY contained in this AGREEMENT shall be construed and held to be cumulative, and no one of the same shall be exclusive of any other, and the CITY shall have the right to pursue any one of all of such remedies or any other remedy or relief that may be provided by law or in equity, whether or not stated in this AGREEMENT.

17.8 Waiver. No waiver by either Party of a breach by the other Party of any of the terms, covenants, or conditions of this AGREEMENT shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, covenant or condition herein contained. No waiver of any default of either Party hereunder shall be implied from any omission by the other Party to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect default other than as specified in said waiver.

17.9 Third Parties. No provision contained in the AGREEMENT shall create or give to third parties any claim or right of action against the CITY or PROVIDER or their respective officers, directors, officials, employees, representatives, subconsultants or agents.

17.10 Survival. The provisions of the AGREEMENT that by their nature survive termination or final completion of the AGREEMENT, including all warranties, indemnities, payment obligations, and the CITY's right to audit PROVIDER's books and records, shall remain in full force and effect after final completion or any termination of the AGREEMENT.

17.11 Severability. In the event that any part of this AGREEMENT is found to be illegal or unenforceable under the law as it is now or hereafter in effect, either Party will be excused from

performance of such portion or portions of this AGREEMENT as shall be found to be illegal or unenforceable without affecting the remaining provisions of this AGREEMENT.

17.12 Exhibits Incorporated. All Attachments/Exhibits referenced in this AGREEMENT are incorporated into the AGREEMENT by this reference.

[SIGNATURES CONTINUED ON NEXT PAGE]

18. SIGNATURES

18.1 Each signatory and Party hereto hereby warrants and represents to the other Party that it has legal authority and capacity and direction from its principal to enter into this AGREEMENT, and that all resolutions or other actions have been taken so as to enable it to enter into this AGREEMENT.

CITY:

By: _____
Tina Friend
City Manager

Date: _____

PROVIDER:

DocuSigned by:
By: Rajiv Shah
05B1A4EB8B2C456...
Rajiv Shah
President / CEO / Secretary / CFO

Date: September 16, 2024

APPROVAL AS TO CONTENT:

John Kim
Director of Administrative Services

Date

APPROVAL AS TO FORM:

Johanna N. Canlas, City Attorney

Date

ATTEST:

Kelsea Holian, CMC, City Clerk

Date

I. REQUIRED CERTIFICATES:

1. PROVIDER'S CERTIFICATE REGARDING WORKERS' COMPENSATION

II. ATTACHMENTS

1. SCOPE OF SERVICES (**ATTACHMENT A**)
2. FEE SCHEDULE/GENERAL INFORMATION (**ATTACHMENT B**);
3. LIST OF SUBCONSULTANTS (**ATTACHMENT C**);
5. NON-COLLUSION DECLARATION (**ATTACHMENT D**); and

PROVIDER'S CERTIFICATE REGARDING WORKERS' COMPENSATION

Section 3700 of the California Labor Code provides in part as follows:


"Every employer except the State shall secure the payment of compensation in one or more of the following ways:

A. By being insured against liability to pay compensation to one or more insurers duly authorized to write compensation insurance in this state.

B. By securing from the Director of Industrial Relations a certificate of consent to self-insure ... which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his other employees...."

I am aware of the provisions of Section 3700 of the Labor Code, which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of any of the work of the foregoing AGREEMENT.

PROVIDER Name: Impex Technologies, Inc.

Signature: 
DocuSigned by:
05B17A4EB6B2C456...

Name: Rajiv Shah

Title: President / CEO / Secretary / CFO

PROVIDER Address: 880 Apollo Street, Suite 315

El Segundo, CA 90245

NOTE: In accordance with Article 5, commencing at Section 1860, Chapter 1, Part 7, Division 2, of the Labor Code, the above certificate must be signed and filed with the awarding body prior to performing any work under this AGREEMENT.

ATTACHMENT A
SCOPE OF SERVICES

I. GENERAL TERMS & CONDITIONS:

PROVIDER shall provide listed hardware, software, and related services including, but not limited to:

- Five (5) fully-functional NX-8170-G9 nodes set up in a cluster;
- Licensing for Nutanix Cloud Infrastructure (NCI) Pro Software License for on-premises and cloud environments;
- Five (5) years of 24/7 production-level manufacturer hardware and software support;
- Deployment services for five nodes at a single physical site;
- Migration services for up to 150 virtual machines from existing Nutanix and VMware environments; and
- Nutanix Hybrid Cloud Fundamentals (NHCF) live virtual training for six individuals.

The PROVIDER agrees to thoroughly examine both the software and hardware. By executing this AGREEMENT, the PROVIDER acknowledges that they have investigated and are satisfied with the conditions to be encountered, the nature and quality of the services to be performed, and the software and hardware requirements necessary to fulfill the terms of this AGREEMENT.

II. CONTRACT DOCUMENTS

A. PROJECT SPECIFICATIONS: N/A

III. PERFORMANCE SPECIFICATIONS

A. GENERAL SPECIFICATIONS:

These specifications are intended to cover all labor, materials and supervision to provide the Subscription, Nutanix Cloud Infrastructure (NCI) Pro Software License and Production Software Support Services for 1 CPU Core.

Contractor shall provide the items listed below:

Hardware		
QTY	PART NUMBER	DESCRIPTION

5	NX-8170-G9-5416S-CM	NX-8170-G9, 1 Node; 2x Intel Xeon-Gold 5416S processor (2.0 GHz/ 16-core/ 150W, Sapphire Rapids) per node
60	C-MEM-64GB-4800-CM	64GB Memory Module (4800MHz DDR5 RDM)
30	C-NVM-7.68TB-B-CM	7.68 TB NVMe SSD
5	C-SSD-NONE-CM	No SSD as part of the system configuration
5	C-LOM-10G2D1BT-CM	LOM Module: Broadcom 10GbE, 2- port, Base-T NIC (BCM 57416)
10	C-NIC-25G2A2-CM	Mellanox 25/10GbE, 2-port, NIC (CX6 25GbE); transceiver not included
10	C-PWR-4FC13C14B-C M	C13/C14, 15A, 4ft Power cord
Software and Services		
160	SW-NCI-PRO-PR	Subscription, Nutanix Cloud Infrastructure (NCI) Pro Software License & Production Software Support Service for 1 CPU Core
5	S-HW-PRD	24/7 Production Level HW Support for Nutanix HCI appliance
60	Support-Term	Support Term in Months
6	EDU-C-NHCF-INV	Education, NHCF Individual Seat
1	Platform Integration	Platform Integration Fee
30	CNS-INF-A-SVC-MIG-V-MS	Service, Virtual Machine Migration. Virtual to Virtual Migration of 3-tier VMs to Nutanix at a single site. 5- VM/2.5TB Pack.
30	United States	Selected region for Services Delivery
30	AHV	Nutanix AHV Hypervisor
5	CNS-INF-A-SVC-DEP-S-TR	Service, NCI Cluster Deployment or Expansion - Starter Edition. For each quantity purchased, deployment is limited to 1 node at a single physical site.
5	United States	Selected region for Services Delivery
5	AHV	Nutanix AHV Hypervisor

B. PROVIDER SHALL:

1. Within three (3) work days after the effective date of the AGREEMENT, prepare and submit a schedule to the CONTRACT OFFICER, showing specific day/date/time of work. Schedule is subject to preapproval by the CONTRACT OFFICER.

2. Notify the CONTRACT OFFICER prior to the scheduled day/date/time of changes for an alternate start date. Failure to meet schedule shall be deemed grounds for non-payment and/or contract termination.
3. PROVIDER shall provide customized billing as directed by the City. Billing may be segregated by department, accounting codes, or any other methodology cited by the Project Manager.
4. PROVIDER agrees that any and all information viewed through and during the performance of Services in accordance with this Agreement is confidential and may not be disclosed without City consent unless ordered by law.
5. The SERVICES shall be delivered FOB Coronado, CA.

C. NON-SCHEDULED/EXTRA WORK:

1. PROVIDER shall evaluate the specific job and labor required upon arrival at the job site; develop an estimate at no cost to CITY of the expected hours, materials and job cost; and advise CONTRACT OFFICER of cost prior to proceeding with the work. CITY reserves the right to accept or refuse PROVIDER'S offer
2. PROVIDER shall proceed with the work after receipt of written authorization by CONTRACT OFFICER.

IV. PROJECT MATERIALS: Manufacturers' names, trade names, brand names, or model numbers used in the specifications are for the purpose of describing and establishing general quality levels. Such references are not intended to be restrictive. Bids will be considered for alternative brands that meet or exceed the quality of the specifications listed for any item.

V. GENERAL REQUIREMENTS:**A. PROVIDER SHALL:**

1. PROVIDER, as well as any of its subconsultants, shall possess and maintain a current City of Coronado business certificate, professional license, and Department of Industrial Relations number.
2. Provide and maintain a telephone answering system that provides for contact during normal business hours, (8:00 a.m. to 5:00 p.m.) Monday through Friday.
3. Respond to calls within four (4) hours.
4. Abide by all applicable laws.

VI GENERAL CONDITIONS:

1. All work shall be subject to the inspection and approval by the CONTRACT OFFICER or designee at the site prior to acceptance and approval for payment.
2. PROVIDER shall be courteous to the public and CITY staff utilizing the facilities, and shall be responsive only to the request of the CONTRACT OFFICER, and shall direct all inquiries or requests to the CONTRACT OFFICER. Exception: If the specific request involves public safety or security of the specific facility, PROVIDER shall immediately comply with the request.

IN ADDITION TO THE SPECIFICATIONS, THE FOLLOWING SHALL APPLY:**VII. TERMS AND CONDITIONS:**

1. **Payment:** Payment shall be net 30 days after receipt of an undisputed invoice subject to routine processing requirements. The responsibility for providing an acceptable invoice rests with the PROVIDER.
2. **Invoicing:** Invoices shall be submitted no sooner than the first day of the service month being invoiced. PROVIDER shall mail an invoice to the following address:

Accounting Technician
Administrative Services Department
City of Coronado
1825 Strand Way
Coronado, California 92118

Invoices shall be subject to the routine processing requirements of the CITY'S Department of Administrative Services.

3. **Authorized Work:** Payment shall only be made to the PROVIDER for work authorized by this AGREEMENT.
4. **Default:** In case of default by the PROVIDER, the CITY may procure the service from other sources and may deduct costs from the unpaid balance due the PROVIDER. The prices paid by the CITY shall be the prevailing market price at the time such purchase is made. This is in addition to any other remedies available at law or in equity.
5. **Change of Ownership:** PROVIDER agrees that if there is a change in ownership prior to completion of this AGREEMENT, the new owners will be required under terms of sale to assume this AGREEMENT and complete it to the satisfaction of the CITY. The CITY reserves the right to approve a change in ownership.
6. **PROVIDER Work Hours and Safety Standards:** The PROVIDER shall ensure compliance with all safety and hourly requirements for its employees, in accordance with Federal, State, and local safety and health regulations and laws. Equipment operation will be in compliance with the CITY's noise ordinance.
7. **Material Safety Data Sheets:** PROVIDER is required to provide Material Safety Data Sheet (MSDS) for any hazardous substances used as required by the California State Labor Code, Sections 6382 and 6390, and the Health and Safety Code of the California Administrative Code. MSDS sheets for each item shall be sent to:

Information Technology Manager
Administrative Services Department
City of Coronado
1825 Strand Way
Coronado, California 92118
8. **Patent/Copyright Materials:** Unless otherwise expressly provided in this AGREEMENT, PROVIDER shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this AGREEMENT.
9. **Declared Emergency Purchasing:** In the event of an emergency or where the CITY is declared a disaster area by the County, State or Federal Government, this AGREEMENT may be subjected to unusual usage. PROVIDER shall service the CITY during an emergency or declared disaster under the same terms and conditions that apply during non-disaster circumstances. The pricing quoted within shall apply to servicing the CITY'S needs regardless of the circumstances.
10. **Terms and Conditions:** The only terms and conditions that will be applicable to the interpretation of this AGREEMENT are those issued by the Contract Officer. The PROVIDER acknowledges that PROVIDER has read and agrees to all terms and conditions.

ATTACHMENT B**FEE SCHEDULE/GENERAL INFORMATION**

In compliance with the REQUEST FOR BIDS, the PROVIDER hereby agrees to furnish all labor, materials, equipment and supervision to perform the proposed services that are described in the below listed enclosures; and to do so in strict accordance with the provisions of this AGREEMENT.

PRICE**II. BASE BID: Includes those items upon which the contract award will be determined.****BASE BID**

Item	Product Code	Product Description	Term (Months)	Quantity	Unit Price	Line TOTAL
1	SW-NCI-PRO-PR	Subscription, Nutanix Cloud Infrastructure (NCI) Pro Software License & Production Software Support Service for 1 CPU Core	60	160	\$1,923.64	\$307,782.40
2	Term-Months	Term in months	60	60		
3	NX-8170-G9	Nutanix Hardware Platform * NX-8170-G9, 1 Node Configuration Nutanix Software * Foundation - Hypervisor Agnostic Installer * Controller VM * Prism Management * Starter License Entitlement		5	\$18,035.23	\$90,176.15
4	C-CPU-5416S	Intel Xeon-Gold 5416S processor (2.0 GHz/ 16-core/ 150W, Sapphire Rapids)		10	0	0
5	C-MEM-64GB-4800	64GB Memory Module (4800MHz DDR5 RDM)		60	0	0
6	C-NVM-7.68TB-B	7.68 TB NVMe SSD		30	0	0

Attachment 1

7	C-SSD-NONE	No SSD as part of the system configuration		5	0	0
8	C-LOM-10G2D1BT	LOM Module: Broadcom 10GbE, 2-port, Base-T NIC (BCM 57416)		5	0	0
9	C-NIC-25G2A2	Mellanox 25/10GbE, 2-port, NIC (CX6 25GbE);transceiver not included		10	0	0
10	C-PWR-4FC13C14B	C13/C14, 15A, 4ft Power cord		10	0	0
11	S-HW-PRD	24/7 Production Level HW Support for Nutanix HCI appliance	60	5	\$3,430.12	\$17,150.60
12	Support-Term	Support Term in Months	60	60		
13	EDU-C-NHCF-INV	Education, Individual seat for Nutanix Hybrid Cloud Fundamentals (NHCF) 2-day class. Delivery: virtual instructor-led (vILT) in English. Duration: 2 Days. Priced per individual seat. One single-use exam voucher for each individual student included. Term: Training must be consumed or scheduled within 12 months of purchase date.		6	\$1,802.33	\$10,813.98
14	Platform Integration	Platform Integration Fee		1	0	0
15	CNS-INF-A-SVC-MIG-VMS	Service, Virtual Machine Migration. Virtual to Virtual Migration of 3-tier VMs to Nutanix at a single site. 5-VM/2.5TB Pack.		30	\$967.53	\$29,025.90
16	United States	Selected region for Services Delivery		30	0	0
17	AHV	Nutanix AHV Hypervisor		30	0	0

Attachment 1

18	CNS-INF-A-SVC-DEP-STR	Service, NCI Cluster Deployment or Expansion - Starter Edition. For each quantity purchased, deployment is limited to 1 node at a single physical site.		5	\$2,112.88	\$10,564.40
19	United States	Selected region for Services Delivery		5	0	0
20	AHV	Nutanix AHV Hypervisor		5	0	0
					Subtotal	\$465,513.43
					Sales Tax	\$6,988.65
		Project Contingency				\$27,497.92
					Total	\$500,000.00

ATTACHMENT C

LIST OF SUBCONSULTANTS


Listed below are any and all subconsultants that the BIDDER intends to use under this AGREEMENT. No change is allowed without the prior approval of the CONTRACT OFFICER.

NAME	ADDRESS	PHONE	DIR PW#	License#	\$ Value
None					

I hereby certify that I have read and examined Sections 3700 and 3800 of the State Labor Code. I am aware of, and will comply with, Section 3700 of the Labor Code, requiring every employer to be insured against liability for Workmen’s Compensation or to undertake self-insurance before commencing any of the work. I further certify that if I should contract or subcontract with any person, including a firm or company, to do all or any part of the work for which this BID covers, I shall assure compliance by that person or subconsultant with Sections 3700 and 3800 of the State Labor Code.

BIDDER NAME: Impex Technologies, Inc.

DocuSigned by:



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SIGNATURE

September 16, 2024

Date

Rajiv Shah

President

NAME AND TITLE (PRINTED)