AGREEMENT FOR SERVICES  
BETWEEN THE CITY OF MENLO PARK  
AND  

NexLevel Information Technology, Inc.  

THIS AGREEMENT, made and entered into at Menlo Park, California, this __15th____ day of June, by and between the CITY OF MENLO PARK, a Municipal Corporation, hereinafter referred to as "CITY", and NexLevel Information Technology, Inc., a California Corporation, hereinafter referred to as "FIRST PARTY."

WITNESSETH:

WHEREAS, CITY desires to retain FIRST PARTY to provide certain professional services for CITY in connection with that certain project called:

Network Security Assessment

WHEREAS, FIRST PARTY is licensed to perform said services and desires to and does hereby undertake to perform said services.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS, PROMISES AND CONDITIONS of each of the parties hereto, it is hereby agreed as follows:

I. SCOPE OF WORK

In consideration of the payment by CITY to FIRST PARTY, as hereinafter provided, FIRST PARTY agrees to perform all the services as set forth in Exhibit "A", Scope of Work.

II. SCHEDULE FOR WORK

FIRST PARTY's proposed schedule for the various services required pursuant to this contract will be as set forth in Exhibit "B", Schedule For Work. CITY will be kept informed as to the progress of work by written reports, to be submitted monthly or as otherwise required in Exhibit "B". Neither party shall hold the other responsible for damages or
delay in performance caused by acts of God, strikes, lockouts, accidents or other events beyond the control of the other, or the other's employees and agents.

FIRST PARTY shall commence work immediately upon receipt of a "Notice to Proceed" from CITY. The "Notice to Proceed" date shall be considered the "effective date" of the Agreement, as used herein, except as otherwise specifically defined. FIRST PARTY shall complete all the work and deliver to CITY all project related files, records, and materials within one month after completion of all of FIRST PARTY's activities required under this Agreement.

III. COMPENSATION AND PAYMENT

A. CITY shall pay FIRST PARTY an all inclusive fee that shall not exceed the amount as detailed in Exhibit "C", COMPENSATION AND PAYMENT. This compensation shall be based on the rates shown on Exhibit "C". All payments, including fixed hourly rates, shall be inclusive of all indirect and direct charges to the Project incurred by FIRST PARTY.

B. FIRST PARTY's fee for the services as set forth herein shall be considered as full compensation for all indirect and direct personnel, materials, supplies and equipment, and services incurred by FIRST PARTY and used in carrying out or completing the work.

C. Payments shall be monthly for the invoice amount or such other amount as approved by CITY. As each payment is due, a statement describing the services performed shall be submitted to CITY by the FIRST PARTY. This statement shall include, at a minimum, the title(s) of personnel performing work, hours spent, payment rate, and a listing of all reimbursable costs. CITY shall have the discretion to approve the invoice and the work completed statement. Payment shall be for the invoice amount or such other amount as approved by CITY.

D. Payments are due upon receipt of written invoices. CITY shall have the right to receive, upon request, documentation substantiating charges billed to CITY. CITY shall have the right to perform an audit of the FIRST PARTY's relevant records pertaining to the charges.
IV. **EQUAL EMPLOYMENT OPPORTUNITY**

A. FIRST PARTY, with regard to the work performed by it under this Agreement shall not discriminate on the grounds of race, religion, color, national origin, sex, handicap marital status or age in the retention of sub-consultants, including procurement of materials and leases of equipment.

B. FIRST PARTY shall take affirmative action to insure that applicants for employment, and employees, are treated during employment, without regard to their race, color, religion, sex, national origin, marital status or handicap. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training including apprenticeship.

C. FIRST PARTY shall post in prominent places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

D. FIRST PARTY shall state that all qualified applications will receive consideration for employment without regard to race, color, religion, sex, national origin, marital status or handicap.

E. FIRST PARTY shall comply with Title VI of the Civil Rights Act of 1964 and shall provide such reports as may be required to carry out the intent of this section.

F. FIRST PARTY shall incorporate the foregoing requirements of this section in FIRST PARTY's agreement with all sub-consultants.

V. **PROSECUTION OF WORK**

FIRST PARTY will employ a sufficient staff to prosecute the work diligently and continuously and will complete the work in accordance with the schedule of work approved by the CITY. (See Exhibit "B", Schedule For Work).
VI. ASSIGNMENT OF AGREEMENT AND TRANSFER OF INTEREST

A. FIRST PARTY shall not assign this Agreement, and shall not transfer any interest in the same (whether by assignment or novation), without prior written consent of the CITY thereto, provided, however, that claims for money due or to become due to the FIRST PARTY from the CITY under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of an intended assignment or transfer shall be furnished promptly to the CITY.

B. In the event there is a change of more than 30% of the stock ownership or ownership in FIRST PARTY from the date of this Agreement is executed, then CITY shall be notified prior to the date of said change of stock ownership or interest and CITY shall have the right, in event of such change in stock ownership or interest, to terminate this Agreement upon notice to FIRST PARTY. In the event CITY is not notified of any such change in stock ownership or interest, then upon knowledge of same, it shall be deemed that CITY has terminated this Agreement.

VII. INDEPENDENT WORK CONTROL

It is expressly agreed that in the performance of the service necessary for compliance with this Agreement, FIRST PARTY shall be and is an independent contractor and is not an agent or employee of CITY. FIRST PARTY has and shall retain the right to exercise full control and supervision of the services and full control over the employment, direction, compensation and discharge of all persons assisting FIRST PARTY in the performance of FIRST PARTY’s services hereunder. FIRST PARTY shall be solely responsible for its own acts and those of its subordinates and employees.

VIII. CONSULTANT QUALIFICATIONS

It is expressly understood that FIRST PARTY is licensed and skilled in the professional calling necessary to perform the work agreed to be done by it under this Agreement and CITY relies upon the skill of FIRST PARTY to do and perform said work in a skillful manner usual to the profession. The acceptance of FIRST PARTY’s work by CITY does not operate as a release of FIRST PARTY from said understanding.
This Agreement is entered into by CITY with the express understanding and agreement that the work will be performed by and/or under the direct supervision of the following persons with the duties as follows: Lee Curtis and Craig Miller. FIRST PARTY shall not reassign the work to other persons without the prior written approval of CITY.

IX. NOTICES

All notices hereby required under this Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid. Notices required to be given to CITY shall be addressed as follows:

City Manager
City of Menlo Park
701 Laurel Street
Menlo Park, CA 94025

Notices required to be given to FIRST PARTY shall be addressed as follows:

Mr. Terry Hackelman, Managing Principal
6829 Fair Oaks Boulevard, Suite 100
Carmichael, California 95608

Provided that any party may change such address by notice, in writing, to the other party and thereafter notices shall be addressed and transmitted to the new address.
X. **HOLD HARMLESS**

The FIRST PARTY shall indemnify and hold harmless the CITY, its subsidiary agencies, their officers, agents, employees and servants from all claims, suits or actions of every name, kind and description, based on negligence or willful misconduct, brought for, or on account of, injuries to or death of any person or damage to property resulting from the performance of any work required by this Agreement by FIRST PARTY, its officers, agents, employees and servants. The duty of the FIRST PARTY to indemnify and hold harmless, as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code, provided, however, that nothing herein shall be construed to require the FIRST PARTY to indemnify the CITY, its subsidiary agencies, their officers, agents, employees and servants against any responsibility to liability in contravention of Section 2782 of the California Civil Code.

XI. **INSURANCE**

A. FIRST PARTY shall not commence work under this Agreement until all insurance required under this paragraph has been obtained and such insurance has been approved by the City, with certificates of insurance evidencing the required coverage.

B. There shall be a contractual liability endorsement extending the FIRST PARTY’s coverage to include the contractual liability assumed by the FIRST PARTY pursuant to this Agreement. These certificates shall specify or be endorsed to provide that thirty (30) days’ notice must be given, in writing, to the CITY, at the address shown in Section IX, of any pending cancellation of the policy. FIRST PARTY shall notify CITY of any pending change to the policy. All certificates shall be filed with the City.

1. **Worker's Compensation and Employer's Liability Insurance:**

   The contractor shall have in effect during the entire life of this Agreement Worker's Compensation and Employer's Liability Insurance providing full statutory coverage. In signing this Agreement, the FIRST PARTY makes the following certification, required by Section 18161 of the California Labor Code: "I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the
provisions of the Code, and I will comply with such provisions before commencing the performance of the work of this Agreement.

2. **Liability Insurance:**

The FIRST PARTY shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance (Commercial General Liability Insurance) on an occurrence basis as shall protect it while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as claims for property damage which may arise from the FIRST PARTY’s operations under this Agreement, whether such operations be by FIRST PARTY or by any sub-consultant or by anyone directly or indirectly employed by either of them. The amounts of such insurance shall be not less than One Million Dollars ($1,000,000) per occurrence and One Million Dollars ($1,000,000), in aggregate or One Million Dollars ($1,000,000) combined single limit bodily injury and property damage for each occurrence. FIRST PARTY shall provide the CITY with acceptable evidence of coverage, including a copy of all declarations of coverage exclusions. FIRST PARTY shall maintain Automobile Liability Insurance pursuant to this Contract in an amount of not less than One Million Dollars ($1,000,000) for each occurrence combined single limit or not less than One Million Dollars ($1,000,000) for any one (1) person, and one million dollars ($1,000,000) for any one (1) accident, and three hundred thousand dollars, ($300,000) property damage.

3. **Professional Liability Insurance:**

FIRST PARTY shall maintain a policy of professional liability insurance, protecting it against claims arising out of the negligent acts, errors, or omissions of FIRST PARTY pursuant to this Agreement, in the amount of not less than One Million Dollars ($1,000,000) combined single limit. Said professional liability insurance is to be kept in force for not less than one (1) year after completion of services described herein.

C. **CITY** and its subsidiary agencies, and their officers, agents, employees and servants shall be named as additional insured on any such policies of comprehensive general and automobile liability insurance, except professional liability and worker’s compensation, which shall also contain a provision that the insurance afforded thereby to the CITY, its subsidiary agencies, and their officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy, and that if the CITY, its subsidiary
agencies and their officers and employees have other insurance against a loss covered by a policy, such other insurance shall be excess insurance only.

D. In the event of the breach of any provision of this section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, CITY, at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work pursuant to this Agreement.

E. Prior to the execution of this Agreement, any deductibles or self-insured retentions must be declared to and approved by CITY.

XII. RESPONSIBILITY AND LIABILITY FOR SUB-CONSULTANTS AND/OR SUBCONTRACTORS

Approval of or by CITY shall not constitute nor be deemed a release of responsibility and liability of FIRST PARTY or its sub-consultants and/or subcontractors for the accuracy and competency of the designs, working drawings, specifications or other documents and work, nor shall its approval be deemed to be an assumption of such responsibility by CITY for any defect in the designs, working drawings, specifications or other documents prepared by FIRST PARTY or its sub-consultants and/or subcontractors.

XIII. OWNERSHIP OF WORK PRODUCT

Work products of FIRST PARTY for this project, which are delivered under this Agreement or which are developed, produced and paid for under this Agreement, shall become the property of CITY. The reuse of FIRST PARTY's work products by City for purposes other than intended by this contract shall be at no risk to FIRST PARTY.

XIV. REPRESENTATION OF WORK

Any and all representations of FIRST PARTY, in connection with the work performed or the information supplied, shall not apply to any other project or site, except the project described in Exhibit "A" or as otherwise specified in Exhibit "A".
XV. TERMINATION OF AGREEMENT

A. CITY may give thirty (30) days written notice to FIRST PARTY, terminating this contract in whole or in part at any time, either for CITY’s convenience or because of the failure of FIRST PARTY to fulfill its contractual obligations or because of FIRST PARTY’s change of its assigned personnel on the project without prior CITY approval. Upon receipt of such notice, FIRST PARTY shall:

1. Immediately discontinue all services affected (unless the notice directs otherwise); and

2. Deliver to the CITY all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated or produced by FIRST PARTY in performing work under this Agreement, whether completed or in process.

B. If termination is for the convenience of CITY, an equitable adjustment in the contract price shall be made, but no amount shall be allowed for anticipated profit on unperformed services.

C. If the termination is due to the failure of FIRST PARTY to fulfill its Agreement, CITY may take over the work and prosecute the same to completion by contract or otherwise. In such case, FIRST PARTY shall be liable to CITY for any reasonable additional cost occasioned to the CITY thereby.

D. If, after notice of termination for failure to fulfill Agreement obligations, it is determined that FIRST PARTY had not so failed, the termination shall be deemed to have been effected for the convenience of the CITY. In such event, adjustment in the contract price shall be made as provided in Paragraph B of this section.

E. The rights and remedies of the CITY provided in this section are in addition to any other rights and remedies provided by law or under this Agreement.
XVI. **INSPECTION OF WORK**

It is FIRST PARTY's obligation to make the work product available for CITY's inspections and periodic reviews upon request by CITY.

XVII. **BREACH OF AGREEMENT**

A. This Agreement is governed by applicable federal and state statutes and regulations. Any material deviation by FIRST PARTY for any reason from the requirements thereof, or from any other provision of this Agreement, shall constitute a breach of this Agreement and may be cause for termination at the election of the CITY.

B. The CITY reserves the right to waive any and all breaches of this Agreement, and any such waiver shall not be deemed a waiver of any previous or subsequent breaches. In the event the CITY chooses to waive a particular breach of this Agreement, it may condition same on payment by FIRST PARTY of actual damages occasioned by such breach of Agreement.

XVII. **SEVERABILITY**

The provisions of this Agreement are severable. If any portion of this Agreement is held invalid by a court of competent jurisdiction, the remainder of the Agreement shall remain in full force and effect unless amended or modified by the mutual consent of the parties.

XIX. **CAPTIONS**

The captions of this Agreement are for convenience and reference only and shall not define, explain, modify, limit, exemplify, or aid in the interpretation, construction, or meaning of any provisions of this Agreement.

XX. **LITIGATION OR ARBITRATION**

In the event that suit or arbitration is brought to enforce the terms of this contract, the prevailing party shall be entitled to litigation costs and reasonable attorneys' fees.
The Dispute Resolution provisions are set forth on Exhibit "D", 'Dispute Resolution' attached hereto and by this reference incorporated herein.

XXI. ENTIRE AGREEMENT

This document constitutes the sole Agreement of the parties hereto relating to said project and states the rights, duties, and obligations of each party as of the document's date. Any prior Agreement, promises, negotiations, or representations between parties not expressly stated in this document are not binding. All modifications, amendments, or waivers of the terms of this Agreement must be in writing and signed by the appropriate representatives of the parties to this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

City of Menlo Park
A Municipal Corporation

By

Title "CITY"

ATTEST:

City Clerk, City of Menlo Park

FIRST PARTY:

Nexlevel Information Technology, Inc.

By ________________________________

Title Managing Principal
"FIRST PARTY"
The Dispute Resolution provisions are set forth on Exhibit "D", 'Dispute Resolution' attached hereto and by this reference incorporated herein.

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This document constitutes the sole Agreement of the parties hereto relating to said project and states the rights, duties, and obligations of each party as of the document's date. Any prior Agreement, promises, negotiations, or representations between parties not expressly stated in this document are not binding. All modifications, amendments, or waivers of the terms of this Agreement must be in writing and signed by the appropriate representatives of the parties to this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

City of Menlo Park
A Municipal Corporation

By

Title, "CITY MANAGER"

ATTEST:

City Clerk, City of Menlo Park

FIRST PARTY:

Nexlevel Information Technology, Inc.

By

Title, Managing Principal
"FIRST PARTY"
Exhibit A – Scope of Work

The objective of this project is to test the City’s network and security infrastructure to understand the level of vulnerability. Once an understanding is obtained, the goal is to address the data and network security posture. Found weaknesses will be documented. In addition, guidance and recommended actions will be provided to the City.

NexLevel will team with our preferred subcontractor, KIS, to complete this project. The NexLevel Team will perform testing using IAW GIAC, SANs.org, and the product “best practices” guides for software and solutions the City uses. Testing procedures will be passive unless otherwise approved by the City for more aggressive scanning modes.

If intrusive testing is required, the NexLevel Team will supplement this statement of work and add tasks/time to accomplish that request as needed, for additional costs. The assessment method used will be a “White Hat” approach (i.e. identifies a security weakness, but instead of taking malicious advantage of it, exposes the weakness in a way that will allow the system’s owners to fix the breach before it can be taken advantage by others). The testing schedule is planned for both “normal-hours” and “after-hours.”

The NexLevel Team will meet with the City to define the level of testing of internal and external systems and networks. The scope of this project will include both wired and wireless networks.

The external testing will attempt to penetrate the City’s Internet firewall and Internet Gateway solutions, as well as surrounding network systems. The testing will include the following systems:

- Internet screening router(s)
- Switch(es)
- Internet firewall(s)
- Email gateway(s)
- Web servers
- Internet facing Database servers
- Other devices identified during our testing. The listing of specific vulnerabilities will include all DMZ’s, and all live hosts within the City’s external IP space.
- Hosted sites will be reviewed and coordinated by the hosting provider if included

The internal testing will attempt to penetrate the following systems:

- Internal router(s)
- Internal firewall(s)
- Switch(es)
- Windows servers
- UNIX servers
- Application server
- Database servers
- Other devices identified during our testing. The listing of specific vulnerabilities against
individual hosts will include up to two (2) City subnets.

The tests performed for this project will give the City a thorough understanding of the vulnerability of the infrastructure external and internal threats.

The NexLevel Team will also review current security related policies and provide input and templates for current and additional policies as needed.

The NexLevel Team will document findings and provide appropriate recommendations. The documented findings will categorize security vulnerabilities among business applications, systems, and networks. NexLevel will create a mitigation plan to address current and potential future vulnerabilities and associated risk based on industry best practices.
Exhibit B – Schedule for Work

NexLevel will work with the City to schedule the work with an estimated completion date within 6 weeks of the agreement signing.
Exhibit C – Compensation and Payment

NexLevel estimates this project will require 80 hours. NexLevel bills our security services at $200/hour. The total estimated cost of consulting services will be $16,000. NexLevel will only bill the City for the actual hours worked. The consulting resources supporting this project will be traveling from the Sacramento area. NexLevel will bill actual travel expenses and estimates travel will not exceed $400.