

# **AGREEMENT FOR SOFTWARE AND SERVICES PURCHASE**

THIS AGREEMENT is made and entered into this \_\_\_\_ day of June, 2009 by and between the CITY OF OVERLAND PARK, KANSAS, hereinafter referred to as "City", and Rimini Street, Inc., hereinafter referred to as "Contractor".

## **SECTION I - SCOPE**

Contractor shall provide to the City certain products and services as outlined in Exhibit A, a copy of which is attached hereto and incorporated by reference herein. These products and services shall be provided in compliance with applicable laws, Exhibit A and the Contract Documents. For purposes of this Agreement, "Contract Documents" is defined as the Request for Proposals (RFP), Requirements and General Specifications, Contractor's response to RFP dated May 18, 2009, this Agreement and amendments or change orders relative to the work contemplated herein. The Contract Documents are incorporated herein by reference.

## **SECTION II - COMPENSATION**

The City agrees to pay Contractor for the products and services as outlined in Exhibit B, a copy of which is attached hereto and incorporated by reference herein.

## **SECTION III - DISPUTE RESOLUTION**

City and Contractor agree that disputes relative to the products delivered and work performed should first be addressed by negotiations between the parties. If direct negotiations fail to resolve the dispute, the party initiating the claim that is the basis for the dispute shall be free to take such steps as it deems necessary to protect its interests; provided, however, that notwithstanding any such dispute Contractor shall proceed with the work as per this Agreement as if no dispute existed; and provided further that no dispute will be submitted to arbitration without the parties' express written consent.

## **SECTION IV – TERM AND TERMINATION**

The term of this Agreement shall commence on \_\_\_\_\_, 2009, and shall continue in force through \_\_\_\_\_, 2010 unless otherwise agreed to by the parties. Thereupon, the Agreement will automatically renew annually for an additional nine (9) terms of one (1) year each unless either party gives written notice of intent to terminate ninety (90) days prior to the date the current term expires or unless otherwise terminated as provided in this Section, Section XV, or Section XVIII below.

Either party may terminate this Agreement at their convenience by giving the other party ninety (90) days written notice. Agreement will be terminated on the first day of the month following the month in which a termination notice is received by either party. Any termination shall not relieve the City of its obligations to pay Contractor for services performed satisfactorily through the effective date of termination.

If the City terminates the Agreement for convenience, Contractor will send notice to City of amounts owed. The amounts owed will be calculated by using a 365 day year and calculating through the last actual day support is provided by Contractor. Any overpayment by the City will be refunded within thirty (30) days of the last day support is provided by Contractor to City.

The Parties may terminate this Agreement for cause if (a) either party defaults under the terms, conditions and warranties of this Agreement, and (b) such default is not cured within thirty (30) business

## **AGREEMENT FOR SOFTWARE AND SERVICES PURCHASE**

days after notice of default is provided to City. If this Agreement is terminated for cause, the amounts due to be refunded to City, if any, shall be paid by Contractor immediately upon the effective date of such termination.

Any payment upon termination contemplated in this Agreement will not include anticipated profits or consequential damages, neither of which will be allowed.

### **SECTION V - ASSIGNMENT**

Parties hereto agree that neither shall assign, sublet or transfer their interest in this Agreement without the written consent of the other and further agree that this Agreement binds the parties, their successors, trustees, assignees and legal representatives.

### **SECTION VI - PRIOR VERBAL OR WRITTEN STATEMENTS NOT BINDING**

It is understood and agreed that the written terms and provisions of this Agreement shall supersede all prior verbal and written statements of any and every official and/or other representative of the City and Contractor and such statements shall not be effective or be construed as entering into, or forming a part of, or altering in any way whatsoever, the written Agreement. In the event that the City issues a purchase order, work order, invoice or similar document relating to services performed, such purchase order or similar document shall be for the City's administrative purposes only and will not supplement, supersede, modify or affect any of the terms and conditions set forth herein.

### **SECTION VII - INDEPENDENT CONTRACTOR**

Contractor is an independent contractor and as such neither Contractor nor its personnel are agents or employees of the City. Contractor is responsible for payment of any and all federal, state and local taxes.

### **SECTION VIII - HOLD HARMLESS AND INDEMNIFICATION**

- A. General. Contractor agrees to defend, indemnify and hold harmless the City and its agents and/or employees from any and all claims, settlements, and judgments for bodily injury, physical property damage and/or death that are caused by the Contractor and within its control and that arise out of Contractor's or any of its agents, servants and/or employees' negligent acts, and or failure to act in the performance of this Agreement. Neither acceptance of the completed work nor payment therefore shall release Contractor of its obligation under this paragraph.
  
- B. Infringement. Contractor shall indemnify and hold City harmless against any third party claims that the Contractor Work Product delivered to City pursuant to this Agreement infringes any U.S. copyright provided that Contractor is given prompt written notice of such claim and is given information, reasonable assistance, and the sole authority to defend or settle such claim. In the event of a threatened claim, Contractor shall, in its reasonable judgment, and at its option and expense: (i) obtain for City the right to continue using the Contractor Work Product; (ii) replace or modify the Contractor Work Product so that it becomes non-infringing; or (iii) terminate the right to use the Contractor Work Product and return only the Services fees paid by City for such portion of the Contractor Work Product which is allegedly infringing, prorated over a one (1) year term from the date of delivery of such portion of the Contractor Work Product. Contractor shall have no obligation to indemnify or defend City to the extent: (i) the alleged infringement is based on information,

## **AGREEMENT FOR SOFTWARE AND SERVICES PURCHASE**

software code or other material furnished by City, its agents, representatives, and suppliers; (ii) the alleged infringement is the result of a modification made by anyone other than Contractor directly or through a subcontractor or is the result of software provided to Contractor by City, its agents, representatives, and suppliers; (iii) such claim would have been avoided but for the combination or use of the Contractor Work Product, or portions thereof, with other products; (iv) City uses the Contractor Work Product other than in accordance with this Agreement or other than in accordance with a license agreement between City and one or more third parties; or (v) City has defaulted on its obligations under Exhibit B. Notwithstanding anything contained herein, Contractor shall have no indemnity obligation hereunder with respect to those portions of Contractor Work Product that embody City's Confidential Information, software code, or ideas including, without limitation, any portion of Contractor Work Product that is developed pursuant to City's specifications. **THE FOREGOING PROVISIONS OF THIS SECTION 8B STATE THE ENTIRE LIABILITY AND OBLIGATIONS OF CONTRACTOR, AND THE EXCLUSIVE REMEDY OF CITY, WITH RESPECT TO ANY ACTUAL OR ALLEGED INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OF THE SERVICES AND THE DEVELOPMENT AND/OR USE OF THE WORK PRODUCT.**

### **SECTION IX - NON-DISCRIMINATION AND OTHER LAWS**

A. Contractor agrees that:

1. Contractor shall observe the provisions of the Kansas act against discrimination and shall not discriminate against any person in the performance of work under the present Agreement because of race, religion, color, sex, disability, national origin ancestry or age;
2. In all solicitations or advertisements for employees, Contractor shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission (Commission);
3. If Contractor fails to comply with the manner in which Contractor reports to the commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, Contractor shall be deemed to have breached the present Agreement and it may be canceled, terminated or suspended, in whole or in part, by the City;
4. If Contractor is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, Contractor shall be deemed to have breached the present Agreement and it may be canceled, terminated or suspended, in whole or in part, by the City; and
5. Contractor shall include the provisions of subsections (A)(1) through (4) in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

The provisions of this Section shall not apply if:

- a) Contractor employs fewer than four employees during the term of such contract; or
- b) If Contractor contracts with the City cumulatively total \$5,000 or less during the fiscal year of the City.

## **AGREEMENT FOR SOFTWARE AND SERVICES PURCHASE**

- B. Contractor further agrees that Contractor shall abide by the Kansas Age Discrimination In Employment Act (K.S.A. 44-1111 et seq.) and the applicable provision in the Americans With Disabilities Act (42 U.S.C. 1201 et seq.) as well as all federal, state and local laws, ordinances and regulations applicable to this project and to furnish any certification required by any federal, state or local governmental agency in connection therewith.

### **SECTION X - PROHIBITION AGAINST CONTINGENT FEES**

Contractor warrants that it has not employed or retained any person, firm, or corporation, other than a bona fide employee working solely for Contractor, to solicit or secure the awarding of this Agreement based upon an arrangement that the person, firm or corporation would receive any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award of this Agreement. For the breach or violation of the foregoing provision, the City shall have the right to terminate the Agreement without liability and, at its discretion to deduct from the contract price, or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

### **SECTION XI - APPLICABLE LAW, NONWAIVER**

This Agreement is entered into under and pursuant to, and is to be construed and enforceable in accordance with, the laws of the State of Kansas. The waiver of or failure to enforce any term or condition of this Agreement shall not be construed as a waiver of any other term or condition. If any provision is held to be unenforceable by a court or other tribunal, the enforceability of the other provisions shall not be affected.

### **SECTION XII – SUBCONTRACTORS**

Contractor shall not subcontract any of the work or services required by this Agreement without the prior written approval of the City. Should Contractor request and the City agree to work being subcontracted, Contractor shall be as fully responsible to the City for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by said sub-contractors, as Contractor is for the acts and omissions of the persons it directly employs.

### **SECTION XIII - INSURANCE REQUIREMENTS**

A. General –

Contractor shall secure and maintain, throughout the duration of this Agreement, insurance (on an occurrence basis unless otherwise agreed to) of such types and in at least such amounts as required herein. Contractor shall provide certificates of insurance and renewals thereof on forms provided or approved by the City. The City shall be notified by receipt of written notice from the insurer at least thirty (30) days prior to material modification or cancellation of any policy listed on the Certificate.

B. General Liability –

The Commercial General Liability insurance coverage that is to be provided by Contractor shall provide coverage for bodily injury and physical damage caused by Contractor while performing the Agreement.

#### MINIMUM INSURANCE REQUIREMENTS

#### COMMERCIAL GENERAL LIABILITY POLICY

# AGREEMENT FOR SOFTWARE AND SERVICES PURCHASE

(Complete Certificate "Form B" or equivalent Acord form)

General Aggregate:	\$ 500,000
Products-Completed Operations Aggregate:	\$ 500,000
Personal & Advertising Injury:	\$ 500,000
Each Occurrence:	\$ 500,000

C. Automobile Liability –

Policy shall protect Contractor against claims for bodily injury and/or property damage arising from the ownership or use of all owned, if any, and hired and/or non-owned vehicles and must include protection for either:

(a) Any Auto

OR

(b) All Owned Autos, if any:  
Hired Autos; and  
Non-Owned Autos.

Limits of liability protection required are \$500,000 combined single limit.

D. Workers' Compensation and Employer's Liability –

This insurance shall protect Contractor against all claims under applicable state Workers' Compensation laws. Contractor shall also be protected against claims for injury, disease or death of employees which, for any reason, may not fall within the provisions of a Workers' Compensation law. The policy shall include liability limits not less than the following:

<u>Workers' Compensation:</u>	Statutory
<u>Employer's Liability:</u>	
Bodily Injury by Accident	\$100,000 each accident
Bodily Injury by Disease	\$500,000 policy limit
Bodily Injury by Disease	\$100,000 each employee

E. Industry Ratings –

The City will only accept coverage from an insurance carrier who offers proof that it:

- (a) Is licensed to do business in the State of Kansas;
- (b) Carries a Best's policy holder rating of A- or better; and
- (c) Carries at least a Class VII financial rating.

# AGREEMENT FOR SOFTWARE AND SERVICES PURCHASE

## OR

Is a company mutually agreed upon by the City and Contractor.

F. Subcontractors Insurance –

If a part of the Agreement is to be sublet, the Contractor shall either:

- (a) Cover all subcontractors in its insurance policies if allowed to by Contractor's insurance carrier, or
- (b) Require each subcontractor not so covered to secure insurance which will protect subcontractor against all applicable hazards or risks of loss as and in the minimum amounts designated.
- (c) Whichever option is chosen, Contractor shall indemnify and hold harmless the City as to any and all damages, claims or losses, including attorney's fees, for bodily injury, physical property damage and/or death that arises out of a subcontractor's or any of its agents, servants, and/or employees' negligent acts, and or failure to act in the performance of this Agreement arising out of the acts or omissions of its subcontractors.

G. Professional Liability Insurance –

This insurance shall protect the Contractor against claims for damage arising from the work performed by Contractor as specified in Section I. The limits of protection shall be \$1 million.

## SECTION XIV – ADJUSTMENT TO CONTRACT TERMS

Changes to the terms of this Agreement may be made only in writing and must be approved by the City and Contractor. Should a decision be made to amend the terms of this Agreement, the City and Contractor must mutually agree in writing to the amended terms.

## SECTION XV – BUDGET/CASH BASIS

The City is obligated only to make payments under this Agreement as may be lawfully made from funds budgeted and appropriated for the purposes as set forth in this Agreement during the City's current budget year. In the event the City does not so budget and appropriate the funds, the parties acknowledge and agree that they shall be relieved from all obligations, without penalty, under this Agreement.

## SECTION XVI – WORK PRODUCT

Any expression of Contractor's findings, analyses, conclusions, opinions, recommendations, ideas, techniques, know-how, designs, programs, enhancements, source and object code, and other technical information shall be deemed Contractor work product ("**Contractor Work Product**"). Contractor Work Product shall not include any intellectual property owned by a third party, unless Contractor or City has procured proper permission for the inclusion of such third party intellectual property in the Contractor Work Product. As between Contractor and the City, all Contractor Work Product is the property of Contractor and is licensed perpetually, royalty-free, and nonexclusively to City for use in accordance with the terms of this Agreement. The license to the Contractor Work Product does not include a license for City to sublicense the Contractor Work Product to any third party. To the extent City acquires any rights in the Contractor Work Product, City hereby assigns those rights to Contractor. City may not distribute

## **AGREEMENT FOR SOFTWARE AND SERVICES PURCHASE**

or share Contractor Work Product with any third party affiliate or beneficiary, regardless of their relationship with City, except with the express prior written permission of Contractor. Fixes and updates provided by Contractor pursuant to this Agreement may only be used in the number of production databases listed in Schedule 1 under the heading “Number of Production Instances” for each Covered Product. City may use the provided fixes and updates in other databases as needed to test fixes and updates prior to moving any fixes and updates into production.

### **SECTION XVII – CONFIDENTIALITY**

- A. Confidential Information. During the course of the Parties’ relationship, a party may have access to the other party’s Confidential Information. The Parties agree that the term “**Confidential Information**” shall mean any information, technical data, or know-how, including, without limitation, that which relates to research, products, services, customers, markets, inventions, processes, designs, marketing, or finances of the disclosing party, including the details of this Agreement. The amount and type of Confidential Information to be disclosed is completely within the sole discretion of each party, but in no case should such disclosure of Confidential Information by City to Contractor be less than that required for Contractor to successfully render Services pursuant to this Agreement.
- B. Non-Confidential Information. The Parties agree that Confidential Information does not include a party’s information which the other party can establish by legally sufficient evidence: (i) was in the possession of, or was rightfully known by a party without an obligation to maintain its confidentiality prior to receipt from the other party; (ii) is or becomes generally known to the public without violation of this Agreement; and (iii) is obtained by a party in good faith from a third party having the right to disclose it without an obligation of confidentiality.
- C. Non-Disclosure. Each party agrees that it shall not use or permit the use of any Confidential Information of the other party except for purposes of this Agreement, nor disclose or permit to be disclosed the Confidential Information of the other party to any person or entity (other than its own employees, agents, representatives, or affiliated entities having a reasonable need for such information in order to provide the Materials), nor duplicate any Confidential Information of the other party which consists of computer software or documentation or other materials expressly restricted against copying or which carry the notation “Confidential,” “Company Confidential,” and/or “Proprietary”, unless such duplication, use or disclosure is specifically authorized in writing by the other party. Neither party shall be liable for any disclosure of Confidential Information of the other party that is required by law or is reasonably necessary in order to enforce this Agreement. Neither party will disclose Confidential Information as required by law until the party receiving the legal notice to disclose such information gives prompt notice to owner of the Confidential Information, thus allowing the owner of the Confidential Information time to make a reasonable effort to obtain a protective order or otherwise protect the confidentiality of such information. Each party agrees that a remedy at law may not be adequate to protect the other party in the event of a threatened breach of this section, and that either party may take equitable action, including injunctive relief, to enforce this section. The provisions of this section shall survive the termination or expiration of this Agreement by two (2) years. Trade secret information will remain confidential for as long as the information remains a trade secret.
- D. Kansas Open Records Act. Notwithstanding anything in this Agreement to the contrary, the Parties understand that the City is subject to the Kansas Open Records Act and is mandated to comply with same. Such compliance will not be deemed to be a breach of this Agreement.

# **AGREEMENT FOR SOFTWARE AND SERVICES PURCHASE**

## **XVIII – WARRANTY**

- A. **Warranty.** Contractor warrants that the Services will be performed consistent with generally accepted industry standards, this Agreement and with the Contract Documents. Other than those mandated by accepted industry standards, this Agreement and the Contract documents, no specific result from provision of the Services is assured or guaranteed. City warrants that it has full legal authority to enter into this Agreement and perform its obligations hereunder, and that no third party rights or permissions are required in order for it to do so. **OTHER THAN THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT, THE PARTIES DISCLAIM ALL OTHER WARRANTIES, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES, INCLUDING THE WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.**
- B. **Remedies.** City's sole remedy and Contractor's sole obligation in the event of a breach of the warranty contained herein is, at Contractor's sole option for the first ninety (90) days after City's notice of non-compliance and at City's option thereafter: (i) to have the Contractor re-perform the Services, or (ii) to terminate the Agreement and receive a refund of the amounts paid by City for the Services which were not as warranted, provided Contractor has received notice from City within forty-five (45) days of the completion of the Services that the City alleges were not performed consistent with the warranty in Section 18(A).

## **XIX – LIMITATION OF LIABILITY**

CONTRACTOR SHALL NOT BE LIABLE TO CITY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST DATA, LOST PROFITS OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, HOWEVER ARISING, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR CLAIMS UNDER SECTION VIII, CONTRACTOR'S LIABILITY FOR DAMAGES ARISING OUT OF, RELATING TO OR IN ANY WAY CONNECTED WITH THE RELATIONSHIP OF THE PARTIES, THIS AGREEMENT, ITS NEGOTIATION OR TERMINATION, OR THE PROVISION OR NONPROVISION OF SERVICES OR SOFTWARE (WHETHER IN CONTRACT OR TORT) SHALL IN NO EVENT EXCEED THE AMOUNT OF FEES RECEIVED BY CONTRACTOR FROM CITY UNDER THIS AGREEMENT FOR THE PRECEDING TWELVE MONTHS OF THE TERM (INITIAL OR ANY EXTENDED TERM) IN WHICH AN ALLEGED LIABILITY ARISES, AND IF SUCH DAMAGES RESULT FROM SPECIFIC SERVICES, SUCH LIABILITY SHALL BE LIMITED TO FEES PAID FOR THE SERVICES GIVING RISE TO THE LIABILITY FROM WHICH THE CLAIM AROSE. THE PARTIES ACKNOWLEDGE AND AGREE TO THE ALLOCATION OF LIABILITY SET FORTH IN THIS SECTION 19 (NINETEEN).

## **XX – NOTICE**

All notices shall be in writing and sent by United States mail with return receipt, registered mail, overnight mail, well-known courier service, or delivered personally to the addresses indicated in this Section, or such other address as either party may provide to the other party at least ten (10) business days prior to the date of any notice provided hereunder, unless otherwise provided in this Agreement. Notices provided pursuant to this Section shall be considered delivered on the date shown on the receipt evidencing delivery of the notice.

TO CITY:                      Vicki Irey, Director of Information Technology



# **AGREEMENT FOR SOFTWARE AND SERVICES PURCHASE**

8500 Antioch  
Overland Park, Kansas 66212

TO CONTRACTOR: Legal Department

## **XXI – SEPARATE AGREEMENTS**

City acknowledges that it may contract with Contractor for other consulting, advisory, and customization services outside the scope of this Agreement. City agrees that this Agreement is a separate and independent contractual obligation from any other contract for services between the Parties. City shall not withhold payments that are due and payable under this Agreement because of the status of any other contract between the Parties.

## **XXII – SECTION HEADINGS**

The section headings herein are provided for convenience only and have no substantive effect on the construction of this Agreement.

## **XXIII - FORCE MAJEURE**

Either party's failure to perform in a timely manner shall be excused to the extent caused by conditions beyond the reasonable control of the affected party and which it could not, by reasonable diligence, have avoided. Such conditions may include but are not limited to natural disaster, fire, accidents, actions or decrees of governmental bodies, Internet or other communication line failure not the fault of the affected party, strikes, acts of God, wars (declared and undeclared), acts of terrorism, riots, embargoes, civil insurrection, acts of vendors and suppliers, and concealed acts of employees or contractor. The party affected shall immediately give notice to the other party of such delay and shall resume timely performance as soon as such condition is terminated. If the period of *force majeure* exceeds thirty (30) days from the receipt of notice, the non-affected party may terminate this Agreement.

## **XXIV – GENERAL**

Except for actions for non-payment or breach of Contractor's proprietary rights in the Contractor Work Product, no action, regardless of form, arising out of this Agreement may be brought by either party more than two years after the cause of action has occurred. This Agreement constitutes the entire agreement between the parties concerning the subject matter contained herein. Nothing in this Agreement is meant to create or creates any rights, obligations, or benefits directly or indirectly to any party not a signatory of this Agreement. Except as otherwise specifically stated herein, remedies shall be cumulative and there shall be no obligation to exercise a particular remedy. Neither party shall assign this Agreement or transfer its responsibilities under this Agreement, nor any interest in this Agreement, except with written consent of the other party, which consent shall not be unreasonably withheld. The parties agree that assignment by operation of law in the context of the sale of all or substantially all of a party's stock or assets shall not constitute an "assignment" for purposes of this prohibition. The JD Edwards name, JD Edwards product names, and JD Edwards release names are trademarks of Oracle Corporation. All other names and product names are the property of their respective owners.

If there are any conflicts between provisions in this Agreement and the RFP and the Contractor's response to the RFP, the RFP and Contractor's response to same will take precedence.

**AGREEMENT FOR  
SOFTWARE AND SERVICES PURCHASE**

**XXV – SURVIVAL**

The following sections of this Agreement will survive termination: the terms of Section 5(A) of the Exhibit, as the definitions may apply to other Sections surviving termination, and Sections VIII (Hold Harmless and Indemnification), XIII (Insurance Requirements), XVI (Work Product), XVII (Confidentiality), XVIII (Warranty), XIV (Limitation of Liability).

**SECTION XXVI - SEVERABILITY CLAUSE.**

Should any provision of this Agreement be determined to be void, invalid, unenforceable or illegal for whatever reason, such provision(s) shall be null and void; provided, however, that the remaining provisions of this Agreement shall be unaffected thereby and shall continue to be valid and enforceable.

**SECTION XXVII - EXECUTION OF CONTRACT**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their authorized officials on the day and year first above written.

CITY OF OVERLAND PARK, KANSAS

RIMINI STREET, INC.

\_\_\_\_\_  
Carl R. Gerlach  
Mayor

\_\_\_\_\_  
Name  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

APPROVED AS TO FORM:

\_\_\_\_\_  
Tammy M. Owens  
Senior Assistant City Attorney

# AGREEMENT FOR SOFTWARE AND SERVICES PURCHASE

## Exhibit A

### Scope of Services

#### 1. Services

Contractor shall provide City with certain support services and certain deliverables as follows for the Oracle Corporation (as successor in interest to JD Edwards, Inc. and JD Edwards, Inc.) products listed in Schedule 1 attached hereto (hereafter collectively referred to as “**Services**”) and subject to the capitalized definitions and additional terms found in Section 5 of Exhibit A:

- A. Product Support.** Contractor will provide City with diagnostic services, advice, and recommendations relating to the proper operation of City’s Production JD Edwards System.
- B. Product & Documentation Fixes.** Contractor will provide fixes for Serious Issues City encounters in the JD Edwards Applications used in the JD Edwards Production Release (as well as the Target JD Edwards Production Release for any JD Edwards upgrade project City currently has underway). Contractor will provide fixes to vanilla and City-Made Customized Code for on-line, batch, and report code.
- C. Tax and Regulatory Updates.** Tax and regulatory updates for different products will be handled during the Term as follows:
  - a. ***JD Edwards “Payables” product listed on Schedule 1.*** Contractor will provide, as needed, United States IRS Form 1099 updates for the JD Edwards “Payables” product.
  - b. ***JD Edwards “Order Management” product listed on Schedule 1.*** City must contract independently of this Agreement and pay Vertex for sales & use tax updates if this product is listed on Schedule 1.
- D. Installation Support.** Contractor will provide support for re-installations of the JD Edwards System if required as a result of a Serious Issue with City’s development, test, or production environments. Installation support shall include advice and recommendations for the execution of installation scripts, configuring the JD Edwards Technology Foundation.
- E. Interoperability Support.** Contractor will provide advice, recommendations, and testing assistance with Serious Issues determined to likely involve interoperability issues between the JD Edwards Technology Foundation, JD Edwards Applications, Contractor supported RDBMS platform and Contractor supported server operating systems.
- F. Performance Tuning Support.** Contractor will provide performance tuning diagnostics, advice, and recommendations for the JD Edwards Technology Foundation and JD Edwards Applications using proprietary and commercially available tools.
- G. Upgrade Process Support.** Contractor will provide upgrade process support from City’s current JD Edwards Production Release to any Target JD Edwards Production Release available prior to termination of City’s JD Edwards Support Services Agreement and noted as a target release on Schedule 1. Contractor will make upgrade support available to any Target JD Edwards Production Release for at least ten (10) years after JD Edwards first published each upgrade process deliverable

# AGREEMENT FOR SOFTWARE AND SERVICES PURCHASE

## 2. Service Level Agreement

During the Term, City will be entitled to receive support twenty-four (24) hours a day, seven (7) days a week (including major holidays) for Serious Issues that result in either a production down or production impacted situation that cannot wait until the following business day and hours for response. Response time commitment for a first live conversation with a Contractor engineer after City contacts Contractor with a request for emergency support is less than thirty (30) minutes.

Further, Contractor will provide City with one (1) Named Primary Support Engineer. City's Named Primary Support Engineer shall be the single point of contact into Contractor for City's personnel and agents reporting and working to resolve Serious Issues with the JD Edwards products listed in Schedule 1 during the Term. When City's Named Primary Support Engineer is unavailable due to on-call rotations or days off, a temporary on-call Named Primary Support Engineer will take over and City will be notified of the temporary Named Primary Support Engineer's contact information.

## 3. City Obligations

City shall perform the following obligations (collectively referred to as "**City Obligations**"):

- A. Primary Contact.** City will designate and provide one (1) City primary point of contact, and this individual shall be City's authorized representative working with Contractor while Services are being rendered during the Term. However, City is not limited in the number of other regular contacts who can call Contractor directly for support.
- B. Personnel.** City will provide sufficient, qualified, and knowledgeable personnel capable of: (i) performing City Obligations set forth in this Agreement; (ii) participating in the project and making necessary and timely decisions on behalf of City; (iii) facilitating the testing of software fixes and updates and workarounds provided by Contractor and/or Oracle and/or JD Edwards; and (iv) customizing, installing, and configuring Contractor and/or Oracle and/or JD Edwards provided deliverables as needed for use with City's JD Edwards System.
- C. Facility Access and Work Space.** Should Contractor need to travel to City's facility in order to render Services pursuant to this Agreement, with advanced notice to the City, City agrees to provide access to City's facilities during City's normal business hours and otherwise as reasonably requested by Contractor to enable Contractor to render the Services. City also agrees to provide Contractor equipment and office support (including, but not limited to analog phone lines for dial up capabilities, phone lines for long distance and local calls related to the provision of Services, photocopying equipment, and the like), and an adequate environment for Contractor representatives where they can conduct work and meet with City personnel and/or other Contractor representatives as necessary.
- D. Access to Software.** City acknowledges that Contractor will need to work with, configure, test, and possibly modify certain JD Edwards products licensed to City in order to render Services pursuant to this Agreement. Contractor requires City configure and prepare remote access to City's test and development environments via the Internet. For purposes of obtaining product updates and related documents only for City's licensed products in Schedule 1 on behalf of City,

## **AGREEMENT FOR SOFTWARE AND SERVICES PURCHASE**

City designates Contractor as an authorized, designated Oracle support contact and will provide Contractor a temporary login and password to access Oracle's PeopleSoft Customer Connection/Knowledge Garden in order to obtain the product updates and related documents on behalf of City. City's authorization of Contractor to utilize the provided access login shall expire when the product updates and related documents are obtained or until City's rights to access Oracle's PeopleSoft Customer Connection/Knowledge Garden terminates, whichever event occurs first.

- E. Final Testing of Fixes and Updates.** City is responsible for all final system testing to ensure that Contractor provided fixes and updates perform as documented with the JD Edwards system before moving said fixes and updates into any production environment.
- F. Timely Performance of City Obligations.** City acknowledges and agrees that Contractor's ability to perform the Services is conditioned upon City's timely performance of City Obligations described herein, and the performance of such City Obligations is material to Contractor's ability to commence, proceed with, and successfully perform the Services.

#### **4. Contractor Obligations**

Subject to City's performing City Obligations, Contractor shall perform or cause to be performed the following obligations (collectively referred to as "**Contractor Obligations**"):

- A. Services.** Contractor will provide Services to City as described in Section 1 of this Exhibit A in consideration of Annual Support Fees described in Section A of Exhibit B, and paid in accordance with the Payment Schedule described in Section B of Exhibit B and additional payment terms in Section C of Exhibit B. Unless otherwise specified in Schedule 1 or an amendment attached hereto, the Parties understand and agree that all Services described in Section 1 of this Exhibit A will only be rendered by Contractor in the English language.
- B. Communications.** Prior to the beginning of the Term, Contractor will provide City with detailed instructions about how to work with Contractor's support engineers, analysts, and representatives, including information about how to report Serious Issues and obtain assistance and resolutions.

#### **5. Additional Services Terms**

The following additional terms apply to the Services described in Section 1 of Exhibit A:

- A. Definitions.** The following definitions are used throughout this Agreement:
  - I. JD Edwards Technology Foundation Code:** Includes the group of JD Edwards and third party products known as Foundation Code, application servers, web servers, and middleware products such as IBM Websphere and Oracle Fusion Middleware.
  - II. JD Edwards Production Release:** The JD Edwards product release level that City is currently using in its live, production environment.
  - III. Target JD Edwards Production Release:** The JD Edwards product release level that City is planning to upgrade to as its next, live, production environment.

## **AGREEMENT FOR SOFTWARE AND SERVICES PURCHASE**

- IV. **JD Edwards System:** Includes the City's JD Edwards Technology Foundation and Applications listed on Exhibit A operating on the JD Edwards Production Release.
  - V. **JD Edwards Application:** A JD Edwards product whose definition, design, and operating characteristics are defined as on-line and batch code.
  - VI. **Crystal Reports:** A third party software product that may be used by some licensees as a reporting tool.
  - VII. **RDBMS:** Relational Database Management System. Examples include DB2, Oracle, and SQL Server products by IBM, Oracle, and Microsoft, respectfully.
  - VIII. **Contractor Supported Operating System:** An operating system and operating system release level supported by JD Edwards, Inc./Oracle, Inc. on or before City terminates their JD Edwards Support Services Agreement, or subsequently agreed to be supported by Contractor for use with City's Production JD Edwards Release.
  - IX. **Contractor Supported RDBMS Release:** An RDBMS and RDBMS release level supported by JD Edwards, Inc./Oracle, Inc. on or before City terminates their JD Edwards Support Services Agreement, or subsequently agreed to be supported by Contractor for use with City's Production JD Edwards Release.
  - X. **City-Made Customized Code:** Changes or updates made by City or City's representatives to application code objects that vary from the standard, unmodified, but fix-mastered code line delivered by JD Edwards in its fix-mastered Applications.
  - XI. **Serious Issue:** An issue that meets all of the following criteria: (i) found by City in the JD Edwards Foundation Code, JD Edwards Applications, in any updates and fixes provided to City by Contractor, or by JD Edwards and obtained from JD Edwards, Inc./Oracle, Inc. by City up through the date that City terminates its JD Edwards Support Services Agreement for Covered Products in Schedule 1; (ii) City becomes aware of the issue during the Term and reports the issue to Contractor during the Term; (iii) seriously impacts City's ability to process; and (iv) causes the failure of a material feature or function in the JD Edwards System.
  - XII. **JD Edwards Software Documentation:** Includes JD Edwards Release Notes, JD Edwards FAQ's, JD Edwards Technical Notes.
- B. JD Edwards Technology Foundation Code, Third Party Products, and Language Support.** Contractor will provide support for JD Edwards Technology Foundation Code under this Agreement. However, City understands and acknowledges that Contractor is not able and will not provide any fixes or updates for the JD Edwards Technology Foundation Code or any third party, non-JD Edwards products used with, imbedded, integrated, or bundled with the Covered Products since City does not have source code for these products. For purposes of example only, such third party products include, but are not limited to, operating systems, database systems, application servers, web servers, Citrix, online and batch processing tools, reporting tools, and analytic tools. Additionally, unless otherwise noted in this Agreement, this Agreement expressly excludes any support for any issues related to language objects other than American English.

## **AGREEMENT FOR SOFTWARE AND SERVICES PURCHASE**

- C. Installation Support.** Installation Support does not include any of the following: initial, first-time installations and configurations of JD Edwards products that the City was not using in production on or before the Term; Project planning, advice, or recommendations relating to the migration of RDBMS platforms or JD Edwards Technology Foundation Code server and RDBMS server operating system platforms (i.e., Oracle to DB2 RDBMS or Windows 2000 to UNIX); nor installations of a new major release of JD Edwards products performed as the first step in an upgrade project to a new production JD Edwards major release (i.e., JD Edwards OneWorld 8.0 to OneWorld 8.9).
- D. Interoperability Support.** Interoperability Support will be available to City for its JD Edwards System so long as the combination of products and platforms is supported and designed for compatible use in the JD Edwards System and such combination of products and platforms has been fully tested for proper interoperability prior to production rollout and go-live. City is fully responsible for any interoperability issues related to third-party products that are incompatible with or that were not properly tested for proper operation with City's JD Edwards System. Contractor will provide upon request, at an additional fee per request and with City providing copies of all source and target software releases, interoperability testing for operating system and RDBMS release updates that have not been tested by JD Edwards for proper operation with the JD Edwards System prior to the termination of City's JD Edwards Support Services Agreement.
- E. Performance Tuning.** City is responsible for ensuring adequate and reasonable functional, scalability, and regression testing have been completed in development and test phases prior to production rollout and go-live. Performance tuning support includes recommendations and advice for configuration, deployment model, and parameter settings for the JD Edwards Foundation Code and JD Edwards Applications, as well as advice for configuration, deployment model, and parameter settings for the Actuate and Resonate third-party products being used in the Production JD Edwards System.
- F. Upgrade Support.** City is responsible for requesting and receiving from JD Edwards Systems all licensed and available software releases that City may wish to eventually utilize as a Target JD Edwards Production Release, as well as all related and available JD Edwards Upgrade deliverables that include upgrade script templates; patches; JD Edwards Fix Bundles; JD Edwards Hot Fixes; release notes; release documentation; upgrade documentation; and all necessary license keys. Contractor recommends that City request each and every deliverable City is entitled to under the terms of its JD Edwards Software License Agreement prior to the expiration date of City's current JD Edwards Support Services Agreement.
- G. Upgrade Process Support.** City is responsible for actual upgrade project planning, resourcing, and execution.
- H. City-Made Customized Code Support.** City must make its City-Made Customizations and related customized documentation available to Contractor with reasonable lead time prior to the first support request by City. Further, only customizations that have been implemented and coded using JD Edwards Tools will be supported as part of this Agreement, and said City-Made Customized code must have been tested and proven functionally stable in a development and/or test environment and must have undergone reasonable, industry-standard functional, regression, and scalability testing prior to production rollout and go-live.

## **AGREEMENT FOR SOFTWARE AND SERVICES PURCHASE**

- I. Twenty-First Century Dates.** JD Edwards designed two-digit year displays to resolve into four-digit years for storage and manipulation. Therefore, two-digit year displays in online panels or reports are not programming errors or considered a Serious Issue in the context of this Agreement.
  
- J. Additional Consulting.** Any services required by City outside the defined Services in this Agreement are expressly excluded from the scope of this Agreement. Contractor will not perform out-of-scope services without City's pre-approval.



# AGREEMENT FOR SOFTWARE AND SERVICES PURCHASE

## Schedule 1

### Covered Products

<b>IT Physical Location:</b>	United States
<b>Support Team Location:</b>	United States
<b>Support Team Language(s):</b>	American English (Only)
<b>Languages Supported:</b>	American English (Only)
<b>Responsibility for Maintaining and Supporting Interfaces:</b>	City (All)
<b>Production Instances Supported:</b>	One (1)
<b>DBMS Hardware Platform, OS, and RDBMS:</b>	Oracle/WINDOWS
<b>Development and Test Software to Be Provided:</b>	
<b>Access Methodology:</b>	VPN, WebEx, TelNet

### Applications Data:

JD Edwards Enterprise One Product	Current Release and Patch Level	Future Target Release(s) and Minimum Patch Level(s)	Licensed & Used Geographic Coverage	Other Deliverables and Notes
Tools	8.92.12	N/A	United States	
Accounts Payable	8.10	N/A	United States	US IRS 1099 Updates
Accounts Receivable	8.10	N/A	United States	
Purchasing	8.10	N/A	United States	
Fixed Asset	8.10	N/A	United States	US Federal Depreciation Table Updates
General Ledger	8.10	N/A	United States	
Job Costing	8.10	N/A	United States	

# AGREEMENT FOR SOFTWARE AND SERVICES PURCHASE

## Exhibit B

### Fees, Payment, and Expenses

**A. Annual Support Fees.** In consideration for Services provided pursuant to this Agreement during the Support Year, City agrees to pay Contractor fees (“Annual Support Fee”) in the amount of \$18,266.00 USD (Eighteen Thousand Two Hundred Sixty Six United States dollars) in accordance with the terms set forth herein. The Annual Support Fee for Services in the nine (9) subsequent one (1) year Terms immediately and contiguously following the first Term shall not have any fee increase whatsoever. Thereafter, the Annual Support Fee for Services in each subsequent year(s) after the Term shall not exceed 105% of the Annual Support Fee for the Services paid by City for the immediately preceding contiguous year. For purposes of example only, the Annual Support Fee for the Services in year eleven (11) shall not exceed \$19,179.00 USD.

**B. Payment Schedule.** Annual Support Fees are due and payable by City to Contractor according to the following agreed payment schedule (“**Payment Schedule**”):

Payment Schedule	Amount (USD)
Year 1: Within Thirty (30) Days Following Execution of this Agreement	\$ 18,266.00
Subsequent Years: On or Before the Starting Month of Each New Year of Support	\$ As Calculated Herein

**C. Payment Terms.** City agrees: (i) to pay Contractor Annual Support Fees in accordance with the Payment Schedule in Section B of this Exhibit B or within twenty (20) calendar days after the date of each invoice, whichever date is later; (ii) except as noted herein, all City payments are non-refundable; (iii) Annual Support Fees listed in Section A of this Exhibit B does not include any taxes or duties, and City is responsible for paying all taxes, duties, and customs fees relating to the Services, excluding taxes based on Contractor’s income and payroll; (iv) all past due amounts will bear interest at the lesser of one and one-half percent (1.5%) per month or the highest interest rate allowable under applicable law; and (v) if any invoiced fees, taxes, duties, or reimbursements related to this Agreement are more than fifteen (15) days past due for payment, Contractor, at its sole discretion and not in lieu of any other remedy, may cease providing Services until such time as City is once again current in its payments to Contractor (as solely determined by Contractor).

**D. Travel and Living Expenses.** Contractor does not anticipate a need to travel to City’s location in order to render Services pursuant to this Agreement, and this Agreement expressly excludes coverage of any travel and living expenses. If situations arise that cause Contractor and/or City representatives to agree travel is appropriate for Contractor representatives in connection with this Agreement, Contractor will seek pre-approval from City before incurring any travel and living expenses. City agrees to reimburse Contractor within twenty (20) days after Contractor provides City with reasonable and appropriate expense documentation.