RESOLUTION NO. 2008-794

Adopted by the Sacramento City Council

December 9, 2008

AUTHORIZING SUPPLEMENTAL AGREEMENT NO. 1 TO AGREEMENT NO. 2006-0789 WITH MUNISERVICES FOR BUSINESS OPERATIONS TAX AUDIT SERVICES

BACKGROUND

A. In 2006, Agreement No. 2006-0789 was executed with MuniServices, LLC, in an amount not to exceed $700,000 per year for tax auditing services.

B. The current computer operating system used to process the City's Business Operations Tax (BOT) is Sacramento's "legacy" mainframe system, which will be decommissioned in March 2009.

C. Supplemental Agreement No. 1 will allow the City to utilize the MuniServices BizLINK system to replace business tax operations currently performed by the City's mainframe systems.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

Section 1. The City Council hereby (1) approves Supplemental Agreement No. 1 to City Agreement No. 2006-0789 with MuniServices, LLC, contained in Exhibits A, B and C, attached hereto and made part of this resolution, and (2) authorizes the City Manager or the City Manger's designee to execute Supplemental Agreement No. 1 in an amount not to exceed $120,000 to allow continued BOT processing services by adding BizLINK services for three years, provided that sufficient funds are available in the budget adopted for the applicable fiscal year(s).

Section 2. The City Manager's approval authority is reset for this project.

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Adopted by the City of Sacramento City Council on December 9, 2008 by the following vote:

Ayes: Councilmembers Cohn, Fong, Hammond, Pannell, Sheedy, Tretheway, Waters, and Mayor Johnson.

Noes: None.

Abstain: None.

Absent: Councilmember McCarty.

Mayor Kevin Johnson

Attest:

Shirley Concolino, City Clerk

SUPPLEMENTAL AGREEMENT

Project Title and Job Number: MuniServices BizLink Implementation **Date: 10/21/08**
Purchase Order #: **Supplemental Agreement No.: 1**

The City of Sacramento ("City") and MuniServices, LLC ("Contractor"), as parties to that certain Professional Services Agreement designated as Agreement Number 2006-0789, including any and all prior supplemental agreements modifying said agreement (said agreement and supplemental agreements are hereafter collectively referred to as the "Agreement"), hereby supplement and modify the Agreement as follows:

1. The scope of Services specified in Exhibit A of the Agreement is amended to include the provisions in Attachment 1-A and Attachment 1-B to this Supplemental Agreement, attached hereto and incorporated herein to provide BizLINK services for 3 years as part of the Business Operations Tax – Local Tax Compliance (LTC) services.

2. Attachment 1 to Exhibit B of the Agreement is amended to include the provisions stated in Attachment 2 to this Supplemental Agreement, attached hereto and incorporated herein.

3. The fee for the LTC services is paid on a contingency basis, which is 30% of new revenues recovered by the City due to Contractor's LTC services. In consideration of the additional and/or revised services described in Section 1 above, the maximum not-to-exceed amount that is specified in Exhibit B of the Agreement for payment of Contractor's fees and expenses is **increased** by $120,000 for the fixed price portion of the LTC services and said maximum not-to-exceed amount is amended as follows:

Agreement's original not-to-exceed amount for the LTC Program:	$N/A
Net change by previous supplemental agreements:	$0
Not-to-exceed amount prior to this supplemental agreement:	$0
Increase to the LTC services program by this supplemental agreement:	$120,000
New not-to exceed amount including all supplemental agreements:	$120,000

Notwithstanding anything in the Agreement to the contrary, the not-to-exceed amount does not apply to contingency fee services.

4. Contractor agrees that the amount of increase or decrease in the not-to-exceed amount specified in section 3, above, shall constitute full compensation for the additional and/or revised services specified in section 1, above, and shall fully compensate Contractor for any and all direct and indirect costs that may be incurred by Contractor in connection with such additional and/or revised services, including costs associated with any changes and/or delays in work schedules or in the performance of other services or work by Contractor.

5. Contractor warrants and represents that the person or persons executing this supplemental agreement on behalf of Contractor has or have been duly authorized by Contractor to sign this supplemental agreement and bind Contractor to the terms hereof.

6. Except as specifically revised herein, all terms and conditions of the Agreement shall remain in full force and effect, and Contractor shall perform all of the services, duties, obligations, and conditions required under the Agreement, as supplemented and modified by this supplemental agreement.

Approval Recommended By:

Project Manager

Approved As To Form By:

City Attorney

Approved By:

Contractor

(Rev. 7-16-08)

SUPPLEMENTAL AGREEMENT

Approved By:

Attested To By:

City of Sacramento

City Clerk

SUPPLEMENTAL GREEMENT

ATTACHMENT 1-A

SOFTWARE SYSTEM IMPLEMENTATION

This Attachment 1-A ("Attachment") supplements and incorporates by this reference the Professional Services Agreement (the "Agreement") #2006-0789 between MuniServices, LLC ("CONTRACTOR") and the City of Sacramento ("CITY"). Capitalized terms not otherwise defined herein shall have the meaning given in the Agreement. In the event of a conflict between this Attachment and the Agreement, the terms of this Attachment shall prevail.

1. DEFINITIONS

For the purposes of this Agreement and all Exhibits and attachments hereto, the following terms, phrases, words, and their deviations shall have the meaning given herein and apply generally to this Agreement and other terms, phrases, words and their deviations shall have the meaning given in other portions of this Agreement. Words not defined in this Agreement shall be given their common and ordinary meaning. The word "shall" is always mandatory.

"Agreement" means the Professional Services Agreement and any exhibits, attachments and amendments thereto.

"BizLINK" is the name of the CONTRACTOR software-as-a-service product

"Business days" means Monday-Friday, excluding CITY holidays.

"CITY Project Manager" means the representative of the CITY designated to oversee the provision of the Services by CONTRACTOR on a day-to-day basis.

"CITY Data File" means all data or all information created or otherwise owned by CITY or licensed by CITY, that is used in conjunction with the Services and Software.

"CONTRACTOR Personnel" means the CONTRACTOR Project Manager, the Key Personnel, and all employees of CONTRACTOR, and all employees of subcontractors of CONTRACTOR, who are providing the Services at any time during the Project Term. An individual within such description is a "CONTRACTOR Person."

"CONTRACTOR Project Manager" means the CONTRACTOR Person designated to manage the day-to-day provision of the Services.

"Deliverable" means the items identified as "Deliverables" or a "Deliverable Material" in the SOW.

"Documentation" means, collectively: (i) all of the written, printed, electronic, or otherwise formatted materials that relate to the Software and/or Software System; (ii) all user, operator, system administration, technical, support, and other manuals and all other written, printed, electronic, or other format materials that describe the functional, operational, and/or performance capabilities of the Software and/or Software System; and (iii) all specifications,

materials, flow charts, notes, outlines, manuscripts, writings, pictorial materials, schematics, and other documents that represent, demonstrate, or explain the Services and Work Product.

"Fees" means the fees payable by the CITY to CONTRACTOR hereunder in consideration of CONTRACTOR's provision of the Services.

"Final Acceptance" means the process that is described in the SOW.

"FOB" a third-party security device provided to CITY by CONTRACTOR for validating user access

"Functional Requirements are set forth in the SOW.

"Go-Live Date" means the date on which each Phase has entered Productive Use. The Go-Live Dates are further identified in of the SOW and in the Project Plan.

"Intellectual Property Rights" for the purposes of this Agreement shall mean patents, copyrights, trademarks, service marks and trade names, whether registered or not, trade secrets, know-how and any and all other recognized industrial and intellectual property rights.

"New Services" mean those Services the CITY elects to have CONTRACTOR perform after the Project Term.

"Phase" means a contained portion of the project dedicated to implementing a particular portion of the Software and/or System.

"Productive Use" means successful use of the Software and/or System, or portions thereof, to perform the functions specified in the SOW.

"Project Term" means the period during which CONTRACTOR shall be obligated to provide the Services, as specified in this Agreement.

"Requirement Specification Document" means a certain Deliverable that is described in the SOW.

"Services" mean the Subscription Services, Data Services, and Connection Services, collectively and together one comprehensive Service provided to CITY by CONTRACTOR. Services shall also mean the installation, implementation, integration, configuration, and other services with respect to the Software and/or System that CONTRACTOR is engaged to perform pursuant to this Agreement.

"Software" shall mean the CONTRACTOR software products, including BizLink^{SM}, and any other software products which CONTRACTOR develops and maintains, whether or not available for license by CITYs of CONTRACTOR, and whether or not CONTRACTOR seeks a patent, copyright, or other registered protection, including all updates, upgrades, modifications, specifications, and in both object and source code forms. Software shall include screen shots, functionality, algorithms, and all intellectual property rights associated therewith including ideas, know-how, trademarks, trade names, service marks, and service names.

"System" shall mean computer systems including personal computers, servers, peripheral devices, LAN and WAN systems, remotely connected devices (to the extent operated

or controlled by employees of the owner of the system), and any and all other computer devises operating with or in conjunction with the system but not including any ISP providing access services, whether DSL, dial-up, or other, for a party.

"Statement of Work" ("SOW") means that certain "Statement of Work" document which describes, in more detail, the Services, Deliverables, and anticipated schedule for delivering the Services and Deliverables. The SOW is attached to this Supplemental Agreement as Attachment 1-B to Supplemental Agreement. The parties may, by mutual agreement, from time to time and subject to the terms and conditions of this Agreement, amend or supplement the SOW.

"User(s)" – means those employees or agents (who are not potential or actual competitors of CONTRACTOR) of CITY whom CITY authorizes to access and use the Services.

"VPN" means Virtual Private Network; a secure method of electronically sending and receiving data between CITY and CONTRACTOR networks.

2. **SERVICES**

In providing the Services for the compensation set forth in this Agreement, CONTRACTOR shall provide to the CITY all of the functionality it requires from the Software and/or Software System as specified in the SOW and further defined by the Requirements Specification Document for each Phase

If requested by the CITY in writing, the parties may, by mutual agreement in writing, substitute the Deliverables, Services, or tasks that are described in the SOW for new Deliverables, Services, or tasks that are reasonably and substantially equivalent to those Deliverables, Services, or tasks being substituted and any such substitution shall not result in any adjustment to the Fees, unless otherwise authorized by the CITY.

a. **Subscription Services.** CONTRACTOR shall provide to CITY access to the Software via on-line services and the internet, for CITY to use the Software as hosted by CONTRACTOR on CONTRACTOR Systems, for that Software for which CONTRACTOR has granted CITY a license. CITY shall be responsible for furnishing all equipment, facilities, connection services, and personnel required for CITY to access the Software. CONTRACTOR shall be responsible for furnishing all equipment, facilities, connection services, and personnel required for CONTRACTOR to make the Software available to CITY via on-line access. At all times, CITY and CONTRACTOR shall each be separately and solely responsible for all costs, expenses, maintenance and services required to keep and maintain their respective equipment and Systems. Access to the Software by CITY shall be via a secured connection, as set forth in Section 2.b hereof. Access to the Software by CITY shall be at any time, day or night, Sunday through Saturday and including holidays, subject however to the restrictions set forth herein, during the term of this Agreement, and only for the number of concurrent users subscribed to by CITY. The combination of the access to the Software and the accessibility for a limited number of concurrent users shall be collectively referred to as "Subscription Services".

b. **Connection Services.** CONTRACTOR shall provide to CITY the Virtual Private Network (VPN) software necessary for CITY to establish connectivity to CONTRACTOR's System and to utilize the Subscription Services via a secure connection. CITY shall be solely responsible for any dial-up, DSL, or other ISP service necessary to provide CITY access to the Internet. CITY shall be issued a FOB device for each concurrent user subscribed for and

identified by CITY. CITY shall be responsible for identifying the specific individuals who shall be provided access to the Subscription Services. Only those individuals identified by CITY shall be issued a FOB device. If at any time CITY wishes to designate a different individual to have access to the Subscription Services, CITY must first return the FOB device for the individual who will no longer have access, and CITY will subsequently be issued a new FOB device for the newly identified individual. CONTRACTOR is not responsible for City's security policies and procedures, including but not limited to its use or control over the FOB devices. Any person having access to one of the issued FOB devices can access CITY's data, and CITY shall be solely responsible for the security of the FOB devices. Any time that a FOB device is lost, stolen, or otherwise unaccounted for, CITY shall notify CONTRACTOR immediately, including the name of the individual for whom the FOB device was issued, and CONTRACTOR shall immediately cancel access to the Subscription Services for that FOB device. CITY shall owe to CONTRACTOR three-hundred dollars ($300) for any lost or damaged FOB device issued in accordance with this Agreement. CONTRACTOR shall provide the VPN software at no additional charge to City, and as part of the Services, for up to 5 users. Additional users may be added at a charge the parties mutually agree to. CITY agrees not to use or install the VPN software except as directed by CONTRACTOR. CITY agrees to comply with the terms and conditions of the applicable license for the VPN software provided to CITY by CONTRACTOR. City may authorize additional Users by providing CONTRACTOR with written authorization that specifies the number of additional Users and authorizes CONTRACTOR to charge City the set-up fee and additional Annual Fees. The written authorization must be from a person with the authority to bind the City. The written authorization may be provided by email. Upon request, City will also provide CONTRACTOR with any additional information CONTRACTOR needs to add the additional User(s).

c. **Data Services.** CONTRACTOR shall provide CITY access to the software system functions necessary for entering, accessing, processing, and extracting CITY data. CONTRACTOR shall be responsible for providing and maintaining storage equipment and provide capacity necessary to meet the CITY data processing and storage needs. CITY is hereby granted a perpetual, non-exclusive license in and to the reports, graphs, charts, and other documentation (collectively "Reports") provided to CITY from the Software using CITY data or generated by the Software using CITY data. "Reports" does not include user manuals. CITY shall have no restrictions on CITY's use or dissemination of the Reports but CITY assumes all liability for its use of the Reports.

d. **Scheduled Maintenance.** CONTRACTOR's System and the Software may occasionally require maintenance for such purposes as installing patches, fixes, or upgrades, loading CITY data, or repairs, modifications, updates, and upgrades to the System. CONTRACTOR reserves the right to schedule a maintenance window to maintain and improve Services ("CONTRACTOR Scheduled Maintenance"). CONTRACTOR shall use commercially reasonable efforts to perform CONTRACTOR Scheduled Maintenance on days and at times necessary to minimize any interruption of CITY's Services. CONTRACTOR will take reasonable steps to schedule maintenance activity at least 10 business days in advance with notice to CITY. CONTRACTOR shall not be liable for any damages or costs incurred by CITY due to CONTRACTOR Scheduled Maintenance. As required in response to an emergency, including but not limited to System damage, viruses, worms, electrical problems, or third party malicious activity (collectively "Emergencies"), CITY's access to the Software may be interrupted. Interruptions in response to Emergencies shall not be a breach of this Agreement. The BizLINK system is unavailable from 1:30 am to 3:00 am, PST on Sundays for regularly scheduled maintenance activities.

e. **Deliverables.** Notwithstanding the limitations set forth herein, CITY shall be granted all right, title, and interest in and to the reports, graphs, charts, and other documentation (collectively "Deliverables") provided to CITY or generated by the Software using CITY data. CITY shall have no restrictions on CITY's use or dissemination of the Deliverables. At no time and for no reason shall the Software, in object code or source code form, or any part thereof, or the processes, procedures, methods, ideas, or know-how of CONTRACTOR be considered as part of the Deliverables. Notwithstanding any other provision of the Agreement, "Deliverables" does not include CONTRACTOR's software documentation or code in any format. All right, title and interest in and to the Services and the Contractor's software and any and all modifications, derivative works or innovations of the Services or the Software, including all Intellectual Property Rights embodied therein, shall be retained in full and owned by CONTRACTOR.

3. **WARRANTIES**

a. CONTRACTOR represents and warrants that the Software and Services as delivered to the CITY does not infringe any copyright, patent, trade secret, or other proprietary right held by any third party, and that CONTRACTOR has title to the Software and/or the authority to grant a license to the Software.

b. CONTRACTOR represents and warrants that the Services shall be provided by persons with knowledge and skills and shall be performed in a professional manner and shall be in accordance with generally accepted industry standards for the software implementation services and consulting industry.

c. **System Performance Warranty**. CONTRACTOR represents and warrants that the Services and all other deliverables furnished hereunder by CONTRACTOR will meet the functionality requirements set forth in the SOW. CONTRACTOR further represents and warrants that all CONTRACTOR-provided software configurations, modifications, customizations, data conversions, calculations and interfaces will function properly, separately and as a fully integrated system, and when operated together will not cause any material delays, defects, or problems with the System. Nothing in this section 3 is a warranty by CONTRACTOR of the accuracy of CITY's data and to the extent an error in CITY's data causes a system performance problem, that problem is not a breach of this warranty.

d. **Confidentiality of CITY's data.** CONTRACTOR represents and warrants that it will maintain the confidentiality of information in the City's data file to the extent the information is made confidential by City ordinance or applicable state or federal law. CONTRACTOR"s representation and warranty applies only to the data file while it is in CONTRACTOR's possession. Once the CITY's data file has been transferred and received by CONTRACTOR, CONTRACTOR shall be deemed a custodian of the data file and shall be responsible for the protection and safeguarding of the CITY's data file and the information contained therein. CONTRACTOR shall implement and maintain reasonable security procedures and practices to protect the data file from unauthorized access, destruction, use, modification, or disclosure. In the event of a security breach that compromises the security of CITY's data or compromise of CONTRACTOR's system that compromises the security of CITY's data, CONTRACTOR shall promptly notify the CITY in writing of the incident and the actions CONTRACTOR has undertaken or will undertake to resolve the security breach issue. CONTRACTOR shall be liable for any damages resulting from a security breach of the CITY's data files that is caused by CONTRACTOR's failure to take reasonable precautions to protect the City's data. CONTRACTOR agrees to defend, indemnify and hold CITY harmless from any and against all costs, liabilities, losses and expenses resulting from any claim, suit, action or proceeding

brought by any third party against CITY arising out of or relating to a security breach of the CITY's data files while in CONTRACTOR's possession so long as the security breach did not arise from CITY's (including its employees' and agents') failure to take reasonable precautions and the security breach was caused by CONTRACTOR's failure to take reasonable precautions.

e. **Availability Guarantee.** Effective as of the Go-Live date, Subscription Services shall be available to CITY twenty-four hours per day, seven days per week, three hundred and sixty-five days per year (24x7x365), excluding CONTRACTOR Scheduled Maintenance. CITY's FOB shall be active and able to provide access codes for the Subscription Services 24x7x365. At any time that CITY is unable to access the Subscription Services, excluding CONTRACTOR Scheduled Maintenance, ("Availability Failure") CITY shall be credited the applicable Fee for the affected Service for one day worth of Service for any Availability Failure during that day ("Credit"). Determination of an Availability Failure shall begin immediately upon CITY's report of such Availability Failure to CONTRACTOR Subscription Services Support. Upon receipt of a report of an Availability Failure, CONTRACTOR shall determine the cause therefore and report the same to CITY. In the event that CONTRACTOR is unable to determine the cause of the Availability Failure within thirty (30) days of the report therefore, CONTRACTOR shall credit CITY's account as if CONTRACTOR were responsible for the Availability Failure. CONTRACTOR shall be relieved of its availability obligations under this Section for failures due to telephony outages, CITY network outages, power outages, acts of God, malicious acts of third parties, and other failures in connectivity or access beyond CONTRACTOR's control.

f. **Data Loading Guarantee.** CONTRACTOR shall process, initial load, and make available via the Subscription Services the CITY Data provided to CONTRACTOR. All CITY Data shall be loaded accurately and in a timely manner. In the event that CONTRACTOR is unable to make CITY Data available to CITY in accordance with the time periods specified in the Agreement or applicable Addendum ("Loading Failure"), CITY shall receive credit for Subscription Services on a one-to-one slip for each day the CITY Data is unavailable (in addition to not being charged for those days during which the CITY Data is unavailable). In the event that CITY determines that CITY Data available through the Subscription Services is invalid, incorrect, or incorrectly processed ("Data Failure"), CITY shall receive one day's Credit for each day until the CITY Data is corrected. Upon receipt of a report from CITY of a Data Failure, CONTRACTOR shall determine the cause therefore and report the same to CITY. In the event that CONTRACTOR is unable to determine the cause of the Data Failure within thirty (30) days of the report therefore, CONTRACTOR shall credit CITY's account as if CONTRACTOR were responsible for the Data Failure. In the event that CONTRACTOR determines that the Data Failure was a result of incorrect or corrupted data provided by CITY to CONTRACTOR, no credit shall be issued for the Data Failure, however, CONTRACTOR shall correct the Data Failure free of charge to CITY. CONTRACTOR is not responsible for the accuracy of data provided by CITY to CONTRACTOR to be loaded into the BizLINK system. Data will be loaded as provided by CITY prior to implementation. Thereafter, CITY's Users will have the ability to load data. CONTRACTOR is not responsible for the data entered into the BizLINK system by CITY or CITY Users. It is CITY's responsibility to institute proper policies and procedures to govern the input of new data to the BizLINK system.

g. **Disclaimer.** CONTRACTOR expressly disclaims any liability or responsibility whatsoever for the actions of CITY not authorized by CONTRACTOR and malicious actions of third parties not preventable by reasonable precautions, and CITY's users access the internet at their own risk, except to the extent that CONTRACTOR is obligated to defend and indemnify the CITY as provided in this Agreement. To the maximum extent permitted by law and except as

specifically set forth herein, the services provided by CONTRACTOR are provided without warranties of any kind, either express or implied, including but not limited to warranties of merchantability or fitness for a particular purpose.

4. **WARRANTY REMEDY**

With respect to a violation of the warranties described in section 3, the CITY's remedy shall be as follows:

a. CITY shall provide CONTRACTOR with written notification of the error and a detailed explanation of why the error constitutes a warranty violation as measured against the Requirements Specification Document and/or the Design Documents. An "error" or "warranty violation" does not include network issues on the CITY's systems that cause disruptions, errors, or slow-downs. CONTRACTOR shall provide CITY with a problem identification and resolution plan for the warranty violation within five (5) calendar days of receiving notification. CONTRACTOR shall work with the CITY to promptly resolve the warranty issue within the agreed resolution plan timeframe. CONTRACTOR shall use commercially reasonable efforts to satisfactorily resolve the warranty issue within thirty (30) calendar days, or as otherwise agreed to by the parties after being notified of a warranty violation.

b. If said warranty violation is preventing the CITY from using the Software and/or Software System for Productive Use (a "Critical Violation"), CONTRACTOR shall respond to the notification within twenty-four (24) hours with a proposed resolution plan. CONTRACTOR will dedicate sufficient resources to satisfactorily resolve the Critical Violation as soon as practicable according to the resolution plan. CONTRACTOR will use commercially reasonable efforts to satisfactory resolve the resolution within (7) calendar days after being notified of a Critical Violation.

c. For purposes of this Section, "Resolution of an error" shall include but not be limited to the following:

i. Provide a workaround for the error that allows the Software System to support the CITY's business operations.
ii. Provide a system fix or update.
iii. Provide a correction to the Software System setup.

d. If after thirty (30) calendar days from notification CONTRACTOR is unable to correct the warranty violation, then CONTRACTOR shall refund amounts prepaid for day 31 and following until such time as problem is resolved or all pre-paid days are refunded. The remedies specified in this section are not exclusive of any others CITY may have.

e. Credits for multiple failures in any one day shall not exceed the prorated charges for that day and CITY may not aggregate separate failure incidents in a single day to obtain more than one day's Credits (i.e. An Availability Failure and a Data Failure both occurring in the same day shall result in only one Credit for that day.).

5. NO TERMINATION OR SUSPENSION OF SERVICES

In connection with any expiration or termination of this Agreement CONTRACTOR shall provide for the prompt and orderly conclusion of all work, following a process the CITY and CONTRACTOR agree upon.

In the event of a dispute between the parties, CONTRACTOR shall not interrupt or suspend or terminate the provision of Services to the CITY or perform any action that prevents, impedes, or reduces in any way the provision of Services or the CITY's ability to conduct its activities, unless: (i) authority to do so is granted by the CITY or conferred by a court of competent jurisdiction; or (ii) this Agreement has been terminated ; or (iii) the CITY has failed to pay CONTRACTOR undisputed invoices that are past due in excess of sixty (60) days after receiving notice from CONTRACTOR of such delinquency; or (iv) CITY materially breaches this Agreement or any license granted in this Agreement In the event that CITY fails to make such full payment within said 60-day period, CONTRACTOR shall grant to CITY an additional thirty (30) days to render full payment provided that CITY requests such additional thirty (30) days.

Return of Data – If, at any time, CITY terminates the Services or this Agreement otherwise expires, then upon CITY request and within a reasonable time CONTRACTOR shall provide CITY with CITY's data in an ASCII comma delimited file format. Data will be provided in electronic format only. CONTRACTOR shall not maintain CITY data more than sixty (60) days after the termination of the Services or expiration of the Agreement

6. FORCE MAJEURE

Neither party shall be liable for, and each party shall be excused from, any failure to deliver or perform or for delay in delivery or performance due to causes beyond its reasonable control, including, but not limited to, governmental actions beyond CITY control, fire, work stoppages, shortages, civil disturbances, transportation problems, interruptions of power or communications, failure of suppliers or subcontractors, natural disasters or other acts of God.

7. PAYMENT BY DELIVERABLE

In accordance with the Deliverable schedule specified in the SOW, drafts shall be provided, when applicable, of each deliverable prior to formal submittal. The CITY shall review and provide written approval or comments, as appropriate. In general, comments, issues, or sign-off shall be provided within ten (10) business days after receipt of draft. If necessary and so instructed to do so, each deliverable will be revised as appropriate and another draft of the final version submitted within five (5) business days. The CITY shall respond to resubmitted deliverables within five (5) business days.

In the event that the CITY fails to respond to a deliverable as required above, notice shall be given to the CITY Project Manager or designee. In the event that no response is received within five (5) business days thereof, the deliverable shall be deemed to be approved.

A "sign-off" form for the CITY to indicate its approval, disapproval, or other comment shall accompany each deliverable submission. If the CITY and CONTRACTOR are unable to come to agreement on the acceptance of a Deliverable, the Dispute Resolution Process set forth below will be initiated.

8. SYSTEM FINAL ACCEPTANCE

Once the System has been moved to the production environment, the CITY shall begin using the System for Productive Use. CITY shall have thirty-days (30) days to begin using the Service to ensure that CITY is able to access the Service. Any problems in accessing the Service should be noted to CONTRACTOR. At the end of the thirty-days (30) days, unless CITY has notified CONTRACTOR to the contrary, it will be deemed that CITY is able to access the Service and that implementation was successful. On an ongoing basis thereafter, problems relating to the stated requirements and functionality of the Service which are identified, and for which CONTRACTOR is notified, will be corrected at no cost to the CITY.

Final Acceptance may be granted notwithstanding the existence of open issues if: (a) the CITY Project Manager determines that none of the open issues significantly impairs the CITY's ability to use the System in a production environment; and (b) a mutually agreeable issues work plan is identified to resolve the open issues.

The course of action in the Final Acceptance Issues Work Plan may include but is not limited to, completing the fix during post production support, utilizing a combination of resources from the CITY and CONTRACTOR to complete the fix, and/or deferring the issue or functionality to a later date. If the CITY and CONTRACTOR are unable to reach an agreement on the issues work plan the Dispute Resolution Process will be utilized.

The CITY shall notify CONTRACTOR in writing of its Final Acceptance of the System. Except as provided in this section, in no event shall any other action or inaction by the CITY, including the CITY's use of the System in a production environment, constitute Final Acceptance of any portion of the System.

9. DISPUTE RESOLUTION PROCESS

Any dispute, disagreement, claim or controversy between the parties arising out of or relating to this Agreement (the "Disputed Matter") shall be resolved by first having the Project Manager for CONTRACTOR and the Project Manager for the CITY meet for the purpose of endeavoring to resolve such dispute. If a resolution to such dispute does not occur during such meeting or within three (3) business days thereafter, the parties agree to elevate the dispute to a meeting of the Steering Committee. If a resolution to such dispute does not occur during such meeting or within three (3) business days thereafter, the parties agree to elevate the dispute to the Managing Director level of CONTRACTOR and the Assistant CITY Manager of the CITY. Failing such mutual agreement to resolve the dispute, the parties may pursue any other legal recourse available to it. No formal proceedings for the judicial resolution of such dispute, except for the seeking of equitable or injunctive relief, may begin until the dispute resolution procedure, as described above is completed.

10. LICENSING

a. License Rights. In providing the Services to CITY, CITY shall be granted a non-exclusive, non-transferable, non-sublicensable right to access the Software. This right of access is perpetual until the earliest of: a) the license or this Agreement being terminated by the CONTRACTOR in writing because of CITY's material breach of this Agreement or any license in this Agreement; or b) this Agreement terminating or expiring. This license grant to CITY shall be for the exclusive use with the Services and shall not be for any other purpose. CITY has the right to access and use BizLINK for all paid users designated by CITY.

b. At any time that CITY discontinues the Services with CONTRACTOR, this license shall automatically terminate and CITY shall cease any and all use of the Services and cease all access to the Software.

11. LIMITATIONS ON LICENSE

a. Except as provided in section 18 (Escrow Clause), at no time shall CITY have the right to have installed on CITY's Systems any of the software, in either object code or source code form, nor shall CITY permit any of CITY's employees, agents, officers, directors, contractors, or any other party directly or indirectly under the direction and control of CITY, or at any time having access to CITY's Systems, to access, use, view, download, copy, recreate, or otherwise obtain copies of the Software, except those employees of CITY for which CITY has purchase an appropriate license therefore.

b. CITY shall not (a) reverse engineer, disassemble, decompile or otherwise attempt to derive source code from CONTRACTOR's proprietary technology, (b) make the Services or Software available to any third parties other than as expressly permitted in this Agreement, (c) modify, adapt, translate or create derivative works based on the Services or Software, (d) reproduce or copy any portion of the Services or Software, or (e) permit or authorize any party to do any of the foregoing. CONTRACTOR acknowledges that it has no copyright to CITY's data. CITY retains all rights, title and interest in CITY's data and derivative works thereof.

c. No rights, title, or interest in and to the Services or Software are granted to CITY other than the rights set forth in paragraph 10a.

d. CITY is not entitled to receive Source Code for the Software at any time or for any reason except as provided in Section 18 Escrow.

e. If the CITY fails to take reasonable measures to prevent a violation of sections 10 and 11, the CITY shall be a material breach of this Agreement and shall give rise in CONTRACTOR to a right to immediate termination of this Agreement and a return of all CONTRACTOR proprietary information of whatever form, in addition to any other remedies available at law or equity.

12. CONFIDENTIAL INFORMATION

Confidential Information shall mean any and all information disclosed by one party (the "Disclosing Party") to the other party (the "Receiving Party") which is identified as Confidential or Proprietary. For oral disclosures, the Disclosing Party shall identify such disclosures as confidential and shall summarize such disclosure in writing within thirty (30) days of disclosure to the Receiving Party. For written disclosures in paper, electronic, or other media, such shall be marked "Confidential" or "Proprietary". In all cases, Confidential Information shall include all patents, copyrights, trademarks, trade secrets, software, models, inventions, know-how, processes, business models, client lists, financial information, constituent lists, employee lists, or prospective business models of the Disclosing Party.

The Receiving Party shall not use, disseminate, or otherwise disclose the Confidential Information of the Disclosing Party to any person, firm, business, or entity, except to the extent necessary for internal use in accordance with this Agreement. In all cases, the Receiving Party shall treat such Confidential Information with at least the same degree of care as the Receiving Party treats its own Confidential Information, but in no case with less than a reasonable degree of care, and shall disclose such information only to persons with a need to know. The Receiving Party shall give notice to the Disclosing Party immediately upon discovering an actual or suspected unauthorized disclosure of Confidential Information.

The responsibility of confidentiality shall not apply to Confidential Information which: a) is in the public domain through no violation of a duty of confidentiality; b) was rightfully in the Receiving Party's possession free and clear of any obligation of confidentiality; c) was developed by the Receiving Party independent of and without reference to the Confidential Information of the Disclosing Party; d) was received by the Receiving Party from a third party who was under no obligation of confidentiality; e) is required to be disclosed pursuant to the order of a court or other governmental body, provided however that the Receiving Party shall promptly inform the Disclosing Party of the required disclosure so as to afford the Disclosing Party the opportunity to prevent or restrict such disclosure.

Nothing in this Agreement shall be construed as a grant from the Disclosing Party to the Receiving Party of any right, title, license, or other interest in the Confidential Information other than the rights specifically provided for herein.

Within five (5) business days of the request of the Disclosing Party, the Receiving Party shall return and/or destroy any and all copies of the Confidential Information then in the Receiving Party's possession. Upon request, the Receiving Party shall certify to the Disclosing Party compliance with this Section. The parties acknowledge that in the event of a violation of this Agreement that the Disclosing Party would not have an adequate remedy at law and the parties hereto expressly agree that in the event of an actual or anticipated disclosure of Confidential Information that the Disclosing Party shall be entitled to seek injunctive relief in addition to any remedies available at law.

13. LIMITATION ON REMEDIES

Except as otherwise expressly described in this Agreement, CONTRACTOR provides Services as is and CONTRACTOR disclaims any and all other warranties, conditions, or representations, express or implied, with respect to the Services provided and all or any portion of the Software System provided hereunder, including any and all implied warranties for any purpose. In no event shall either party be liable for any indirect, incidental, special or consequential damages, including, but not limited to, loss of revenue, use or profits incurred by either party or any third party, however, arising, whether in contract or tort, even if it has been advised of the possibility of such damages. CONTRACTOR's liability under this Agreement shall in no event exceed the amounts paid by the CITY under this Agreement except this limitation shall not apply to claims arising out or related to breach of the warranties provided in sections 3b. (Confidentiality) and to claims arising out of related to any indemnification obligations under this Agreement.

14. INDEMNITY

a. By CITY. CITY shall defend, indemnify, and hold harmless CONTRACTOR, its directors, officers, employees and affiliates from any losses arising from or related to a claim of intellectual property right infringement based on a use by CITY of the Services in a manner or with other products or services not authorized or specified by CONTRACTOR.

b. By CONTRACTOR. CONTRACTOR shall defend, indemnify, and hold harmless CITY, its directors, officers, employees and affiliates from any proceedings, lawsuits or actions arising from or related to a claim that the Services provided by CONTRACTOR infringes upon a proprietary right of a third party, If, (a) CITY notifies CONTRACTOR of the existence or possible existence of the claim promptly upon learning of it; and (b) CONTRACTOR has full control over the disposition of any claims hereunder; and (c) CITY provides reasonable assistance to CONTRACTOR as required by the claim. CITY shall be afforded reasonable compensation for such assistance.

15. CITY RESPONSIBILITIES

a. CITY shall be solely responsible for the installation, operation, maintenance, use and compatibility of equipment or software not provided by CONTRACTOR and CONTRACTOR shall have no responsibility or liability in connection therewith or for the security of CITY's own facilities, network and systems.

b. Except as may otherwise be specifically stated herein, in the event that equipment or software not provided by CONTRACTOR impairs CITY's use of any Service: (a) CITY shall remain liable for payment for all Services ordered by CITY; and (b) any service specifications or service levels (and corresponding service credits) generally applicable to the Service shall not apply.

c. Encryption Software. CITY understands and acknowledges that the Services work in conjunction with CITY's ISP and VPN and may contain certain encryption software (the "Encryption Software") which is a U.S. product with cryptographic functionalities which are subject to U.S. export controls under the Export Administration Regulations. CITY shall comply with all relevant export and encryption laws and regulations of the United States and shall not export or re-export the Encryption Software in violation of such regulations.

16. ASSIGNMENT

Neither party shall assign any right and obligation pursuant to this Agreement without the written consent of the other party, which shall not be unreasonably withheld. Any attempted or purported assignment without the written consent of the other party shall be void and of no effect.

17. WAIVER

Either Party's failure to insist upon strict performance of any provision of this Agreement shall not be construed as a waiver of that or any other of its rights hereunder at any later date or time.

18. ESCROW

a. Deposit. Within ___ days of the Go-live date, CONTRACTOR shall deliver to an escrow agent, agreeable to both parties, one copy of the Software source code(s) and all

Documentation necessary to enable a person of reasonable skill with software to compile and build machine-readable code for the Software, to maintain the Software, and to fully operate the Software. Promptly after each release of any update, upgrade, patch, bug-fix, enhancement, new version, or other revision to the Software, CONTRACTOR shall deliver deposit the updated source code and documentation with the escrow agent. CITY is responsible for paying all third-party costs of the Escrow including, but not limited to, the deposit and storage costs of the materials. CONTRACTOR will bill CITY for these costs with its invoices under this Supplemental Agreement.

(d) Release Conditions. CITY shall have physical access to the materials deposited with the escrow agent if and only if:
CONTRACTOR ceases to function as a going concern, or becomes insolvent, liquidated or dissolved; and CONTRACTOR (or a successor in interest) cannot provide the Service; and at that time this Agreement is in full force and effect and CITY is not in default of this Agreement CITY may only use, reproduce, and create derivative works from the materials deposited to continue operation and maintenance of the Software for internal business purposes.

SUPPLEMENTAL AGREEMENT

ATTACHMENT 1-B

BizLINK IMPLEMENTATION STATEMENT OF WORK

Background

Biz*LINK*™ is a web-based Business License Management System designed to track CITY's Business Licenses and provide detailed reports for use by various CITY Departments in forecasting future revenue and reviewing business trends. Additionally, Biz*LINK*™ includes features necessary for the production of a Business License, thereby allowing CITY to control the entire Business License process from within one centralized system.

1. Description of Services and Deliverables

Biz*LINK*™ is an Internet based application that allows Users to access the following functions:

- Initial Business License information gathering and issuing
- Automatic SDIC to NAICS Transactions
- Built in Transaction History Log, with unlimited notes capability
- Unlimited Owner and Contract Listings
- Renewal Notification – Mail-Merge Compatible Export
- Renewal processing

The application's pre-defined reports include but are not limited to the following:

- Business Inventory Report
- SIC / NAIC
- Financials (Daily, Weekly, Monthly, Quarterly and Annually)

In addition to standard reports, Biz*LINK*™ provides a detailed Ad-Hoc query capability enhanced by CONTRACTOR's report building tools to allow for:

- Integrated Custom Report Designer allowing complete control of Ad-Hoc Report Generation
- Automatic Report Generation
- Easy to use selection criteria for field selection
- Full control of tabular field selection, sorting and display
- Ability to send selected data to Tabular Data export for Excel, Delimited (Tab/Comma), or XML file formats

2. Implementation

If this Agreement is fully signed by December 9, 2008, CONTRACTOR will deliver a Biz*LINK*™ system capable of productive use to CITY Business Operations Tax specification within 60 to 90 working days following receipt of all required data, but no later than March 1, 2009. This deadline is conditioned upon no significant changes being made to the specifications by the CITY, and no significant or material substitutions that require adjustments in deadline, and full and prompt cooperation by the City. Any adjustments to the deadline shall be by mutual written agreement of the parties.

CONTRACTOR will deliver Biz*LINK*™ system enhancements capable of productive use to CITY Commercial and Residential Rental Tax at a date to be determined by agreement of the parties.

Implementation of the Biz*LINK*™ system has three phases:

Phase One: Requirements Gathering:

In the initial phase CONTRACTOR will need specific information from CITY in order to define the requirements necessary for CITY to issue and track businesses licenses within their jurisdiction. CONTRACTOR will conduct an information gathering session with appropriate CITY personnel to ascertain CITY's system requirements.

Phase Two: Project Plan Approval:

Once the information gathering has been completed, CONTRACTOR will deliver to CITY the final Service specifications. Any requests for changes to the Service must be made at this time, prior to implementation. Both CITY and CONTRACTOR, at which time those requirements become part of the Agreement, must sign the final project plan document. Any subsequent changes must be made in writing. If the change results in additional costs, CITY must approve prior to implementation.

Phase Three: Implementation and Testing:

The final project plan will be implemented and the Service installed according to the agreed upon requirements. Set-Up shall include the following:

- Conversion of existing CITY data to the Biz*LINK*™ system (applies to CITY data available to CONTRACTOR in electronic format only. CITY shall be responsible for any direct data entry not available in electronic format)
- Installation and configuration of the VPN software (this install is done remotely by CONTRACTOR working with CITY IT staff to install and configure the VPN).
- On-site user training
- SecureID's and UserID's for Users

3. City of Sacramento Responsibilities

The following tasks will be performed by CITY at no charge to CONTRACTOR:

- All existing forms and electronic materials used in the issuance of a Business License by CITY.
- A written description of the administrative process used in the issuance of a new Business License by CITY or renewal of an existing license.
- A detailed list of the Job Classification Standards in use by CITY, whether SIC or NAICS, or other CITY specific classifications.
- A detailed written description of how the Business License Fee is calculated, business improvement districts and any other additional calculations taking into account businesses with multiple locations.
- A detailed written description of CITY's interest and/or penalty rates and how they are calculated.

- A detailed written description of the procedure used when terminating, revoking and suspending a Business License.
- CITY's current procedures for archiving and retrieving Business License forms.
- Unique printing/processing requirements for Business License Certificates.
- Identify the type of reports that would be most useful in the Business License Process. (Note: Biz*LINK* has the capability to provide seven standard reports.)
- Provide a summary of any information gathered in the business license process that is not stored electronically, such as questionnaires or voluntary information,
- A list of the current status codes and descriptions associated with the system for applications, renewals, holds, inactive, etc.
- Identify any CITY specific coding structures that have been developed for Business Class, Process Status Codes, Hazardous Materials Codes, etc.
- The CITY shall also promptly provide any additional information CONTRACTOR deems necessary to the SERVICES and shall make the appropriate, knowledgeable personnel available upon reasonable request to provide additional information and answer follow-up questions.

4. System Requirements

CITY shall ensure that its systems meet the following minimum requirements. CONTRACTOR has no obligation to provide Services to CITY if the CITY's systems do not meet the minimum system requirements.

- IBM/PC compatible, 333mhz or higher
- Ram: 256 MB or higher recommended
- 20G hard drive with at least 20MB of free space
- Microsoft Windows 2000 (service pack 3 and above) or XP Operating System (service pack 2)
- Microsoft TCP/IP installed (Confirm via Start > Settings > Control Panel > Network > Protocols or Configuration.)
- Web Browser: Microsoft Internet Explore 6.0 or higher (Note: The speed of response time for the proposed applications is not under the control of CONTRACTOR and is limited by the Internet availability and connectivity source used by the CITY).
- Microsoft .Net Framework 1.1
- Display: 1024 X 768 resolution for optimum view; 800 x 600 resolution supported
- 17" Monitor or larger (A larger monitor is suggested for better view of displays)

5. Project Management

Prior to start of this Statement of Work, CITY will designate a person, called the City of Sacramento Project Manager (CITY PM), to whom all CONTRACTOR communications may be addressed. This person will ensure that the appropriate CITY resources and personnel are available to provide the necessary information for this project. The responsibilities of the CITY PM include:

- Serve as the interface between the CONTRACTOR project team and the CITY workgroups participating on this project
- Administer project change control

- Help resolve project issues and escalate issues within the CITY organization, as necessary
- Facilitate the approval of all deliverables in a timely manner

The CITY PM will coordinate the reservation of a conference room suitable for the meeting and number of participants and also provide meeting notices to CITY staff.

6. Service Costs

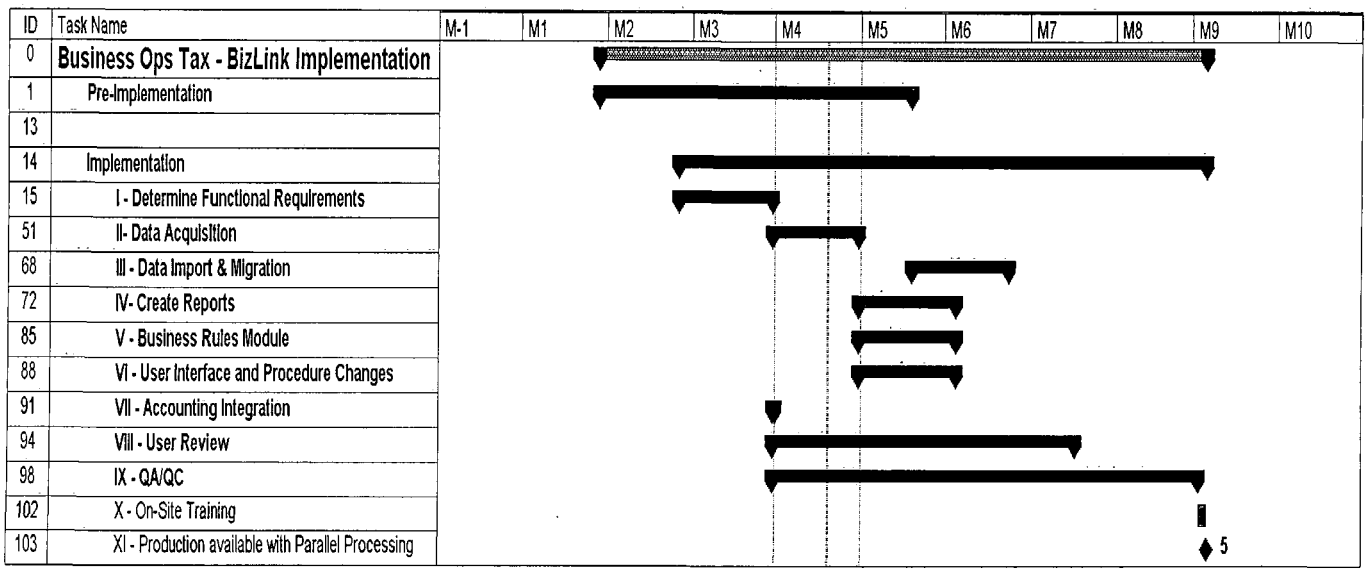
This project is a Fixed Fee project. Payment shall be made within thirty (30) days from the receipt of the invoice therefore. Below is a summary of the Deliverables, Deadlines, Payment Amounts, and Acceptance Criteria associated with this project:

ID #	Title	Deadline	Total Cost	Acceptance Criteria
D1	Core system set up and implementation	3/1/09	$0	Provide the set up of Core BizLINK system and up to $20,000 of implementation and customization. This deliverable will be considered complete when the system is configured to City specification; contains current City-related data; and is substantially capable of performing its intended function
D2	Additional Core system set up and implementation	3/1/09	$6,000	Create conversion routine sets to accommodate Business Tax (First Deadline) and Rental Tax (Second Deadline) data sources. Each of these two deliverables will be considered complete when City data has been converted, transferred, tested, and successfully proven to be substantially error free.
D3	Cashier File Import to BizLink (contingent upon agreement of the parties)	3/1/09	$1,500	BizLink will provide for Users to import and process the file, and BizLink will post payments to the accounts. This deliverable will be considered complete when City data have been converted, transferred, tested, and successfully proven substantially error free
D4	Third-Party Data Import (TDS)	3/1/09	$2,250	Develop a routine to import and process the data into BizLINK. This deliverable will be considered complete when City data have been converted, transferred,

ID #	Title	Deadline	Total Cost	Acceptance Criteria
				tested, and successfully proven substantially error free
D5	Rental Housing Tax File Import	TBD by agreement of parties	$2,250	Develop an import and processing routine to import file to BizLink, add new records automatically, update existing records, and be able to send notices out appropriately. This deliverable will be considered complete when City data have been converted, transferred, tested, and successfully proven to be substantially error free
D6	Large Print File Delivery Solution	TBD by agreement of parties	$1,500	Development of a solution to send large print file to designated City Printer for mass mailing. This deliverable will be considered complete when solution has been developed, tested, and successfully proven to be substantially error free
D7	5 User Accounts	3/1/09	$0	Provide 5 user accounts and SecureID access fobs for first year at no charge. This deliverable will be considered complete upon receipt of SecureID fobs and upon successful login of each user
D8	Up to additional 20 User fobs and annual fees	3/1/09	$12,000	Provide additional 20 user accounts and SecureID access fobs at a one-time price of $400 each This deliverable will be considered complete upon receipt of SecureID fobs and upon successful login of each user
D9	User Training	3/1/09	$0	Waive the cost of eight (8) hours of training for one (1) group of 5 users. This deliverable will be considered complete when all users have completed training
D10	Additional User Training	3/1/09	$6,000	Provide 3 days of user training for 20 Data Entry users. Provide one day of training for 4 System Admins.

ID #	Title	Deadline	Total Cost	Acceptance Criteria
				Provide one day of training for 4 Operational Managers. This deliverable will be considered complete when all users have completed training.
D11	Waive first year annual fees		$0	Includes 24 hour access to BizLINK system, user support, except for scheduled outages by Contractor.and periodic maintenance releases of BizLINK. City shall not be charged for first year service fee of $30,000 and City shall not be charged for first year of five (5) user service fees of $1,000.
D12	Travel & Expenses		$2,500	Payment to be made on completion of project
				Total Cost: $40,000

7. Project Schedule



This is a high level project plan for the BizLINK Implementation project for the CITY based on CONTRACTOR's understanding of the project and the information that CONTRACTOR has received to date from CITY.

CONTRACTOR shall commence work on the BizLINK Implementation project within ten (10) business days after the receipt of written Notice to Proceed from CITY to CONTRACTOR.

SUPPLEMENTAL AGREEMENT

ATTACHMENT 2

FEE SCHEDULE

City Agreement No. 2006-0789 valid through 7/31/2011
Supplemental Agreement: 1

	Unit Cost	Year 1	Year 2	Year 3[1]	Total
Set-up & Maintenance					
Standard Set-up		$ 20,000			
Custom work		$ 19,500	$ 5,000	$ 5,000	
Annual Fee		$ 30,000	$ 30,000	$ 30,000	
Less LTC Discount (1)		$ (50,000)	0	0	
Sub Total		$ 19,500	$ 35,000	$ 35,000	$ 89,500
User Accounts					
User count		25	25	25	
Set up	$ 400	$ 10,000	$ -	$ -	
Annual Fee	$ 200	$ 5,000	$ 5,000	$ 5,000	
Less LTC Discount (2)		$ (3,000)			
Sub Total		$ 12,000	$ 5,000	$ 5,000	$ 22,000
Training (3)					
Days		6			
Per Day	$ 1,200	$ 7,200	$0	$0	
Less LTC Discount (4)		$ (1,200)			
Sub Total		$ 6,000	$0	$0	$ 6,000
Travel & Expenses		$ 2,500	$0	$0	
Grand Total		$ 40,000	$ 40,000	$ 40,000	$ 120,000

Note:

(1) Set-up and first full year fees waived
(2) 5 users free for first year
(3) Includes travels and expenses
(4) 8 hours training for 5 users free

[1] If the parties extend this agreement beyond three years, the annual fees will be subject to an annual CPI adjustment as follows. The Annual Fee shall be adjusted at the beginning of the fourth year and each following calendar year by the percentage change in the Consumer Price Index- West Urban (CPI-WU) as reported by the Bureau of Labor Statistics, with the first adjustment to occur at the beginning of the fourth year under this Agreement. The adjustments will be based on the CPI-WU from the last month of the prior calendar year. Each Annual Fee adjustment shall not be less than two percent (2%) or greater than ten percent (1 0%).