

Meeting Date: 6/9/2015

Report Type: Consent

Report ID: 2015-00517

Title: Agreement: Business Process Management Software

Location: Citywide

Recommendation: Pass a Motion 1) awarding a Software Licensing, Technical Support and Maintenance Agreement to SourceCode North America to purchase Business Process Management (BPM) software for an amount not-to-exceed \$200,000; 2) authorizing the City Manager or his designee to execute the Agreement.

Contact: Cassy Vaioleti Matu, Program Analyst, (916) 808-8047; Mrudul Sadanandan, IT Manager, (916) 808-7894, Information Technology Department

Presenter: None

Department: Information Technology

Division: IT Business Management

Dept ID:

Attachments:

1-Description/Analysis

2-Background

3-Contract

City Attorney Review

Approved as to Form
Audreyell A. Anderson
6/3/2015 4:47:41 PM

Approvals/Acknowledgements

Department Director or Designee: Maria MacGunigal - 6/3/2015 11:13:12 AM

Description/Analysis

Issue Detail:

Many City processes currently require updating and migration from a paper based form to an electronic and digital format. BPM software will allow the combination of modeling, automation, execution, control, measurement and optimization of business activity flows, in support of the organization's goals of optimization and streamlining business operations.

Staff recommends awarding a Software Purchase Agreement to SourceCode North America, Inc for the Business Process Management Software, configuration, and training.

Policy Considerations: The recommendations in this report are in accordance with the goals, objectives, initiatives, and vision of the City's Digital Strategy, Sacramento City Code Chapters 3.64, and Administrative Policy 4102.

Economic Impacts: None.

Environmental Considerations: The report does not constitute a "project" and is therefore exempt from the California Environmental Quality Act (CEQA) [CEQA Guidelines Sections 15061(b)(3);15378(b)(2)].

Sustainability: Not applicable

Commission/Committee Action: Not applicable.

Rationale for Recommendation: The City of Sacramento envisions using BPM automation throughout the organization in order to create staff efficiencies and reduce manual processes and paper consumption. In addition, the BPM system will allow the City to gain visibility into business processes allowing analysis of each individual process and management of tasks in the work list. This will facilitate monitoring, controlling, and reporting areas of improvement in business processes to achieve more efficient use of resources.

Financial Considerations: Once the BPM system is implemented, the City will realize savings from staff efficiencies, a reduction in manual processes, and reduced paper consumption. The total cost of the software purchase and related services with SourceCode North America, Inc will not exceed \$200,000. Funding is identified in the Digital Strategy Project(A07000701).

Local Business Enterprise (LBE): SourceCode North America, Inc is not a LBE.

Background

The City of Sacramento (the “City”) developed a Digital Strategy in 2014 that reviewed current information technology (“IT”) business systems and assets to ensure that new IT initiatives and strategic business technologies are sound and deliver the highest possible value and efficiencies to the City and its constituents.

Business Process Automation (BPM) is one of the key initiatives identified as an opportunity for improved citywide efficiency and funded under the Digital Strategy. The City is committed to working in a digital environment to increase efficiencies and reduce costs. This commitment enhances collaboration, provides consistent practices and provides transparency.

BPM software will integrate seamlessly with the City’s existing enterprise applications like electronic Citywide Accounting and Personnel System (eCAPS) and Citywide Content Management (CCM).

On November 12, 2014, staff issued a Request for Proposal (RFP) inviting proposals from qualified firms to provide a Business Process Management (BPM) software. Nearly Ninety-three (93) firms viewed and downloaded the RFP, and fifteen (15) firms submitted proposals. A team of city staff from the City Clerk’s Office, Finance, Public Works, Human Resources, Utilities and Information Technology (IT) evaluated the proposals and concluded that the proposal from SourceCode North America, Inc best met the City’s software requirements and service needs.

SourceCode North America, Inc is not a Local Business Enterprise (LBE) vendor. IT staff conducted an extensive search within the local area and could not locate a vendor that produced and sold BPM software. The purchase will only include software licenses, core software enhancement/module development, support and maintenance, and related training. Based on these conditions, the Economic Development Department approved the LBE waiver for this project.

SOURCECODE TECHNOLOGY HOLDINGS, INC.

MASTER LICENSE AND TECHNICAL SUPPORT AND MAINTENANCE AGREEMENT

This Master License and Technical Support and Maintenance Agreement (“Agreement”) is made by and between SourceCode Technology Holdings, Inc., a Delaware corporation with its principal place of business at 5150 Village Park Drive SE, Suite 200, Bellevue, Washington, 98006, USA and its subsidiaries (collectively, “SourceCode”) and City of Sacramento, with its principal place of business at 915 I Street, Sacramento, California, 95815 (“Licensee”). The Effective Date of this Agreement is _____ . In the event that there is a conflict between the provisions of this Agreement and any attachment, order, end-user license and technical support and maintenance agreements, the provisions of this Agreement shall prevail.

- A. SourceCode owns and distributes a collection of software programs, tools and documentation collectively referred to as “K2 software.”
- B. Licensee desires to license K2 software from SourceCode for use in its internal business purposes.

NOW THEREFORE, in consideration of the promises and mutual covenants contained herein, the parties agree as follows:

1. Definitions.

- 1.1 “License Configuration” means terms governing the specific licenses acquired by Licensee under this Agreement and the applicable Order, such as the number of licensed users, the applicable period of the license granted, and/or other usage rights or limitations.
- 1.2 “Licensed Software” means SourceCode’s K2 software as available on the then-current Price List, and patches, modifications, updates and revisions thereto which SourceCode may provide as part of Technical Support and Maintenance if acquired by Licensee, and accompanying documentation, in electronic and/or printed form.
- 1.3 “Order” means the SourceCode quotation accepted by Licensee, or other ordering document accepted by SourceCode, which specifies the Licensed Software and/or Technical Support and Maintenance to be provided to Licensee by SourceCode. The Order will also include License Configuration information and other terms applicable to the license rights granted to Licensee. The Order is governed by the terms and conditions of the Agreement.
- 1.4 “Technical Support and Maintenance” means SourceCode standard technical support and maintenance services pursuant to SourceCode’s then-current Technical Support and Maintenance policies in effect at the time such services are ordered. A current copy of SourceCode’s Technical Support and Maintenance Policies are in Exhibit A.

2. Grant of License; License Keys.

- 2.1 License. Upon acceptance by SourceCode of the applicable Order, SourceCode grants Licensee a license to use the version of the Licensed Software provided to Licensee by SourceCode, and to receive Technical Support and Maintenance if acquired, solely for Licensee’s own internal

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business purposes and subject to the terms of this Agreement. Licensee's use of the Licensed Software shall be in accordance with this Agreement, the documentation for the Licensed Software and the applicable License Key(s) and License Configuration as defined herein. Licensee's rights to specific Licensed Software may be perpetual ("Perpetual License"), or limited to a subscription period, if applicable ("Subscription License"). Licensee may allow its agents and contractors to use the Licensed Software for Licensee's internal business purposes and Licensee is responsible for their compliance with the terms of this Agreement. Unless otherwise provided, Licensee may only make copies of the Licensed Software for archive purposes. The Licensed Software is deemed accepted when SourceCode makes the Licensed Software available to Licensee.

- 2.2 License Keys. The Licensed Software requires an applicable license key in order to access its functionality ("License Key"). The Licensed Software may initially be provided to Licensee with a trial or evaluation License Key which allows time-limited access to the Licensed Software with limited functionality until the License Key expires. License Key(s) allowing for full access and functionality of the Licensed Software will be issued to Licensee based on the applicable Order and License Configuration.
- 2.3 Technical Support and Maintenance. If ordered by Licensee, Technical Support and Maintenance is governed by SourceCode's Technical Support and Maintenance policies in effect at the time such Technical Support and Maintenance is ordered. A hardcopy or electronic copy of SourceCode's Technical Support and Maintenance policies in effect at the time such is ordered shall be provided to Licensee upon request at the time such Technical Support and Maintenance is ordered. Any enhancements, improvements, modifications or other supplemental software code provided to Licensee as part of Technical Support and Maintenance shall be considered part of the Licensed Software and subject to the terms and conditions of this Agreement. With respect to technical information Licensee may provide to SourceCode as part of Technical Support and Maintenance, SourceCode may use such information for its business purposes, only as it relates to this Agreement, including for product support and development.
- 2.4 All rights not expressly granted in this Agreement are reserved by SourceCode.

3. Other Rights and Limitations.

- 3.1 Limitations on Reverse Engineering, Decompilation and Disassembly. Licensee shall not cause or permit the reverse engineering, decompilation or disassembly of the Licensed Software or any portion thereof, except and only to the extent that such activity is expressly permitted by applicable law.
- 3.2 Marks. This Agreement does not grant Licensee any rights in connection with any trademarks or service marks of SourceCode. Licensee shall not remove or modify any Licensed Software markings or any notice of SourceCode's proprietary rights.
- 3.3 Third Party Use. Licensee shall not rent, lease or lend the Licensed Software, or make the Licensed Software available in any manner to any third party for use for the third party's business purposes (unless such access is expressly permitted in writing by SourceCode).

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- 3.4 Actual License Limits. If Licensee uses software or hardware that (i) reduces the number of users directly accessing or utilizing the Licensed Software; (ii) allows Licensee to exceed the number of servers for which the Licensed Software is licensed; or (iii) otherwise prevents the Licensed Software from keeping an accurate count of the number of users actually accessing or servers utilized by the Licensed Software, Licensee shall pay additional license fees to SourceCode based on the actual number of users using the Licensed Software or the actual servers on each computer(s) on which the Licensed Software is installed, as applicable.
- 3.5 Benchmarks and Competitive Analysis. Licensee shall not disclose results of any Licensed Software benchmark tests without SourceCode's prior written consent. The Licensed Software may not be used for purposes of competitive analysis or development of a competitive product.
- 3.6 Proprietary Rights. All rights, title, interest and copyrights in and to the Licensed Software are owned by SourceCode or its licensors. All title and intellectual property rights in and to the content which may be accessed through use of the Licensed Software is the property of the respective content owner and may be protected by applicable copyright or other intellectual property laws and treaties. This Agreement grants Licensee no rights to use such content.
- 3.7 Use of Licensee Name. Licensee agrees SourceCode may include the name, but not its trademark or seal, of Licensee in lists, presentations, webpages and/or displays used by SourceCode which generally describe similar customers of SourceCode.

4. Fees and Payments.

- 4.1 Fees. All fees payable to SourceCode are due and payable within 30 days from the invoice date. Licensee has not relied on the future availability of any software or updates in ordering or obtaining the Licensed Software from SourceCode.
- 4.2 Payments. Remittance information, including the applicable currency for payment, shall be specified in the applicable invoice. For unpaid balances, SourceCode may suspend Licensee's use of the Licensed Software starting on the 31st day after such payment was due until such balances are paid. Amounts not paid 60 days after they are due may accrue late charges of 1.5% monthly on the unpaid balance until paid.
- 4.3 Taxes. Licensee shall be liable for and pay any and all federal, state and local sales, use, license, ad valorem, value-added, property or other similar taxes, duties and charges resulting from this Agreement, the license rights granted herein, Licensee's use of the Licensed Software or the fees paid to SourceCode under this Agreement, except for taxes based on SourceCode's income. SourceCode shall pay, when and as due, any and all taxes incurred as a result of SourceCode's compensation hereunder, including estimated taxes, and shall provide Licensee with proof of such payment upon request. SourceCode hereby agrees to indemnify Licensee for any claims, losses, costs, fees, liabilities, damages or injuries suffered by Licensee arising out of SourceCode's breach of this Section 4.3.
4. Audit. Upon 30 days written notice, SourceCode may audit Licensee's use of the Licensed Software. Licensee shall cooperate with SourceCode's audit and provide reasonable assistance and access to information. SourceCode shall provide Licensee with a detailed report of any excess use by Licensee discovered as a result of the audit and shall provide Licensee with recommendations to avoid such like encroachment in the future. Licensee shall pay within 30 days of written notification of excess use, any fees applicable to Licensee's use of the Licensed Software in excess of the license rights granted to Licensee pursuant to this Attachment and applicable Orders. Licensee shall pay the reasonable costs of such audit if the audit reveals Licensee has exceeded the license rights granted. SourceCode shall not be responsible for any of Licensee's costs incurred in cooperating with the audit. This and fees required in section 3.4 shall be SourceCode's exclusive remedy and Licensee's entire liability for such use.

5. Warranties, Disclaimers and Exclusive Remedies.

- 5.1 Until Licensee has obtained from SourceCode an applicable License Key which allows for access to the full functionality of the Licensed Software, the Licensed Software is provided to Licensee "as is" with no warranty of any kind.
- (a) If Licensee has acquired a Perpetual License to the Licensed Software, SourceCode warrants for 90 days after SourceCode makes the Licensed Software available to Licensee (the "Warranty Period") that the Licensed Software will function in all material respects as described in the documentation for the Licensed Software, subject to compliance with the License Configuration.
- (b) If Licensee has acquired a Subscription License to the Licensed Software, SourceCode warrants for 90 days after the start of such subscription, or an annual renewal of such

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subscription, if applicable (the "Subscription Warranty Period") that the Licensed Software will function in all material respects as described in the documentation for the Licensed Software, subject to compliance with the License Configuration.

Licensee must notify SourceCode of any Licensed Software warranty deficiency during the applicable Warranty Period. SourceCode also warrants that if Licensee has acquired and paid for Technical Support and Maintenance, it will be provided in a professional manner consistent with industry standards. Licensee must notify SourceCode of any Technical Support and Maintenance warranty deficiencies within 60 days of the performance of the deficient Technical Support and Maintenance.

5.2 SOURCECODE DOES NOT WARRANT OR GUARANTEE THAT THE LICENSED SOFTWARE WILL MEET LICENSEE'S REQUIREMENTS, WILL OPERATE ERROR-FREE OR UNINTERRUPTED OR THAT SOURCECODE WILL CORRECT ALL ERRORS IN THE LICENSED SOFTWARE. TO THE EXTENT PERMITTED BY LAW, THESE WARRANTIES ARE EXCLUSIVE AND SOURCECODE EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OR CONDITIONS, INCLUDING WARRANTIES OR CONDITIONS OF MERCHANTABILITY, TITLE QUALITY AND FITNESS FOR A PARTICULAR PURPOSE.

5.3 For any breach of the above warranties, Licensee's exclusive remedy and SourceCode's entire liability shall be, as applicable: (a) for the Licensed Software (i) the correction of errors in the Licensed Software that cause breach of the warranty, or (ii) if SourceCode cannot substantially correct such breach, SourceCode may terminate the license for the Licensed Software and refund to Licensee the fees Licensee has paid to SourceCode for the specific Licensed Software (in the case of subscriptions, such refund shall be limited to the then-current subscription period) and any unused, prepaid Technical Support and Maintenance fees Licensee has paid to SourceCode for the specific Licensed Software; and (b) for Technical Support and Maintenance (i) the reperformance of deficient Technical Support and Maintenance, or (ii) if SourceCode cannot substantially correct such breach, SourceCode may terminate the relevant Technical Support and Maintenance and refund to Licensee any unused, prepaid Technical Support and Maintenance fees Licensee has paid to SourceCode for the deficient Technical Support and Maintenance.

5.4 Licenses; Permits, Etc. SourceCode represents and warrants that it has all licenses, permits, city Business Operations Tax Certificate, qualifications, and approvals of whatsoever nature that are legally required for SourceCode to practice its profession or provide any services under the Agreement. SourceCode represents and warrants that it shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, and approvals that are legally required for SourceCode to practice its profession or provide such Services. Without limiting the generality of the foregoing, as an out-of-state corporation, SourceCode warrants and represents that it possesses a valid certificate of qualification to transact business in the State of California issued by the California Secretary of State pursuant to Section 2105 of the California Corporations Code.

6. Limitation of Liability.

EXCEPT FOR A BREACH OF THE CONFIDENTIALITY REQUIREMENTS SPECIFIED HEREIN OR A BREACH BY LICENSEE OF SOURCECODE'S INTELLECTUAL PROPERTY RIGHTS, NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF PROFITS, REVENUE, DATA OR DATA USE, ARISING FROM THIS AGREEMENT OR FROM THE USE OF OR

INABILITY TO USE THE LICENSED SOFTWARE OR THE PROVISION OF OR FAILURE TO PROVIDE TECHNICAL SUPPORT AND MAINTENANCE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR DEATH OR PERSONAL INJURY TO PERSONS CAUSED BY THE NEGLIGENCE OF SOURCECODE (WHERE NO LIMIT APPLIES), SOURCECODE'S MAXIMUM LIABILITY FOR ANY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, THE USE OF THE LICENSED SOFTWARE OR TECHNICAL SUPPORT AND MAINTENANCE, WHETHER IN CONTRACT OR TORT, OR OTHERWISE, SHALL BE LIMITED TO THE FEES PAID BY LICENSEE TO SOURCECODE FOR THE DEFICIENT LICENSED SOFTWARE OR TECHNICAL SUPPORT AND MAINTENANCE UNDER THIS AGREEMENT.

7. Indemnification.

- 7.1 Indemnification by SourceCode. Subject to the terms specified herein, SourceCode will defend, indemnify and hold Licensee harmless against any claims that the Licensed Software as used by Licensee according to this Agreement and the documentation for the Licensed Software infringes a third party's intellectual property rights.
- 7.2 Indemnification by Licensee. Subject to the terms specified herein, Licensee will defend, indemnify and hold SourceCode and its licensors harmless against: (a) any claims or actions by any third party (including any of Licensee's customers) in connection with Licensee's use of the Licensed Software, except with respect to matters which are covered by SourceCode's indemnification obligations as provided above and any other use expressly approved by SourceCode; and (b) any loss or damage arising from a breach by Licensee of this Agreement, or any action of any of Licensee's agents or contractors with respect to the Licensed Software for which Licensee is responsible under this Agreement.
- 7.3 If any action shall be brought against either party in respect to which indemnity may be sought from the other pursuant to the provisions of this Section, the indemnified party shall promptly notify the indemnifying party in writing, not later than 30 days after the indemnified party receives notice of the claim, specifying the nature of the action and the total monetary amount sought or other such relief as is sought therein. The indemnified party shall cooperate with the indemnifying party in all reasonable respects in connection with the defense of any such action. The indemnifying party will have sole control over the defense and settlement of the action.
- 7.4 If SourceCode believes or it is determined that the Licensed Software may violate a third party's intellectual property rights, SourceCode may choose in its discretion to: (a) modify the Licensed Software to be non-infringing; (b) obtain a license for Licensee to allow for continued use; or (c) terminate the license for the Licensed Software and require its return from Licensee, and refund a prorated (based on a 5 year life) portion of the fees Licensee paid SourceCode for the Licensed Software.
- 7.5 SourceCode has no obligation to indemnify, defend or hold Licensee harmless: (a) if the Licensed Software is altered or modified by anyone other than SourceCode, or used outside the scope of use identified in the Licensed Software documentation provided by SourceCode to Licensee, the License Configuration or this Agreement; (b) if Licensee continues to use a version of the Licensed Software which has been superseded, if the infringement claim could have been avoided by using an unaltered current version of the Licensed Software which was provided to Licensee; (c) to the extent that an infringement claim is based upon any software, design, specification, instruction, data or other material not furnished by SourceCode; or (d) to the extent an infringement claim is

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based upon the combination of the Licensed Software with any products or services not provided to Licensee by SourceCode.

- 7.6 This Section provides the parties' exclusive remedies and liabilities for any infringement claim or damages.

8. Term and Termination.

- 8.1 If either party breaches a material term of this Agreement and fails to correct the breach within 30 days of written notice specifying the breach, the other party may terminate this Agreement. If either party breaches a material term of this Agreement which cannot be cured as determined by non-breaching party, the non-breaching party may immediately terminate this Agreement upon notice to the breaching party.
- 8.2 If SourceCode terminates this Agreement as specified herein, Licensee shall pay within 30 days all amounts owed to SourceCode which have accrued prior to the end of this Agreement.
- 8.3 If Licensee is in default of this Agreement, or if the Agreement is terminated, Licensee may no longer use the Licensed Software or have any of the rights granted hereunder. If Licensee is in default of this Agreement, SourceCode will not terminate this Agreement nor suspend Licensee's ability to use the Licensed Software until SourceCode provides written notice of this default and Licensee fails to cure the default within the time identified in Section 8.1 above.
- 8.4 Notwithstanding anything to the contrary, SourceCode may terminate Licensee's license to the Licensed Software immediately by written notice to Licensee if Licensee becomes insolvent or bankrupt or enters into any arrangement or composition with its creditors or if a receiver, trustee or administrator is appointed to operate or otherwise direct Licensee's business or assets.
- 8.5 Licensee shall also have the right to terminate this Agreement at any time by giving written notice of termination to SourceCode. If Licensee gives such notice of termination, SourceCode shall immediately terminate Licensee's license to the Licensed Software and cease maintenance services hereunder. If Licensee terminates this Agreement: 1. SourceCode shall, not later than five (5) days after such notice of termination, deliver to Licensee copies of all Licensee confidential information prepared pursuant to this Agreement.
- 8.5 Provisions of this Agreement which survive termination or expiration include those relating to limitation of liability, infringement indemnity, payment and others which by their nature are intended to survive.

9. Confidentiality

Confidentiality of Licensee Information. During performance of this Agreement, Licensee may gain access to and use Licensee Information regarding inventions, machinery, products, prices, apparatus cots, discounts, future plans, business affairs, governmental affairs, processes, trade secrets, technical matters, systems, facilities, customer lists, product design, copyright, data, and other vital information (hereafter collectively referred to as "Licensee Information") that are valuable, special and unique assets of the Licensee. SourceCode agrees to protect all Licensee Information and treat it as strictly confidential and further agrees that Licensee shall not at any time, either directly or indirectly, divulge, disclose or

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communicate in any manner any Licensee Information to any third party without the prior written consent of Licensee. In addition, SourceCode shall comply with all Licensee policies governing the use of the Licensee network and technology systems, as set forth in applicable provisions of the City of Sacramento Administrative Policy Instructions #30. A violation by SourceCode of this Section 10.5 shall be a material violation of this Agreement and shall justify legal and/or equitable relief.

All proprietary and other information received from SourceCode, whether received in connection with SourceCode's proposal or quote to Licensee or in connection with any SourceCode's software or maintenance services provided under this Agreement, will be disclosed upon receipt of a request for disclosure, pursuant to the California Public Records Act; provided, however, that, if any information is set apart and clearly marked "trade secret" when it is provided to Licensee, Licensee shall give notice to SourceCode of any request for the disclosure of such information. SourceCode shall then have five (5) days from the date it receives such notice to enter into an agreement with Licensee, satisfactory to Licensee's Attorney, providing for the defense of, and complete indemnification and reimbursement for all costs (including plaintiff's attorney fees) incurred by Licensee in any legal action to compel the disclosure of such information under the California Public Records Act. SourceCode shall have sole responsibility for defense of the actual "trade secret" designation of such information. The parties understand and agree that any failure by SourceCode to respond to the notice provided by Licensee and/or to enter into an agreement with Licensee, in accordance with this section, shall constitute a complete waiver by SourceCode of any rights regarding the information designated "trade secret" by SourceCode, and such information shall be disclosed by Licensee pursuant to applicable procedures required by the Public Records Act.

10. General Provisions.

10.1 All notices and requests in connection with this Agreement shall be deemed given as of the day they are received either by messenger, delivery service, or in the U.S. mail, postage prepaid, certified or registered, return receipt requested, and addressed as follows:

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Licensee: City of Sacramento
915 I Street
Sacramento, CA 95815

Attention: Mrudul Sadanandan
Telephone: 916-808-7894
Fax: 916-808-5087

SourceCode: SourceCode Technology Holdings, Inc.
5150 Village Park Drive SE, Suite 200
Bellevue, WA 98006
Attention: Chief Financial Officer
Telephone: (425) 883-4200
Fax: (425) 671-0411

With a copy to: SourceCode Technology Holdings, Inc.
5150 Village Park Drive SE, Suite 200
Bellevue, WA 98006
Attention: General Counsel
Fax: (425) 671-0411

or to such other address as the party to receive the notice or request so designates by written notice to the other.

- 10.2 Relationship of Parties. The parties are independent contractors under this Agreement. Neither party shall act, and shall not be deemed as, an agent for the other, nor shall either party have any right or power hereunder to act for or to bind the other in any respect. Notwithstanding anything to the contrary, this Agreement shall not be deemed to create any employer-employee, agency, franchise, joint venture or partnership relationship between the parties. Licensee is not required to make any deductions or withholdings from the compensation payable to SourceCode under the provisions of this Agreement, and SourceCode shall be issued a Form 1099 for its services hereunder. As an independent contractor, Source Code hereby agrees to indemnify and hold Licensee harmless from any and all claims that may be made against Licensee based upon any contention by any of SourceCode's employees or by any third party, including but not limited to any state or federal agency, that an employer-employee relationship or a substitute therefor exists for any purpose whatsoever by reason of this Agreement or by reason of the nature and/or performance of any Services under this Agreement.
- 10.3 Non-Discrimination in Employee Benefits. This Agreement is subject to the provisions of Sacramento City Code Chapter 3.54, Non-Discrimination in Employee Benefits by Licensee's Contractors. By signing this Agreement, SourceCode assures Licensee that SourceCode will comply with the requirements of Sacramento City Code Chapter 3.54.
- 10.4 Accounting Records of SourceCode. During the performance of this Agreement and for a period of three (3) years after completing all Services under this Agreement, SourceCode shall maintain all accounting and financial records related to this Agreement, including but not limited to, records of SourceCode's costs for all Services performed under this Agreement, in accordance

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with generally accepted accounting practices, and shall keep and make such records available for inspection and audit by representatives of Licensee upon reasonable written notice.

10.5

10.6 Assignment. Licensee may not assign this Agreement or any portion thereof to any third party unless SourceCode expressly consents to such assignment in writing. For purposes of this Agreement, a merger, consolidation or other corporate reorganization or a transfer or sale of a controlling interest in Licensee's stock, or all or substantially all of its assets, shall be deemed to be an assignment. SourceCode will have the right to assign this Agreement and/or any portion thereof as SourceCode may deem appropriate. This Agreement will inure to the benefit of and be binding upon the parties, their successors, administrators, heirs and permitted assigns.

10.7 No Waiver. Failure to enforce any rights hereunder, irrespective of the length of time for which such failure continues, shall not constitute a waiver of those or any other rights, nor shall a waiver by either party in one or more instances be construed as constituting a continuing waiver or as a waiver in other instances.

10.8 Governing Law. This Agreement shall be construed and controlled by the laws of the State of California, United States of America, and SourceCode consents to exclusive jurisdiction and venue in the federal courts sitting in Sacramento County, California, unless no federal subject matter jurisdiction exists, in which case SourceCode consents to exclusive jurisdiction and venue in the Superior Court of Sacramento County, California. SourceCode waives all defenses of lack of personal jurisdiction and forum non-conveniens. Process may be served on either party in the manner authorized by applicable law or court rule. In any action to enforce any right or remedy under this Agreement or to interpret any provision of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees, costs and other expenses. The parties expressly agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement or to the transactions processed under this Agreement.

10.9 Severance. If any provision or provisions of this Agreement is held invalid, illegal or unenforceable by a court of competent jurisdiction, such provision(s) shall be severed, and the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The parties shall use all commercially reasonable efforts to agree upon a valid and enforceable provision for the severed provision(s), taking into account the intent of this Agreement.

10.10 Counterparts. This Agreement may be executed in any number of counterparts (including facsimile counterparts), each of which shall be original as against the party whose signature appears thereon, but all of which taken together shall constitute one and the same instrument.

10.11 Force Majeure. Neither party shall be responsible for failure or delay of performance if caused by: an act of war, hostility or sabotage; act of God; Internet, telecommunication or electrical outage that is not caused by the obligated party; government restrictions (including the denial or cancellation of any export or other license); or other event outside the reasonable control of the obligated party (collectively, "Force Majeure Events"). The parties will use reasonable efforts to mitigate the effect of any Force Majeure Events. If such Force Majeure Event continues for more than 90 days, either party may cancel unperformed services upon written notice, all remitted funds for canceled unused services will be refunded. This Section does not excuse either party's

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obligation to take reasonable steps to follow normal disaster recovery procedures or Licensee's obligation to pay for Licensed Software or Technical Support and Maintenance as provided.

- 10.12 U.S. Government Restricted Rights. All Licensed Software provided to the U.S. Government pursuant to solicitations issued on or after December 1, 1995 is provided with the commercial rights and restrictions described elsewhere herein. All Licensed Software provided to the U.S. Government pursuant to solicitations issued prior to December 1, 1995 is provided with RESTRICTED RIGHTS as provided for in FAR, 48 CFR 52.227-14 (JUNE 1987) or FAR, 48 CFR 252.227-7013 (OCT 1988), as applicable.
- 10.13 Export Regulations. Licensee acknowledges that the Licensed Software may be subject to United States export jurisdiction. Licensee shall comply with all applicable international and national laws that apply to the Licensed Software, including United States Export Administration Regulations, as well as end-user, end-use and destination restrictions which may be issued by the United States and other governments.
- 10.14 Entire Agreement. This Agreement and the information which is incorporated into this Agreement by written reference (including reference to information contained in a URL or referenced policy), together with the applicable Order(s), is the complete agreement for the Licensed Software and/or Technical Support and Maintenance provided to Licensee, and this Agreement supersedes all prior or contemporaneous agreements or representations, written or oral, regarding such Licensed Software and/or Technical Support and Maintenance. **THE TERMS OF THIS AGREEMENT AND ANY CORRESPONDING ORDER(S) SHALL SUPERSEDE THE TERMS CONTAINED IN ANY PURCHASE ORDER OR OTHER NON-SOURCECODE ORDERING DOCUMENT OR CORRESPONDENCE, REGARDLESS OF WHEN SUCH ORDERING DOCUMENT IS RECEIVED OR IF SOURCECODE SIGNS SUCH ORDERING DOCUMENT, AND NO TERMS INCLUDED IN ANY SUCH PURCHASE ORDER OR OTHER NON-SOURCECODE ORDERING DOCUMENT OR CORRESPONDENCE SHALL APPLY TO SOURCECODE OR TO THE LICENSED SOFTWARE OR TECHNICAL SUPPORT AND MAINTENANCE.** This Agreement and Orders shall not be modified and the rights and restrictions contained therein shall not be altered or waived except in a writing signed by authorized representatives of Licensee and of SourceCode. Any notice required under this Agreement shall be provided to the other party in writing. No alteration of the terms of this Agreement shall be valid unless approved in writing by the parties in accordance with the applicable provisions of the Sacramento City Code.

IN WITNESS WHEREOF, each of the parties have caused this Agreement to be executed by its duly authorized representative:

SOURCECODE TECHNOLOGY HOLDINGS, INC. CITY OF SACRAMENTO

By: 

By: _____

Date: June 9, 2015

Date: _____

Name: Shereen Pinto

Name: _____

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Title: Director – Enterprise Accounts

Title: _____



QUOTATION

QUOTATION NO.	SCNA0001597
DATE	May 13, 2015

SourceCode North America, Inc.
 5150 Village Park Drive SE, Suite 200
 Bellevue, Washington 98006
 Phone - 1 (415) 865-0301
 Fax - 1 (425) 671-0411

QUOTATION FOR

City of Sacramento
 915 I Street 5th Floor
 Sacramento, California 95814

SourceCode is pleased to provide you with the following quotation and terms.

PRODUCT	QTY	SALES PRICE	LINE TOTAL
K2 Production Server License	2	\$120,000.00	\$240,000.00
K2 Non-Production Server License	2	\$15,000.00	\$30,000.00
K2 Internet Connector	1	\$65,000.00	\$65,000.00
Discount	1	(\$175,000.00)	(\$175,000.00)
Gold Level Technical Support and Maintenance for 12 months from Signature Date (17.5% of software licensed per year)	12	17.50 %	\$28,000.00
TOTAL (USD)			\$188,000.00

License Configuration

- Each K2 Production Server License specified above allows for installation of one copy each of K2 blackpearl server software and K2 smartforms server software on one physical or virtual server. All K2 Production Servers together may be used by no more than 5,000 Internal Named Users. The K2 Production Server License also allows for the installation of unlimited copies of K2 blackpearl Development Server and K2 smartforms Development Server for non-production use only. K2 blackpearl Development Servers and K2 smartforms Development Servers may not be run as a Windows Service and may only be operated in "console" mode.
- Each K2 Non-Production Server License specified above allows for installation of one copy each of K2 blackpearl server software and K2 smartforms server software on one physical or virtual server for non-production use only. All K2 Non-Production Servers together may be used by the same number of Internal Named Users as licensed by Licensee for K2 Production Server.
- The K2 Internet Connector License specified above allows Licensee's vendors, suppliers and customers who are unrelated to Licensee to access the Licensed Software as installed on the K2 Server Farm for Licensee's internal business purposes. Access to the Licensed Software through the K2 Internet Connector License is not permitted by employees, independent contractors, agents or consultants (collectively "Employees") of Licensee, or by those Employees of Licensee's affiliated companies, including but not limited to Licensee's subsidiaries, parent and sister companies, and subsidiaries of each. A K2 Internet Connector License is needed for each "K2 Server Farm" that allows for interaction with an external non-employee user base. A "K2 Server Farm" means one or more physically co-located production servers with the Licensed Software installed.

The License(s) and/or Technical Support and Maintenance specified herein are governed by the End User License and Technical Support and Maintenance Agreement provided with the software and available at www.k2.com.

The prices specified in this quotation are valid until June 15, 2015.

It is expressly agreed that the terms of this quotation shall supersede the terms contained in any purchase order or other non-SourceCode ordering document or correspondence, regardless of when such ordering document is received or if SourceCode signs such ordering document, and no terms included in any such purchase order or other non-SourceCode ordering document or correspondence shall apply to SourceCode or to the software or Technical Support and Maintenance specified in this quote.

The software may not be used to provide application services to third parties.

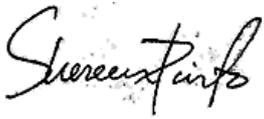
QUOTATION

QUOTATION NO.	SCNA0001597
DATE	May 13, 2015

Payment Due: 30 days from date of invoice. All prices are in USD. Any discounts specified herein are forfeit if payment terms are not met. This quote does not include any applicable taxes SourceCode may be obligated to collect as part of this order. Once accepted, and except as otherwise specified, this quote becomes a non-cancellable order and the related fees become due and non-refundable. Unless otherwise provided, the fees for all renewals of Technical Support and Maintenance are calculated at 22.5% of the then-current list price for the Licensed Software.

FOR SOURCECODE NORTH AMERICA, INC.

**APPROVED AND ACCEPTED FOR CITY OF SACRAMENTO
BY**



Shereen Pinto

Email: shereen@k2.com

Signature

Signature Date

Name

Title