



CITY OF PACIFIC GROVE
300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council
FROM: Steven Silveria, Information Services Director, and Jeffrey W. Killian,
Finance Director Emeritus
MEETING DATE: August 20, 2014
SUBJECT: Approval of Agreement for Financial System Upgrade/Update and
Hosting Services
CEQA: Does not constitute a “project” under California Environmental Quality
Act (CEQA) guidelines.

RECOMMENDATION

Approve a contract between the City of Pacific Grove and SunGard Public Sector for improvements to the City’s financial software system, including updating to the most current software and hosting the City’s software system and database.

DISCUSSION

In 2001, the City purchased a license to operate a financial software system for municipal finance applications from SunGard, a company specializing in public sector software applications. The name of the financial software system was Pentamation; it has since been renamed FinancePLUS.

The City has not kept pace with updated versions of the software, which are upgraded to remain in conformance with latest GASB standards, provide more efficient tools, and provide more options for tracking and reporting current status to the line programs. As recognized by the Council’s Budget Committee in prior years, the City needs to update to the most current 5.0 release.

Second, the current UNIX server has severely exceeded its life expectancy. The City’s outdated server is running an older version of UNIX and lacks security updates. Due to these deficiencies, some or all of the backups being made of the City’s financial database are likely unusable, creating potentially severe operational and financial issues for the City should the current server fail. Replacement of the UNIX server would cost in excess of \$40,000.

Staff analysis has identified a better option. Under the proposed contract, SunGard will systematically update the financial software system and the structure of the multi-year database to the most current version, likely a 3- to 4-month process. Additionally, SunGard will host the server hardware, software, and our multi-year database at its remote site. As part of this hosting service, SunGard will perform the following tasks that will prudently secure the City’s financial data:

- Daily monitor previous night’s backups and continuous logs

- Daily monitor system performance and throughput
- Daily perform nightly backup of all of the City of Pacific Grove financial software system data
- Daily perform nightly differential system (note: backups are a copy of data created from processing various tasks on the software system. Backups are necessary to restore this data when the data is lost due to a hardware failure or similar disaster. If the data was not available through a backup, the data would have to be recreated, which could take months of staff time depending upon the amount of data lost or damaged, costly professional consultant services, and a disruption in services routinely provided by the Finance Department.) backups
- Process all printer/user requests
- Weekly perform full backups that include delivery of backup data to an off-site location
- Monthly perform various system performance and system maintenance tasks
- As necessary, install operating system, third party, and SunGard software upgrades

The hardware and software hosting service is at a secure server farm operated by SunGard; it will not be contracted out to other service providers that provide cloud services.

The software upgrade will move the platform of the software/database from UNIX/Informix to a Windows/Microsoft SQL platform/database. The software upgrade provides improved navigation similar to other Windows applications. The upgraded software includes improved export features to Excel. This will make the software more user friendly to users familiar with Windows-based products. In-house maintenance of systems will also be more uniform since the City will no longer need UNIX/Informix software/hardware skills. The new updated software includes features that will assist in compliance with the Affordable Care Act. Training on new features and functions will be provided to the City by SunGard as part of this arrangement

Given the extent of the needed upgrades and changes, it is also an appropriate time to consider switching to alternative financial software. Staff has surveyed the options, and does not find significant advantages to switching to alternative systems. The FinancePLUS system is well regarded for cities of our size and complexity. In addition, SunGard has 204 customers nationwide, with 47 California-based customers using the FinancePLUS system. This provides a large user group able to pioneer new approaches, address City questions, and collectively represent the users to ensure SunGard continues to meet emerging needs as well as needs unique to California cities.

FISCAL IMPACT

The current budget has anticipated the annual and one-time costs for this project within the Information Services program budget. Upgrade of the system is approved for this year in the adopted capital improvement schedule. No budget adjustments will be required as part of this recommended action.

Costs for the upgrading/updating of the City of Pacific Grove's software financial system and database and the hosting and related services such as system/database backup and maintenance is \$31,885 in one-time professional services and start-up fees. Annual costs will be \$42,100. The

annual costs provide substantially higher levels of service and prevent the need to employ additional professional services to update/upgrade the newer versions of software releases.

As mentioned above, the cost to replace the existing UNIX service would exceed \$40,000. There would also be additional and ongoing staff and contract maintenance expenses in addition to utility costs for running the server 24/7. Current annual maintenance fees total \$32,400.

ATTACHMENTS

1. Application Services Provider Agreement

RESPECTFULLY SUBMITTED:

Jeffrey W. Killian

Jeffrey W. Killian
Finance Advisor

REVIEWED BY:

THOMAS FRUTCHET

Thomas Frutchet
City Manager

Steven Silveria

Steven Silveria
Information Services Director

APPLICATION SERVICES PROVIDER AGREEMENT

This Application Services Provider Agreement ("Agreement") is made between SunGard Public Sector Inc., ("**SunGard Public Sector**") a Florida corporation with a business address at 1000 Business Center Drive, Lake Mary, FL 32746 and City of Pacific Grove, 300 Forest Ave, Pacific Grove, CA 93950, ("**Customer**") as of the Execution Date.

Customer desires to engage SunGard Public Sector to provide Customer with access to and use of certain SunGard Public Sector-provided Software on an application services provider basis. Accordingly, the parties agree as follows:

1. Defined Terms.

"Additional Functionality" means changes that SunGard Public Sector makes for inclusion in a General Release Module to increase the functionality of the General Release Module.

"Appendix" means each schedule that is attached to this Agreement that is marked as an "Appendix." Appendices are incorporated herein and are lettered sequentially, beginning with "Appendix A" and continuing thereafter.

"Application(s)" means the software system(s) to which Customer has requested access and paid therefor, listed on Appendix A - Order Form, including, but not limited to, all computer programs and related documentation, and any modifications thereto.

"Application Services" means the services and Software utilization and access rights to be provided to Customer by SunGard Public Sector under this Agreement.

"Application Services Term" means the period identified in Section 9 of this agreement as "Term and Termination," and during which Customer will have the right to access the Software.

"Commencement Date" is defined in Appendix A, and is the date on which the Term commences and the date upon which Customer will begin to pay Application Services fees to SunGard Public Sector.

"Confidential Information" means non-public information of a party to this Agreement. Confidential Information of SunGard Public Sector includes the Software and algorithms, methods, techniques and processes revealed by the Software. Confidential Information does not include information that: (i) is or becomes known to the public without fault or breach of the Receiving Party; (ii) the Disclosing Party regularly discloses to third parties without restriction on disclosure; or (iii) the Receiving Party obtains from a third party without restriction on disclosure and without breach of a non-disclosure obligation.

"Customer Employees" means: (i) Customer's employees with a need to know; and (ii) third party consultants engaged by Customer who have a need to know, who have been pre-approved by SunGard Public Sector, and who, prior to obtaining access to the Software, have executed a SunGard Public Sector-approved non-disclosure agreement.

"Disclosing Party" means the party providing its Confidential Information to the Receiving Party.

"Documented Defect" means a material deviation between the General Release Module and its documentation, for which Documented Defect SunGard Public Sector has confirmed that Customer has given SunGard Public Sector enough information for SunGard Public Sector to replicate the deviation on a computer configuration which is both comparable to the Hardware and is under SunGard Public Sector's control.

"Execution Date" means the latest date shown on the signature page of this Agreement.

"General Release" means the general release version of a Module as updated by Upgrades, but without any other modification whatsoever.

"IP Rights" means all patents, patent rights, patent applications, copyrights, copyright registrations, trade secrets, trademarks and service marks and Confidential Information.

"Maintenance" means SunGard Public Sector's efforts to provide Customer with avoidance procedures for or corrections of Documented Defects. The hours during which Maintenance will be provided for each Application, the targeted response times for certain defined categories of Maintenance calls for each Application, and other details and procedures (collectively, the "Maintenance Standards") relating to the provision of Maintenance for each Application is described in attached Appendix C.

"Module" means any one of the Applications identified in Appendix A, excluding Third Party Products, as well as all code and related specifications, documentation, technical information and all IP Rights for such Application.

"New Releases" means new editions of a General Release Module.

"Notification" means a communication to SunGard Public Sector's help desk by means of: (i) SunGard Public Sector's web helpline; (ii) the placement of a telephone call; or (iii) the sending of an e-mail, in each case, in accordance with SunGard Public Sector's then-current policies and procedures for submitting such communications.

"Object Code" means computer programs assembled, compiled, or converted to magnetic or electronic binary form on software media, which are readable and usable by computer equipment.

"Order Form" means an attachment to this Agreement, which is a supplement to this Agreement for all purposes. Unless otherwise stated in any Order Form, all terms and conditions stated in this Agreement shall remain in effect.

"Receiving Party" means the party receiving Confidential Information of the Disclosing Party.

"Software" means the Modules listed in Appendix A – Order Form.

"Start-Up Assistance" means SunGard Public Sector's efforts in getting the hosted environment ready for the functional implementation of the Application Services. Such Start-Up Assistance may include, but shall not be limited to, hardware acquisition and setup, user setup, and global security setup.

"Upgrades" means, collectively, Maintenance, Additional Functionality and New Releases.

2. **Application Services, Generally.** During the Application Services Term, SunGard Public Sector will provide Customer with the Application Services generally described in this Section 2 and in Section 3 hereunder, including the right to access to the Applications, on the terms and conditions of this Agreement. Application Services include the grant by SunGard Public Sector to Customer of a non-exclusive, non-transferable license to access and use the Software in Object Code form within the United States of America for Customer's own, non-commercial computing operations (subject to any Concurrent User limitations provided for in Appendix A), while such Object Code resides in and is executed from a SunGard Public Sector datacenter. Any rights not expressly granted in this Agreement are expressly reserved.

a) **Documentation.** Customer can make a reasonable number of copies of the documentation for each Module for its use in accordance with the terms of this Agreement.

b) **Restrictions on Use of the Software.** Customer is prohibited from causing or permitting the reverse engineering, disassembly or decompilation of the Software. Customer is prohibited from using the Software to provide service bureau data processing services or to otherwise provide data processing services to third parties. Customer will not allow the Software to be used by, or disclose all or any part of the Software to, any person except Customer Employees. Without limiting the foregoing, Customer is permitted to allow use of the input and/or output sensory displays of or from the Software by third parties on a strict "need to know" basis, and such use will not be deemed a non-permitted disclosure of the Software.

This Agreement is expressly made subject to any United States government and other applicable laws, regulations, orders or other restrictions regarding export from the United States or another country, and import into any country, of computer hardware, software, technical data or other items, or derivatives of such hardware, software, technical data or other items. Customer will not allow the Software, in whole or in part, to be exported outside of the United States of America, in any manner or by any means. Customer is prohibited from removing or altering any of the IP Rights notice(s) embedded in or that SunGard Public Sector otherwise provides with the Software. Customer must reproduce the unaltered IP Rights notice(s) in any full or partial copies that Customer makes of the Software.

c) Application Software Maintenance and Support Services. Maintenance is available during the SunGard Public Sector hours outlined in Appendix C.

3. **Access rights, Improvements and Changes, Start-Up Assistance, Conversion Services.**

SunGard Public Sector agrees to provide access to the Applications requested by Customer on Appendix A - Order Form (or any supplemental or replacement Order Form(s)) for the number of terminals indicated so long as Customer is current in its payment obligations hereunder. Information regarding access to the Applications and related responsibilities for both parties under the Application Services is as provided in Appendix B.

a) Improvements and Changes. SunGard Public Sector will install upgrades, new software releases and enhancements, error corrections, upgrades to third party operating system software, and upgrades to hardware, as necessary, for the Host Computer Systems.

b) Start-Up Assistance. SunGard Public Sector will provide Start-Up Assistance to Customer and Customer agrees to pay to SunGard Public Sector the Start-Up Fees as provided on Appendix A - Order Form. Customer agrees to reimburse SunGard Public Sector for actual, reasonable travel and living expenses incurred by or on behalf of SunGard Public Sector and its personnel in furnishing the Start-Up Assistance. Any such travel and living expenses shall be billed by SunGard Public Sector to Customer on a monthly basis and governed by the SunGard Public Sector Travel Policy.

c) Optional Conversion Services. At Customer's option, SunGard Public Sector will provide Conversion services. If Customer elects Conversion services, Customer shall provide data to SunGard Public Sector in a compatible format acceptable to SunGard Public Sector, and on media specified by SunGard Public Sector.

4. **Fees, Payment and Taxes.**

a) Payment.

i. Application Services Fees or "Access Fees". During the Application Services Term, Customer will pay SunGard Public Sector the Application Services fees as specified in Appendix A, including but not limited to fees for access to the Applications ("Access Fees"), as otherwise provided for in Appendix A. No more frequently than once per year, SunGard Public Sector shall have the right to adjust the Application Services Fees. For the Term of this Agreement only, any increase in Application Services fees shall be limited to no more than 5% compared to the preceding year's fees. Time is of the essence with regard to Customer's payment obligations pursuant to this Agreement.

ii. Travel and Living Expenses. Except as otherwise provided in Appendix A, Customer will reimburse SunGard Public Sector for actual and reasonable, out-of-pocket travel and living expenses that SunGard Public Sector incurs in providing Customer with services under this Agreement. Such travel and living expenses will be invoiced on a monthly basis in arrears and will be due within thirty (30) days from the date of invoice.

iii. Late Charge. SunGard Public Sector will have the right to charge a late fee to the extent that any payment is received later than thirty (30) days from the date of invoice. Late fees will be calculated based on a per annum rate equal to the lesser of: (i) the prime lending rate established from time to time by Citizens Bank, Philadelphia, Pennsylvania Bank, plus three percent (3%); and (ii) the highest rate permitted by applicable law, and will be payable to SunGard Public Sector on demand.

b) Taxes. Customer is responsible for paying all taxes (except for taxes based on SunGard Public Sector's net income or capital stock) relating to this Agreement, the application services, the Software, and any other services provided or payments made under this Agreement. Applicable tax amounts (if any) are NOT included in the fees set forth in this Agreement. If Customer is exempt from the payment of any such taxes, Customer must provide SunGard Public Sector with a valid tax exemption certificate; otherwise, absent proof of Customer's direct payment of such tax amounts to the applicable taxing authority, SunGard Public Sector will invoice Customer for and Customer will pay to SunGard Public Sector all such tax amounts.

c) Data Communications and Telephone Services. Customer shall pay for any data communications services (internet or telephone services). If Customer requires special telephone line configurations due to unique equipment or data requirements, SunGard Public Sector reserves the right to charge for analysis and design of such special configurations.

d) Suspension of Service. If in any instance, Customer fails to pay to SunGard Public Sector within thirty (30) days after SunGard Public Sector makes written demand therefor, and payment of the amount in question is not the subject of a *bona fide* dispute, then, in addition to preserving its rights to collect payment of the past-due amount and all accompanying late fees, and all other rights and remedies that SunGard Public Sector may have at law or in equity, SunGard Public Sector may, in its sole discretion and without further notice to Customer, suspend or reduce its performance of the Application Services.

5. Confidential Information. Except as otherwise permitted under this Agreement, the Receiving Party will not knowingly disclose to any third party, or make any use of the Disclosing Party's Confidential Information. The Receiving Party will use at least the same standard of care to maintain the confidentiality of the Disclosing Party's Confidential Information that it uses to maintain the confidentiality of its own Confidential Information of equal importance. Except in connection with the Software and any software provided with the Software, the non-disclosure and non-use obligations of this Agreement will remain in full force with respect to each item of Confidential Information for a period of ten (10) years after Receiving Party's receipt of that item. However, Customer's obligations to maintain the Software as confidential will survive in perpetuity.

6. Existing Products. For any products listed in Appendix A as "Existing Products" or "Currently Licensed" (Licensed Programs) of which Customer has licensed under a previous agreement, Customer shall retain the right to run a copy of the Licensed Program(s) on hardware owned or leased by Customer at a facility which is owned or controlled by Customer. Customer acknowledges that should they run a copy of the Licensed Program(s), maintenance services for said Licensed Program(s) will not be provided under this Agreement. Should Customer desire to receive maintenance services they will be required to enter into a separate software maintenance agreement with SunGard Public Sector.

7. Intellectual Property Indemnity by SunGard Public Sector. SunGard Public Sector will defend, indemnify and hold Customer harmless from and against any loss, cost and expense that Customer incurs because of a claim that use of a General Release Module infringes any United States copyright of others. SunGard Public Sector's obligations under this indemnification are expressly conditioned on the following: (i) Customer must promptly notify SunGard Public Sector of any such claim; (ii) Customer must in writing grant SunGard Public Sector sole control of the defense of any such claim and of all negotiations for its settlement or compromise (if Customer chooses to represent its own interests in any such action, Customer may do so at its own expense, but such representation must not prejudice SunGard Public Sector's right to control the defense of the claim and negotiate its settlement or compromise); (iii) Customer must cooperate with SunGard Public Sector to facilitate the settlement or defense of the claim. If any Module is, or in SunGard Public Sector's opinion is likely to become, the subject of a United States

copyright infringement claim, then SunGard Public Sector, at its sole option and expense, will either: (A) obtain for Customer the right to continue using the Module under the terms of this Agreement; (B) replace the Module with products that are substantially equivalent in function, or modify the Module so that it becomes non-infringing and substantially equivalent in function; or (C) refund to Customer the annual Application Services fee payable by Customer in the year that such claim or threatened claim arises. **THE FOREGOING IS SUNGARD PUBLIC SECTOR'S EXCLUSIVE OBLIGATION WITH RESPECT TO INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS.**

8. **Term and Termination.**

a) **Application Services Term.** The initial Application Services Term is for a period as stated in the Appendix A – Order Form. Thereafter, the Application Services Term will automatically renew for consecutive one (1) year periods, unless terminated by either party by providing written notice one-hundred eighty days (180) days prior to the upcoming Application Services Term annual renewal date.

b) **Right of Termination.** A party has the right to terminate this Agreement if the other party breaches a material provision of this Agreement. Either party has the right to terminate this Agreement at any time while an event or condition giving rise to the right of termination exists. To terminate this Agreement, the party seeking termination must give the other party notice that describes the event or condition of termination in reasonable detail. From the date of its receipt of that notice, the other party will have thirty (30) days to cure the breach to the reasonable satisfaction of the party desiring termination. If the event or condition giving rise to the right of termination is not cured within that period, this Agreement will automatically be deemed terminated at the end of that period. However, notice to SunGard Public Sector of a suspected Documented Defect will not constitute a notice of termination of this Agreement.

c) **Effect of Expiration of Application Services Term or Termination of Agreement.** Upon the expiration of the Application Services Term, or upon any earlier termination of this Agreement by either party, Customer's right to receive the Application Services and to use the Software as otherwise provided for in this Agreement terminates. Any use of the Software after the Application Services Term or after the termination of this Agreement is a violation of this Agreement, and further, may subject the user to additional claims under applicable law, including without limitation claims for violation of SunGard Public Sector's copyright interest in and to the Software.

d) **Deconversion Assistance.** If after any termination or expiration of this Agreement Customer converts to a different vendor's applications, SunGard Public Sector will provide, upon payment of SunGard Public Sector's then-current standard deconversion fee, reasonable assistance and documentation for such deconversion in order to assist Customer in removing its information and placing said information in SunGard Public Sector's standard format for input to the other vendor's applications. In the event Customer requests a non-standard deconversion, SunGard Public Sector shall be entitled to receive compensation for consultation, software and documentation provided to assist in the deconversion on a time and materials basis at the standard prevailing rate then charged by SunGard Public Sector for such services.

e) **Survival of Obligations.** All obligations relating to non-use and non-disclosure of Confidential Information and indemnity will survive termination of this Agreement.

f) **Termination Without Prejudice to Other Rights and Remedies.** Termination of this Agreement will be without prejudice to the terminating party's other rights and remedies pursuant to this Agreement.

9. **Notices.** All notices and other communications required or permitted under this Agreement must be in writing and will be deemed given when: Delivered personally; sent by United States registered or certified mail, return receipt requested; transmitted by facsimile confirmed by United States first class mail; or sent by overnight courier. Notices must be sent to a party at its address shown on the first page of this Agreement, or to such other place as the party may subsequently designate for its receipt of notices.

10. **Force Majeure.** Neither party will be liable to the other for any failure or delay in performance under this Agreement due to circumstances beyond its reasonable control, including Acts of God, acts of war, accident, labor disruption, acts, omissions and defaults of third parties and official, governmental and judicial action not the fault of the party failing or delaying in performance.

11. **Assignment.** Neither party may assign any of its rights or obligations under this Agreement, and any attempt at such assignment will be void without the prior written consent of the other party. For purposes of this Agreement, "assignment" will include use of the Software for benefit of any third party to a merger, acquisition and/or other consolidation by, with or of Customer, including any new or surviving entity that results from such merger, acquisition and/or other consolidation. However, the following will not be considered "assignments" for purposes of this Agreement: SunGard Public Sector's assignment of this Agreement or of any SunGard Public Sector rights under this Agreement to SunGard Public Sector's successor by merger or consolidation or to any person or entity that acquires all or substantially all of its capital stock or assets; and SunGard Public Sector's assignment of this Agreement to any person or entity to which SunGard Public Sector transfers any of its rights in the Software.

12. **No Waiver.** A party's failure to enforce its rights with respect to any single or continuing breach of this Agreement will not act as a waiver of the right of that party to later enforce any such rights or to enforce any other or any subsequent breach.

13. **Choice of Law; Severability.** This Agreement will be governed by and construed under the laws of the State of Florida, without reference to the choice of laws provisions thereof. If any provision of this Agreement is illegal or unenforceable, it will be deemed stricken from the Agreement and the remaining provisions of the Agreement will remain in full force and effect.

14. **LIMITATIONS OF LIABILITY; DISCLAIMER OF WARRANTIES**

a) **LIMITED LIABILITY OF SUNGARD PUBLIC SECTOR.** SUNGARD PUBLIC SECTOR'S LIABILITY IN CONNECTION WITH THE APPLICATION SERVICES, THE SOFTWARE, ANY CONSULTING SERVICES, OR ANY OTHER MATTER RELATING TO THIS AGREEMENT WILL NOT EXCEED THE APPLICATION SERVICES FEES THAT CUSTOMER ACTUALLY PAID TO SUNGARD PUBLIC SECTOR IN THE IMMEDIATELY PRECEDING TWELVE (12) MONTH PERIOD.

b) **EXCLUSION OF DAMAGES.** REGARDLESS WHETHER ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE OR OTHERWISE, IN NO EVENT WILL SUNGARD PUBLIC SECTOR BE LIABLE TO CUSTOMER FOR ANY SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, OR OTHERWISE, AND WHETHER OR NOT SUNGARD PUBLIC SECTOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

c) **DISCLAIMER OF WARRANTIES.** EXCEPT AS EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, SUNGARD PUBLIC SECTOR MAKES NO WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, WITH REGARD TO THE APPLICATION SERVICES AND/OR THE SOFTWARE, IN WHOLE OR IN PART. SUNGARD PUBLIC SECTOR EXPLICITLY DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE.

d) **BASIS OF THE BARGAIN.** CUSTOMER ACKNOWLEDGES THAT SUNGARD PUBLIC SECTOR HAS SET ITS FEES AND ENTERED INTO THIS AGREEMENT IN RELIANCE UPON THE LIMITATIONS OF LIABILITY AND THE DISCLAIMERS OF WARRANTIES AND DAMAGES SET FORTH IN THIS AGREEMENT, AND THAT THE SAME FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES.

15. **Entire Agreement.** This Agreement contains the entire understanding of the parties with respect to its subject matter, and supersedes and extinguishes all prior oral and written communications between the parties about its subject matter. Any purchase order or similar document which may be issued by Customer in connection with this Agreement does not modify this Agreement. No modification of this Agreement will be effective unless it is in writing, is signed by each party, and expressly provides that it amends this Agreement. The individual executing this Agreement on behalf of its party represents and warrants that he/she has full authority to bind such party to all terms, conditions and obligations of this Agreement.

City of Pacific Grove, CA

SunGard Public Sector Inc.

BY: _____

DocuSigned by:
BY: Chris Coleman
0240C20A72094BA...

PRINT NAME: _____

PRINT NAME

PRINT TITLE: _____

AND TITLE: Chris Coleman – VP & CFO

DATE SIGNED: _____

DATE SIGNED: 8/7/2014

APPENDIX A
Order Form**Agreement Number:** 1731-141498-1**Customer:** City of Pacific Grove**Delivery Address:** 300 Forest Avenue, Pacific Grove, CA 93950**1. Commencement Date:** September 1, 2014**2. Term:**

The initial Application Services Term begins upon Commencement Date and expires, twelve (12) months thereafter. Thereafter, the Application Services Term will automatically renew for consecutive one (1) year periods, unless terminated by either party by providing written notice one-hundred eighty days (180) days prior to the upcoming Application Services Term annual renewal date.

3. Application Groups & Fees:

	Applications and/or Services	Professional Services	Start-Up Fee	Monthly Access Fee
Existing PLUS Products (Currently Licensed)	Fund Accounting/Purchasing/Budget - (GPFAM), Human Resource/Payroll - (GFPPRS/GFPAY), Employee Benefits - (GFBEN), Position Control - (GFPPCL), Personnel Budget -(GFPPBS), Fixed Assets - (GPFIX), CA State Reporting - (GFPRCA), Business License/ Pet Licensing -(GCPGBL/GCPPL), Central Receipting - (GCPPCR)	N/A	\$ -	\$ 3,380.00
New 3rd Party Products (Not Currently Licensed)	DATANGO -UC -\$1,260.;OPTIO-UPG -\$3,420;MKS-\$2,710.	N/A	\$ 7,390.00	128.00
3rd Party Products (Currently Licensed)	Four J's Compiler - (FOURJ) FOUR J'S Runtime (25 users) - (FOURJS-RUN), Cognos Impromptu 9 Bundle1, OPTIO DCS, Diagnostic Support Package, Easy Spooler	N/A	N/A	included in Monthly Access Fee
Professional Services Training Upgrade to 5.0/9.0	Webex Training - 1 day 9.0 Community-\$1,280; 2 days 5.0 Finance - \$2,560.	\$ 3,840.00	N/A	N/A
ASP Services	Setup, Implementation, Disaster Recovery Plan for SunGard Public Sector applications	N/A	N/A	Included in Monthly Access Fee
Professional Services Upgrade to 5.0/9.0	5.0/9.0 Upgrade Installation \$7,175, Project Management \$4480, Conversion \$9,000	20,655.00	N/A	N/A
Total Proposed System:		\$ 24,495.00	\$ 7,390.00	\$ 3,508.00

Application Groups & Fees Notes:

- 1) Start-Up Fee is based on use of SunGard Public Sector's Standard ASP Implementation Methodology.

Monthly Access Fee(s): The chart above reflects the initial Monthly Access Fee(s) only. During the initial Application Services Term, Monthly Access Fee(s) shall be at the rates listed below.

Months 1 – 12 \$3,508.00 per month or \$42,096.00 per year;

Monthly Access Fees for any Contract Year subsequent to the initial Application Services Term are subject to change and will be specified by SunGard Public Sector in an annual invoice.

APPLICABLE TAXES ARE NOT INCLUDED IN THIS ORDER FORM, AND, IF APPLICABLE, WILL BE ADDED TO THE AMOUNT IN THE PAYMENT INVOICE(S) BEING SENT SEPARATELY TO THE CUSTOMER.

4. Payment Terms: The amounts noted above shall be payable as follows

Start-Up Fee: 100% on the Execution Date.

Monthly Access Fee: Due in advance on a monthly basis. The initial Monthly Access Fee will be due September 1, 2014. Subsequent Monthly Access Fees will be due on the first of the month thereafter throughout the Application Services Term.

Professional Services Fees: 100% on the Execution Date.

Third Party Products Services Fee: 100% on the Execution Date.

Travel and Living Expenses: Travel and living expenses are in addition to the prices quoted above and will be invoiced as incurred and shall be governed by the SunGard Public Sector Corporate Travel and Expense Reimbursement Policy. Travel and living expenses actually incurred in prior months for which SunGard Public Sector is seeking reimbursement, shall also be invoiced monthly.

5. Maintenance Termination. Upon commencement of billing for the Monthly Access Fee, Customer acknowledges the termination of their current maintenance billing for the above listed applications in the "Existing Products (Currently Licensed)" and "Existing Third Party (Currently Licensed)" and Retrofit Maintenance section(s) contained in Schedule A. SunGard Public Sector shall continue to provide Customer with maintenance of these products until the transition to the ASP Environment is complete, at which time maintenance will be terminated.

6. Third Party Products - Software and Hardware.

6.1 Grant of Third Party Licenses. Where applicable, SunGard Public Sector grants to Customer a personal, non-transferable, non-exclusive, limited-scope sublicense to use, in accordance with the license, use and confidentiality restrictions and other provisions of this Agreement, the third party software set forth on Schedule A ("Third Party Software Products") subject to the following additional conditions: (i) the Third Party Product shall be used only in conjunction with any permissible use of the Application software specifically authorized hereunder, and (ii) the Third Party Products shall be used only in accordance with the Third Party Products documentation.

6.2. Third Party Products. During the term of this Agreement, SunGard shall use reasonable efforts to provide Customer the benefit of all indemnities and warranties granted to SunGard Public Sector by the licensor(s) or manufacturer(s) of the Third Party Products, to the extent possible without additional cost to SunGard Public Sector, as and if permitted by SunGard Public Sector's agreement with the licensor of the Third Party Products, and to the extent such warranties and indemnities pertain to Customer's use of the Third Party Products hereunder. In the event of any defect in any Third Party Products supplied by SunGard Public Sector, SunGard Public Sector will use commercially reasonable efforts to replace or correct the Third Party Products without charge, unless it has been damaged or corrupted after supply by SunGard Public Sector (including, but not limited to, damage caused by incorrect use, incorrect voltage or attempts to modify the Software or Third Party Products). If such damage or corruption has occurred after supply by SunGard Public Sector, SunGard Public Sector reserves the right to refuse to replace or correct the Third Party Products or to impose charges for so doing. Provided that SunGard Public Sector complies with this provision, it shall face no further liability with respect to any defect in any Third Party Products.

6.3 Informix. Customer will provide access to said backups of its PLUS 4.1 and 8.0 Informix databases which SunGard Public Sector will copy on a bi-weekly basis. Customer understands that should access to the stored data become necessary due to failure of its computer hardware prior to go live of the PLUS 5.0 and 9.0 upgrade, that additional professional services would apply.

6.4 Hardware. Should Customer's computer hardware fail prior to the PLUS 5.0 and 9.0 upgrade, the upgrade will be accelerated subject to availability of SunGard Public Sector's resources on a best effort basis and additional professional service fees would apply.

(Intentionally left blank)

APPENDIX B
STANDARDS SHEET

PLUS:**SYSTEM SUPPORT SERVICES - eFinancePLUS, BusinessPLUS, eSchoolPLUS, IEPPLUS.**

a. System Use: This Agreement permits Client to use the software modules listed in Exhibit 1 during normal business hours, subject to any concurrent usage limitations as set forth herein. A concurrent user is defined as a session in any of the applications in the corresponding product group, as listed in Exhibit 1, under the control of a client user currently logged into the SunGard Public Sector computer system. This limit may be raised only by mutual agreement and formal amendment to this Agreement; additional charges will apply. Client agrees that use of these software modules is limited to Client's own employees or contracted employees. SunGard Public Sector will provide non-exclusive hardware to operate Software on behalf of Customer. Live support is available 8 AM EST to 8PM EST.

b. Administration: SunGard Public Sector will provide System Management Resources for computer server management, data storage and backup. System backups will be performed on a full-backup basis weekly, with partial-backups daily.

SunGard Public Sector will schedule with the Customer in advance for routine maintenance and repairs performed at the SunGard Public Sector's data center. Generally, these activities are not performed during business hours; however, the Customer should anticipate SunGard Public Sector to schedule short periods of downtime quarterly. SunGard Public Sector will make every effort to schedule this maintenance period at least two weeks in advance.

c. Network Responsibilities: SunGard Public Sector's responsibility for network communication terminates at the WAN connection on the router at SunGard Public Sector's location, and excludes the leased line, Customer routers and local computing infrastructure and Personal Computers at the Customer site.

SunGard Public Sector will assume responsibility for the purchase, configuration, installation, and management of the data communications equipment hosted at SunGard Public Sector's facility and will hold title to same.

d. System Performance: The Customer and SunGard Public Sector will work together to isolate performance bottlenecks, should they occur, and to identify whether they are related to the data communications link, the SunGard Public Sector computer server, or the Customer's local network. SunGard Public Sector shall provide sufficient Internet access bandwidth and server capacity for the duration of this Agreement to meet the reasonable performance requirements of the number of concurrent system users provided for in this Agreement.

For purposes of this agreement, "reasonable performance requirements" shall mean the following:

- End-user response time: typically 2-5 seconds to retrieve a single record using the primary indexed key
- System availability: 98% available during normal business hours calculated on an annual basis.

e. Interfaces or Custom Reports: Interfaces, custom reports, special formats, and other programming or set-up requests are not included in this Agreement, but can be provided by SunGard Public Sector under separate Agreement.

f. Creation/Setup of New Users: SunGard Public Sector will set up and create new users at the operating system level within two business days when requested by customer.

g. On-Going Maintenance: SunGard Public Sector will be responsible for maintenance of the computer server(s) at SunGard Public Sector, the respective operating system(s), and the data communications equipment at SunGard Public Sector. SunGard Public Sector will update the computer server and operating system software as necessary to remain current with new releases of the software.

h. Customer's Network, Personal Computers: The Customer's network and personal computers, including configuration, Microsoft Customer Access Licenses, and setup to use the products listed in Appendix 1, are not included in this Agreement.

i. Additional Accounts and Update Frequency: In addition to the Production Environment for Customer processing, SunGard Public Sector will provide a Test Environment. To provide the Test Environment, SunGard Public Sector will replicate the Production Environment into the Test Environment semi-annually. This replication shall be performed only after consultation with the Customer. Additional accounts or more frequent replication will be offered at the hourly rates then in effect.

j. Creation/Setup of Remote Printers: Most reports generated by applications running in the SunGard Public Sector Data Centers can be output by users to printers defined within the Customer's desktop computer network. Some applications will require IP Addressable printers that support PCL (Printer Control Language) Version 5 or above. For these printers, associated print queues need to be uniquely defined and configured on the servers housed in the SunGard Public Sector Data Center.

SunGard Public Sector will provide the set up for up to five (5) IP Addressable print queues at no additional charge. For each additional IP Addressable print queue the customer requires beyond the initial 5, SunGard Public Sector will bill a \$200 setup fee. SunGard Public Sector will complete printer configuration changes within two business days when requested by customer.

k. Disaster Recovery: In the event of a disaster which disables SunGard Public Sector's data center, SunGard Public Sector will make commercially reasonable efforts to recover the Customer's time critical systems for continued processing at the recovery location. If this occurs, Customer will be given an initial projection of estimated recovery time, and SunGard Public Sector will provide daily status updates thereafter to Customer concerning estimated recovery time frames.

For the purpose of this Agreement, "commercially reasonable efforts" shall mean that SunGard Public Sector shall have a recovery project team working on and dedicated to the recovery effort.

l. Specific Periodic Tasks Performed by SunGard Public Sector: In addition to the general items referenced above, the specific items listed below shall be performed periodically.

Daily

- Monitor previous night's backups and continuous logs
- Monitor system performance and throughput
- Perform Nightly backup of all Customer data
- Perform Nightly Differential System Backups (system/software and related data files which have changed since the last full system backup)
- Process any Printer/User requests

Weekly

- Perform Full Backups including delivery to off-site storage location to include:
 - 5 nightly backups
 - 4 weekly backups

- 12 monthly backups
- Year end backup kept on a permanent basis
- Test failover to data center generator

Monthly

- Check space in File Systems
- Check space in Swap file
- Check Wide Area Network statistics

As Necessary

- Perform Operating System, Third Party, and SunGard Public Sector Software upgrades
- Add users and printers
- Modify users and printers
- Restore data as identified by customer
- Update database statistics and indexes
- Design, implement, and execute disaster recovery procedures
- Build and maintain communication circuit

m. Client Responsibilities.

- i. **Printing.** The Client is responsible for all printing, using compatible local printers. No print jobs will print at SunGard Public Sector and all physical printing requirements will be handled by the Client. Printers must support TCP/IP and be PCL5 compliant. For IP addressable print queues, any Jet-Direct compatible printer may be used. If the printer is not Jet-Direct compatible or routed through external servers, additional software or services may be required.
- ii. **Existing Environment.** The Client is responsible for any issues arising from the existing LAN, existing data communications configuration, hardware, or software at the Client's site. Specifically, the Client is responsible for all elements of their existing infrastructure. If any Client site application updates (either hardware or software) are needed, they will be the responsibility of the Client.
- iii. **Application Set Up.** The Client assumes responsibility for application software setup, setup and maintenance of user security within the software applications testing, and operation, such as chart of accounts, setup, posting strategies, common code setup, etc. User/site based administrative tasks are the responsibility of the Client (e.g. report generation/creation, printing, local configuration, defining user security, etc.).
- iv. **Leased Lines and Data Communications Equipment.** The Client will connect to the SunGard Public Sector data center over the Internet. The Client assumes responsibility for the leased lines, Internet access, and the data communications equipment to support the leased lines, Internet access (excluding the router equipment at SunGard Public Sector's facility), including installation, troubleshooting, maintenance, management, and any contracts related thereto. Client will assume responsibility for the purchase, configuration, installation, management and on-going support of the data communications equipment and will hold title to same (excluding the router equipment at SunGard Public Sector's facility).
- v. **User Set Up and Management.** The Client will perform all user setup and maintenance at the application level.
- vi. **Facility Restrictions.** The Client is responsible for costs associated with any special requirements or restrictions of Client's office facility that preclude the installation of telecommunication or other necessary equipment required for this project.

vii. Maintenance and Support. Effective application software administration is the key to a successful installation and smooth on-going system operation. An individual (or two) must be designated as a primary focal point of contact for communication between Client's organization and SunGard Public Sector, and will handle the daily coordination of issues raised within your organization regarding the use of SunGard Public Sector's application software products.

The responsibilities of this individual would include:

1. Communicating with SunGard Public Sector Support personnel for problem reporting and resolution
2. Provide first level application software support to end users
3. Train new staff on software applications
4. Maintain any unique procedural documentation to your organization
5. Diagnose and resolve minor user procedural problems

APPENDIX C**MAINTENANCE STANDARDS**

- I. **Hours During Which SunGard Public Sector's Telephone Support Will be Available to Customer in Connection with the Provision of Maintenance:** Unless otherwise noted, support hours are Monday through Friday, 7:00 A.M. to 6:00 P.M. Customer's Local Time within the continental United States, excluding holidays ("5x11").
- II. **Targeted Response Times.** With respect to SunGard Public Sector's Maintenance obligations, SunGard Public Sector will use diligent, commercially reasonable efforts to respond to Notifications from Customer relating to the Applications identified in Appendix A – Order Form of this Agreement in accordance with the following guidelines with the time period to be measured beginning with the first applicable SunGard Public Sector "Telephone Support" hour occurring after SunGard Public Sector's receipt of the Notification:

Priority	Description	Response Goal*	Resolution Goal*
Urgent 1	A support issue shall be considered Urgent when it produces a Total System Failure; meaning SunGard Public Sector's Applications are not performing a process that has caused a complete work stoppage.	SunGard Public Sector has a stated goal to respond within 60 minutes of the issue being reported and have a resolution plan within 24 hours.	Although resolution times vary depending on the exact issue and customer environment, SunGard Public Sector has a stated goal to resolve an urgent issue within 24 hours OR provide a resolution plan with urgent issues within 24 hours of the issue being reported.
Critical 2	A support issue shall be considered Critical when a critical failure in operations occurs; meaning SunGard Public Sector's Applications are not performing a critical process and prevents the continuation of basic operations. Critical problems do not have a workaround. This classification does not apply to intermittent problems.	SunGard Public Sector has a stated goal to respond within two hours of the issue being reported.	A resolution plan details the steps necessary to understand and possibly resolve the issue.
Non-Critical 3	A support issue shall be considered Non-Critical when a non critical failure in operations occurs; meaning SunGard Public Sector's Applications are not performing non-critical processes, but the system is still usable for its intended purpose or there is a workaround.	SunGard Public Sector has a stated goal to respond within four hours of the issue being reported.	
Minor 4	A support issue will be considered Minor when the issue causes minor disruptions in the way tasks are performed, but does not affect workflow or operations. This may include cosmetic issues, general questions, and how to use certain features of the system.	SunGard Public Sector has a stated goal to respond within 24 hours of the issue being reported.	

* Measured from the moment a Case number is created. As used herein a "Case number" is created when a) SunGard Public Sector's support representative has been directly contacted by Customer either by phone, email, in person, or through SunGard Public Sector's online support portal, and b) when SunGard Public Sector's support representative assigns a case number and conveys that case number to the Customer.