AMENDMENT TWO

City and County of San Francisco
OFFICE OF CONTRACT ADMINISTRATION

Purchasing Division
City Hall, Room 430
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4685

SOFTWARE LICENSE AND MAINTENANCE AGREEMENT
AMENDMENT TO ORACLE LICENSE AND SERVICES AGREEMENT
BETWEEN THE CITY AND COUNTY OF SAN FRANCISCO AND

Oracle USA, Inc.

This amendment two (the "Amendment") is made as of this **26th** day of March, **2008** in the City and County of San Francisco, State of California, by and between: **Oracle USA, Inc.** 500 Oracle Parkway, Redwood City, California, 94065, hereinafter referred to as Oracle or "Contractor," and the City and County of San Francisco, a municipal corporation, hereinafter referred to as "City," acting by and through its Director of the Office of Contract Administration, hereinafter referred to as "Purchasing."

Recitals

WHEREAS, City and Contractor have entered into the Agreement (as defined below); and

WHEREAS, City and Contractor desire to modify the Agreement on the terms and conditions set forth herein to license additional software from Contractor, obtain technical and maintenance services for it, and increase the compensation;

Now, THEREFORE, the parties agree as follows:

NOW, THEREFORE, Contractor and the City agree as follows:

1.   **Definitions.** The following definitions shall apply to this Amendment:

        a.   **Agreement.** The term "Agreement" shall mean the Oracle pre-printed License and Services Agreement (OLSA V071807) dated November 21, 2007, Amendment One dated November 16, 2007 attached to it, and this Amendment Two between Contractor and City.

        b.   **Other Terms.** Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.

2.   **Modifications to the Agreement.** The Agreement is hereby modified as follows:

        2a.   **Section 1.** Section **1 (Definitions)** of the Agreement currently reads as follows in part:

1.   Definitions – Related to Software License

AGREEMENT   The Oracle pre-printed License and Services Agreement (OLSA
                  V071807), to which this document is attached, and this Amendment shall
                  be construed together as this "Agreement."

AMENDMENT   This document, which contains City's express terms that both (i)
                  supplement and (ii) control over any conflict or clear inconsistency with
                  the terms of the OLSAv071807.

....

THE ORDERING
DOCUMENTS   The Oracle ordering form attached to this Amendment as Appendix A.

....

WARRANTY PERIOD The warranty period shall commence on (i) the effective date of the
Ordering Document and continue for 12 (twelve) months for the software and each related update
to the software and (ii) the date of performance of technical services and continue for 90 (ninety)
days thereafter for technical services, unless greater periods for (i) and (ii) are specified in the
Ordering Documents.

Such section is hereby amended in part to read as follows:

AGREEMENT   The Oracle pre-printed License and Services Agreement (OLSA
                  V071807), to which Amendment One and this document, Amendment
                  Two, are attached, and these documents shall be construed together as
                  this "Agreement."

AMENDMENT   Amendment One and this document, Amendment Two, which contain
                  City's express terms that both (i) supplement and (ii) control over any
                  conflict or clear inconsistency with the terms of the OLSAv071807.

....

THE ORDERING
DOCUMENTS   The Oracle ordering forms attached to Amendment One as Appendix A
                  and the Oracle ordering forms attached to Amendment Two as Appendix
                  B.

....

WARRANTY PERIOD The warranty period shall commence on (i) the effective date of the
                  specific Ordering Document and continue for 12 (twelve) months for the
                  software and each related update to the software and (ii) the date of
                  performance of technical services and continue for 90 (ninety) days
                  thereafter for technical services, unless greater periods for (i) and (ii) are
                  specified in the specific Ordering Document.

2b.   Section 3. Section **3 ("City's Payment Obligation")** of the Agreement
currently reads as follows:

The City will pay all invoices within 30 days of the invoice date. However, failure to pay within the 30 days of the invoice date shall not be deemed a default or material breach of this Agreement without notice to the City and a reasonable opportunity to cure. In no event shall City be liable for interest or late charges for any late payments made after such 30-day period.

Contractor and the City understand and intend that the obligations of the City to pay fees for Support hereunder shall constitute a current expense of the City and shall not in any way be construed to be a debt of the City in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by the City, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or monies of the City.

No fees or expenses will be paid except those specifically agreed upon, in writing, in the Ordering Documents. Under no circumstances shall the fees and expenses result in payment of an amount that exceeds the total amount of this Agreement as set forth below.

Notwithstanding anything in this Agreement to the contrary, City shall pay any sales and use taxes that may be imposed upon the services and commodities obtained under this Agreement as long as the amount of such taxes are clearly identified on the Contractor's invoice. The City shall not be required to pay taxes directly to the tax assessing authority. City shall not pay any taxes based on Contractor's income.

The City shall pay fees for Support, exclusively from legally available funds, to Contractor or, in the event of an authorized assignment by Contractor to its assignee, according to the terms of the Agreement, upon presentation of invoices furnished by Contractor in a form acceptable to the Controller. Payments will be made by warrant drawn on the Treasurer of the City.

In no event shall the amount of the Software License payment exceed Three Million Two Hundred Thirty Thousand, One Hundred Twenty Eight dollars ($3,230,128). In no event shall the fees for Support exceed Seven Hundred Ten Thousand, Six Hundred Twenty-Eight dollars ($710,628).

In no event shall the total amount for all software and services paid under this contract exceed Three Million Nine Hundred Forty Thousand, Seven Hundred Fifty Six dollars ($3,940,756).

The City shall pay the fee for the Software Licensed pursuant to this Agreement in one lump sum after the Controller has certified the funds and issued a Purchase Order. Payments of fees for Support shall be invoiced by Contractor in arrears on a quarterly basis.

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

Such section is hereby amended in its entirety to read as follows:

The City will pay all invoices within 30 days of the invoice date. However, failure to pay within the 30 days of the invoice date shall not be deemed a default or material breach of this Agreement without notice to the City and a reasonable opportunity to cure. In no event shall City be liable for interest or late charges for any late payments made after such 30-day period.

Contractor and the City understand and intend that the obligations of the City to pay fees for Support hereunder shall constitute a current expense of the City and shall not in any way be construed to be a debt of the City in contravention of any applicable constitutional or statutory

limitations or requirements concerning the creation of indebtedness by the City, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or monies of the City.

No fees or expenses will be paid except those specifically agreed upon, in writing, in the Ordering Documents. Under no circumstances shall the fees and expenses result in payment of an amount that exceeds the total amount of this Agreement as set forth below.

Notwithstanding anything in this Agreement to the contrary, City shall pay any sales and use taxes that may be imposed upon the services and commodities obtained under this Agreement as long as the amount of such taxes are clearly identified on the Contractor's invoice. The City shall not be required to pay taxes directly to the tax assessing authority. City shall not pay any taxes based on Contractor's income.

The City shall pay fees for Support, exclusively from legally available funds, to Contractor or, in the event of an authorized assignment by Contractor to its assignee, according to the terms of the Agreement, upon presentation of invoices furnished by Contractor in a form acceptable to the Controller. Payments will be made by warrant drawn on the Treasurer of the City.

To cover the purchase under the Oracle order document dated as of March 26, 2008, the amount for the Software License payment shall be increased by Two Hundred Fifty-Eight Thousand, Six Hundred Seventy-Two dollars ($258,672) and the Support fees shall be increased by Fifty One Thousand, Nine Hundred Eighteen dollars ($51,918).

In no event shall the aggregate amount of the Software License payments exceed Three Million Four Hundred Eighty Eight Thousand, Eight Hundred dollars ($3,488,800). In no event shall the aggregate fees for Support exceed Seven Hundred Sixty Two Thousand, Five Hundred Forty Six dollars ($762,546).

In no event shall the total amount for all software and services paid under this contract exceed Four Million Two Hundred Fifty One Thousand, Three Hundred Forty Six dollars ($4,251,346).

The City shall pay the fees for the Software Licensed pursuant to each order document attached to this Agreement in one lump sum after the Controller has certified the funds regarding that order and issued a Purchase Order. Payments of fees for Support shall be invoiced by Contractor in arrears on a quarterly basis.

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

3.   **Order of Precedence.**

In the event of any conflict between the terms of this Amendment Two and the Agreement as amended by Amendment One, this Amendment Two shall control.
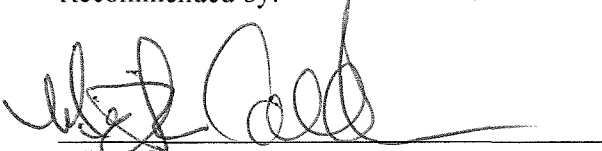
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

CITY

Recommended by:

Micki Callahan
Director
Department of Human Resources

Approved as to Form:

Dennis J. Herrera
City Attorney

By

Deputy City Attorney

Approved:

Naomi Kelly
Director of the Office of Contract
Administration, and Purchaser

CONTRACTOR

Oracle USA, Inc.

Kathryn Troutman
Senior Contracts Manager
Oracle USA, Inc.
500 Oracle Parkway
Redwood City, California 94065

City vendor number: 71766

Appendix B: Ordering Document regarding Time and Labor software

Oracle USA, Inc.
500 Oracle Parkway,
Redwood Shores, CA 94065

Your Name	CITY AND COUNTY OF SAN FRANCISCO	**Your Contact**	SHELLEY THOMPSON
Your Location	25 VAN NESS AVE SAN FRANCISCO, CA 94102	**Phone Number** **Email Address**	415-557-4833 shelley.thompson@sfgov.org

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ORACLE CONTRACT INFORMATION

Agreement: Oracle License and Services Agreement
Agreement Name: US-OLSA-10013938-30-NOV-2007

This ordering document incorporates by reference the terms of the agreement specified above between you and Oracle USA, Inc. (as successor in interest to Oracle Corporation) hereinafter "Oracle". For purposes of this ordering document any reference to "Software Updates" or "Product Support" in the agreement shall have the same meaning as "Software Update License and Support" in this ordering document.

A. Description and Fees for Ordered Programs and Services

Listed below is a summary of net fees due under the ordering document. These fees are in US Dollars and are exclusive of any applicable shipping charges or applicable taxes.

You have ordered the program licenses and 333 days of technical support services described below. Technical support services shall begin on March 26, 2008 and shall terminate on February 21, 2009.

UPK Programs

Product Description / License Type	Quantity	Net Fee
PeopleSoft Enterprise UPK Time & Labor over 4K employees and/or $1 billion in revenue - UPK Module Perpetual	1	
License		9,000.00
Software Update License & Support		1,804.86

Product Description / License Type	Quantity	Net Fee
PeopleSoft Enterprise Time and Labor - Enterprise Employee Perpetual	30,000	
License		249,671.75
Software Update License & Support		50,113.17

Product Description / License Type	Quantity	Net Fee
Crystal Reports for PeopleSoft Enterprise for Unlimited Users (Mfr is Business Objects SA; Third Party Program)	1	
License		0.00
Software Update License & Support		0.00
Crystal Enterprise/BusinessObjects Enterprise PeopleSoft Enterprise Concurrent Access License (bundles of 5) (Mfr is Business Objects SA; Third Party Program)	1	
License		0.00
Software Update License & Support		0.00
Websphere for PeopleSoft Enterprise (Mfr is International Business Machines Corporation; Third Party Program)	1	
License		0.00
Software Update License & Support		0.00

	Net Fee
Oracle Programs License Fees	258,671.75
Oracle Programs Support Fees	51,918.03
Net Fee	**310,589.78**
Total Fees	**310,589.78**

B.   General Terms

1.   Commencement Date

All program licenses and the period of performance for all services are effective upon shipment of tangible media or upon the effective date of this ordering document if shipment of tangible media is not required.

2.   Fees, Invoicing, and Payment Obligation

a. All fees due under this ordering document shall be non-cancellable and the sums paid nonrefundable, except as provided in the agreement.

b. In entering into payment obligations under this ordering document, you agree and acknowledge that you have not relied on the future availability of any program or updates. However, (a) if you order technical support for programs licensed under this ordering document, the preceding sentence does not relieve Oracle of its obligation to provide such technical support under this ordering document, if-and-when available, in accordance with Oracle's then current technical support policies, and (b) the preceding sentence does not change the rights granted to you for any program licensed under this ordering document, per the terms of this ordering document and the agreement.

c. License fees are invoiced as of the commencement date. Service fees are invoiced after performance of the service; specifically, technical support fees are invoiced quarterly in arrears from the commencement date.

d. Provided that you comply with the delivery terms in section B.3, Oracle shall not invoice you for sales tax pursuant to California law based on the net fees in section A for the programs delivered by electronic download; however, if sales tax is imposed on the net fees for the program licenses listed in section A, you agree to pay such tax.

3. **Delivery and Installation**

a. Oracle has made available to you for electronic download at the electronic delivery website located at the following Internet URL:http://edelivery.oracle.com/exempt the programs listed in section A. Through the Internet URL, you can access and electronically download to your California location a current production release as of the effective date below of the software and related program documentation for each program listed in section A. You shall have 60 days from the effective date of this ordering document to complete the download of the software and program documentation. Please be advised that not all programs are available on all hardware/operating system combinations. For current program availability please check the electronic delivery website. Oracle is under no further delivery obligation under this ordering document, electronic or otherwise. You agree to execute and return the attached Certificate of Electronic Delivery simultaneously with the execution and return of this ordering document.You acknowledge that Oracle is under no further delivery obligation under this ordering document, electronic download or otherwise.

b. Should you require a replacement copy of the software or program documentation, such replacement copy shall also be delivered electronically. You shall not be entitled to any replacement copy in the form of tangible media for the software or the program documentation, other than updates provided by Oracle under technical support service if ordered.

c. You acknowledge and agree that you have requested to receive all updates provided by Oracle under Oracle's Technical Support Services via electronic delivery and you are solely responsible for ensuring that you do not order tangible media from Oracle for the programs, which you receive via electronic delivery. In the event that you order updates for delivery via tangible media shipment (i.e., shipment of CD Pack(s)), sales taxes and interest may be due and you agree pay such tax and required interest.

d. You shall be responsible for installation of the software.

4. **Source Code**

Oracle may deliver source code as part of its standard delivery for particular programs; all source code delivered by Oracle is subject to the terms of the agreement, ordering document and program documentation.

5. **Segmentation**

The program licenses provided in this ordering document are offered separately from any other proposal for consulting services you may receive or have received from Oracle and do not require you to purchase Oracle consulting services.

6. **Territory**

The program licenses and services described in section A are for use in the U.S.

7. **Technical Support Cap**

a. Replace the first sentence of the third paragraph of Section H, Technical Support, of the agreement with "Software Update License & Support (or any successor technical support offering to Software Update License & Support, "SULS") acquired with your order may be renewed annually and, if you renew SULS for the same number of licenses for the same programs, for the first through fourth renewal years the fee for SULS will not increase over the prior year's fees. If you renew SULS for the same number of licenses for the same programs for the fifth through eighth renewal years, the fee for SULS will not increase by more 2% over the prior year's fees."

b. For the purposes of this ordering document, the prior year's fees for the first renewal year of technical support is based on a period of 12 months of technical support and is equal to $56,907.78.

C. **Future Purchases**

1. **Expansion**

If you exceed your licensed quantity you must order the programs (and first year Software Update License & Support for the programs) at the appropriate license and support fees specified on the attached Expansion Exhibit. The number of additional program licenses to be ordered shall be equal to the actual number of Enterprise Employees as of the order date less the total number of licensed quantity (under this ordering document or other ordering documents) rounded up to the next increment on the attached Expansion Exhibit.

2. **License definitions and rules**

The license definitions and program specific terms contained in section D of this ordering document will apply to program licenses ordered pursuant to this section.

3. **Delivery Obligation**
    Each order placed pursuant to this section will specify Oracle's delivery obligation. If the order specifies delivery, the programs will be delivered via electronic download. If electronic download is not possible or otherwise agreed to the parties, tangible media will be delivered. Whenever the delivery of tangible media is required, you are charged for media and the shipping terms are FCA: Shipping Point, Pre-paid and Add.

D.   Other

1. **Pricing Pursuant to Price Hold**
    The pricing for the programs listed in section A above is granted pursuant to the discounts contained in the ordering document between you and Oracle dated 30-NOV-2007.

E.   Enterprise Application Specific Terms

1. **Applicable to programs with the license type of Enterprise Employee**
    The number of Enterprise Employees determines the value of these program licenses. For these program licenses, the licensed quantity purchased must, at a minimum, be equal to the number of Enterprise Employees as of the effective date of your order. If at any time the number of Enterprise Employees exceeds the licensed quantity, you are required to order additional licenses (and technical support for such additional licenses) such that the number of Enterprise Employees is equal to or less than the licensed quantity. You are not entitled to any refund, credit or other consideration of any kind if there is a reduction in the number of Enterprise Employees. In addition, each year 90 days before the anniversary date (defined as the day and month of the ordering document effective date), you are required to report to Oracle the number of Enterprise Employees as of such date.

2. **Enterprise Employee**
    Enterprise Employee is defined as all of your full-time, part-time, temporary employees and all of your agents, contractors and consultants. The quantity of the licenses required is determined by the number of Enterprise Employees and not the actual number of users. In addition, if you elect to outsource any business function(s) to another company, all of the company's full-time, part-time, temporary employees and agents, contractors and consultants that are providing the outsourcing services for you must be counted for the purposes of determining the number of Enterprise Employees.

F.   Program Specific Terms for the PeopleSoft and JDE Product Lines

1. **UPK Module**
    UPK Module is defined as the functional software component described in the product documentation.

2. **License Grant**
    Oracle grants to you a non-exclusive, nontransferable license for your UPK Developer(s) to: (i) use those PeopleSoft User Productivity Kit ("UPK") products listed above in section A (collectively referred to as "materials") only as necessary to create and provide training solely for UPK to use the underlying programs for your benefit; (ii) make an unlimited number of copies of the materials only as necessary to create and provide training solely to UPK to use the underlying programs for your benefit; and (iii) develop modifications and customizations to the UPK content materials, if applicable, all subject to the terms and conditions set forth in the agreement, provided all copyright notices are reproduced as provided on the original. Except as explicitly set forth above, the materials designated as program materials in the table above in section A shall be considered programs as such term is defined in the agreement. You are prohibited from reselling or distributing the materials to any other party or using the materials other than as explicitly permitted in this ordering document or in the agreement. Oracle represents that the materials and any content created by you using the program materials contain valuable proprietary information. Oracle (or its third-party program providers) retains title to all portions of the materials and any copies thereof. You shall use materials modifications created by you solely for your internal use in accordance with the terms of the agreement. You may provide access to and use of the materials only to those third parties that are licensed as UPK Users and that: (a) provide services to you concerning your use of the materials; (b) have a need to use and access the materials; and (c) have agreed to substantially similar non-disclosure obligations imposed by you as those contained in the agreement. **NOTWITHSTANDING ANYTHING IN THE AGREEMENT TO THE CONTRARY, CONTENT MATERIALS ARE PROVIDED "AS IS" AND ARE PROVIDED WITHOUT WARRANTY OF ANY KIND.**

3. **Additional License Rights**
    Your license for the program(s) may include additional license rights. Please review the additional license rights listed on the PeopleSoft / JD Edwards program table located at http://oracle.com/contracts for additional information.

4. **Included Programs - Crystal Reports for PeopleSoft Enterprise**
   This program is a third party program and it is also a supportable program. "Unlimited users" for purposes of this program means all users who are authorized by you to use such program. You may use this third party program solely in conjunction with PeopleSoft Enterprise programs licensed by you.

5. **Included Programs - Crystal Enterprise/BusinessObjects Enterprise for PeopleSoft Enterprise**
   You acknowledge that this program requires a web application server. This third party program is a supportable program. A "concurrent access license" is a license for one person to access all features and functions of this program. A concurrent access license user is accessing the program from the time the concurrent access license user logs onto the program until the concurrent access license user exits or closes the program. You may use this third party program solely in conjunction with PeopleSoft Enterprise programs licensed by you.
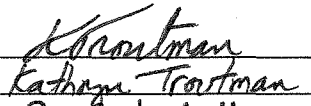
6. **Included Programs - WebSphere**
   Notwithstanding anything in the agreement to the contrary, Oracle shall not be obligated to indemnify you for any claims based on: (i) any third party products identified in the "README" AND "LICENSE.TXT" files included with WebSphere; (ii) open source code delivered with the WebSphere product; (iii) any trade secret embodied within WebSphere; and (iv) the combination, operation or use of WebSphere with any non-International Business Machine Corporation product, data, or apparatus. In addition to the terms set forth in the agreement and this ordering document, use of this program shall be subject to the terms and conditions set forth in the "README" and "LICENSE.TXT" files included with the WebSphere program, as those terms may change from time to time. This third party program is a supportable program.

7. **Included Programs - PeopleTools**
   You may use PeopleTools – Restricted Development and PeopleTools Mobile Agent – Restricted Development to develop interfaces and modifications, including creation of new application data tables, only to the PeopleSoft Enterprise programs you have licensed. Oracle will deliver these programs to you per the terms of the Delivery and Installation section.

By signing below, the parties agree that the agreement and this ordering document constitute the entire agreement between the parties with regard to the subject matter herein and as such, no other preprinted, non-negotiated or other terms and conditions, on your purchase order or elsewhere, shall apply.

This quote is valid through May 31, 2008 and shall become binding upon execution by you and acceptance by Oracle.

CITY AND COUNTY OF SAN FRANCISCO	ORACLE USA, INC.	
Signature	Signature	
Name _Micki Callahan_	Name	_Katharine Troutman_
Title _Human Resources Dir_	Title	_Sr. Contracts Manager_
Signature Date _3-24-08_	Signature Date	_19-MAR-08_
Effective Date (to be completed by Oracle)		

EXPANSION EXHIBIT

Listed below is the license fee and first year Software License Update & Support (SULS) fee for additional program licenses for the program listed in section A with the license type Employee Count that may be purchased pursuant to section C.1

Product Description	License Type	License Fee per Increment	First Year SULS per Increment**	Increment*
PeopleSoft Enterprise Time and Labor	Employee Count	$24,967.18	$5,492.78	3,000

*Each increment shall include all of the products listed in the product description column for the applicable metric ordered.

** Based on a period of 12 months of technical support.

Certificate of Electronic Delivery

This Certificate of Electronic Delivery is executed as of the effective date set forth below by THE CITY AND COUNTY OF SAN FRANCISCO ("you") and relates to the electronic delivery of certain software programs provided by Oracle USA, Inc. ("Oracle"). This Certificate of Electronic Delivery shall be governed by the terms of the US-OLSA-10013938-30-NOV-2007, as amended, between you and Oracle (the "agreement").

1. As of the date of this Certificate of Electronic Delivery, you agree that Oracle has provided you with an Internet URL through which you can download all the programs provided in the ordering document between Oracle and you dated _____ (the "ordering document"). You will have 60 days from the effective date of the ordering document to complete your download of the programs provided.

2. You agree that Oracle has completed all of the delivery responsibilities required by the ordering document and the agreement and no additional shipment of the programs on tangible media (CD's, Disks, Tapes, etc.) shall be provided or is required.

The Effective Date of this Certificate of Electronic Delivery is _____, 2008.

THE CITY AND COUNTY OF SAN FRANCISCO

By: _____

Name: Micki Callahan

Title: Human Resources Director