City and County of San Francisco
Office of Contract Administration
Purchasing Division

Amendment Four

THIS AMENDMENT (this "Amendment") is made as of **October 5, 2010**, in San Francisco, California, by and between **Oracle America, Inc., 1910 Oracle Way, Reston VA 20190** ("Contractor"), and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Director of the Office of Contract Administration.

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 renew annual support, increase the contract amount, and update standard contractual clauses;

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 between Contractor and City, as amended by, Amendment One dated November 21, 2007, Amendment Two dated November 17, 2008, Amendment Three dated February 22, 2010, and the Assignment and Assumption Agreement dated October 5, 2010.

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.   **Definitions.** Section 1 of the Agreement currently reads as follows:

1.   **Definitions**

AGREEMENT	The Oracle pre-printed License and Services Agreement (OLSA V071807), to which Amendments One and Amendment Two, and this document, Amendment Three, are attached, and these documents shall be construed together as this "Agreement."
AMENDMENT	Amendment One and Amendment Two, and this document, Amendment Three, 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, the
                      Oracle ordering forms attached to Amendment Two as Appendix B, and the
                      Oracle ordering forms attached to Amendment Three as Appendix C.

AUTHORIZATION; or
AUTHORIZATION
DOCUMENT   This Agreement, a Blanket Purchase Order, Contract Order, or
                      Purchase Order of the City, properly executed by the Office of the
                      Controller and Purchasing, and certified by the Controller for the
                      specific funding of this Agreement or any modification thereof. A
                      Purchase Order certified by the Controller indicates full funding for
                      that order.

Whenever the words "as directed," "as required," "as permitted," or words of like effect are used,
it shall be understood as the direction, requirement, or permission of the Office of the Controller.
The words "sufficient," "necessary," or "proper," and the like, mean sufficient, necessary or
proper in the judgment of the Office of the Controller, unless otherwise indicated by the context.

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

1.   **Definitions**

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

     AMENDMENT   Amendment One, Amendment Two, Amendment Three, and this
                      document, Amendment Four, 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, the
                      Oracle ordering forms attached to Amendment Two as Appendix B, the
                      Oracle ordering forms attached to Amendment Three as Appendix C, and the
                      Oracle ordering forms attached to Amendment Four as Appendix D.

     AUTHORIZATION; or
     AUTHORIZATION
     DOCUMENT   This Agreement, a Blanket Purchase Order, Contract Order, or Purhcase
                      Order of the City, properly executed by the Office of the Controller and
                      Purchasing, and certified by the Controller for the specific funding of this
                      Agreement or any modification thereof. A Purchase Order certified by the
                      Controller indicates full funding for that order.

Whenever the words "as directed," "as required," "as permitted," or words of like effect are used,
it shall be understood as the direction, requirement, or permission of the Office of the Controller.

The words "sufficient," "necessary," or "proper," and the like, mean sufficient, necessary or proper in the judgment of the Office of the Controller, unless otherwise indicated by the context.

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

3.   City's Payment Obligation

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 attached as Appendix C to this Third Amendment, the amount for the Support fees shall be increased by Two Hundred Forty-One Thousand, Eight Hundred Fifty Five dollars ($241,855).

In no event shall the aggregate amount of the Software License payments exceed One Million Ninety-Nine Thousand, Three Hundred Forty dollars ($1,099,340). In no event shall the fees for Support exceed Seven Hundred Eighty-One Thousand, Two Hundred Twenty Five dollars ($781,225).

In no event shall the total amount for all software and services paid under this contract exceed One Million Eight Hundred Eighty Thousand, Five Hundred Sixty Five dollars ($1,880,565).

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.

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

3. City's Payment Obligation

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 attached as Appendix C to this Third Amendment, the amount for the Support fees shall be increased by Two Hundred Forty-One Thousand, Eight Hundred Fifty Five dollars ($241,855).

In no event shall the aggregate amount of the Software License payments exceed One Million Ninety-Nine Thousand, Three Hundred Forty Dollars ($1,099,340). In no event shall the fees for Support exceed One Million Twenty Three Thousand and Eighty Dollars ($1,023,080).

In no event shall the total amount for all software and services paid under this contract exceed Two Million One Hundred and Twenty Two Thousand Four Hundred and Twenty Dollars ($2,122,420).

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.

2 c. Term of the Agreement. Section 4 of the Agreement currently reads as follows:

4. Term of the Agreement

a. Term of the License

Subject to Section 5, the license granted under this Agreement shall commence upon Acceptance of the Licensed Software and shall continue in perpetuity. All licenses granted under this Agreement shall be perpetual unless otherwise stated in the specific Ordering Document procuring the license, and shall be in the quantity that City designates in its ULA certification delivered to Contractor in accordance with section C of the November 2007 Ordering Document (Appendix A).

b. Term of the Support and Update Services

Subject to Section 5, the term of the Support shall be from Acceptance for until February 21, 2011 unless sooner terminated in accordance with the provisions of this Agreement. This term may be renewed annually at City's option for Six additional one year terms (with the price caps set forth in Section B.6 of the November 2007 Ordering Document, Appendix A) by issuance of an amendment to this Agreement.

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

4. Term of the Agreement

a. Term of the License

Subject to Section 5, the license granted under this Agreement shall commence upon Acceptance of the Licensed Software and shall continue in perpetuity. All licenses granted under this Agreement shall be perpetual unless otherwise stated in the specific Ordering Document procuring the license, and shall be in the quantity that City designates in its ULA certification delivered to Contractor in accordance with section C of the November 2007 Ordering Document (Appendix A).

b. Term of the Support and Update Services

Subject to Section 5, the term of the Support shall be from the date of Acceptance to February 21, 2012 unless sooner terminated in accordance with the provisions of this Agreement. This term may be renewed annually at City's option for Five (5) additional one year terms (with the price caps set forth in Section B.6 of the November 2007 Ordering Document, Appendix A) by issuance of an amendment to this Agreement.

2d. Cooperative Drafting. Section 46 is hereby added to the Agreement, as follows:

46. Cooperative Drafting. This Agreement has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

2e. The February 2011 Ordering Document regarding support from February 22, 2011 to February 21, 2012, is added to the Agreement and incorporated by reference hereto as Appendix D.

3. Effective Date. Each of the modifications set forth in Section 2 shall be effective on and after **February 22, 2011.**
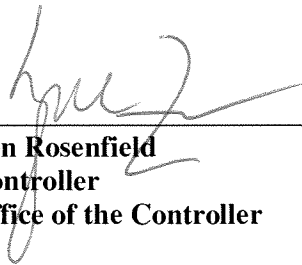
4.   Legal Effect. Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

5.   Order of Precedence. In the event of any conflict between the terms of this Amendment Four and the Agreement as amended by Amendments One, Two, and Three, this Amendment Four shall control.

IN WITNESS WHEREOF, Contractor and City have executed this Amendment as of the date first referenced above.
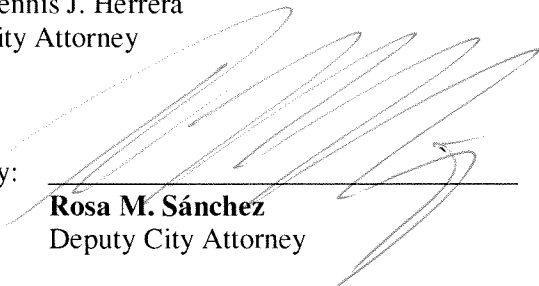
CITY

Recommended by:

Ben Rosenfield
Controller
Office of the Controller

Approved as to Form:

Dennis J. Herrera
City Attorney

By: _____
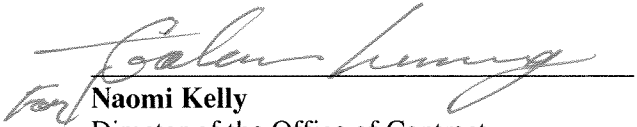   **Rosa M. Sánchez**
    Deputy City Attorney

Approved:

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

CONTRACTOR

Oracle America, Inc.

Krys Koper
Senior Contracts Manager
Oracle America, Inc.
One Bellevue Center
411 108th Avenue NE
Suite 900
Bellevue, WA 98004

City vendor number: 41827

Amendment 4
Order Doc

ORACLE®

25-Aug-10

Rachel Cukierman
City And County Of San Francisco
25 Van Ness Ave.
Suite 345
San Francisco
CA 94102
United States

Dear Rachel Cukierman

The technical support services and benefits provided under service contract number 2599575 will expire, or have expired, on 21-Feb-11. Please find attached an ordering document for the renewal of this service contract. If applicable, the attached ordering document may describe services that you have ordered that are in addition to the services that you are renewing.

To ensure that there is no interruption to the technical support services and benefits provided under service contract number 2599575, please order the technical support services on this ordering document by issuing a form of payment acceptable to Oracle in accordance with the attached Order Processing Details section on or before 21-Jan-11.

If further information is required, please contact me at the e-mail address or telephone number provided below.

Regards,

Ann Tran
Oracle Support Services
E-mail: ann.tran@oracle.com
Tel.: 408.642.2847
Fax: 408.642.2847

ORACLE®

Ordering Document

Service Contract #:	2599575	**Renewal Contact:**	Ann Tran
Offer Expires:	21-Feb-11		
Payment Terms:	30 NET from date of invoice	**Telephone:**	408.642.2847
		Fax:	408.642.2847
Billing Terms:	Quarterly in Arrears	**E-mail:**	ann.tran@oracle.com

CUSTOMER: City And County Of San Francisco

QUOTE TO		BILL TO	
Account Contact:	Rachel Cukierman	**Account Contact:**	Jeannie Wong
Account Name:	City And County Of San Francisco	**Account Name:**	City And County Of San Francisco
Address:	25 Van Ness Ave.	**Address:**	1 Dr Carlton B Goodlett Pl
	Suite 345 San Francisco CA 94102 United States		San Francisco CA 94102 United States
Telephone:	415 554-2333	**Telephone:**	-415.554.7604
Fax:		**Fax:**	
E-mail:	rachel.cukierman@sfgov.org	**E-mail:**	@

Oracle may provide certain information and notices about technical support via e-mail. Accordingly, please verify and update the Quote To and Bill To information above to ensure that such communications and notices are received from Oracle. If changes are required, please e-mail or fax the updated information to Ann Tran at ann.tran@oracle.com or 408.642.2847. Please also include service contract number 2599575 on such reply.

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Service Details

Service Level:	Software Update License & Support					End Date: 21-Feb-12

Product Description	CSI #	Qty	License Metric	License Level / Type	Start Date	Price
Oracle Database Enterprise Edition - Processor Perpetual	15685350	42		ULA	22-Feb-11	139,819.68
Real Application Clusters - Processor Perpetual	15685350	20		ULA	22-Feb-11	33,290.40
Advanced Security - Processor Perpetual	15685350	18		ULA	22-Feb-11	14,980.68
Partitioning - Processor Perpetual	15685350	10		ULA	22-Feb-11	8,322.60
Diagnostics Pack - Processor Perpetual	15685350	42		ULA	22-Feb-11	10,486.48
Provisioning and Patch Automation Pack for Database - Processor Perpetual	15685350	42		ULA	22-Feb-11	10,486.48
Tuning Pack - Processor Perpetual	15685350	42		ULA	22-Feb-11	10,486.48
Configuration Management Pack - Processor Perpetual	15685350	42		ULA	22-Feb-11	10,486.48
Application Management Pack for PeopleSoft - Processor Perpetual	15685350	7		ULA	22-Feb-11	3,495.49

Subtotal: **USD** **241,854.77**

Total Amount: USD **241,854.77**

plus applicable tax

Notes:
1. If any of the fields listed above are blank, then such field(s) does not apply for the applicable programs and/or hardware.

2. If a change to the Service Details provided above is required, please contact Ann Tran at 408.642.2847 or at ann.tran@oracle.com and an updated ordering document will be provided to you.

RL_v051910

GENERAL TERMS

"You" and "your" refers to the Customer provided above.

In the event that the Customer and the Quote To Account Name provided above are not the same, City And County Of San Francisco represents that Customer has authorized City And County Of San Francisco to execute this ordering document on Customer's behalf and to bind Customer to the terms described herein. City And County Of San Francisco agrees that the ordered services shall be used solely by the Customer and shall advise Customer of the terms of this ordering document as well as information and notices about technical support that Oracle provides to City And County Of San Francisco during the term of service. Customer agrees that even if the Customer and the Bill To Account Name above are different, that: a) Customer has the ultimate responsibility for payments under this ordering document; and, b) any failure of City And County Of San Francisco to make timely payment under this ordering document shall be deemed to be Customer's breach of this ordering document; and, c) in addition to any other remedies available to Oracle, it may terminate Customer's support for such nonpayment of fees.

The technical support services acquired under this ordering document are governed by the terms and conditions of the agreement that you executed for technical support from the vendor of the programs and/or hardware listed in the Service Details section above (i.e. Oracle, a vendor acquired by Oracle, or an authorized reseller of Oracle or of the acquired vendor). However, any use of the programs and/or hardware, which includes by definition the updates and other materials provided or made available by Oracle under technical support, is subject to the rights granted for the programs and/or hardware set forth in the order in which the programs and/or hardware were acquired.

Technical support is provided under Oracle's technical support policies in effect at the time the services are provided. The technical support policies are subject to change at Oracle's discretion; however, Oracle will not materially reduce the level of services provided for supported programs and/or hardware during the period for which fees for technical support have been paid. You should review the technical support policies prior to entering into this ordering document. The current version of the technical support policies may be accessed at http://www.oracle.com/support/policies.html. Customers who allow technical support to lapse may be subject to Oracle's reinstatement policy in effect at the time of reinstatement.

Order Processing Details

Your order is subject to Oracle's acceptance. An order consists of the following: (i) this ordering document, which incorporates by reference the agreement that you executed for technical support from the vendor of the programs and/or hardware listed in the Service Details section above (i.e. Oracle, a vendor acquired by Oracle, or an authorized reseller of Oracle or of the acquired vendor), and (ii) a form of payment acceptable to Oracle. Oracle normally accepts orders after receipt of a purchase order, check or credit card issued in accordance with the Purchase Order, Check, Credit Card Confirmation section below. If Oracle accepts your order, the service start date is the effective date of such order and also serves as the commencement date of the technical support services.

Please note that if the pre-tax value of this ordering document is USD $2,000 or less, the technical support services on this ordering document must be paid either by credit card or electronic upload of a PO to the Online site.

Once ordered, technical support for the support period defined above is non-cancelable and the related fees are non-refundable.

An invoice will only be issued upon receipt of a form of payment acceptable to Oracle. Regardless of the form of payment, Oracle's invoice includes applicable sales tax, GST, or VAT (collectively referred to as " tax"). If City And County Of San Francisco is a tax exempt organization, a copy of City And County Of San Francisco's tax exemption certificate must be submitted with City And County Of San Francisco's purchase order, check, credit card or other acceptable form of payment.

PURCHASE ORDER, CHECK, CREDIT CARD CONFIRMATION

Purchase Order
If the technical support services on this ordering document will be ordered and paid under a purchase order, the purchase order must include the following information:

- Service Contract #: 2599575
- Term of Service: 22-Feb-11 to 21-Feb-12
- Final Total: USD 241,854.77 (excluding applicable tax)
- Local Tax, if applicable

In issuing a purchase order, City And County Of San Francisco agrees that the terms of this ordering document and the terms of the agreement described above supersede the terms in the purchase order or any other non-Oracle document, and no terms included in any such purchase order or other non-Oracle document shall apply to the technical support services ordered.

Please e-mail or fax the purchase order to Oracle per the Remittance Details provided below.

Check
If the technical support services on this ordering document will be ordered and paid by check, the check must include the following information:

- Service Contract #: 2599575
- Term of Service: 22-Feb-11 to 21-Feb-12
- Final Total: USD 241,854.77 (excluding applicable tax)
- Local Tax, if applicable

In issuing a check, City And County Of San Francisco agrees that only the terms of this ordering document and the terms of the agreement described above shall apply to the technical support services ordered. No terms attached or submitted with the check shall apply.

Please mail check payments per the Remittance Details provided below.

Credit Card Confirmation
If the technical support services on this ordering document will be ordered and paid under a credit card, please complete the section below and return it to Oracle per the Remittance Details provided below. Please note that Oracle is unable to process credit card transactions of USD100,000 or greater.

- Service Contract #:   2599575
- Term of Service: 22-Feb-11 to 21-Feb-12
- Final Total: USD 241,854.77 (excluding applicable tax)

_____
Credit Card Number

_____
Expiration Date

_____
Billing Address (associated with Credit Card)

_____
City, State, and Zip (associated with Credit Card)

_____
Authorized Signature

_____
Name

The credit card must be valid for the entire Term of Service above. In issuing this credit card confirmation, City And County Of San Francisco agrees that only the terms of this ordering document and the terms of the agreement described above shall apply to the technical support services ordered. No terms attached or submitted with the credit card confirmation shall apply.

REMITTANCE DETAILS
Purchase orders or credit card details for the technical support services ordered hereto should be sent to:

Attn: Ann Tran
            Oracle Support Services
Fax: 408.642.2847
E-mail: ann.tran@oracle.com

Checks for the technical support services ordered hereto should be sent to:

AK, AZ, CA, HI, ID, NV, OR, UT, WA:

Oracle America, Inc
PO Box 44471
San Francisco, CA 94144-4471

All Other States:

Oracle America, Inc
PO Box 71028
Chicago, IL 60694-1028

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