

**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 17th day of November, 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 extend the performance period, and increase the contract amount;

Now, THEREFORE, the parties 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 21, 2007, 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:
  - a. Section 1.** Section 1 (Definitions) of the Agreement currently reads as follows:  
...

ACCEPTANCE                      City's Acceptance of the Licensed Software shall be deemed to have occurred upon the effective date of the Ordering Document, and post

acceptance testing, if any, shall be governed by the procedures set forth in Section 8.

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 its entirety to read as follows:**

...

ACCEPTANCE            City's Acceptance of the Licensed Software shall be deemed to have occurred upon the effective date of the November 2007 Ordering Document (Appendix A), and post acceptance testing, if any, shall be governed by the procedures set forth in Section 8.

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 as 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 November 2007 Ordering Document (Appendix A) 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 November 2007 Ordering Documents (Appendix A).

**2b. Section 3. Section 3 ("City's Payment Obligation") 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.

In no event shall the amount of the Software License ayment exceed One Million Ninety-Nine Thousand, Three Hundred Thirty Four dollars (\$1,099,339.80). In no event shall the fees for Support exceed Two Hundred Forty-One Thousand, Eight Hundred Fifty-Five dollars (\$241,855).

In no event shall the total amount for all software and services paid under this contract exceed One Million Three Hundred Forty-One Thousand, One Hundred Ninety-Five dollars (\$1,341,195).

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:**

**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 B to this Second Amendment, the amount for the Support fees shall be increased by Two Hundred Ninety-Seven Thousand, Five Hundred Fifteen dollars (\$297,515).

In no event shall the amount of the Software License payment exceed One Million Ninety-Nine Thousand, Three Hundred Thirty Four dollars (\$1,099,339.80). In no event shall the fees for Support exceed Five Hundred Thirty-Nine Thousand, Three Hundred Seventy dollars (\$539,370).

In no event shall the total amount for all software and services paid under this contract exceed One Million Six Hundred Thirty-Eight Thousand, Seven Hundred Ten dollars (\$1,638,710).

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.**

**2c. Section 4. Section 4 ("Term of the Agreement") 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, and shall be in the quantity that City designates in its ULA certification delivered to Contractor in accordance with section C of the Ordering Document.

**b. Term of the Support and Update Services**

Subject to Section 5, the term of the Support shall be from Acceptance for one year unless sooner terminated in accordance with the provisions of this Agreement. This term may be renewed annually at City's option for the additional one year terms (contemplated in section B.6 of the Ordering Document) 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 Acceptance for until February 21, 2010 unless sooner terminated in accordance with the provisions of this Agreement. This term may be renewed annually at City's option for seven 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. Section 7.** Section 7 ("Delivery") of the Agreement currently reads as follows:

**7. Delivery**

**a. Delivery.** Contractor shall make the Licensed Software products available to download by City beginning no later than the date specified in the Ordering Document, after certification of the purchase order and notice to Contractor.

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

**7. Delivery**

**a. Delivery.** Contractor shall make the Licensed Software products available to download by City beginning no later than the date specified in the November 2007 Ordering Document (Appendix A), after certification of the purchase order and notice to Contractor.

**2e. Section 8.** Section 4 ("Acceptance Testing") of the Agreement currently reads as follows:

**8. Acceptance Testing.** Acceptance testing shall have the meaning provided in the Ordering Documents.

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

**8. Acceptance Testing.** Acceptance testing shall have the meaning provided in the November 2007 Ordering Document (Appendix A).

**2f.** The November 2008 Ordering Document regarding support is added to the Agreement and attached hereto as Appendix B.

**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**

**CONTRACTOR**

Recommended by:

**Oracle USA, Inc.**



**Micki Callahan**  
**Director**  
**Department of Human Resources**



**Glenda Sakati**  
**Manager – Public Sector License Contracts**  
**Oracle USA, Inc.**  
**500 Oracle Parkway**  
**Redwood City, California 94065**

Approved as to Form:

City vendor number: 71766

Dennis J. Herrera  
City Attorney

By



Deputy City Attorney

Approved:



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

Appendix B: Ordering Document



19-Nov-08

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 29-Nov-08. Please find attached an ordering document for the renewal of this service contract. If applicable, the attached ordering document may also include incremental technical support services newly acquired.

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 an acceptable form of payment in accordance with the attached Order Processing Details section on or before 26-Nov-08.

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

Regards,

M. Aaron Anastasi  
Oracle Support Services  
E-mail: [aaron.anastasi@oracle.com](mailto:aaron.anastasi@oracle.com)  
Tel.: +19163154041  
Fax: +19163155657





## Ordering Document

<b>Service Contract #:</b> 2599575 <b>Offer Expires:</b> 29-Nov-08  <b>Payment Terms:</b> NET 30 DAYS from date of invoice  <b>Billing Terms:</b> Quarterly in Arrears	<b>Renewal Contact:</b> M. Aaron Anastasi  <b>Telephone:</b> +19163154041 <b>Fax:</b> +19163155657 <b>E-mail:</b> aaron.anastasi@oracle.com
<b>CUSTOMER:</b> City And County Of San Francisco	
<b>QUOTE TO</b> <b>Account Contact:</b> Rachel Cukierman <b>Account Name:</b> City And County Of San Francisco <b>Address:</b> 25 Van Ness Ave. Suite 345 San Francisco CA 94102 United States  <b>Telephone:</b> 415 554-2333 <b>Fax:</b> <b>E-mail:</b> rachel.cukierman@sfgov.org	<b>BILL TO</b> <b>Account Contact</b> Dept. Of Human Resources <b>Account Name:</b> City And County Of San Francisco <b>Address:</b> 25 Van Ness Ave. Suite 345 San Francisco CA 94102 United States  <b>Telephone:</b> <b>Fax:</b> <b>E-mail:</b>

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 M. Aaron Anastasi at aaron.anastasi@oracle.com or +19163155657. Please also include service contract number 2599575 on such reply.

## Service Details

Service Level: Software Update License & Support						End Date: 21-Feb-10
Product Description	CSI #	Qty	License Metric	License Level / Type	Start Date	Final Price
Oracle Database Enterprise Edition - Processor Perpetual	15685350	42		ULA	30-Nov-08	171,997.36
Real Application Clusters - Processor Perpetual	15685350	20		ULA	30-Nov-08	40,951.75
Advanced Security - Processor Perpetual	15685350	18		ULA	30-Nov-08	18,428.29
Partitioning - Processor Perpetual	15685350	10		ULA	30-Nov-08	10,237.94
Diagnostics Pack - Processor Perpetual	15685350	42		ULA	30-Nov-08	12,899.81
Provisioning Pack for Database - Processor Perpetual	15685350	42		ULA	30-Nov-08	12,899.81
Tuning Pack - Processor Perpetual	15685350	42		ULA	30-Nov-08	12,899.81
Configuration Management Pack - Processor Perpetual	15685350	42		ULA	30-Nov-08	12,899.81
Application Management Pack for PeopleSoft - Processor Perpetual	15685350	7		ULA	30-Nov-08	4,299.92
<b>Subtotal:</b>						<b>USD 297,514.50</b>
<b>Total Amount:</b>						<b>USD 297,514.50</b>
plus applicable tax						

### Notes:

1. If any of the fields listed above are blank, the program licenses were acquired under a separate license model in which such field(s) does not apply.
2. If a change to the Service Details provided above is required, please contact M. Aaron Anastasi at +19163154041 or at aaron.anastasi@oracle.com and an updated ordering document will be provided to you in accordance with Oracle's technical support policies.

## 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 acknowledges 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 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.

The technical support services acquired under this ordering document are governed by the terms and conditions of the Oracle License and Services Agreement v071807. However, any use of the programs, 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 set forth in the order in which the programs 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 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, including Oracle's reinstatement policy, may be accessed at <http://www.oracle.com/support/policies.html>. Customers who allow technical support to lapse and later wish to reactivate it will be subject to Oracle's reinstatement policy in effect at the time of reinstatement. Applicable reinstatement fees may apply in addition to the annual technical support fees.

In the event that Priority Service is acquired under this ordering document, you acknowledge you must maintain a current Software Update License & Support contract for all licenses in a license set for which Priority Service has been purchased. By accepting this ordering document, you also acknowledge that Software Update License & Support for program licenses listed under the Priority Service level may be renewed under separate contract(s). Upon renewal, Priority Service fees will be based on the Priority Service pricing policies in effect at the time of renewal and such fees will be adjusted to account for any acquisition of additional licenses in a license set. Contractual caps on annual technical support fees for Software Update License & Support do not apply to Priority Service, unless stated otherwise in your contract.

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## 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 license and services agreement that you executed when you acquired technical support from Oracle or an Oracle authorized reseller, (ii) an acceptable form of payment, and (iii) a tax exemption certificate (if applicable). 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.

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 an acceptable form of payment. 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 and is not a U.S. federal government entity, 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 purchased by purchase order, the purchase order must include the following information:

- Service Contract #: 2599575
- Term of Service: 30-Nov-08 to 21-Feb-10
- Final Total: USD 297,514.50 (excluding applicable tax)
- Local Tax, if applicable
- Agreement: Oracle License and Services Agreement v071807

In issuing a purchase order, City And County Of San Francisco agrees and acknowledges that the terms of this ordering document are incorporated into City And County Of San Francisco's purchase order and that the terms of this ordering document and the terms of Oracle License and Services Agreement v071807 supersede 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 purchased by check, the check must include the following information:

- Service Contract #: 2599575
- Term of Service: 30-Nov-08 to 21-Feb-10
- Final Total: USD 297,514.50 (excluding applicable tax)
- Local Tax, if applicable
- Agreement: Oracle License and Services Agreement v071807

In issuing a check, City And County Of San Francisco agrees and acknowledges that the terms of this ordering document and the terms of Oracle License and Services Agreement v071807 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 purchased by 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: 30-Nov-08 to 21-Feb-10  
Final Total: USD 297,514.50 (excluding applicable tax)  
Agreement: Oracle License and Services Agreement v071807

\_\_\_\_\_  
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 and acknowledges that the terms of this ordering document and the terms of Oracle License and Services Agreement v071807 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: M. Aaron Anastasi  
Oracle Support Services  
Fax: +19163155657  
E-mail: aaron.anastasi@oracle.com

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

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

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

**All other States:**

Oracle USA, Inc.  
PO Box 71028  
Chicago, IL 60694-1028