4305

PEOPLESOFT

OFFICIAL FILE

SOFTWARE LICENSE AND SERVICES AGREEMENT

This Software License and Services Agreement ("**Agreement**") is made as of May 19, 1998 ("**Effective Date**") by and between PeopleSoft USA, Inc. ("**PeopleSoft**"), a California corporation having an office at 4305 Hacienda Drive, P.O. Box 9085, Pleasanton, California 94588 and City of Peoria, Arizona ("**Licensee**").

TERMS AND CONDITIONS

1. LICENSE

1.1 PeopleSoft grants Licensee a perpetual, non-exclusive, non-transferable license to use the licensed Software, solely for Licensee's internal data processing operations on one or more servers at its facilities in the Territory for the size of the entity specified in the Schedule(s). Licensee shall use any third party software products or modules provided by PeopleSoft solely with PeopleSoft Software.

1.2 Licensee may:

a. in the event that a Server at its facility is inoperable, use the Software temporarily on a back-up Server, which may be at a third-party site provided that the back-up Server is under the sole control of Licensee and the Software installed on the back-up Server is used only in accordance with this Agreement;

b. make a reasonable number of copies of the Software, solely for: (i) use in accordance with the terms set forth herein in the Territory for the size of the entity specified in the applicable Schedule ; (ii) archive or emergency back-up purposes; (iii) disaster recovery testing purposes; and/or (iv) test and development purposes; and

c. modify or merge the Software with other software, provided, however, that any modifications, however extensive, shall not diminish PeopleSoft's title or interest in the Software.

1.3 PeopleSoft shall provide Licensee with the number of copies of the Software and Documentation only as specified in the applicable Schedule and workstation access as specified in the applicable Schedule. Licensee may make a reasonable number of copies of Documentation and the Software which shall be limited to Production and test and development use solely for Licensee's internal data processing operations provided all copyright and proprietary notices are reproduced.

2. LICENSE EXCLUSIONS

2.1 *Except as expressly authorized herein*, Licensee shall not:

a. Copy the Software;

b. Cause or permit reverse compilation or reverse assembly of all or any portion of the Software;

c. Distribute, disclose, market, rent, lease or transfer to any third party any portion of the Software (including PeopleTools) or the Documentation, or use the Software or Documentation in any service bureau arrangement, facility management, or third party training;

d. Disclose the results of Software performance benchmarks to any third party without PeopleSoft's prior written consent;

e. Transfer the Software to a different software database platform without the prior written consent of PeopleSoft (such consent shall not be unreasonably withheld) and payment of any additional fees that may be due;

f. Transfer to or use the Software outside the Territory without providing prior written notice to PeopleSoft, and without paying additional fees that may be due;

g. Export the Software in violation of U.S. Department of Commerce export administration regulations;

h. Use PeopleTools or third party software provided by PeopleSoft, except solely in conjunction with the licensed PeopleSoft applications.

2.2 No license, right, or interest in any PeopleSoft trademark, trade name, or service mark is granted hereunder.

3. FEES AND PAYMENT TERMS

3.1 Licensee shall pay PeopleSoft the fees as specified in each applicable Schedule.

3.2 Unless Licensee provides PeopleSoft with a valid tax exemption or direct pay certificate, Licensee is responsible for all taxes, duties and customs fees concerning the Software and/or services, excluding taxes based on PeopleSoft's income. Overdue payments shall bear interest at the lesser of twelve percent (12%) per annum or the maximum rate allowed under applicable law.

3.3 The license fee for the Software is based upon Licensee's representations concerning pricing metrics of operation, as set forth in the Schedule(s). PeopleSoft reserves the right to assess additional license fees if the pricing metrics of operation are enlarged beyond the scope which formed the basis for the license fees.

3.4 On an annual basis PeopleSoft shall provide Licensee with a statement listing the applicable pricing metrics for which the Software is licensed. Licensee shall provide PeopleSoft with a signed certification of such statement either (a) confirming that the Software is being used in conformance with the applicable License; or (b) providing PeopleSoft with corrected figures. If Licensee provides PeopleSoft with

L CON 7298

corrected figures, PeopleSoft shall invoice Licensee for the applicable fees for any increase beyond the applicable pricing metrics licensed. Should Licensee fail to pay the applicable fees for any increase, such failure shall be a breach of this Agreement.

3.5 PeopleSoft reserves the right to audit Licensee's use of the Software no more than once annually at PeopleSoft's expense. All audits shall be conducted during regular business hours at Licensee's site and shall not unreasonably interfere with Licensee's business activities. PeopleSoft shall schedule any audits at least fifteen (15) days in advance.

4. TITLE AND PROTECTION

4.1. PeopleSoft (or its third-party providers) retains title to all portions of the Software and any copies thereof. PeopleSoft retains title to all modifications created by Licensee as a derivative work, but Licensee shall have a perpetual, royalty free license to use such modifications in conjunction with the Software in accordance with this Agreement. Licensee may share modifications with other PeopleSoft customers only through PeopleSoft Customer Connection, subject to PeopleSoft's right to modify and monitor modifications distributed through PeopleSoft Customer Connection. Except as stated above, Licensee shall have no rights to market or distribute modifications. PeopleSoft shall have no obligation to support Licensee created modifications or third party modifications. Licensee is not obligated to disclose modifications to PeopleSoft.

4.2 Title to the physical media for the Software vests in Licensee upon delivery. PeopleSoft represents that the Software contains valuable proprietary information. Licensee shall not disclose the Software to anyone other than those of its employees or consultants under nondisclosure obligation who have a need to access the Software for purposes consistent with this Agreement. This section shall not prohibit Licensee from giving third parties access to the Software through the Internet or other means, such as a kiosk, if such access: (i) does not include installation of any part of the Software upon the third party's computer; (ii) does not give the third party any ability to copy the Software; and (iii) does not give the third party any access to the Software's source code. Each full or partial copy of the Software made by Licensee shall have all copyright and proprietary information notices as affixed to the original.

4.3 The Software was developed at private expense, is commercial, and is published and copyrighted. If Licensee is an agency of the United States Government or licensing the Software for operation on behalf of the United States Government, the Software is transferred to Licensee with rights no greater than those set forth at Federal Acquisition Regulation 52.227-19(c) [or DFAR 227.7202-3 if the transfer is to a defense-related agency] or subsequent citation.

5. PATENT AND COPYRIGHT INDEMNITY

PeopleSoft shall indemnify and defend Licensee against any claims that the Software infringes any United States or Canadian patent or copyright, provided that PeopleSoft is given prompt written notice of such claim and is given information, reasonable assistance, and sole authority to defend or settle the claim. In the defense or settlement of the claim, PeopleSoft shall, in its reasonable judgment and at its option and expense: (i) obtain for Licensee the right to continue using the Software; (ii) replace or modify the Software so that it becomes noninfringing while giving equivalent performance; or (iii) if PeopleSoft cannot obtain the remedies in (i) or (ii), as its sole obligation, terminate the license for the infringing Software, and upon receipt of the infringing Software, return only the license fees paid by Licensee for such Software, prorated over a five year term from the applicable Schedule Effective Date. PeopleSoft shall have no liability to indemnify or defend Licensee to the extent the alleged infringement is based on: (i) a modification of the Software by anyone other than PeopleSoft; (ii) use of the Software other than in accordance with the Documentation; or (iii) use of the Software outside the Territory where such claim is brought under the law of such country or countries.

6. DEFAULT AND TERMINATION

6.1 An event of default is: (i) a failure by either party to comply with any material obligation under this Agreement; and (ii) such non-compliance remains uncured for more than thirty (30) days after receipt of written notice thereof.

6.2 If an event of default occurs, the nondefaulting party, in addition to any other rights available to it under law or equity, may terminate this Agreement and all licenses granted hereunder by giving written notice to the defaulting party. Except as otherwise specifically stated herein, remedies shall be cumulative and there shall be no obligation to exercise a particular remedy.

6.3 Within fifteen (15) days after termination of this Agreement, Licensee shall certify in writing to PeopleSoft that all copies of the Software in any form, including partial copies within modified versions, have been destroyed or returned to PeopleSoft.

7. LIMITED WARRANTY

PeopleSoft warrants that it has title to the Software and/or the authority to grant licenses to use the third party software. PeopleSoft warrants that the Software will perform substantially in accordance with the Documentation for a period of one (1) year from the date of initial installation and that the Software media is free from material defects. PeopleSoft does not warrant that the Software is error-free. PeopleSoft's sole obligation is limited to repair or replacement of the defective Software in a timely manner, provided Licensee notifies PeopleSoft of the deficiency within the one-year period and provided Licensee has installed all Software

updates provided pursuant to PeopleSoft's Software Support Services. PEOPLESOFT DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

8. LIMITATION OF LIABILITY

EXCEPT FOR VIOLATIONS OF PEOPLESOFT'S INTELLECTUAL OR PROPRIETARY RIGHTS, NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST DATA OR LOST PROFITS, HOWEVER ARISING, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCLUDING DAMAGES INCURRED BY LICENSEE UNDER THE ARTICLE ENTITLED, "PATENT AND COPYRIGHT INDEMNITY," PEOPLESOFT'S LIABILITY FOR DAMAGES UNDER THIS AGREEMENT (WHETHER IN CONTRACT OR TORT) SHALL IN NO EVENT EXCEED THE AMOUNT PAID BY LICENSEE TO PEOPLESOFT FOR THE SOFTWARE MODULE OR THE SERVICES FROM WHICH THE CLAIM AROSE. THE PARTIES AGREE TO THE ALLOCATION OF LIABILITY RISK SET FORTH IN THIS SECTION.

9. SOFTWARE SUPPORT SERVICES TERMS AND CONDITIONS

For a period of one year commencing on the Schedule Effective Date, PeopleSoft shall provide Licensee with one (1) year of Software Support Services for a single production instance at a single Site designated in the applicable Schedule as described in PeopleSoft's standard Software Support Services Terms and Conditions. After the first year, Licensee may elect to acquire Software Support Services pursuant to the then-current terms and conditions by paying PeopleSoft the fees stated in the applicable Schedule. Unless Licensee elects to purchase Software Support Services for more than one Site, Licensee shall support all copies of the Software licensed under this Agreement through one central point of support staffed by Licensee's employees. Licensee may purchase Support Services for Additional Sites or Servers in accordance with PeopleSoft's then-current fee.

10. INSTALLATIONS

Upon Licensee's request and upon a mutually agreeable schedule within six (6) months following the Schedule Effective Date, PeopleSoft shall perform an initial installation of one (1) copy of the licensed Software on a single database server, single file server, single application server and single web server at the Site at no additional charge, for a maximum of installations equal to the number of Installation Events set forth in the applicable Schedule. An "**Installation Event**" shall mean the initial installation of one (1) Suite at one (1) Site in accordance with the then current PeopleSoft installation documentation, which can be found at http://www.peoplesoft.com/products_and_services/services/installa.htm. "**Suite**" is a grouping of Software modules to include but is not limited to: Financials, Financials for Federal Government, Financials for Education and Government, Distribution, HRMS, HRMS for Federal Government, HRMS for Education and Government, Manufacturing, Supply Chain, or Student Administration. Licensee may license fewer than all modules within a given Suite, and may license modules from more than one Suite. From time to time, PeopleSoft may create new Suites or redesignate modules among Suites. Installation support requested by Licensee beyond the scope of an Installation Event shall be provided to Licensee at the then-current PeopleSoft professional services hourly rate. Licensee shall reimburse PeopleSoft for all reasonable travel and living expenses associated with any Installation Event.

11. TRAINING

PeopleSoft shall provide Licensee with the number of training units set forth in the Schedule for use at a PeopleSoft training facility. Licensee may use training units for training at Licensee's site only as the parties mutually agree in writing. Licensee must use these training units within one (1) year from the Schedule Effective Date.

12. NOTICES

All notices shall be in writing and sent by registered mail, overnight mail, courier, or transmitted by facsimile (if confirmed by such mailing), to the addresses indicated on the first page of this Agreement, or such other address as either party may indicate by at least ten (10) days prior written notice to the other party. Notices to PeopleSoft shall be sent to the attention of PeopleSoft Legal with a copy to Licensee's assigned PeopleSoft account manager.

13. ASSIGNMENT

Licensee may not assign this Agreement (by operation of law or otherwise) or sublicense the Software without the prior written consent of PeopleSoft, and any prohibited assignment or sublicense shall be null and void.

14. NONDISCLOSURE OBLIGATION

14.1 The terms, conditions, pricing and any other information clearly marked "confidential" under this Agreement are confidential and shall not be disclosed, orally or in writing by Licensee to any third party without the prior written consent of PeopleSoft. If Licensee is a governmental entity subject to disclosure obligations under the United States Freedom of Information act or similar statute or regulation,

L CON 7298

Licensee agrees that the terms, conditions, and pricing under this Agreement will be disclosed only pursuant to requests made in accordance with the relevant statute or regulation, and that any other information clearly marked "confidential" under this Agreement shall be treated as information identified by PeopleSoft as confidential, trade secret, commercially sensitive information, and will not be disclosed without affording PeopleSoft a full opportunity to establish that such information is exempt from the disclosure obligation.

14.2 Licensee shall protect the Software with at least the same degree of care and confidentiality, but not less than a reasonable standard of care, which Licensee utilizes for Licensee information that it does not wish disclosed to the public. Licensee may provide access to and use of the Software only to those third parties that: (i) provide services to Licensee concerning Licensee's use of the Software; (ii) have a need to use and access the Software; and (iii) have agreed to substantially similar non-disclosure obligations imposed by Licensee as those contained herein. This Agreement imposes no obligation upon Licensee with respect to PeopleSoft's confidential information which Licensee can establish by legally sufficient evidence: (a) was in the possession of, or was rightfully known by Licensee without an obligation to maintain its confidentiality prior to receipt from PeopleSoft; (b) is or becomes generally known to the public without violation of this Agreement; (c) is obtained by Licensee in good faith from a third party having the right to disclose it without an obligation on confidentiality; or (d) is independently developed by Licensee without the participation of individuals who have had access to PeopleSoft's confidential information. Licensee may disclose confidential information if so required by law, provided that Licensee notifies PeopleSoft of such requirement prior to disclosure, and provided further that PeopleSoft may (i) require Licensee to request the appropriate court or governmental body to seal the record that shall contain such confidential information; and/or (ii) assume responsibility for responding to and defending such requests for disclosure of the confidential information.

15. GENERAL

This Agreement is made in and shall be governed by the laws of the State of California, without regard to its choice of law principles. Venue shall be in San Francisco, California. The section headings herein are provided for convenience only and have no substantive effect on the construction of this Agreement. No purchase order or other ordering document that purports to modify or supplement the printed text of this Agreement or any Schedule shall add to or vary the terms of this Agreement. All such proposed variations or additions (whether submitted by PeopleSoft or Licensee) are objected to and deemed material unless agreed to in writing. Except for Licensee's obligation to pay PeopleSoft, neither party shall be liable for any failure to perform due to causes beyond its reasonable control. If any provision of this Agreement is held to be unenforceable, this Agreement shall be construed without such provision. The failure by a party to exercise any right hereunder shall not operate as a waiver of such party's right to exercise such right or any other right in the future. Except for actions for non-payment or breach of PeopleSoft's proprietary rights in the Software, no action, regardless of form, arising out of this Agreement may be brought by either party more than one year after the cause of action has accrued. This Agreement may be amended only by a written document executed by a duly authorized representative of each of the parties.

This Agreement and the Schedule(s) constitute the entire agreement between the parties concerning Licensee's acquisition and use of the Software. This Agreement replaces and supersedes any prior verbal or written understandings, communications, and representations between the parties. This Agreement may be executed in counterparts, which taken together shall be considered an original.

The provisions of Sections 3, 4, 5, 8, 14, and 15 shall survive termination of this Agreement.

16. DEFINITIONS

"**Documentation**" means only technical publications relating to the use of the Software, such as reference, user, installation, systems administrator and technical guides, delivered by PeopleSoft to Licensee.

"**PeopleTools**" means the underlying architecture from which the Software is designed, and includes software application programming tools and code.

"**Production Use**" means the use of the Software to perform real time transactions for Licensee's internal use.

"**Schedule(s)**" means the independent Software product schedule(s) executed by the parties and Support Services schedule(s) referencing this Agreement. Each Schedule is a separate and independent contractual obligation from any other Schedule. Agreement Effective Date and Schedule Effective Date(s) may differ.

"**Server**" means a single database or file server that may be accessed by a network of personal computers as set forth in the applicable Schedule.

"**Site**" means a specific, physical location of Licensee's Server as set forth in the applicable Schedule that shall be the one location to which Software Support Services are provided, if at all.

L CON 7298

"**Software**" means all or any portion of the then commercially available global version(s) of the binary computer software programs and enhancements thereto, (including corresponding source code), and Documentation delivered by PeopleSoft to Licensee), as listed in the applicable Schedule. Software includes the third-party software delivered by PeopleSoft as specified in the Schedule(s), subject to usage limitations that may appear in the applicable Schedule(s). Software does not include source code to PeopleTools, PepperTools, or certain third party software delivered by PeopleSoft. Unless specifically stated otherwise, all Software is delivered to Licensee only if and when generally commercially available.

"**Territory**" means the territory as specified on the applicable Schedule in which Licensee may use the Software.

The authorized representatives of the parties have signed this Software License and Services Agreement.

CITY OF PEORIA, ARIZONA

By: Terrence Ellis

Name: Terrence Ellis

Title: City Manager

PEOPLESOFT USA, INC.

By: Jon Klem

Name: Jon Klem

Title: Vice President

ATTEST:

Donna K Griffith

City Clerk-acting

Approved as to form

PLG 5-98

Initials Date

APPROVED AS TO FORM.

City Attorney

PEORIA, AZ OFFICIAL FILE: _____

CC: 055-8R EFF. DATE: 5/19/98

CONTRACT: L CON 7298

VOID IF EXECUTED AFTER JUNE 20, 1998

SCHEDULE 1
TO THE
SOFTWARE LICENSE AND SERVICES AGREEMENT

This independent Schedule to the Software License and Services Agreement ("**Schedule**") is made as of May 19, 1998 ("**Schedule Effective Date**") by and between PeopleSoft USA, Inc. ("**PeopleSoft**") and City of Peoria, Arizona ("**Licensee**"). This Schedule is part of the Software License and Services Agreement between the parties dated May 19, 1998 ("**Agreement**"). PeopleSoft's standard Software Support Services Terms and Conditions shall be a part of this Schedule provided Licensee is receiving Software Support Services. Capitalized terms used herein shall have the same meaning ascribed to them in the Agreement. Handwritten or typewritten text (other than information which is specifically called for in the spaces provided) which purports to modify or supplement the printed text of this Schedule shall have no effect and shall not add to or vary the terms of the Agreement. All such additions (whether submitted by Licensee or PeopleSoft) are objectionable and deemed material unless initialed by both parties.

	SOFTWARE Copies[1]	License Fee
PeopleSoft HRMS for Public Sector:		$122,265.00
Human Resources (Public Sector)	1	Not separately priced
Payroll (Public Sector)	1	Not separately priced
Time and Labor (Public Sector)	1	Not separately priced
PeopleSoft Financials for Public Sector:		$405,700.00
General Ledger (Public Sector)	1	Not separately priced
Payables (Public Sector)	1	Not separately priced
Receivables (Public Sector)	1	Not separately priced
Purchasing (Public Sector)	1	Not separately priced
Asset Management (Public Sector)[2]	1	Not separately priced
Projects (Public Sector)[2]	1	Not separately priced
Billing (Public Sector)[2]	1	Not separately priced
Budgets (Public Sector)[2]	1	Not separately priced
Inventory (Public Sector)	1	Not separately priced
	Subtotal page 1	**$527,965.00**
	Subtotal page 2	**$21,200.00**
	Total Fees:	**$549,165.00**

Technical Environment:

Database Version: SQL Server	Operating System: Win/NT	Hardware Model: Compaq 5500 & 7000

[1] Indicates the number of physical copies to be shipped to Licensee. As more fully set forth in the Agreement, Licensee's license includes the right to make as many copies on one or more servers at Licensee's site(s) as necessary to meet the needs upon which Licensee's license fee is based. Licensee will not receive additional physical copies of the Software for this purpose.

[2] Contains Public Sector functionality through inclusion of specialized chartfields only.

As part of the license of the Software above, Licensee receives:

	Qty.
PeopleTools - Restricted Development[3]	1
Training Units[4]	98
Installation Events	2
Cognos Powerplay	5 users[5]
Documentation for third party software	1
Documentation for PeopleSoft Software	1

ADDITIONAL SOFTWARE / SERVICES

Software/Service	Manufacturer	Quantity	Fee
Workstation Access (includes base application access, PS/nVision, Workstation SQR, QueryLink).	PeopleSoft USA, Inc. Sybase, Inc./ SQRIBE Technologies Seagate Software Information Management Group, Inc	One copy shipped; right to use on unlimited number of workstations in conjunction with Software on this Schedule.	$16,100.00
Server SQR	Sybase, Inc./ SQRIBE Technologies	One copy shipped; right to use on unlimited number of servers in conjunction with Software on this Schedule.	$5,100.00
		Subtotal Page 2:	**$21,200.00**

1. Specific Licensed Use: Licensee's use is limited to the uses described below. License fee is based on the following, and will be subject to increases if Licensee exceeds any of the parameters stated below or uses the software in an additional country.

Territory	Software (Global, Local, or Public Sector version)	Employees (for HRMS)	Annual Budget (for Financials)
United States	HRMS for public sector on this Schedule	650	
United States	Financials for public sector on this Schedule		$88 million

2. Expansion of Licensed Use: PeopleSoft will assess additional license fees for increases unrelated to any merger with another institution or acquisition of another entity as follows:

No additional license fee will be assessed for Financials products on this Schedule if budget does not increase by more than $250 million in additional annual budget. No additional license fee will be assessed for HRMS products on this Schedule if fewer than 1000 additional employees are added.

Thereafter, PeopleSoft's assessment of additional license fees will be in accordance with PeopleSoft's then-current policy. In the event of any growth related to a merger or acquisition, PeopleSoft's assessment of additional license fees will be in accordance with PeopleSoft's then-current policy. If Licensee wishes to expand licensed use to additional countries, such expansion shall require a mutually executed addendum or amendment to the Software License and Services Agreement. Under no circumstance is a PeopleSoft Account Manager authorized to expand licensed use.

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[3] PeopleTools for Restricted Development shall be used by Licensee to develop add-on functionality only to the licensed PeopleSoft Software application modules.

[4] One (1) Training Unit is one day in class for one student.

[5] Cognos "users" are individual users, not concurrent users.

3. Training: For the purposes of this Schedule only, Section 11 of the Software License and Services Agreement is deleted in its entirety and replaced as follows:

11. PeopleSoft shall provide Licensee with the number of training units set forth in the Schedule(s) for use at a PeopleSoft Training Facility. Licensee may use training units for training at Licensee's site only as the parties mutually agree in writing. Licensee must use these training units within two (2) years from the Schedule Effective Date. If Licensee purchases additional training units, such additional training units must be used within one (1) year of date of purchase.

4. Payment Terms: Licensee shall pay PeopleSoft seventy (70%) percent of license fees on the Schedule Effective Date, twenty-five (25%) percent upon the earlier of installation or 45 days from the Schedule Effective Date, and, five (5%) percent within 60 days of the Schedule Effective Date. Unless otherwise stated in this Schedule, the fees specified herein are non-cancelable and non-refundable. All fees are payable in U.S. dollars and shall be sent to the attention of PeopleSoft's Accounts Receivable Department.

5. Professional Services: Licensee shall be entitled to purchase professional services from PeopleSoft. Professional Services must be ordered through a separate written agreement clearly identifying the work to be performed. Professional Services are not subject to acceptance unless the Consulting Services Agreement includes specific deliverables and acceptance terms. PeopleSoft reserves the right to refuse requests for professional services.

Services are calculated at PeopleSoft's then-current hourly rate. As of the Schedule Effective Date, those rates shall be[6]:

Associate Consultant	$150
Consultant	$190
Senior Consultant	$225
Project Manager	$250
Practice Manager	$250
Process Specialist	$250
Systems Engineer	$250
Senior Project Manager	$275
Senior Systems Engineer	$275
Enterprise Solutions Specialist	$275
Enterprise Implementation Manager	$300

Licensee shall pay for the reasonable travel and living expenses related to PeopleSoft's provision of professional services. Under no circumstances shall any payments due for the Software licensed on this Schedule be delayed, set-off against, or otherwise affected by work performed pursuant to any Consulting Services Agreement.

6. Designated initial Software Support Site(s): Licensee shall receive software support for a single production system associated with the following site(s):

Support Site	Associated Countries/Regions
City of Peoria	Arizona

Unless otherwise specified, support services are provided on a centralized basis through a PeopleSoft support center in the United States. Licensee shall designate a central support team for each supported site. Only members of Licensee's central support team shall be authorized to request support services from PeopleSoft. PeopleSoft shall designate an account manager or managers for each support site. Local support shall consist of any support not provided at a central support site and shall not be included as part of Support Services. Licensee shall contract for

[6] The indicated Professional Services rates shall be valid for one year from the Schedule Effective Date. Rates for the following year shall not increase by more than fifteen (15%) percent.

local support at the then current list price. In the event that Licensee licenses the Software in a country or region not designated on this Schedule, support for such additional license shall be acquired separately at the then current local Country list price.

7. Support Services Terms for One Single, Central Site:
As part of the license fee, Licensee receives one year of Support Services at the Site for the Software for the indicated Technical Environment and initial licensed level of use, commencing on Schedule Effective Date. One (1) year after the Schedule Effective Date, Licensee may elect to continue Software Support Services for the following year by paying PeopleSoft an annual Support Services fee of seventeen (17%) percent of the net license fee paid by Licensee for the applicable Software listed on this Schedule. For three years thereafter, Licensee may elect to continue Software Support Services by paying PeopleSoft an amount up to the then-current Support Services fee, provided Licensee's support services fee obligation will not increase more than seven (7%) percent per year. Thereafter, Licensee may elect to continue Software Support Services for the following year by paying PeopleSoft the then-current annual Support Services fee, or in accordance with a fixed fee schedule of no greater than three year's duration as mutually agreed by PeopleSoft and Licensee. If Licensee expands use through growth, licensing additional software, or by using the licensed software in additional countries, PeopleSoft shall be entitled to assess an additional Support Services Fees, in accordance with PeopleSoft's then-current pricing policy to reflect that expanded use. Since the Support Services term and conditions are implicitly renewable year to year, it is possible that a particular hardware, database, and operating system configuration will fail to achieve or maintain strong market demand to enable PeopleSoft to economically provide on-going Support Services on a long-term multi-year basis. In such a situation, PeopleSoft will provide Licensee with at least twelve months written notice of its intent to cease support on such a configuration and will work with Licensee concerning Licensee' migration to a then commercially viable solution supported by PeopleSoft.

8. Year 2000: As stated in PeopleSoft's documentation, PeopleSoft's Software uses internal year fields of no fewer than four digits. Such use is consistent with correct processing of dates before, after, and during the year 2000. Users can customize data entry screens to call for fewer than four digit year fields for ease of data entry. Licensee will be converting existing data, which may or may not include dates which have fields of fewer than four digits. Licensee's conversion of its existing data must be designed to resolve any pre-existing date fields which contain fewer than four digits.

9. Software not on a Schedule is not included: PeopleSoft may have proposed or described other software. During negotiations and the procurement process, the parties have determined that Licensee is not licensing every software product that PeopleSoft offers. Except for software that is embedded in the listed software and therefore implicitly provided, Licensee will not receive any software not listed on a Schedule.

10. Definitions: The following terms have the indicated definitions

"Employees" are calculated based on the number of full time equivalent employees. For the purpose of this calculation, an "employee" includes any records identified by a unique social security number and assigned to an active status. These employees may be characterized by being active, permanent, permanent part-time, faculty, adjunct faculty, student employee, wage temporary, retired with health benefits administered by Licensee using the Software, etc. This term does not include employee records for separated employees, employees on leave without pay and benefits, employee dependents, retired employees not participating in retiree health or pension plans administered by Licensee using the Software, and records placed in archival (inactive) files which are periodically viewed, but not updated. The "employee count" is based on average annual employment so as to avoid distortions created by extraordinary cyclical or emergency employment activities.
"Annual Budget" includes funding from all sources, including grants and endowments.

PEOPLE Soft

VOID IF EXECUTED AFTER JUNE 20, 1998

SHIPPING INFORMATION	BILLING INFORMATION	SUPPORT SITE INFORMATION
Mr. Dan Zenko	Mr. Kevin McManus	Mr. Kevin McManus
Materials Management Dept.	Project Technical Specialist	Project Technical Specialist
8401 W. Monroe Street, #150	8401 W. Monroe Street, #240	8401 W. Monroe Street, #240
Peoria, Arizona 85345	Peoria, Arizona 85345	Peoria, Arizona 85345
Phone: (602) 412-7147	Phone: (602) 412-7374	Phone: (602) 412-7374
Fax: (602) 412-7118	Fax: (602) 412-7270	Fax: (602) 412-7270

TRAINING ADMINISTRATOR
Mr. Kevin McManus
Project Technical Specialist
8401 W. Monroe Street, #240
Peoria, Arizona 85345
Phone: (602) 412-7374
Fax: (602) 412-7270

ACCEPTED BY:
CITY OF PEORIA, ARIZONA

Authorized Signature

Terrence Ellis, City Manager
Printed Name and Title

ACCEPTED BY:
PEOPLESOFT USA, INC.

Authorized Signature

Jon Klem, Vice President
Printed Name and Title

ATTEST:

City Clerk-acting

Approved as to form

PKG | 5-98
Initials | Date

APPROVED AS TO FORM.

City Attorney

PEOPLE Soft

Software Support Services Terms and Conditions

Software Support Services Terms and Conditions ("**Support Services**") are referenced in and incorporated into the Agreement between PeopleSoft and Licensee. Upon reasonable notice, PeopleSoft reserves the right to modify the terms and conditions of Support Services on an annual basis to reflect current market conditions.

1. Coverage

PeopleSoft provides Licensee with Support Services for the Software for the single, central Site set forth in the applicable Schedule in consideration of Licensee's payment of the applicable Support Services fees to PeopleSoft. Only designated Licensee employees may contact PeopleSoft for the provision of Support Services. Licensee may acquire Support Services for additional Licensee sites by paying PeopleSoft the applicable annual secondary site Support Services fee.

2. Software Maintenance

The following technical and functional improvements will be issued periodically by PeopleSoft to improve Software operations:

a. Fixes to Errors;
b. Updates; and
c. Enhancements contained within new releases.

3. Priority Level of Errors

Licensee shall report an Error and provide PeopleSoft with Licensee's categorization of the Error. PeopleSoft shall reasonably and conclusively determine the priority level of Error and will respond in accordance with the following protocols:

Priority A:

PeopleSoft promptly initiates the following procedures: (1) assign PeopleSoft specialist(s) to correct the Error; (2) provide ongoing communication on the status of the correction; and (3) immediately begin to provide a Workaround or a Fix.

Priority B:

(1) PeopleSoft assigns a PeopleSoft specialist to commence correction of Error; and (2) provide escalation procedures as reasonably determined by PeopleSoft support staff. PeopleSoft exercises all commercially reasonable efforts to include the Fix for the Error in the next Software maintenance release.

Priority C:

PeopleSoft may include the Fix for the Error in the next major Software release.

4. Telephone Support

PeopleSoft provides telephone support concerning installation and use of the Software. Except for designated holidays, standard telephone support hours are Monday through Friday, 4:00 a.m. to 6:30 p.m., Pacific Time. Telephone Support is also available 24-hours a day, 7-days a week for in-production customers who need to resolve critical production problems outside of normal support hours.

5. Account Manager

PeopleSoft assigns an account manager to assist with the on-going support relationship between PeopleSoft and Licensee. Licensee will reimburse PeopleSoft for the reasonable travel and living expenses of the account manager for on-Site support activity.

6. Customer Connection

a. The PeopleSoft Customer Connection system is an on-line, self-service system which features postings by PeopleSoft and PeopleSoft Software users regarding technical and non-technical topics of interest. Licensee may

access PeopleSoft Customer Connection via the Internet. At Licensee's expense, Licensee is responsible for independently acquiring appropriate Internet access.

b. All Software maintenance releases and Fixes to the Software may be delivered to Licensee through PeopleSoft Customer Connection, or by mail from PeopleSoft upon written request by Licensee. All information specified in Customer Connection by PeopleSoft is confidential and proprietary to PeopleSoft and shall only be used in connection with Licensee's use of the Software and informational communications with other PeopleSoft Customer Connection participants. PeopleSoft reserves the right to modify information posted to PeopleSoft Customer Connection. PeopleSoft shall have the right to publish and distribute only through PeopleSoft Customer Connection in all languages and in association with Licensee's name any material or software programs provided by Licensee to Customer Connection. Licensee shall not use PeopleSoft Customer Connection for advertising or public relations purposes and shall only submit information to PeopleSoft Customer Connection which is owned by Licensee or which Licensee has third party permission to submit to PeopleSoft Customer Connection for use by all other PeopleSoft Customer Connection users.

c. In the interest of diminishing exposure to software viruses, PeopleSoft tests and scans for software viruses all information entered by PeopleSoft prior to submission of information to PeopleSoft Customer Connection. Licensee shall also use a reliable virus detection system on any software or information posted to PeopleSoft Customer Connection, utilize back-up procedures, monitor access to PeopleSoft Customer Connection, promptly notify PeopleSoft of any virus detected within Licensee's systems associated with PeopleSoft Customer Connection and generally exercise a reasonable degree of caution when utilizing information from PeopleSoft Customer Connection. PeopleSoft does not warrant that Customer Connection will operate without interruption or without errors. PeopleSoft reserves the right to modify or suspend PeopleSoft Customer Connection service in connection with PeopleSoft's provision for Support Services. PeopleSoft assumes no responsibility for anything posted by anyone other than PeopleSoft, including, but not limited to, information about PeopleSoft software or modification code or portions thereof.

7. Fees

The first year of Support Services for the Site is included in the Software license fee; thereafter, in the event Licensee elects to continue to receive Support Services, Licensee shall pay PeopleSoft the annual Support Services fee as set forth in the applicable Schedule. Support Services are billed on an annual basis, payable in advance. Licensee shall be responsible for all taxes associated with Support Services, exclusive of taxes based on PeopleSoft's income. Licensee's payment shall be due within thirty (30) days of receipt of the PeopleSoft invoice. Should Licensee elect not to renew Support Services and subsequently request Support Services, PeopleSoft shall reinstate Support Services only after Licensee pays PeopleSoft the annual then current fee plus all cumulative fees that would have been payable had Licensee not suspended Support Services.

8. Term and Termination

Unless otherwise expressly set forth in the Agreement, Support Services shall be provided for a period of one (1) year from the Schedule Effective Date, and shall be extended each additional year unless terminated by either party. Each one (1) year term shall commence on the anniversary of the Schedule Effective Date.

Either party may terminate the Support Services provisions at the end of the original term or at the end of any renewal term by giving the other party written notice at least ninety (90) days prior to the end of any term.

In the event Licensee fails to make payment pursuant to the section titled "Fees", or in the event Licensee breaches the Support Services provisions and such breach has not been cured within thirty (30) days of written receipt of notice of breach, PeopleSoft may suspend or cancel Support Services.

PEOPLE Soft

9. Exclusions

PeopleSoft shall have no obligation to support:

a. Substantially altered, damaged or substantially modified Software;
b. Software that is not the then-current release, or a Previous Sequential Release;
c. Errors caused by Licensee's negligence, hardware malfunction, or other causes beyond the reasonable control of PeopleSoft;
d. Software installed in a hardware or operating environment not supported by PeopleSoft; and
e. Third party software not licensed through PeopleSoft.

10. General

All Updates provided to Licensee are subject to the terms and conditions of the Agreement.

PeopleSoft shall not be liable for any failure or delay in performance of the Support Services due to causes beyond its reasonable control. Any illegal or unenforceable provision shall be severed from these Terms and Conditions. Licensee agrees that any information received pursuant to these Terms and Conditions shall be deemed subject to the non-disclosure obligations set forth in the Agreement. The Support Services Terms and Conditions states the entire agreement of PeopleSoft's provision of Support Services to Licensee and may only be amended by a written amendment executed by both parties.

11. Definitions

Unless otherwise defined herein, capitalized terms used herein shall have the same meaning as set forth in the Agreement and applicable Schedule.

"Enhancement" means technical or functional additions to the Software to improve software functionality and/or operations. Enhancements are delivered with new releases of the Software.

"Error" means a malfunction in the Software which degrades the use of the Software.

"Fix" means the repair or replacement of source or object or executable code versions of the Software to remedy an Error.

"Previous Sequential Release" means a release of Software for use in a particular operating environment which has been replaced by a subsequent release of the Software in the same operating environment. A Previous Sequential Release will be supported by PeopleSoft for a period of eighteen (18) months after release of the subsequent release. Multiple Previous Sequential Releases may be supported at any given time.

"Priority A " means an Error that: (1) renders the Software inoperative; or (2) causes the Software to fail catastrophically.

"Priority B " means an Error that affects performance of the Software, but does not prohibit Licensee's use of the Software.

"Priority C " means an Error that causes only a minor impact of the use of the Software.

"Update" means all published revisions to the Documentation and one (1) copy of the new release of the Software which are not designated by PeopleSoft as new products for which it charges separately.

"Workaround" means a change in the procedures followed or data supplied to avoid an Error without significantly impairing performance of the Software.

PEOPLE Soft

INVOICE

Mr. Kevin McManus
City of Peoria
8401 W. Monroe Street, #240
Peoria, Arizona 85345
Phone: (602) 412-7374
Fax: (602) 412-7270

Invoice # TEK-W-Q1-98-7
Invoice Date: May 11, 1998

RE: Fees due pursuant to the terms of the Software License and Services Agreement between PeopleSoft USA, Inc. and City of Peoria, Arizona

TERMS: NET DUE AND PAYABLE IMMEDIATELY CURRENCY: U.S. Dollars

LINE ITEM DESCRIPTION	LINE ITEM AMOUNT
Seventy (70%) percent of license fees due upon Schedule 1 Effective Date for HRMS for Public Sector and Financials for Public Sector Software	$384,415.50
TOTAL AMOUNT DUE	$384,415.50

Sales Tax billed at later date unless exemption certificate on file

Please include copy of invoice with payment and specify the Invoice Number on the check.

Please remit immediately and make payable to:
PeopleSoft, Inc.
(Please send via Federal Express, using PeopleSoft Account # 1683 3551 2):
PeopleSoft, Inc.
c/o Cash Flex
9700 West Higgins Rd., #800
Rosemont, Ill 60018
or
Wire Transfer Instructions
Wells Fargo Bank
ABA#: 121000248
Commercial Banking Office
One Kaiser Plaza, Suite 850
Oakland, CA 94612
For Account of: PeopleSoft, Inc.
Account #: 4103-135729

THANK YOU FOR YOUR BUSINESS!

L CON 7298

From: <Terry_Again@peoplesoft.com>
To: Peoria.CityHallComplex(DanZ)
Date: 5/8/98 3:15pm
Subject: Re: TRAVEL POLICY

Hi Dan,
The travel policy that is outlined is acceptable to Customer Services. Any further questions please give me a call at (714) 224-1017. Thanks-t

Dan Zenko <DanZ@peoriaaz.com> on 05/08/98 11:17:53 AM

To: Terry Again
cc:
Subject: TRAVEL POLICY

Please review and resond ASAP.

CC: Peoria.INET("Mark_Conry@peoplesoft.com")

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CITY OF PEORIA TRAVEL POLICY
FOR
Contract P8-0025
BUSINESS INFORMATION TECHNOLOGY
AND PEOPLESOFT

Reasonable expenses will be billed separately on a monthly basis. All expenses will be billed to the City at cost without markup. Copies of bills for expenses are to be submitted with the invoice. The following is a list of allowable travel expenses under this contract agreement:

1. Transportation:

   A. Public Transportation - airline (coach class, minimum 21 days advance fares unless prior approval of the City).
   B. Car Rental - economy, gas for rental car (City assumes no liability regarding additional insurance costs).
   C. Airport Shuttle – in lieu of airport parking (not to exceed $18 each way).

2. Lodging and Meals:

   A. Meals - three meals per day, (not to exceed an average of $30.00 per day).
   B. Lodging - Long term lodging will be at the Hampton Inn located in Peoria at 8314 W. Paradise Lane, Peoria, AZ (602) 486-9918. The rate is $32.00 per day for long term stays of more than 3 weeks. Short term stays are at the seasonal corporate rate in effect at that time (as of 4/28/98, $55.00 per day).

3. Miscellaneous:

   A. Parking allowance not to exceed $8.00 per day. Personal car mileage will be paid at standard IRS rates for local consultants only. Travel time to and from job site is excluded from this contract. No incidentals for travel of any kind are allowed under this contract.

L CON 7298

OFFICIAL FILE

Consulting Services Agreement

Document ID: 19990208112513-IXOUKY

This Consulting Services Agreement ("**Agreement**") is made as of March 27, 2000, ("**Effective Date**") by and between PeopleSoft USA, Inc. ("**PeopleSoft**"), a California corporation having a principal place of business at 4460 Hacienda Drive, Pleasanton, California, 94588, and City Of Peoria ("**Customer**"), having a principal place of business at 8401 West Monroe Street #150, Peoria, AZ, 85345, USA.

The parties agree as follows:

1. **Services Provided by PeopleSoft.** PeopleSoft shall provide Customer with consultation services as specified in a Statement of Services ("**SOS**") executed by the parties (**"Services"**). This Agreement in combination with each SOS individually comprises a separate and independent contractual obligation from any other SOS. A breach by PeopleSoft under one SOS will not be considered a breach under any other SOS. The types of Services intended to be provided hereunder are services related to Customer's implementation and/or use of the software licensed in a software license agreement between the parties (**"License Agreement"**).

2. **Fees, Expenses, and Payment.** For all Services performed pursuant to an SOS or otherwise, Customer shall: (i) pay PeopleSoft at the rates set forth in each SOS as adjusted from time to time or, if not set forth in such SOS, at the PeopleSoft standard consulting rates in effect at the time the Services are rendered; (ii) reimburse PeopleSoft for all reasonable travel and living expenses incurred in connection with such Services, and (iii) pay PeopleSoft within thirty (30) calendar days after the date of each invoice. All payments must be in U.S. dollars and are non-refundable. Customer is responsible for all taxes, duties, and customs fees concerning the Services performed, excluding taxes based on PeopleSoft's income. All past due amounts will bear interest at the lesser of one and one-half percent (1 ½%) per month or the highest interest rate allowable under applicable law.

3. **Customer Obligations.** Customer shall perform its obligations as set forth in the applicable SOS, as well as the following obligations (collectively referred to as **"Customer Obligations"**):

(a) designate and provide for each SOS one (1) Customer point of contact who shall be responsible for responding to PeopleSoft's questions and issues relating to the Services;

(b) provide sufficient, qualified, knowledgeable personnel capable of: (i) performing Customer Obligations set forth in this Agreement and each SOS; (ii) making timely decisions necessary to move the Services forward; (iii) participating in the project and assisting PeopleSoft in rendering the Services; and (iv) facilitating development, testing and implementation of PeopleSoft software, if applicable;

(c) provide PeopleSoft with reasonable access to Customer's facilities during Customer's normal business hours and otherwise as reasonably requested by PeopleSoft in order to enable PeopleSoft to perform the Services;

(d) provide PeopleSoft with such reasonable working space, equipment and office support (including, but not limited to analog phone lines for dial up capabilities, digital or analog phone lines for long distance and local calls related to the provision of Services, photocopying equipment, and the like) and an adequate environment for consultants, where they can conduct efficient analytical work, and meetings with Customer personnel and/or other PeopleSoft personnel as PeopleSoft may reasonably request;

(e) perform such other duties and tasks as set forth in the applicable SOS to facilitate PeopleSoft's and its subcontractors' performance of the Services set forth thereunder; and

(f) not hire the employees or representatives of PeopleSoft who have been associated with the provision of Services hereunder for a period of six (6) months commencing on the date of completion of such Services. If Customer fails to comply with this provision, Customer agrees to pay PeopleSoft fifty

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percent (50%) of the annualized salary of the employee or representative hired or retained by Customer, payable within fifteen (15) days of Customer's hire or retention of such employee or representative.

4. **PeopleSoft Obligations.** Subject to Customer's performing Customer Obligations, PeopleSoft shall perform or cause to be performed the Services. Customer acknowledges and agrees that PeopleSoft's ability to perform the Services is conditioned upon Customer's timely performance of its obligations and the assumptions described in the applicable SOS, and the performance of such Customer Obligations is material to PeopleSoft's ability to commence and/or proceed with the Services. In the event Customer does not perform Customer Obligations in a timely manner, PeopleSoft may revise the applicable SOS and/or amount it is charging for Services, or terminate this Agreement, at PeopleSoft's sole option. For each SOS, PeopleSoft will designate one (1) PeopleSoft point of contact who shall be responsible for responding to Customer's questions and issues relating to the Services. Customer understands and agrees that PeopleSoft may subcontract with third parties to perform all or part of the Services.

5. **Consultant Planning.** Customer may request removal of any consultant at any time on ten (10) business days prior written notice to PeopleSoft and agrees to pay PeopleSoft for the consultant through the ten (10) day notice period. PeopleSoft shall have the right to remove or replace an assigned consultant with a similarly skilled consultant. PeopleSoft shall provide reasonable notice to Customer of any change in consultants.

6. **Change Procedures.** Customer may modify the scope of the Services, at any time during the term of this Agreement; provided, however, that if such modifications would require PeopleSoft to provide services materially in excess of the Services or in addition to its obligations under this Agreement or an SOS, or extend the time needed to complete the Services, the parties shall comply with the following procedures:

(a) Customer shall submit to PeopleSoft a written request for any change ("Change Request").

(b) As soon as reasonably possible PeopleSoft shall provide Customer with a written statement offering to perform consistent with the Change Request, proposing modifications to the Change Request, or rejecting such request. PeopleSoft's statement will include detailed information as to (i) the availability of PeopleSoft's personnel and resources, and (ii) the impact, if any, on the completion of Services, the delivery of any deliverable items and/or the cost of the Services.

(c) If Customer desires to implement a Change Request, Customer shall provide written authorization to PeopleSoft to proceed with such Change Request upon the terms set forth therein or as modified by PeopleSoft in its response pursuant to Section 6 (b). Customer's authorization of the Change Request as modified by PeopleSoft's response thereto may modify the terms of this Agreement and will modify the terms of the SOS, the cost for the Services and/or the completion date, as specified in the Change Request or in PeopleSoft's response thereto.

(d) Upon receipt of such written authorization from Customer, PeopleSoft shall promptly commence performance in accordance with the Change Request as modified by PeopleSoft's response thereto.

(e) Each Change Request, as modified by PeopleSoft's response thereto, which is duly authorized in writing by Customer shall constitute a formal modification to, shall be deemed incorporated into and shall become a part of, the applicable SOS. In no event shall the SOS, and/or any other obligations of PeopleSoft to provide Services be deemed amended except through a Change Request approved by PeopleSoft and Customer in accordance with the provisions of this Section 6.

7. **Insurance.** The parties shall each maintain general liability insurance, adequate worker's compensation and employer's liability insurance as required by applicable laws.

8. Confidential Information.

8.1 During the course of the parties' relationship, they may have access to Confidential Information of the other. Confidential Information of PeopleSoft includes, but is not limited to, this Agreement, any and all SOS(s), and the terms, conditions and pricing contained herein. Confidential Information shall not be disclosed, orally or in writing, to any third party without the prior written consent of the owner of such information.

8.2 Customer shall protect PeopleSoft's Confidential Information with at least the same degree of care and confidentiality, but not less than a reasonable standard of care, which Customer utilizes for Customer's information which Customer does not wish disclosed to the public.

8.3 PeopleSoft shall protect Customer's Confidential Information with at least the same degree of care and confidentiality, but not less than a reasonable standard of care, which PeopleSoft utilizes for similiar PeopleSoft information which it does not wish disclosed to the public. PeopleSoft may provide access to and use of Customer's Confidential Information only to those third parties that: (a) provide services to PeopleSoft concerning PeopleSoft's use of Customer's Confidential Information; (b) have a need to use and access Customer's Confidential Information; and (c) have agreed to substantially similar non-disclosure obligations as those contained herein.

8.4 This Agreement imposes no obligation upon either party (**"Recipient"**) with respect to the other party's (**"Discloser's"**) confidential information which Recipient can establish by legally sufficient evidence: (a) was in the possession of, or was rightfully known by Recipient without an obligation to maintain its confidentiality prior to receipt from Discloser; (b) is or becomes generally known to the public without violation of this Agreement; (c) is obtained by Recipient in good faith from a third party having the right to disclose it without an obligation of confidentiality; or (d) was required to be disclosed by applicable law, provided that Recipient notifies Discloser of such requirement prior to disclosure and provided further that Recipient makes diligent efforts to limit disclosure.

9. Indemnity.

9.1 PeopleSoft Indemnity. Provided the License Agreement has not been terminated, PeopleSoft shall indemnify Customer against any claims that the Work Product (as defined in Section 12 below) delivered to Customer pursuant to an SOS infringes any U.S. copyright provided that PeopleSoft is given prompt written notice of such claim and is given information, reasonable assistance, and the sole authority to defend or settle such claim. In the event of a threatened claim, PeopleSoft shall, in its reasonable judgment, at its sole obligation, and at its option and expense: (i) obtain for Customer the right to continue using the Work Product; (ii) replace or modify the Work Product so that it becomes noninfringing; or (iii) terminate the license for the Work Product and return only the Services fees paid by Customer for such portion of the Work Product which is allegedly infringing, prorated over a five (5) year term from the date of delivery of such portion of the Work Product. The fulfillment of the obligations set forth in this Subsection 9.1 shall constitute Customer's sole and exclusive remedy. PeopleSoft shall have no obligation to indemnify or defend Customer to the extent: (i) the alleged infringement is based on information, software code or other material furnished by Customer; (ii) the alleged infringement is the result of a modification made by anyone other than PeopleSoft or the result of software provided to PeopleSoft by Customer, its agents or representatives; (iii) such claim would have been avoided but for the combination or use of the Work Product, or portions thereof, with other products; or (iv) Customer uses the Work Product other than in accordance with this Agreement or the License Agreement. Notwithstanding anything contained herein, PeopleSoft shall have no obligation hereunder with respect to those portions of Work Product that embody Customer's confidential information, software code, or ideas including, without limitation, any portion of Work Product that is developed pursuant to Customer's specifications.

9.2 Customer Indemnity. Customer shall indemnify and hold PeopleSoft harmless against any claims that those portions of Work Product that embody Customer's confidential information, software code, or ideas, including, without limitation, any portion of Work Product that is developed pursuant to Customer's specifications infringe any copyright, provided that Customer is given prompt written notice of

such claim and is given information, reasonable assistance, and the sole authority to defend or settle such claim.

9.3 General Indemnity. Each party ("**Indemnifying Party**") shall indemnify and hold the other party ("**Indemnified Party**") harmless against any claim, including costs and reasonable attorney's fees, in which the Indemnified Party is named as a result of the negligent or intentional acts or failure to act by the Indemnifying Party, its employees or agents, while performing its obligations pursuant to this Agreement or any SOS which result in death or personal injury. This indemnification obligation is contingent upon the Indemnified Party's providing the Indemnifying Party with prompt written notice of such claim, information, all reasonable assistance in the defense of such action, and the sole authority to defend or settle such claim.

9.4 Entire Liability. THE FOREGOING PROVISIONS OF THIS SECTION 9 STATE THE ENTIRE LIABILITY AND OBLIGATIONS OF PEOPLESOFT, AND THE EXCLUSIVE REMEDY OF CUSTOMER, WITH RESPECT TO ANY ACTUAL OR ALLEGED INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OF THE SERVICES AND THE DEVELOPMENT AND/OR USE OF THE WORK PRODUCT.

10. Limited Warranty.

10.1 PeopleSoft Warranty. PeopleSoft warrants that the Services will be performed consistent with generally accepted industry standards. No specific result from provision of the Services is assured or guaranteed. PEOPLESOFT DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT.

10.2 Remedies. Customer's sole remedy and PeopleSoft's sole obligation in the event of a breach of the warranty contained herein is, at PeopleSoft's sole option: (i) to reperform the Services, or (ii) to refund the amounts paid by Customer for the Services which were not as warranted, provided PeopleSoft has received notice from Customer within thirty (30) days of the completion of the Services which Customer alleges were not performed consistent with the warranty in Section 10.1

11. Limitation of Liability. PEOPLESOFT SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST DATA, LOST PROFITS OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, HOWEVER ARISING, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. PEOPLESOFT'S LIABILITY FOR DAMAGES ARISING OUT OF, RELATING TO OR IN ANY WAY CONNECTED WITH THE RELATIONSHIP OF THE PARTIES, THIS AGREEMENT, ITS NEGOTIATION OR TERMINATION, OR THE PROVISION OR NONPROVISION OF SERVICES OR SOFTWARE (WHETHER IN CONTRACT OR TORT) SHALL IN NO EVENT EXCEED THE AMOUNT RECEIVED BY PEOPLESOFT FROM CUSTOMER UNDER THE APPLICABLE SOS, AND IF SUCH DAMAGES RESULT FROM SPECIFIC SERVICES, SUCH LIABILITY SHALL BE LIMITED TO FEES PAID FOR THE SERVICES GIVING RISE TO THE LIABILITY FROM WHICH THE CLAIM AROSE. THE PARTIES AGREE TO THE ALLOCATION OF LIABILITY SET FORTH IN THIS SECTION. CUSTOMER ACKNOWLEDGES THAT WITHOUT ITS AGREEMENT TO THE LIMITATIONS CONTAINED HEREIN, THE PRICE CHARGED FOR THE SERVICES WOULD BE HIGHER.

12. Rights to Work Product. "**Work Product**" means any expression of PeopleSoft's findings, analyses, conclusions, opinions, recommendations, ideas, techniques, know-how, designs, programs, enhancements, source and object code, software, and other technical information. All Work Product is the property of PeopleSoft and is licensed nonexclusively to Customer, at no additional license fee, pursuant to the terms of the license for software contained in the License Agreement and subject to the terms hereof. To the extent Customer acquires any rights in the Work Product, Customer hereby assigns those rights to PeopleSoft.

13. Independent Contractor Status. PeopleSoft performs its obligations pursuant to this Agreement as an independent contractor, not as an employee of Customer. Nothing in this Agreement is intended to

create or be construed as the existence of a partnership, joint venture, or agency relationship between the parties.

14. Notice. All notices shall be in writing and sent by regular mail, registered mail, overnight mail, courier, transmitted by facsimile or delivered personally to the addresses indicated on the first page of this Agreement, or such other address as either party may indicate by at least ten (10) business days prior written notice to the other party. Notices to PeopleSoft will be addressed to PeopleSoft's General Counsel. Notices made pursuant to this Section shall be effective on the date shown on the receipt evidencing delivery or the facsimile confirmation, or if sent by regular mail or where there is no written evidence of delivery, on actual receipt.

15. Termination. Customer may terminate this Agreement , or any SOS at any time by giving PeopleSoft ten (10) business days prior written notice of termination, provided that: (i) all fees due under this Agreement and all other SOS(s) shall be paid by Customer to PeopleSoft immediately upon the effective date of such termination; and (ii) Customer shall not be due any refund or credit in relation to Services already performed. In the event Customer provides less than ten (10) business days notice, PeopleSoft reserves the right to invoice Customer for up to (10) business days of consulting services per Consultant terminated. PeopleSoft may terminate this Agreement, or any SOS for no reason or any reason on written notice to Customer.

16. Separate Agreements. Customer acknowledges that it may license PeopleSoft's software without utilizing PeopleSoft's consulting services and that it could utilize consulting services of third parties. Customer agrees that this Agreement including any SOS, is a separate and independent contractual obligation from the License Agreement. Customer shall not withhold payments that are due and payable under this Agreement or any SOS because of the status of any software licenses or schedules, nor shall Customer withhold payments that are due and payable pursuant to the License Agreement or schedules thereto because of the status of services performed under this Agreement or any SOS. If there is any conflict between the terms of this Agreement and the License Agreement, the terms of this Agreement will control.

17. Survival. The terms of Sections 8. (Confidential Information), 9. (Indemnity), 11. (Limitation of Liability), 12. (Rights to Work Product), 14. (Notice), 16. (Separate Agreements), 17. (Survival) and 18. (General) shall survive the termination of this Agreement.

18. General. This Agreement is made in and shall be governed by the laws of the State of Califonia, without regard to its choice of law principles. Jurisdiction and venue shall be in San Francisco, California. The section headings herein are provided for convenience only and have no substantive effect on the construction of this Agreement. No purchase order or other ordering document that purports to modify or supplement the printed text of this Agreement or any SOS thereto shall add to or vary the terms of this Agreement. All such proposed variations or additions (whether submitted by PeopleSoft or Customer) are objected to and deemed material unless otherwise agreed to in writing. Except for Customer's obligation to pay PeopleSoft and to pay taxes, duties and customs fees in relation to the Services, neither party shall be liable for any failure to perform due to causes beyond its reasonable control. If any provision of this Agreement is held to be unenforceable, this Agreement shall be construed without such provision. The failure by a party to exercise any right hereunder shall not operate as a waiver of such party's right to exercise such right or any other right in the future. Except for actions for non-payment or breach of PeopleSoft's proprietary rights in the Work Product, no action, regardless of form, arising out of this Agreement may be brought by either party more than one year after the cause of action has accrued. This Agreement, including any and all SOSs, constitutes the entire agreement between the parties concerning the subject matter contained herein. This Agreement replaces and supersedes any prior verbal or written understandings, proposals, quotations, communications, and representations between the parties relating to the subject matter hereof. This Agreement may be amended only by a written document executed by a duly authorized representative of each of the parties. Except as otherwise specifically stated herein, remedies shall be cumulative and there shall be no obligation to exercise a particular remedy.

The undersigned represent and warrant that they are authorized as representatives of the party on whose behalf they are signing to sign this Consulting Services Agreement and to bind their respective party thereto.

CITY OF PEORIA, ARIZONA
A municipal corporation

BY: Terrence L. Ellis
City Manager

PeopleSoft USA, Inc.

Authorized Signature

J. P. Wallace
Director

Printed Name and Title

APPROVED AS TO FORM:

Alfred J. Smith
Deputy City Attorney

ATTESTED BY:

Janice L. Graziano
City Clerk

CITY OF PEORIA

Document ID: 19990208112513-IXOUKY

L CON 7298A

Temp Copy . 4/5/05

These are Copies. Originals went back to Dan

MEMORANDUM

DATE: April 18, 2000

TO: Jan Graziano, City Clerk

FROM: Dan Zenko, Contract Officer

RE: P8-0025, PeopleSoft Agreement (LCON 7298), **Amendment 1**

Please find attached the **originals (2)** as submitted by PeopleSoft for the amendment referenced above. PeopleSoft insists on the City signing first and then they will send our original back after they sign. This is an amendment to the original software contract (LCON 7298, P8-0025). There is a provision in the original contract allowing for the purchase of additional PeopleSoft services by separate written agreement. Please process for the assignment of the **LCON** number and the remaining signatures (in blue ink). **Return Both** Completed Originals to Dan Zenko, Materials Management.

Thank you for your assistance in this matter.

Attachment

OFFICIAL FILE

#4305

Amendment to the
Software License and Services Agreement
Between
City of Peoria, Arizona and PeopleSoft USA, Inc.

THIS Amendment to the Software License and Services Agreement ("**Amendment**") is made and entered into on May 11, 2001 ("**Amendment Effective Date**") by and between PeopleSoft USA, Inc. ("**PeopleSoft**") and City of Peoria, Arizona ("**Licensee**").

WITNESSETH:

THAT, for and in consideration of the mutual promises herein contained, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties to this Amendment, intending to be legally bound, hereby agree that the Software License and Services Agreement between the parties, dated May 19, 1995 as amended ("**Agreement**") is further amended to provide as follows:

1. **Definitions.** Unless otherwise defined herein, capitalized terms used in this Amendment shall have the same meaning as those used in the Agreement.

2. **License Grant.** Licensee is licensed to use the following New Software modules(s) at no additional license fee, subject to the terms of the Agreement, and the use restrictions and limitations for the Base Software module, as indicated in the table below:

New Software	Base Software
eRecruit	Human Resources
eCompensation	Human Resources
eProfile	Human Resources
eDevelopment	Human Resources
ePay	Payroll or Payroll Interface

3. **Support Services.** Licensee shall be entitled to receive Support Services for each of the New Software modules for a period of time commencing on the Amendment Effective Date and terminating upon the next Anniversary Date of the associated Base Software, as indicated in the table above.

4. **Expiration of Offer.** The offer set forth in this Amendment is valid only through May 15, 2001, and if this Amendment is not executed by such date, the offer is rescinded, and all terms are null and void.

5. **Conflict.** In the event of any conflicts or inconsistencies between the provisions of this Amendment and the Agreement and/or any addenda thereto, the provisions of this Amendment shall prevail. The remainder of the Agreement shall remain in full force and effect, unamended.

CITY OF PEORIA, ARIZONA

Authorized Signature

John F. Wenderski

Director of Management Services

Printed Name and Title

APPROVED AS TO FORM:

for Stephen M. Kemp,
City Attorney

PEOPLESOFT USA, INC.

Authorized Signature

Laura Allbritten, Secretary

Printed Name and Title

ATTESTED BY:

Janice L. Graziano
City Clerk

OFFICIAL FILE

05/11/01, 9:28 AM

Document4.glc

L CON 07298 B

Temp copy

RECEIVED
MAY 14 2001
OFFICE OF THE CITY ATTORNEY

MEMORANDUM

DATE: May 14, 2001

TO: Jan Graziano, City Clerk

FROM: Dan Zenko, Contract Officer

RE: LCON 7298, Amendment to the PeopleSoft Software Contract P8-0025

Please find attached **two (2) originals** of an amendment to the PeopleSoft Software Contract P8-0025. This amendment is time sensitive and is only valid until May 15, 2001. This amendment will license several new H.R. software modules for the City to use. There is no initial cost for these licenses until the anniversary date of the base contract at which time ongoing maintenance fees will apply. Please process as an amendment to LCON 7298 and obtain the necessary signatures. **Return both originals** of the amendment to Dan Zenko, Materials Management.

Thank you for your assistance in this matter.

Attachment

Steve & William - Please rush
Dan Z needs this 5/15 per
Clerk's office. Jane

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AMENDMENT TO THE DOCUMENTS OF THE SOFTWARE LICENSE AGREEMENT BETWEEN CITY OF PEORIA, ARIZONA AND PEOPLESOFT USA, INC.

THIS Amendment ("**Amendment**") is made and entered into on May 19, 2004 ("**Amendment Effective Date**") by and between PeopleSoft USA, Inc. ("**PeopleSoft**") and City of Peoria, Arizona ("**Licensee**").

WITNESSETH:

THAT, for and in consideration of the mutual promises herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties to this Amendment, intending to be legally bound, hereby agree that the Software License and Services Agreement between the parties, dated May 19, 1998 ("**Agreement**") is amended to provide as follows:

1. **Definitions.** Unless otherwise defined herein, capitalized terms used in this Amendment shall have the same meaning as those used in the Agreement.

"Supportable Modules" shall mean the Software modules licensed pursuant to: (i) Schedule #1 to the Agreement dated as of May 19, 1998 **("Schedule #1")** which for the purposes of this Amendment include: Human Resources, Payroll, Time & Labor, General Ledger, Payables, Purchasing, Asset Management, and Inventory; and (ii) the Amendment to the Agreement for the HRMS eApplications dated as of May 11, 2001 **("eApps Amendment")** which for the purposes of this amendment include: eRecruit, eCompensation, eProfile, eDevelopment, and ePay. Hereinafter Schedule #1 and the eApps Amendment shall be referred to as the Documents **("Documents").**

2. **Support Services Terms:** For a period commencing upon May 19, 2004 and terminating one (1) year thereafter upon May 18, 2005 ("**Initial Services Term**"), Licensee shall receive Support Services for the Supportable Modules licensed pursuant to the Documents which meet the technical environment set forth therein for the fees equal to the following: for Schedule #1 fees equal to $123,366 and for the eApps Amendment fees equal to $15,280.

In the event Support Services are to be provided thereafter, increases in the fee for Support Services for a period terminating three (3) years after the Initial Services Term, years two (2) through four (4), other than Support Services for Third Party Software shall not exceed eight percent (8%) in each subsequent twelve (12) month period. In the event Support Services are to be provided thereafter, for years five (5) and six (6), increases in the fee for Support Services for other than Support Services for Third Party Software shall not exceed ten percent (10%) in each subsequent twelve (12) month period. In the event Support Services are to be provided thereafter, for year seven (7), increases in the fee for Support Services other than Support Services for Third Party Software shall not be higher than twenty-five percent (25%) over the prior years fee. These caps are provided that: (i) Licensee continuously subscribes to Support Services and pays for such services for all Supportable Modules licensed pursuant to the Documents in a timely manner, (ii) is not in breach of this or any other agreement with PeopleSoft; and (iii) the base upon which the increases are measured will be adjusted to take into account additional license fees, including fees owed pursuant to the Incremental License Fees section, or such applicable named section. Notwithstanding anything herein to the contrary after the Initial Services Term, the Support Services fee for Third Party Software Supportable Modules licensed pursuant to the Documents will equal the fee in effect at the time such Support Services are renewed.

Thereafter, in the event Support Services are to be provided for the Supportable Modules licensed pursuant to the Documents after the period during which the increases have been capped, and Licensee has been a compliant, continuous subscriber to Support Services, Licensee shall pay PeopleSoft, on or before the applicable Anniversary Date (defined as the month and day of the Schedule Effective Date), PeopleSoft's fee for Support Services in effect on the Anniversary Date on which Support Services are renewed.

In the event Support Services are not renewed or are terminated and Licensee subsequently requests Support Services, PeopleSoft may, in its sole discretion, reinstate Support Services but only after Licensee pays

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PeopleSoft.

PeopleSoft the annual Support Services fee in effect at the time of such reinstatement, plus a reinstatement fee equal to the number of years or portion thereof during which Licensee was not a subscriber to Support Services multiplied by the annual Support Services fee in effect at the time of such reinstatement.

3. **Payment Terms:** Licensee shall pay PeopleSoft one hundred percent (100%) of the Support Services fee equal to $138,646 for the Supportable Modules on or before that date which is thirty (30) calendar days after the date of PeopleSoft's invoice. Unless explicitly stated in this Amendment, all fees specified herein are non-cancelable, non-refundable and non-contingent. All fees are payable in U.S. dollars and shall be sent to the attention of PeopleSoft's Accounts Receivable Department.

4. **Expiration of Offer:** The offer set forth in this Amendment is valid only through May 30, 2004, and if this Amendment is not executed by such date, the offer is rescinded, and all terms are null and void.

5. **Conflict.** In the event of any conflicts or inconsistencies between the provisions of this Amendment and the Agreement and/or any addenda thereto, the provisions of this Amendment shall prevail. The remainder of the Agreement shall remain in full force and effect, unamended.

Acknowledged and Agreed to:

CITY OF PEORIA, ARIZONA
A municipal corporation

BY: **Terrence L. Ellis**
City Manager

PEOPLESOFT USA, INC.

Kevin R. Maddock

Regional Vice President

ATTEST:

Mary Jo Kief
City Clerk

APPROVED AS TO FORM:

Stephen M. Kemp
City Attorney

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Agreement No. P8-0025
Contract No. LCON07298D

ORIGINAL

AMENDMENT TO THE SOFTWARE LICENSE AND SERVICES AGREEMENT BETWEEN CITY OF PEORIA AND ORACLE USA, INC.

THIS Amendment to the Software License and Services Agreement ("**Amendment**") is made and entered into on March 13, 2007 ("**Amendment Effective Date**") by and between Oracle USA, Inc. ("**Oracle**" formerly known as PeopleSoft USA, Inc.) and City of Peoria ("**Licensee**").

WITNESSETH:

THAT, for and in consideration of the mutual promises herein contained, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties to this Amendment, intending to be legally bound, hereby agree that the Software License and Services Agreement between the parties (P-98-358-00-000--24), dated May 19, 1998 ("**Agreement**") is further amended to provide as follows:

1. **Definitions.** Unless otherwise defined herein, capitalized terms used in this Amendment shall have the same meaning as those used in the Agreement.

"**Updates**" means those subsequent releases of the Software and Documentation which are generally made available to licensees of the Software which are similarly situated to Licensee, as part of Support Services at no additional charge, other than the fees for Support Services, media and handling charges. Updates shall not include any releases, enhancements, functionality or products which Oracle licenses separately or charges for separate from Support Services. The use of an Update may be subject to additional terms and Licensee may be required to agree to such terms in writing prior to receiving an Update. Updates are delivered only if and when available.

2. **License Grant.**

a) Provided Licensee is, as of the Amendment Effective Date: (i) a licensee of Payroll for North America; and (ii) a compliant Support Services subscriber for Payroll for North America, Licensee may, by executing this Amendment, receive the Absence Management Software module, subject to the limitations of the license for Payroll for North America and in accordance with the terms of the Agreement. After the Amendment Effective Date, all Updates provided to Licensee will include Updates of Absence Management in addition to Updates of Payroll for North America. The fees for Support Services will continue to be the fees in effect for Payroll for North America under the terms of the Agreement.

b) Provided Licensee is, as of the Amendment Effective Date: (i) a licensee of Human Resources; (ii) not a licensee of eRecruit Manager Desktop, and (iii) a compliant Support Services subscriber for Human Resources, Licensee is hereby granted a limited use license for the Talent Acquisition Manager Software module, subject to the limitations of license for the Human Resources module and in accordance with the terms of the Agreement. Such limited use license for the Talent Acquisition Manager Software module means that Licensee shall have the right to use only the functionality that was previously included in the Recruit Workforce component of the Human Resources module which consists of employee referral program, applicant management, applicant interviewing, offer, hire applicant, search functionality, status management, and requisition management and not to access any other functionality in the Talent Acquisition Manager module, including, without limitation, integration framework, recruiting console, applicant relationship management, contact management, and recruiting teams. After the Amendment Effective Date, all Updates provided to Licensee will be Updates of Human Resources and the limited use license of Talent Acquisition Manager and fees for Support Services will be the fees in effect for the Human Resources under the terms of the Agreement.

3. **Expiration of Offer.** The offer set forth in this Amendment is valid only through May 31, 2007.

4. **Conflict.** In the event of any conflicts or inconsistencies between the provisions of this Amendment and the Agreement, the provisions of this Amendment shall prevail. The remainder of the Agreement shall remain in full force and effect, unamended.

CITY OF PEORIA

Signature

SANDRA TERTSEL
Name

CTO
Title

5/29/07
Signature Date

ORACLE USA, INC.

Signature

Jennifer L. Jones
Name

Director, License Contract Services
Title

26-Jul-07
Signature Date

City of Peoria.Mike.Nealon

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Agreement No. P8-0025

CITY OF PEORIA, ARIZONA
A Municipal Corporation

Herman Koebergen, Materials Manager
City of Peoria

Approved as to form:

Stephen M. Kemp, City Attorney
City of Peoria

Attested by:

Mary Jo Kief, City Clerk
City of Peoria

L CON 07298D