

Legislative File

File ID No. 12-0283

Introduction Date 1-25-12

Enactment No. 12-0139

Enactment Date 1-25-12

By B

Oakland Unified School District
Office of the Board of Education

January 25, 2012

TO: Board of Education

FROM: Anthony Smith, Ph.D., Superintendent
Vernon Hal, Deputy Superintendent Business & Operations *WBH*
Gee Kin Chou, Information Technology Officer

SUBJECT: **Contract No. 1628, Software Maintenance Renewal, between the District and SunGard Public Sector Inc., Bethlehem, PA, for the latter to renew the existing Software Maintenance Agreement, dated January 13, 2011. All terms and conditions of the existing Agreement shall remain in effect (with the exception of any conditions, prices and payment terms contained in Exhibit A of this Agreement) for the period commencing December 1, 2011 and concluding November 30, 2012, with an annual support cost in an amount not-to-exceed \$123,217.63.**

ACTION REQUESTED

Approval by the Board of Education of Contract No. 1628, Software Maintenance Renewal, between the District and SunGard Public Sector Inc., Bethlehem, PA, for the latter to renew the existing Software Maintenance Agreement, dated January 13, 2011. All terms and conditions of the existing Agreement shall remain in effect (with the exception of any conditions, prices and payment terms contained in Exhibit A of this Agreement) for the period commencing December 1, 2011 and concluding November 30, 2012, with an annual support cost in an amount not-to-exceed \$123,217.63.

BACKGROUND

The Software License Agreement between SunGard Public Sector Inc. and the Oakland Unified School District was signed on August 28, 2001. Based on Schedule C-3 to this agreement, the Software License continuing from year to year is contingent upon payment of the Annual Support fees.

Annual Support will be provided for the following BusinessPLUS modules listed in Exhibit A - SunGard Public Sector Proforma Order No. 46965:

1. IFGENERAL LEDGER
BusinessPLUS General Ledger/Nucleus/GUI (formerly IFAS)

2. IFAP/ENCUMBRANCES
BusinessPLUS Accounts Payable/Encumbrances (formerly IFAS)
3. IFAR CASH RECEIPTS
BusinessPLUS Accounts Receivable/Cash Receipts (formerly IFAS)
4. IFBANK RECON
BusinessPLUS Bank Reconciliation (formerly IFAS)
5. IFPEID
BusinessPLUS Person/Entity Database (formerly IFAS)
6. IFPURCHASING
BusinessPLUS Purchasing (formerly IFAS)
7. IFFIXED ASSETS
BusinessPLUS Fixed Assets Inventory (formerly IFAS)
8. IFEASY LASER FORMS
BusinessPLUS Easy Laser Forms (formerly IFAS)
9. IFPAYROLL
BusinessPLUS Payroll (formerly IFAS)
10. IFHUMAN RESOURCES
BusinessPLUS Human Resources and Position Control (formerly IFAS)
11. IFPOSITION BUDGETING
BusinessPLUS Position Budgeting (formerly IFAS)
12. IFSUBTRACKER
BusinessPLUS Subtracker (formerly IFAS)
13. IFEMPLOYEE ONLINE
BusinessPLUS Employee Online (formerly IFAS)
14. IFWORK ORDER
BusinessPLUS Work Order (formerly IFAS)
15. IFCDD
BusinessPLUS Click, Drag, & Drill includes CDD.net (formerly IFAS)
16. IFDOCUMENTS ONLINE
BusinessPLUS Documents Online (formerly IFAS)
17. BC
BCOUS1002-Changes to Positive Pay File

FISCAL IMPACT

The Microsoft Settlement Account will fund the \$123,217.63.

RECOMMENDATION

Approval by the Board of Education of Contract No. 1628, Software Maintenance Renewal, between the District and SunGard Public Sector Inc., Bethlehem, PA, for the latter to renew the existing Software Maintenance Agreement, dated January 13, 2011. All terms and conditions of the existing Agreement shall remain in effect (with the exception of any conditions, prices and payment terms contained in Exhibit A of this Agreement) for the period commencing December 1, 2011 and concluding November 30, 2012, with an annual support cost in an amount not-to-exceed \$123,217.63.

ATTACHMENT

Contract No. 1628 Software Maintenance Renewal between SunGard Public Sector and the District.

Software Maintenance Agreement between SunGard Public Sector and the District signed January 13, 2011.

Software License Agreement between SunGard Bi-Tech Inc. and the District.

CONTRACT NO. 1628

SunGard Public Sector Inc.
d/b/a "SUNGARD K-12 EDUCATION"

SOFTWARE MAINTENANCE RENEWAL

Client:

Oakland Unified School District
1011 Union Street
Oakland, CA 94607
Telephone: 510-879-8324
Fax: 510-451-1695
Attn: Janice Chinn

Licensor:

SunGard K-12 Education
3 West Broad Street
Bethlehem, PA 18018
Telephone: (610) 691-3616
Fax: (610) 954-8378

SunGard K-12 Education and Client agree to renew their existing Software Maintenance Agreement, dated January 13, 2011 ("Agreement"), in accordance with the following as attached hereto and part of this Software Maintenance Renewal.

EXHIBIT A: Annual Support Fees

All terms and conditions of the existing Agreement shall remain in effect (with the exception of any conditions, prices and payment terms indicated herein). For payment terms, refer to the payment schedule in Exhibit A.

IN WITNESS WHEREOF AND INTENDING TO BE LEGALLY BOUND, the parties have caused this Software Maintenance Renewal to be signed by its duly authorized officer.

Oakland Unified School District

SunGard Public Sector Inc.

BY: Jody London

BY: [Signature]

PRINT NAME: Jody London
President, Board of Education

PRINT NAME: Bronne J. Bruzgo

PRINT TITLE: [Signature]
Legal Counsel, Jr., Secretary
Board of Education

PRINT TITLE: Vice President, Sales

DATE SIGNED: 1/25/12

DATE SIGNED: 12/15/11

OAKLAND UNIFIED SCHOOL DISTRICT
Office of General Counsel
APPROVED FOR FORM & SUBSTANCE
By: [Signature]
Attorney at Law

Legislative File
File ID Number: 12-0283
Introduction: 1-25-12
Enactment Number: 12-0139
Enactment Date: 1-25-12
B

EXHIBIT A

Annual Support Fees

Listed below are the modules for which Annual Support will be provided during the term of December 1, 2011 through November 30, 2012.

Per SunGard K-12 Education's Proforma dated November 17, 2011, Order No. 46965 attached hereto and incorporated herein by reference.

\$118,052.85
+ \$5,164.78 Tax
\$123,217.63 Total

Improvement fees for any Contract Year subsequent to the initial Contract Year are subject to change and will be specified by SunGard K-12 Education in an annual invoice.

PROFORMA

Company	Order No.	Date	Page No
PE	46965	17/Nov/2011	1

To: OAKLAND UNIFIED SCHOOL DISTRICT
 Attn: KIRK BROWN-STUDENT SYS. DIRECTOR
 510-879-8274
 OAKLAND UNIFIED SCHOOL DISTRICT
 1011 UNION STREET
 OAKLAND, CA 94607
 United States

Ship To: OAKLAND UNIFIED SCHOOL DISTRICT
 Attn: KIRK BROWN-STUDENT SYS. DIRECTOR
 510-879-8274
 OAKLAND UNIFIED SCHOOL DISTRICT
 1011 UNION STREET
 OAKLAND, CA 94607
 United States

Customer Grp/No.	Customer PO#	Payment Terms	Currency Code	Ship Via	Salesperson Cd
1	2733	Net 30	USD		

No. Item/	Description/ Comments	Drop Ship	# Users	Quantity	U/M	Unit Price	Disc %	Total Cost
1	Renewal: IFGENERAL LEDGER BusinessPLUS General Ledger/Nucleus/GUI (formerly IFAS) Maintenance: Start: 12/01/2011, End: 11/30/2012; Term: 12 months	No	1	1	EA	33,085.93	.00	33,085.93
2	Renewal: IFAP/ENCUMBRANCES BusinessPLUS Accounts Payable/Encumbrances (formerly IFAS) Maintenance: Start: 12/01/2011, End: 11/30/2012; Term: 12 months	No	1	1	EA	4,837.82	.00	4,837.82
3	Renewal: IFAR CASH RECEIPTS BusinessPLUS Accounts Receivable/Cash Receipts (formerly IFAS) Maintenance: Start: 12/01/2011, End: 11/30/2012; Term: 12 months	No	1	1	EA	4,837.82	.00	4,837.82
4	Renewal: IFBANK RECON BusinessPLUS Bank Reconciliation (formerly IFAS) Maintenance: Start: 12/01/2011, End: 11/30/2012; Term: 12 months	No	1	1	EA	2,686.65	.00	2,686.65
5	Renewal: IFPEID BusinessPLUS Person/Entity Database (formerly IFAS) Maintenance: Start: 12/01/2011, End: 11/30/2012; Term: 12 months	No	1	1	EA	2,686.65	.00	2,686.65
6	Renewal: IFPURCHASING BusinessPLUS Purchasing (formerly IFAS) Maintenance: Start: 12/01/2011, End: 11/30/2012; Term: 12 months	No	1	1	EA	6,959.89	.00	6,959.89
7	Renewal: IFFIXED ASSETS BusinessPLUS Fixed Assets Inventory (formerly IFAS) Maintenance: Start: 12/01/2011, End: 11/30/2012; Term: 12 months	No	1	1	EA	4,380.31	.00	4,380.31
8	Renewal: IFEASY LASER FORMS BusinessPLUS Easy Laser Forms (formerly IFAS) Maintenance: Start: 12/01/2011, End: 11/30/2012; Term: 12 months	No	1	1	EA	2,014.99	.00	2,014.99
9	Renewal: IFPAYROLL BusinessPLUS Payroll (formerly IFAS) Maintenance: Start: 12/01/2011, End: 11/30/2012; Term: 12 months	No	1	1	EA	11,689.08	.00	11,689.08
10	Renewal: IFHUMAN RESOURCES BusinessPLUS Human Resources and Position Control (formerly IFAS) Maintenance: Start: 12/01/2011, End: 11/30/2012; Term: 12 months	No	1	1	EA	11,689.08	.00	11,689.08
11	Renewal: IFPOSITION BUDGETING BusinessPLUS Position Budgeting (formerly IFAS) Maintenance: Start: 12/01/2011, End: 11/30/2012; Term: 12 months	No	1	1	EA	3,307.98	.00	3,307.98

SUNGARD[®] PUBLIC SECTOR PROFORMA

Company	Order No.	Date	Page No
PE	46965	17/Nov/2011	2

Customer Grp/No.	Customer PO#	Payment Terms	Currency Code	Ship Via	Salesperson Cd
1	2733	Net 30	USD		

No. Item/ Description/ Comments	Drop Ship	# Users	Quantity	U/M	Unit Price	Disc %	Total Cost
12 Renewal: IFSUBTRACKER BusinessPLUS SubTracker (formerly IFAS) Maintenance: Start: 12/01/2011, End: 11/30/2012; Term: 12 months	No	1	1	EA	2,203.18	.00	2,203.18
13 Renewal: IFEMPLOYEE ONLINE BusinessPLUS Employee Online (formerly IFAS) Maintenance: Start: 12/01/2011, End: 11/30/2012; Term: 12 months	No	1	1	EA	5,644.13	.00	5,644.13
14 Renewal: IFWORK ORDER BusinessPLUS Work Order (formerly IFAS) Maintenance: Start: 12/01/2011, End: 11/30/2012; Term: 12 months	No	1	1	EA	6,046.52	.00	6,046.52
15 Renewal: IFCDD BusinessPLUS Click, Drag, & Drill includes CDD.net (Report Writer) (formerly IFAS) Maintenance: Start: 12/01/2011, End: 11/30/2012; Term: 12 months	No	1	1	EA	11,098.48	.00	11,098.48
16 Renewal: IFDOCUMENTS ONLINE BusinessPLUS Documents Online (formerly Image Enabler) Maintenance: Start: 12/01/2011, End: 11/30/2012; Term: 12 months	No	1	1	EA	3,309.34	.00	3,309.34
Total Amount For BUSINESSPLUS PRODUCTS							\$116,477.85
17 Renewal: BC BCOUS1002 - Changes to Positive Pay File Maintenance: Start: 12/01/2011, End: 11/30/2012; Term: 12 months	No	1	1	EA	1,575.00	.00	1,575.00
Total Amount For BUSINESSPLUS PROFESSIONAL SERVICES							\$1,575.00

Does not include any applicable taxes

Order Total: 118,052.85

We would like to continue on the current maintenance plan

- Our Purchase Order is enclosed
- Our Purchase Order is _____.
- Purchase Order is not required to be invoiced

AN INVOICE WILL BE SENT AFTER CONFIRMATION OF ORDER

SOFTWARE MAINTENANCE AGREEMENT

BETWEEN

SunGard Public Sector Inc.
a Florida corporation

with a business address at:

3 West Broad Street, Suite 1
Bethlehem, PA 18018
Phone #: (610) 691-3616
Fax #: (610) 691-1031

("SunGard Public Sector")

AND

Oakland Unified School District
1025 2nd Ave.
Oakland, CA 94606

(for purposes of this Agreement, "Customer")

By the signatures of their duly authorized representatives below, SunGard Public Sector and Customer, intending to be legally bound, agree to all of the provisions of this Agreement and all Exhibits, Supplements, Schedules, Appendices, and/or Addenda to this Agreement.

Oakland Unified School District, CA

BY: _____

PRINT NAME: Gary D. Yee, Ed.D.
President, Board of Education

PRINT TITLE: _____

DATE SIGNED: 1/13/11
Edgar Rakestraw, Jr., Secretary
Board of Education

SunGard Public Sector

BY: _____

PRINT NAME: David Madea

PRINT TITLE: VP - Finance

DATE SIGNED: 12/7/10

OAKLAND UNIFIED SCHOOL DISTRICT
Office of General Counsel

APPROVED FOR FORM & SUBSTANCE

By: _____
Attorney at Law

LEGISLATIVE FILE

File ID No. 10-3022
Introduction Date 1-3-11
Enactment No. 11-0074
Enactment Date 1-12-11 49

THIS AGREEMENT is entered into between SunGard Public Sector and Customer on the Execution Date, and SunGard Public Sector's obligations hereunder will commence on Execution Date.

Customer desires that SunGard Public Sector provide Maintenance and Enhancements for and new releases of the Baseline Software identified in Exhibit 1 on the terms and conditions contained in this Agreement. Accordingly, the parties agree as follows:

1. **Definitions.**

"Exhibit 1" means, collectively: (i) The schedule attached to this Agreement which is marked as "Exhibit 1," including all attached Software Supplements; and (ii) any schedule also marked as "Exhibit 1" (also including any attached Software Supplements) that is attached to any amendment to this Agreement. Other appendices to this Agreement are numbered sequentially and are also "Appendices."

"Baseline" means the general release version of a Component System as updated to the particular time in question through both SunGard Public Sector's warranty services and SunGard Public Sector's Maintenance Program, but without any other modification whatsoever.

"Component System" means any one of the computer software programs which is identified in Exhibit 1 as a Component System, including all copies of Source Code, Object Code and all related specifications, Documentation, technical information, and all corrections, modifications, additions, improvements and enhancements to and all Intellectual Property Rights for such Component System.

"Confidential Information" means non-public information of a party to this Agreement. Confidential Information of SunGard Public Sector includes the Software, all software provided with the Software, and algorithms, methods, techniques and processes revealed by the Source Code of the Software and any software provided with the Software. Confidential Information does not include information that: (i) is or becomes known to the public without fault or breach of the Recipient; (ii) the Discloser regularly

discloses to third parties without restriction on disclosure; or (iii) the Recipient obtains from a third party without restriction on disclosure and without breach of a non-disclosure obligation.

"Discloser" means the party providing its Confidential Information to the Recipient.

"Documentation" means the on-line and hard copy functional and technical specifications that SunGard Public Sector provides for a Baseline Component System, and that describe the functional and technical capabilities of the Baseline Component System in question.

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

"Equipment" means a hardware and systems software configuration meeting the "Equipment" criteria set forth in Exhibit 1.

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

"Software" means the Component Systems listed in Exhibit 1.

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

"Recipient" means the party receiving Confidential Information of the Discloser.

"Software Supplement" means, with respect to a Component System, the addendum provided as part of Exhibit 1 that contains additional terms, conditions, limitations and/or

other information pertaining to that Component System. If any terms of a Software Supplement conflicts with any other terms of this Agreement, the terms of the Software Supplement will control.

"Source Code" means computer programs written in higher-level programming languages, sometimes accompanied by English language comments and other programmer documentation.

"Contract Year" means, with respect to each Baseline Component System and Custom Modification, each one (1) year period beginning on the Execution Date or the anniversary thereof, and ending one (1) year thereafter.

"Custom Modification" means a change that SunGard Public Sector has made at Customer's request to any Component System in accordance with a SunGard Public Sector-generated specification, but without any other changes whatsoever by any person or entity. Each Custom Modification for which SunGard Public Sector will provide Customer with Improvements is identified in Exhibit 1.

"Defect" means a material deviation between the Baseline Component System and its Documentation, for which Defect Customer has given SunGard Public Sector enough information to enable SunGard Public Sector to replicate the deviation on a computer configuration that is both comparable to the Equipment and that is under SunGard Public Sector's control. Further, with regard to each Custom Modification, "Defect" means a material deviation between the Custom Modification and the SunGard Public Sector-generated specification and documentation for such Custom Modification, and for which Defect Customer has given SunGard Public Sector enough information to enable SunGard Public Sector to replicate the deviation on a computer configuration that is both comparable to the Equipment and that is under SunGard Public Sector's control.

"Enhancements" means general release (as opposed to custom) changes to a Baseline Component System or Custom Modification which increase the functionality of the Baseline Component System or Custom Modification in question.

"Improvements" means, collectively,

Maintenance, Enhancements and New Releases provided under this Agreement.

"Maintenance" means using reasonable efforts to provide Customer with avoidance procedures for or corrections of Defects.

"New Releases" means new editions of a Baseline Component System or Custom Modification, as applicable.

2. Services.

(a) Types of Services. During the term of this Agreement, SunGard Public Sector will provide Customer with Maintenance for, Enhancements of, and New Releases of each Baseline Component System and each Custom Modification identified in Exhibit 1.

(b) Limitations. All Improvements will be part of the applicable Baseline Component System/Custom Modification, and will be subject to all of the terms and conditions of the License Agreement and this Agreement. SunGard Public Sector's obligation to provide Customer with Improvements for Baseline Component Systems owned by parties other than SunGard Public Sector is limited to providing Customer with the Improvements that the applicable third party owner provides to SunGard Public Sector for that Baseline Component System. Customer must provide SunGard Public Sector with such facilities, equipment and support as are reasonably necessary for SunGard Public Sector to perform its obligations under this Agreement, including remote access to the Equipment.

3. Payment and Taxes.

(a) Maintenance Fees. For the Improvements, Customer will pay SunGard Public Sector the amount provided for in Exhibit 1 as the "Payment Amount" for the first Contract Year. For each Contract Year subsequent to the initial Contract Year, SunGard Public Sector reserves the right to increase the Improvements fees. Fees for Improvements for a Baseline Component System/Custom Modification are due on the first day of the first month of the Contract Year for that Baseline Component System/Custom Modification.

(b) Additional Costs. Customer will also reimburse SunGard Public Sector for actual travel and living expenses that SunGard Public Sector incurs in providing Customer with

Improvements under this Agreement, with reimbursement to be on an as-incurred basis. Such travel and living expenses will be governed by SunGard Public Sector's Corporate Travel and Expense Reimbursement Policy and will be invoiced on a monthly basis in arrears and due within thirty (30) days from the date of invoice.

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

(d) Late Charges. Customer will pay each SunGard Public Sector invoice by no later than thirty (30) days after receipt. Late payments are subject to a late charge equal to the lesser of: (i) the prime lending rate established from time to time by Citizens Bank, Philadelphia, Pennsylvania plus three percent (3%); or (ii) the highest rate permitted by applicable law.

4. Term. This Agreement will remain in full force and effect throughout the initial Contract Year. After the initial Contract Year, this Agreement will renew for an additional Contract Year unless, at least three (3) months prior to the expiration of the initial Contract Year, Customer notifies SunGard Public Sector in writing of Customer's intent not to renew the Agreement for the second Contract Year. After the second Contract Year, this Agreement will automatically be extended for consecutive Contract Years on a year-to-year basis unless either party notifies the other in writing of its intent not to extend this Agreement for any particular Baseline Component System/Custom Modification at least three (3) months prior to the expiration of the then-current Contract Year.

5. Disclaimer of Warranties. Customer agrees and understands that **SUNGARD**

PUBLIC SECTOR MAKES NO WARRANTIES WHATSOEVER, EXPRESSED OR IMPLIED, WITH REGARD TO ANY IMPROVEMENTS AND/OR ANY OTHER MATTER RELATING TO THIS AGREEMENT, AND THAT SUNGARD PUBLIC SECTOR EXPLICITLY DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. FURTHER, SUNGARD PUBLIC SECTOR EXPRESSLY DOES NOT WARRANT THAT A COMPONENT SYSTEM, ANY CUSTOM MODIFICATION OR ANY IMPROVEMENTS WILL BE USABLE BY CUSTOMER IF THE COMPONENT SYSTEM OR CUSTOM MODIFICATION HAS BEEN MODIFIED BY ANYONE OTHER THAN SUNGARD PUBLIC SECTOR, OR WILL BE ERROR FREE, WILL OPERATE WITHOUT INTERRUPTION OR WILL BE COMPATIBLE WITH ANY HARDWARE OR SOFTWARE OTHER THAN THE EQUIPMENT.

6. Termination. A party has the right to terminate this Agreement if the other party breaches a material provision of this Agreement. Either party has the right to terminate this Agreement at any time while an event or condition giving rise to the right of termination exists. To terminate this Agreement, the party seeking termination must give the other party notice that describes the event or condition of termination in reasonable detail. From the date of its receipt of that notice, the other party will have thirty (30) days to cure the breach to the reasonable satisfaction of the party desiring termination. If the event or condition giving rise to the right of termination is not cured within that period, then the party seeking to terminate this Agreement can effect such termination by providing the other party with a termination notice that specifies the effective date of such termination. Termination of this Agreement will be without prejudice to the terminating party's other rights and remedies pursuant to this Agreement.

7. Confidential Information. Except as otherwise permitted under this Agreement, the Recipient will not knowingly disclose to any third party, or make any use of the Discloser's Confidential Information. The Recipient will use at least the same standard of care to maintain the confidentiality of the Discloser's Confidential Information that it uses to maintain the confidentiality of its own Confidential Information of equal importance. Except in connection with the Software and any software provided with the

Software, the non-disclosure and non-use obligations of this Agreement will remain in full force with respect to each item of Confidential Information for a period of ten (10) years after Recipient's receipt of that item. However, Customer's obligations to maintain both the Software and any software provided with the Software as confidential will survive in perpetuity.

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

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

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

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

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

13. LIMITATIONS OF LIABILITY.

(a) LIMITED LIABILITY OF SUNGARD PUBLIC SECTOR. SUNGARD PUBLIC SECTOR'S LIABILITY IN CONNECTION WITH THE IMPROVEMENTS OR ANY OTHER MATTER RELATING TO THIS AGREEMENT WILL NOT EXCEED THE FEES THAT CUSTOMER ACTUALLY PAID TO SUNGARD PUBLIC SECTOR FOR THE IMPROVEMENTS FOR THE YEAR THAT SUCH LIABILITY ARISES.

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

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

**AN ESSENTIAL BASIS OF THE BARGAIN
BETWEEN THE PARTIES.**

14. Entire Agreement. This Agreement contains the entire understanding of the parties with respect to its subject matter, and supersedes and extinguishes all prior oral and written communications between the parties about its subject matter. Any purchase order

or similar document which may be issued by Customer in connection with this Agreement does not modify this Agreement. No modification of this Agreement will be effective unless it is in writing, is signed by each party, and expressly provides that it amends this Agreement.

EXHIBIT 1

Customer: **Oakland Unified School District**

Annual Support Fees

Listed below are the modules for which Annual Support will be provided during the term of December 1, 2010 through November 30, 2011.

Per SunGard Public Sector Proforma dated November
23, 2010, order number 41421 which is attached
\$ 107,852.97 hereto and incorporated herein by reference
\$ 5,230.87 Tax
\$ 113,083.84 Total

Improvements fees are due thirty (30) days prior to the commencement of the Contract Year for which such fees are being remitted. Improvement fees for any Contract Year subsequent to the initial Contract Year are subject to change and will be specified by SunGard Public Sector in an annual invoice.

PROFORMA

Company	Order No.	Date	Page No
PE	41421	23/Nov/2010	1

To: OAKLAND UNIFIED SCHOOL DISTRICT
 Attn: KIRK BROWN-STUDENT SYS. DIRECTOR
 510-879-8274
 OAKLAND UNIFIED SCHOOL DISTRICT
 1025 2ND AVE.
 OAKLAND, CA 94606
 United States

Ship To: OAKLAND UNIFIED SCHOOL DISTRICT
 Attn: KIRK BROWN-STUDENT SYS. DIRECTOR
 510-879-8274
 OAKLAND UNIFIED SCHOOL DISTRICT
 1025 2ND AVE.
 OAKLAND, CA 94606
 United States

Customer Grp/No.	Customer PO#	Payment Terms	Currency Code	Ship Via	Salesperson Cd
1	2733	Net 30	USD		

No. Item/	Description/	Comments	Drop Ship	# Users	Quantity	U/M	Unit Price	Disc %	Total Cost
1	Renewal: IFGENERAL LEDGER		No	1	1	EA	31,509.83	.00	31,509.83
	BusinessPLUS General Ledger includes Nucleus and GUI (formerly IFAS)								
	Maintenance: Start: 12/01/2010, End: 11/30/2011; Term: 12 months								
2	Renewal: IFAP/ENCUMBRANCES		No	1	1	EA	4,611.84	.00	4,611.84
	BusinessPLUS Accounts Payable/Encumbrances (formerly IFAS)								
	Maintenance: Start: 12/01/2010, End: 11/30/2011; Term: 12 months								
3	Renewal: IFAR CASH RECEIPTS		No	1	1	EA	4,611.84	.00	4,611.84
	BusinessPLUS Accounts Receivable/Cash Receipts (formerly IFAS)								
	Maintenance: Start: 12/01/2010, End: 11/30/2011; Term: 12 months								
4	Renewal: IFBANK RECON		No	1	1	EA	2,561.15	.00	2,561.15
	BusinessPLUS Bank Reconciliation (formerly IFAS)								
	Maintenance: Start: 12/01/2010, End: 11/30/2011; Term: 12 months								
5	Renewal: IFPEID		No	1	1	EA	2,561.15	.00	2,561.15
	BusinessPLUS Person/Entity Database (formerly IFAS)								
	Maintenance: Start: 12/01/2010, End: 11/30/2011; Term: 12 months								
6	Renewal: IFPURCHASING		No	1	1	EA	6,634.79	.00	6,634.79
	BusinessPLUS Purchasing (formerly IFAS)								
	Maintenance: Start: 12/01/2010, End: 11/30/2011; Term: 12 months								
7	Renewal: IFFIXED ASSETS		No	1	1	EA	4,175.70	.00	4,175.70
	BusinessPLUS Fixed Assets Inventory (formerly IFAS)								
	Maintenance: Start: 12/01/2010, End: 11/30/2011; Term: 12 months								
8	Renewal: IFEASY LASER FORMS		No	1	1	EA	1,920.87	.00	1,920.87
	BusinessPLUS Easy Laser Forms (formerly IFAS)								
	Maintenance: Start: 12/01/2010, End: 11/30/2011; Term: 12 months								
9	Renewal: IFPAYROLL		No	1	1	EA	11,143.07	.00	11,143.07
	BusinessPLUS Payroll (formerly IFAS)								
	Maintenance: Start: 12/01/2010, End: 11/30/2011; Term: 12 months								
0	Renewal: IFHUMAN RESOURCES		No	1	1	EA	11,143.07	.00	11,143.07
	BusinessPLUS Human Resources and Position Control (formerly IFAS)								
	Maintenance: Start: 12/01/2010, End: 11/30/2011; Term: 12 months								
11	Renewal: IFSUBTRACKER		No	1	1	EA	2,100.27	.00	2,100.27
	BusinessPLUS SubTracker (formerly IFAS)								
	Maintenance: Start: 12/01/2010, End: 11/30/2011; Term: 12 months								

SUNGARD® PUBLIC SECTOR PROFORMA

<i>Company</i>	<i>Order No.</i>	<i>Date</i>	<i>Page No</i>
PE	41421	23/Nov/2010	2

<i>Customer Grp/No.</i>	<i>Customer PO#</i>	<i>Payment Terms</i>	<i>Currency Code</i>	<i>Ship Via</i>	<i>Salesperson Cd</i>
1	2733	Net 30	USD		

No. Item/ Description/ Comments	Drop Ship	# Users	Quantity	U/M	Unit Price	Disc %	Total Cost
12 Renewal: IFEMPLOYEE ONLINE BusinessPLUS Employee Online (formerly IFAS) Maintenance: Start: 12/01/2010, End: 11/30/2011; Term: 12 months	No	1	1	EA	5,380.49	.00	5,380.49
13 Renewal: IFWORK ORDER BusinessPLUS Work Order (formerly IFAS) Maintenance: Start: 12/01/2010, End: 11/30/2011; Term: 12 months	No	1	1	EA	5,764.08	.00	5,764.08
14 Renewal: IFCDD BusinessPLUS Click, Drag, & Drill includes CDD.net (Report Writer) (formerly IFAS) Maintenance: Start: 12/01/2010, End: 11/30/2011; Term: 12 months	No	1	1	EA	10,580.06	.00	10,580.06
15 Renewal: IFDOCUMENTS ONLINE BusinessPLUS Documents Online (formerly Image Enabler) Maintenance: Start: 12/01/2010, End: 11/30/2011; Term: 12 months	No	1	1	EA	3,154.76	.00	3,154.76

Total Amount For BUSINESS PLUS PRODUCTS

\$107,852.97

Does not include any applicable taxes

Order Total:

107,852.97

We would like to continue on the current maintenance plan

- Our Purchase Order is enclosed
- Our Purchase Order is _____.
- Purchase Order is not required to be invoiced

AN INVOICE WILL BE SENT AFTER CONFIRMATION OF ORDER

Legislative File

File ID No 10-3022
Introduction Date 1/3/11
Enactment No 117 0074
Enactment Date 1-12-11
By [Signature]

Oakland Unified School District
Office of the Board of Education

January 12, 2011

TO: Board of Education

FROM: Anthony Smith, Ph.D., Superintendent
Vernon Hal, Deputy Superintendent Business & Operations *VH*
Gee Kin Chou, Information Technology Officer

SUBJECT: Software Maintenance Agreement, between the District and SunGard Public Sector Inc., Bethlehem, PA, for the latter to provide Maintenance and Enhancements for and new releases of the Baseline Software identified in Exhibit 1 on the terms and conditions contained in this Agreement for the period commencing December 1, 2010 and concluding November 30, 2011, with an annual support cost in an amount not-to-exceed \$113,083.84.

ACTION REQUESTED

Approval by the Board of Education of the Software Maintenance Agreement, between the District and SunGard Public Sector Inc., Bethlehem, PA, for the latter to provide Maintenance and Enhancements for and new releases of the Baseline Software identified in Exhibit 1 on the terms and conditions contained in this Agreement for the period commencing December 1, 2010 and concluding November 30, 2011, with an annual support cost in an amount not-to-exceed \$113,083.84.

BACKGROUND

The Software License Agreement between SunGard Public Sector Inc. and the Oakland Unified School District was signed on August 28, 2001. Based on Schedule C-3 to this agreement, the Software License continuing from year to year is contingent upon payment of the Annual Support fees.

Annual Support will be provided for the following BusinessPLUS modules listed in Exhibit 1 - SunGard Public Sector Proforma Order No. 41421:

- ◆ IFGENERAL ledger
BusinessPLUS General Ledger includes Nucleus and GUI (formerly IFAS)
- ◆ IFAP/ENCUMBRANCES
BusinessPLUS Accounts Payable/Encumbrances (formerly IFAS)

- ◆ IFAR CASH RECEIPTS
BusinessPLUS Accounts Receivable/Cash Receipts (formerly IFAS)
- ◆ IFBANK RECON
BusinessPLUS Bank Reconciliation (formerly IFAS)
- ◆ IFPEID
BusinessPLUS Person/Entity Database (formerly IFAS)
- ◆ IFPURCHASING
BusinessPLUS Purchasing (formerly IFAS)
- ◆ IFFIXED ASSETS
BusinessPLUS Fixed Assets Inventory (formerly IFAS)
- ◆ IFEASY LASER FORMS
BusinessPLUS Easy Laser Forms (formerly IFAS)
- ◆ IFPAYROLL
BusinessPlus Payroll (formerly IFAS)
- ◆ IFHUMAN RESOURCES
BusinessPLUS Human Resources and Position Control (formerly IFAS)
- ◆ IFSUBTRACKER
BusinessPlus SubTracker (formerly IFAS)
- ◆ IFEMPLOYEE ONLINE
BusinessPLUS Employee Online (formerly IFAS)
- ◆ IFWORK ORDER
BusinessPLUS Work Order (formerly IFAS)
- ◆ IFCDD
BusinessPLUS Click, Drag & Drill includes CDD.net (formerly IFAS)
- ◆ IFDOCUMENTS ONLINE
BusinessPLUS Documents Online (formerly Image Enabler)

FISCAL IMPACT

The General Purpose/Unrestricted Account will fund the \$113,083.84.

RECOMMENDATION

Approval by the Board of Education of the Software Maintenance Agreement, between the District and SunGard Public Sector Inc., Bethlehem, PA, for the latter to provide Maintenance and Enhancements for and new releases of the Baseline Software identified in Exhibit 1 on the terms and conditions contained in this Agreement for the period commencing December 1, 2010 and concluding November 30, 2011, with an annual support cost in an amount not-to-exceed \$113,083.84.

ATTACHMENT

Software Maintenance Agreement between SunGard Public Sector and the District
Exhibit 1 – SunGard Public Sector Performa Order Number 41421
Software License Agreement between SunGard Bi-Tech Inc. and the District.

Basic Directions

Additional directions and related documents are in the School Operations Library (<http://intranet.ousd.k12.ca.us>)

Services cannot be provided until the contract is fully approved and a Purchase Order has been issued.

- Contractor and OUSD contract originator (principal or manager) reach agreement about scope of work and compensation.
- Ensure contractor has OUSD Vendor Number and meets the consultant requirements (including insurance and background check)
- Contractor and OUSD contract originator complete the contract packet together and attach required attachments.
- OUSD contract originator creates the requisition.
- Within 2 weeks of creating the requisition the OUSD contract originator submits complete contract packet for approval.

Attachment Checklist	<input type="checkbox"/> For individual consultants: HRSS Pre-Consultant Screening Letter for current fiscal year
	<input type="checkbox"/> For individual consultants: Proof of negative tuberculosis status within past 4 years
	<input type="checkbox"/> For All Consultants: Statement of qualifications (organization); or resume (individual consultant)
	<input type="checkbox"/> For All Consultants: Proof of Commercial General Liability insurance naming OUSD as an Additional Insured
	<input type="checkbox"/> For All Consultants with employees: Proof of workers compensation insurance

OUSD Staff Contact Emails about this contract should be sent to: janice.chinn@ousd

Contractor Information

Contractor Name	SUNGARD PUBLIC SECTOR INC.	Agency's Contact	DAVID MADEA
OUSD Vendor ID #	1024393	Title	VICE PRESIDENT, FINANCE
Street Address	3 WEST BROAD STREET	City	BETHLEHEM
Telephone	(610) 691-3616	State	PA
Contractor History	Previously been an OUSD contractor? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Worked as an OUSD employee?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Compensation and Terms – Must be within the OUSD Billing Guidelines

Anticipated start date	12/01/2010	Date work will end	11/30/2011	Other Expenses	
Pay Rate Per Hour (required)	\$	Number of Hours		Total Contract Amount	\$ 113,083.84

Budget Information

If you are planning to multi-fund a contract using LEP funds, please contact the State and Federal Office before completing requisition.

Resource #	Resource Name	Org Key	Object Code	Amount
0000	GPUrestricted	9861110799	5846	\$ 113,083.84
			5825	\$
			5825	\$
Requisition No.	R0102740	Total Contract Amount		\$ 113,083.84

Approval and Routing (in order of approval steps)

Services cannot be provided before the contract is fully approved and a Purchase Order is issued. Signing this document affirms that to your knowledge services were not provided before a PO was issued.

1.	Administrator / Manager (Originator)	Name	KIRK BROWN	Phone	(510) 879-8274
	Site / Department	TECHNOLOGY SERVICES		Fax	(510) 451-1695
	Signature	<i>Kirk Brown</i>		Date Approved	12/9/10
2.	Resource Manager , if using funds managed by: <input type="checkbox"/> State and Federal <input type="checkbox"/> School Portfolio Management <input type="checkbox"/> Complementary Learning / After School Programs				
	<input type="checkbox"/> Scope of work indicates compliant use of restricted resource and is in alignment with school site plan (SPSA)				
	Signature			Date Approved	
3.	Network or Executive Officer				
	<input type="checkbox"/> Services described in the scope of work align with needs of department or school site				
	<input type="checkbox"/> Consultant is qualified to provide services described in the scope of work				
	Signature			Date Approved	
4.	Cabinet (CAO, CCA, CFO, CSO, Assist. Sup. Facilities)				
	Signature	<i>[Signature]</i>		Date Approved	12/14/10
5.	Superintendent, Board of Education Signature on the legal contract				
	Legal Required if not using standard contract	Approved	<i>[Signature]</i>	Denied - Reason	
	Procurement	Date Received		PO Number	
				Date	12/13/10



SOFTWARE LICENSE AGREEMENT

BETWEEN

SunGard Bi-Tech Inc.
a Delaware Corporation
with Headquarters at
890 Fortress Street
Chico, CA 95973

SANDY SNOW



("SunGard")

ORIGINAL

Legislative File

AND

File ID No. 00-1167
Introduction Date 09-05-00
Enactment No 01-0607
Enactment Date 08-27-01
By BC

Oakland Unified School District *BRAND BOVEY*
1025 2nd Ave
Oakland, CA 94606
("Customer")

By the signatures of their duly authorized representatives below, SunGard and Customer, intending to be legally bound, agree to all of the provisions of this Agreement and all Schedules and Addenda to this Agreement.

[SunGard]
BY: *Bruce E. Langston*
PRINT NAME: Bruce E. Langston
PRINT TITLE: V.P. Finance
DATE SIGNED: 8/7/01

[Customer]
BY: *Jason Hodge*
PRINT NAME: Jason Hodge *8/28/01*
PRINT TITLE: President, Board of Education
DATE SIGNED: 8/28/01

Edgar Rakestraw, Jr.
Edgar Rakestraw, Jr.
Deputy Secretary, Board of Education

8/28/01

OAKLAND UNIFIED SCHOOL DISTRICT
Office of General Counsel
APPROVED FOR FORM & SUBSTANCE
By: *ROYA A. COMBS*
ROYA A. COMBS, Attorney at Law
General Counsel

1. DEFINITION OF TERMS

As used in this Agreement, the following terms have the following meanings:

- (a) "Account" means a single and unique combination of database and Software.
- (b) "Affiliate" means, with respect to a specified person, any person which directly or indirectly controls, is controlled by, or is under common control with the specified person as of the date of this Agreement, for as long as such relationship remains in effect.
- (c) "Confidential Information" means all business information disclosed by one party to the other in connection with this Agreement unless it is or later becomes publicly available through no fault of the other party or it was or later is rightfully developed or obtained by the other party from independent sources free from any duty of confidentiality. Without limiting the generality of the foregoing, Confidential Information shall include Customer's data and the details of Customer's computer operations and shall include SunGard's Proprietary Items. Confidential Information shall include the terms of this Agreement, but not the fact that this Agreement has been signed, the identity of the parties hereto or the identity of the products licensed under a Software Schedule.
- (d) "Concurrent User" means the highest total number of users making simultaneous use of the Software at any time during a calendar year period, whether use is via modem, direct connection, LAN connection, or via the Web.
- (e) "Copy" means any paper, disk, tape, film, memory device, or other material or object on or in which any words, object code, source code or other symbols are written, recorded or encoded, whether permanent or transitory.
- (f) "Documentation" means technical manuals, training manuals, user guides, and workbooks provided by SunGard to assist Customer with the use of Software.
- (g) "Execution Date" means the latest date shown on the signature line of this Agreement.
- (h) "Export Laws" means all laws, administrative regulations, and executive orders of any Applicable Jurisdiction relating to the control of imports and exports of commodities and technical data, software and related property, use or remote use of software and related property, or registration of this Agreement, including the Export Administration Regulations of the U.S. Department of Commerce, and the International Traffic in Arms Regulations of the U.S. Department of State. "Applicable Jurisdiction" means the U.S., and any other jurisdiction where any Proprietary Items will be located or from where any Proprietary Items will be accessed under this Agreement.
- (i) "including" means including but not limited to.
- (j) "Latest Software Update" means those Software Updates which SunGard has made generally available to its Customer's within the preceding twelve months.
- (k) "New Module" means a set of functionality available to be licensed to Customer by SunGard which was not previously licensed to Customer.

- (l) "Person" means any individual, sole proprietorship, joint venture, partnership, corporation, company, firm, association, cooperative, trust, estate, government, governmental agency, regulatory authority, or other entity of any nature.
- (m) "Proprietary Items" means, collectively, the Software and Documentation, the object code and the source code for the Software, the visual expressions, screen formats, report formats and other design features of the Software, all ideas, methods, algorithms, formulae and concepts used in developing and/or incorporated into the Software or Documentation, all future modifications, revisions, updates, refinements, improvements and enhancements of the Software or Documentation, all derivative works based upon any of the foregoing, and all copies of the foregoing.
- (n) "Software Update" means Software modifications, revisions and updates to the Software which SunGard, in its sole discretion, incorporates into the Software as a Software Update per Schedule E as part of Annual Support Agreement.

2. LIMITED LICENSE

- 2.1. **Grant.** SunGard grants to Customer a non-transferable, non-exclusive, limited-scope, license to use SunGard's proprietary application software identified in Schedule A of this Agreement, known as IFAS, hereinafter referred to as ("Software"). SunGard further grants the right to use the documentation associated to the Software, hereinafter referred to as ("Documentation"), as the Software and Documentation may be modified, revised and updated in accordance with this Agreement.
- 2.2. **Scope.** Customer may use the Software as provided in this Agreement, only in the ordinary course of its own business operations and for its own business purposes and within the limitations identified in Schedule C. Customer may copy and use the Software for inactive back-up or archival purposes, for disaster recovery purposes and for parallel testing. Customer may copy the Documentation to the extent reasonably necessary for use of the Software under the terms of this Agreement.
- 2.3. **Source Code.** Customer shall receive one copy of the source code which shall reside with the Customer for the Term of this Agreement for the sole purpose of aiding SunGard in performing its maintenance and support obligations as set forth herein. Customer is strictly prohibited from copying, distributing, modifying or using the source code for any purpose.

UPDATES
ESLOW
CASE OF
BARRIER

3. SOFTWARE ACCEPTANCE

- 3.1. **Acceptance.** SunGard shall give written notice to Customer certifying that installation of the Software at the Initial Installation Site(s) is completed. Customer shall be deemed to have accepted the Software thirty (30) days after receiving SunGard's notice, unless, during that period, the Software fails to perform in accordance with the Documentation in some material respect that precludes acceptance of the Software by Customer, and, by the end of that thirty (30) day period, Customer gives written notice of non-acceptance to SunGard describing the material failure in reasonable detail and explaining why the failure precludes acceptance of the Software by Customer. If Customer gives a proper notice of non-acceptance to SunGard, then:

- (a) SunGard shall investigate the reported failure. Customer shall provide to SunGard reasonably detailed documentation and explanation, together with underlying data, to substantiate the failure and to assist SunGard in its efforts to diagnose, reproduce and if necessary correct the failure.
- (b) If there was no material failure to perform or the failure to perform was not attributable to a defect in the Software or an act or omission of SunGard, then SunGard shall give written notice to Customer explaining its determination in reasonable detail, and Customer shall be deemed to have accepted the Software as of the date of SunGard's notice. In the event SunGard determines, that the reported error did not, in fact, exist or was not attributable to a defect in the Software or an act or omission of SunGard, then Customer shall pay for SunGard's investigation and related services at the then current professional service rates in effect.
- (c) If there was a material failure to perform that was attributable to a defect in the Software or an act or omission of SunGard, and if SunGard cannot correct the failure within thirty (30) days (or such longer period as may be reasonable under the circumstances) after receipt of Customer's notice of non-acceptance, then Customer shall promptly return to SunGard all copies of the Software and Documentation and any other items delivered to Customer by SunGard, and SunGard shall then refund to Customer the license fees paid by Customer. If, within such period, SunGard does correct the failure, then SunGard shall give written notice to Customer certifying that the failure has been corrected, and another thirty (30) day acceptance period shall begin in accordance with this Section 3.1.

4. WARRANTIES AND LIMITATIONS

- 4.1. **Performance.** SunGard warrants to Customer that the Software will perform as described in the Documentation in all material respects for a period of one year from the date of initial installation.
- 4.2. **Right to License; No Infringement.** SunGard warrants to Customer that it has the full legal right to grant to Customer the license granted under this Agreement, and that the Software and Documentation, as and when delivered to Customer by SunGard and when properly used for the purpose and in the manner specifically authorized by this Agreement, do not infringe upon any United States patent, copyright, trade secret or other proprietary right of any person. SunGard shall defend and indemnify Customer against any third party claim to the extent attributable to a violation of the foregoing warranty. SunGard shall have no liability or obligation under this Section 4.2 unless Customer gives written notice to SunGard promptly (within ten (10) days, provided that later notice shall relieve SunGard of its liability under this Section 4.2 only to the extent that SunGard is prejudiced by such later notice) after any applicable infringement claim is initiated against Customer and allows SunGard to have sole control of the defense or settlement of the claim. If any applicable infringement claim is initiated, or in SunGard's sole opinion is likely to be initiated, then SunGard shall have the option, at its expense, to:

- (a) modify or replace all or the infringing part of the Software or Documentation so that it is no longer infringing, provided that the Software functionality does not change in any material adverse respect; or
 - (b) procure for Customer the right to continue using the infringing part of the Software or Documentation; or
 - (c) remove all or the infringing part of the Software or Documentation, and refund to Customer the corresponding portion of the initial license fee paid by Customer to SunGard under Schedule B.
- 4.3. **Customer Infringement.** Customer warrants to SunGard that Customer has the full legal right to grant to SunGard the right to use the ideas, methods, formulae, concepts, designs, plans, specifications and other materials provided by or on behalf of Customer for use in developing and/or incorporated into the Software or the Documentation ("Customer Material") and that the Customer Material does not infringe upon any United States patent, copyright, trade secret or other proprietary right of any Person. Customer shall indemnify and defend SunGard against any third party claim to the extent attributable to a violation of the foregoing warranty or any third party infringement of a United States patent, copyright, trade secret or other proprietary right of any Person to the extent resulting from a modification of the Software or Documentation by Customer or any third party which gains access to the Proprietary Items of SunGard through Customer.
- 4.4. **Exclusion for Unauthorized Actions.** SunGard shall have no liability under any provision of this Agreement with respect to any performance problem, claim of infringement or other matter to the extent attributable to any unauthorized or improper use or modification of the Software, any unauthorized combination of the Software with other software, any use of any version of the Software other than the Latest Software Update that is then generally available to SunGard's customer base, or any breach of this Agreement by Customer.
- 4.5. **Force Majeure.** Except with respect to breach of confidentiality and except with respect to Customer's payment obligations hereunder, neither party shall be liable for, nor shall either party be considered in breach of this Agreement due to, any failure to perform its obligations under this Agreement as a result of a cause beyond its control, including any act of God or a public enemy, act of any military, civil or regulatory authority, change in any law or regulation, fire, flood, earthquake, storm or other like event, disruption or outage of communications, power or other utility, labor problem, unavailability of supplies, or any other cause, whether similar or dissimilar to any of the foregoing, which could not have been prevented by the non-performing party with reasonable care.
- 4.6. **Disclaimer.** EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, SUNGARD MAKES NO REPRESENTATIONS OR WARRANTIES, ORAL OR WRITTEN, EXPRESS OR IMPLIED, INCLUDING IMPLIED WARRANTY OF TITLE, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, REGARDING THE SOFTWARE OR ANY OTHER MATTER PERTAINING TO THIS AGREEMENT.
- 4.7. **Limitation of Liability.**
- (a) EXCEPT FOR INDEMNIFICATION UNDER SECTION 4.2, SUNGARD'S TOTAL LIABILITY UNDER THIS AGREEMENT SHALL UNDER NO

CIRCUMSTANCES EXCEED THE INITIAL LICENSE FEES ACTUALLY PAID BY CUSTOMER TO SUNGARD UNDER THIS AGREEMENT.

- (b) UNDER NO CIRCUMSTANCES SHALL SUNGARD BE LIABLE TO CUSTOMER OR ANY OTHER PERSON FOR LOST REVENUES, LOST PROFITS, LOSS OF BUSINESS, OR ANY INDIRECT OR CONSEQUENTIAL DAMAGES OF ANY NATURE, WHETHER OR NOT FORESEEABLE.
- (c) CUSTOMER AND SUNGARD HAVE FREELY AND OPENLY NEGOTIATED THIS AGREEMENT INCLUDING THE PRICING TERMS IN THE KNOWLEDGE THAT THE LIABILITY OF THE PARTIES IS TO BE LIMITED IN ACCORDANCE WITH THE PROVISIONS OF THIS AGREEMENT.

4.8. Other Limitations. The warranties made by SunGard in this Agreement, and the obligations of SunGard under this Agreement, run only to Customer and not to its affiliates, its customers or any other persons. Under no circumstances shall any other person be considered a third party beneficiary of this Agreement or otherwise entitled to any rights or remedies under this Agreement. Customer shall have no rights or remedies against SunGard except as specifically provided in this Agreement. No action or claim of any type relating to this Agreement may be brought or made by Customer more than one (1) year after Customer first has knowledge of the basis for the action or claim.

5. CONFIDENTIALITY, OWNERSHIP AND RESTRICTIVE COVENANT

5.1. Disclosure Restrictions. All Confidential Information as defined in Section 1, of one party ("Disclosing Party") in the possession of the other ("Receiving Party"), whether or not authorized, shall be held in strict confidence, and the Receiving Party shall take all steps reasonably necessary to preserve the confidentiality thereof. One party's Confidential Information shall not be used or disclosed by the other party for any purpose except as necessary to implement or perform this Agreement, or except as required by law, provided that the other party is given a reasonable opportunity to obtain a protective order. The Receiving Party shall limit its use of and access to the Disclosing Party's Confidential Information to only those of its employees whose responsibilities require such use or access. The Receiving Party shall advise all such employees, before they receive access to or possession of any of the Disclosing Party's Confidential Information, of the confidential nature of the Confidential Information and require them to abide by the terms of this Agreement. The Receiving Party shall be liable for any breach of this Agreement by any of its employees or any other person who obtains access to or possession of any of the Disclosing Party's Confidential Information from or through the Receiving Party.

5.2. SunGard's Proprietary Items, Ownership Rights. The Proprietary Items, as defined in Section 1, are trade secrets and proprietary property of SunGard, having great commercial value to SunGard. All Proprietary Items provided to Customer under this Agreement are being provided on a strictly confidential and limited use basis. Customer shall not, directly or indirectly, communicate, publish, display, loan, give or otherwise disclose any Proprietary Item to any person, or permit any person to have access to or possession of any Proprietary Item. Title to all Proprietary Items and all related patent, copyright, trademark, trade secret, intellectual property and other ownership rights shall

remain exclusively with SunGard, even with respect to such items that were created by SunGard specifically for or on behalf of Customer. This Agreement is not an agreement of sale, and no title, patent, copyright, trademark, trade secret, intellectual property or other ownership rights to any Proprietary Items are transferred to Customer by virtue of this Agreement. All copies of Proprietary Items in Customer's possession shall remain the exclusive property of SunGard and shall be deemed to be on loan to Customer during the term of this Agreement.

5.3. Proprietary Restrictions. Customer shall not do, attempt to do, nor permit any other person to do, any of the following:

- (a) use any Proprietary Item for any purpose, or in any manner not specifically authorized by this Agreement; or
- (b) make or retain any copy of any Proprietary Item except as specifically authorized by this Agreement; or
- (c) create or recreate the source code for the Software, or re-engineer, reverse engineer, decompile or disassemble the Software; or
- (d) modify, adapt, translate or create derivative works based upon the Software or Documentation, or combine or merge any part of the Software or Documentation with or into any other software or documentation; or
- (e) refer to or otherwise use any Proprietary Item as part of any effort to develop a program having any functional attributes, visual expressions or other features similar to those of the Software to compete with SunGard; or
- (f) remove, erase or tamper with any copyright or other proprietary notice printed or stamped on, affixed to, or encoded or recorded in any Proprietary Item, or fail to preserve all copyright and other proprietary notices in any copy of any Proprietary Item made by Customer; or
- (g) sell, market, license, sublicense, distribute or otherwise grant to any person, including any outsourcer, vendor, consultant or partner, any right to use any Proprietary Item, whether on Customer's behalf or otherwise.

5.4. Notice and Remedy of Breaches. Each party shall promptly give written notice to the other of any actual or suspected breach by it of any of the provisions of this Section 5, whether or not intentional, and the breaching party shall, at its expense, take all steps reasonably requested by the other party to prevent or remedy the breach.

5.5. Enforcement. Each party acknowledges that the restrictions in this Agreement are reasonable and necessary to protect the other's legitimate business interests. Each party acknowledges that any breach of any of the provisions of this Section 5 shall result in irreparable injury to the other for which money damages could not adequately compensate. If there is a breach, then the injured party shall be entitled, in addition to all other rights and remedies which it may have at law or in equity, to have a decree of specific performance or an injunction issued by any competent court, requiring the breach to be cured or enjoining all persons involved from continuing the breach. The existence of any claim or cause of action which a party or any other person may have against the other shall not constitute a defense or bar to the enforcement of any of the provisions of this Section 5.

5.6. Dispute Resolution Language

- (a) Either party may, upon notice to the other party, declare a dispute. Within ten (10) days after a dispute is declared, senior management of the parties not involved in day to day operations related to this Agreement shall meet and attempt to resolve the dispute. If, after using diligent efforts, the parties are unable to resolve the dispute within ten (10) days, either party, upon notice to the other party, may declare an impasse.
- (b) Arbitration. Ten (10) days after declaration of an impasse, either party may file a demand for arbitration under the rules then prevailing of the American Arbitration Association, upon written notice of demand for arbitration by the party seeking arbitration, setting forth the specifics of the matter in controversy or the claim being made. The arbitration shall be heard before an arbitrator mutually agreeable to the parties; provided, that if the parties cannot agree on the choice of arbitrator within ten (10) days after the first party seeking arbitration has given written notice, then the arbitration shall be heard by three (3) arbitrators, one chosen by each party, and the third chosen by those two arbitrators. A hearing on the merits of all claims for which arbitration is sought by either party shall be commenced not later than sixty (60) days from the date demand for arbitration is made by the first party seeking arbitration. The arbitrator (s) must render a decision within ten (10) days after the conclusion of such hearing. Any award in such arbitration shall be final and binding upon the parties and judgement thereon may be entered in any court of competent jurisdiction.
- (c) Applicable Law. The arbitration shall be governed by the United States Arbitration Act. The arbitrators shall apply the substantive law of the State of California. The arbitrators shall have the authority to grant any legal remedy available had the parties submitted the dispute to a judicial proceeding.
- (d) Situs. If arbitration is required to resolve any disputes between the parties, the proceedings to resolve the dispute shall be held in a neutral County in California.
- (e) This provision shall not be construed to prevent a party from instituting and a party is authorized to institute formal proceedings to avoid the expiration of any applicable limitation periods.

6. TERMINATION

6.1. **Termination by Customer.** Customer may immediately terminate this Agreement, by giving written notice of termination to SunGard, upon the occurrence of any of the following events:

- (a) SunGard breaches any of its material obligations under this Agreement and does not cure the breach within thirty (30) days (or such other time period as may be reasonable under the circumstances) after Customer gives written notice to SunGard describing the breach in reasonable detail.
- (b) SunGard (or a surviving company in the event of a merger or sale of SunGard) dissolves or liquidates or otherwise discontinues substantially all of its business operations. Notwithstanding the foregoing, SunGard reserves the right to outsource professional services which will not be deemed grounds for Customer termination hereunder.

6.2. **Termination by SunGard.** SunGard may immediately terminate this Agreement, by giving written notice of termination to Customer, upon the occurrence of any of the following events:

- (a) Customer fails to pay to SunGard, within thirty (30) days after SunGard makes written demand therefor, any past-due amount payable under this Agreement (including interest thereon) that is not the subject of a good faith dispute.
- (b) Customer breaches any of its material obligations under this Agreement and does not cure the breach within thirty (30) days (or such other time period as may be reasonable) after SunGard gives written notice to Customer describing the breach in reasonable detail.
- (c) Customer dissolves or liquidates or otherwise discontinues substantially all of its business operations.

6.3. **Certain Remedies for Nonpayment.** If Customer fails to pay to SunGard, within ten (10) days after SunGard makes written demand therefor, any past-due amount payable under this Agreement (including interest thereon) that is not the subject of a good faith dispute in addition to all other rights and remedies which SunGard may have at law or in equity, SunGard may, in its sole discretion and without further notice to Customer, suspend performance or revoke the License granted under this Agreement until all past due amounts are paid in full.

6.4. **Effect of Termination.** Upon a termination of this Agreement, whether under this Section 6 or otherwise, Customer shall: (a) discontinue all use of all Software and Documentation, (b) promptly return to SunGard all copies of the Software, the Documentation and any other Proprietary Items then in Customer's possession, and (c) give written notice to SunGard certifying that all copies of the Software have been permanently deleted from its computers. Customer shall remain liable for all payments due to SunGard with respect to the period ending on the date of termination. The provisions of Schedule B, and Sections 4 (excluding 4.1), 5, and 7 shall survive any termination of this Agreement, whether under this Section 6 or otherwise.

7. GENERAL PROVISIONS

7.1. **Notice.** All notices, consents and other communications under or regarding this Agreement shall be in writing and shall be deemed to have been received on the earlier of the date of actual receipt, the third business day after being mailed by first class certified air mail, or the first business day after being sent by a reputable overnight delivery service. Any notice may be given by facsimile, provided that a signed written original is sent by one of the foregoing methods within twenty-four (24) hours thereafter. Customer's address for notices is 1025 2nd Ave, Oakland, CA 94606, attention Phil White. SunGard's address for notices is SunGard Software Inc., 890 Fortress Street, Chico, CA 95973, Attention: Vice President of Finance. Either party may change its address for notices by giving written notice of the new address to the other party in accordance with this Section.

7.2. Parties in Interest.

- (a) This Agreement shall bind, benefit and be enforceable by and against SunGard and Customer and, to the extent permitted hereby, their respective successors and assigns.
- (b) Neither party shall assign this Agreement or any of its rights hereunder, nor delegate any of its obligations hereunder, without the other party's prior written consent, except that such other party's consent shall not be required in the case of an assignment to a purchaser of or successor to substantially all of such party's business or to an affiliate of such party, provided that the scope of any license granted hereunder does not change and the assignor guarantees the obligations of the assignee. Any assignment by a party in breach of this Section shall be void.
- (c) Any express assignment of this Agreement, any change in control of Customer, any acquisition of additional business by Customer shall constitute an assignment of this Agreement by Customer for purposes of this Section 7.2 ("Customer Assignment"). Customer shall give written notice to SunGard thirty (30) days prior to an Assignment certifying the expected use of the Software to process any additional business related to such Customer Assignment ("Additional Business"). If any Customer Assignment occurs, Customer may continue to process the business to the extent it existed prior to any such Customer Assignment, but Customer may not use the Software to process any Additional Business until and unless Customer has paid SunGard an Additional Business fee, to be mutually agreed to, and any use to process any Additional Business prior to the payment of such fee shall be deemed a material breach of this Agreement. Customer shall promptly complete and return to SunGard periodic certifications which SunGard, in its sole discretion, may from time to time send to Customer, certifying the actual use of the Software to process any Additional Business.

7.3. **Export Laws and Use Outside of the United States.** Customer shall comply with the Export Laws. Customer shall not export or re-export directly or indirectly (including via remote access) any part of the Software or Confidential Information to any country to which a license is required under the Export Laws without first obtaining a license.

7.4. **Relationship.** The relationship between the parties created by this Agreement is that of independent contractors and not partners, joint ventures or agents.

- 7.5. **Entire Understanding.** This Agreement, which includes and incorporates the Schedules referred to herein, states the entire understanding between the parties with respect to its subject matter, and supersedes all prior proposals, marketing materials, negotiations and other written or oral communications between the parties with respect to the subject matter of this Agreement. Any written, printed or other materials which SunGard provides to Customer that are not included in the Documentation are provided on an "as is" basis, without warranty, and solely as an accommodation to Customer.
- 7.6. **Modification and Waiver.** No modification of this Agreement, and no waiver of any breach of this Agreement, shall be effective unless in writing and signed by an authorized representative of the party against whom enforcement is sought. No waiver of any breach of this Agreement, and no course of dealing between the parties, shall be construed as a waiver of any subsequent breach of this Agreement.
- 7.7. **Severability.** A determination that any provision of this Agreement is invalid or unenforceable shall not affect the other provisions of this Agreement.
- 7.8. **Headings.** Section headings are for convenience of reference only and shall not affect the interpretation of this Agreement.
- 7.9. **Construction of Agreement.** The terms and conditions of this Agreement are the result of negotiations between the parties. No provision of this Agreement shall be construed in favor of or against any party because one party or its professional advisors participated in the preparation of this Agreement.
- 7.10. **Personnel.** Neither party shall, directly or through one or more subsidiaries or other controlled entities, hire or offer to hire any programmer, trainer, or member of a data processing, customer support or conversion team of the other at any time when such person is employed or engaged by such party or during the six (6) months after such employment or engagement ends. For purposes of this provision, "hire" means to employ as an employee or to engage as an independent contractor, whether on a full-time, part-time or temporary basis. This provision will remain in effect during the term of this Agreement and for a period of one (1) year after expiration or termination of this Agreement.
- 7.11. **Jurisdiction and Process.** In any action relating to this Agreement, (a) each of the parties irrevocably consents to the exclusive jurisdiction and venue of the federal and state courts located in the State of California, (b) each of the parties irrevocably waives the right to trial by jury, (c) each of the parties irrevocably consents to service of process by first class certified mail, return receipt requested, postage prepaid, to the address at which the party is to receive notice in accordance with Section 7.1, and (d) the prevailing party shall be entitled to recover its reasonable attorney's fees (including, if applicable, charges for in-house counsel), court costs and other legal expenses from the other party.
- 7.12. **Governing Law.** THIS AGREEMENT SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF STATE OF CALIFORNIA, EXCLUDING CHOICE OF LAW.
- 7.13. **Piggy Back Clause.** Whereas Customer has conducted a competitive evaluation and has concluded such efforts with this negotiated Agreement; therefore this Agreement may serve as the basis for similar Agreements whereby other governmental entities may contract separately with SunGard.

**SCHEDULE A
TO SOFTWARE LICENSE AGREEMENT
Itemized list of Software and associated Professional Services**

SUMMARY PAGE

One-Time Fees	Fixed Fee	Serial Fee	Other Fee
IPAS Application Software	\$470,928		\$470,928
Third Party Software	Included in ASP	Included in ASP	Included in ASP
Standard Training, Data Conversion, Task Hours and Forms		286,200	286,200
SimCard Hi-Tech - Custom Project Services		651,850	651,850
Schlafer and Associates - Custom Project Services (M/WBVE)		97,500	97,500
ABKO Consulting - Custom Project Services (Local DBB Vendor)		116,250	116,250
Total One-Time Fees	\$470,928	\$1,151,800	\$1,622,728

Recurring Fees (Annual Support / Maintenance Fees)	Fixed Fee
IPAS Application Software	\$108,121
Third Party Software	Included in ASP
Total Recurring Fees	\$108,121

SCHEDULE A
'TO SOFTWARE LICENSE AGREEMENT'
Itemized list of Software and associated Professional Services

LICENSE FEES, TRAINING AND CONVERSION

200 Concurrent User License		License, Support, Training, & Conversion Fees				Training, Conversion, and Task Hours					
QTY	Description	License Fee	First Year Support Fee	Training & Conversion Subtotal	Total Fees	Distance Learning	Class Hours @ \$50/Day	Class Hours @ Client	Conversion Hours	Task Hours	Total Hours
1	IFAS Module Pricing Integrated Finance & Administrative Modules										
1	General Ledger	\$68,306	\$12,295	\$36,000	\$116,601	64	32	40	64	40	240
1	NUCLEUS Security	9,758	1,756	4,800	16,314	8	0	24	0	0	32
1	Accounts Payable/Insurance	17,564	3,162	13,500	34,226	24	6	4	56	0	90
1	Accounts Receivable/Cash Receipts	17,564	3,162	9,600	30,326	16	4	4	40	0	64
1	Bank Reconciliation	9,758	1,756	10,800	22,314	8	0	16	16	32	72
1	Person/Entity Database (Vendor Database)	9,758	1,756	8,700	20,214	16	6	4	32	0	58
1	Job/Project Ledger	31,714	5,709	4,800	42,223	16	8	8	0	0	32
1	Budget Item Detail	16,296	2,933	4,800	24,029	0	0	16	16	0	32
1	Purchasing	25,273	4,549	13,500	43,322	24	6	4	56	0	90
1	Fixed Assets	15,906	2,863	5,400	24,169	16	0	0	20	0	36
1	Stores Inventory (Warehouse)	31,714	5,709	12,000	49,423	32	0	0	32	16	80
1	Click, Drag, & Drill (Report Writer)	24,395	4,391	9,600	38,386	0	32	32	0	0	64
1	Easy Laser Forms (E.L.F)	7,319	1,317	7,200	15,836	0	0	0	0	48	48
1	Graphical User Interface	41,950	7,533	3,600	53,112	0	0	24	0	0	24
2	Payroll (includes web-based timecards)	42,447	7,640	36,750	86,837	133	24	24	40	24	245
2	Human Resources and Position Control	42,447	7,640	34,950	85,037	85	24	24	80	20	233
2	Position Budgeting	12,002	2,160	14,400	28,562	0	0	72	0	24	96
1	Project Allocation	25,273	4,549	7,200	37,022	0	0	48	0	0	48
3	Contract Management	15,906	2,863	2,400	21,169	0	0	16	0	0	16
3	Bid & Quote Management	15,906	2,863	2,400	21,169	0	0	16	0	0	16
3	Employee Online	20,492	3,689	12,600	36,781	0	0	32	0	32	64
3	Applicant Online	20,492	3,689	0	24,181	0	0	0	0	0	0
3	Grants Management	20,540	3,699	8,400	32,648	0	0	56	0	0	56
3	Work Order Management	21,956	3,952	3,600	29,508	0	0	24	0	0	24
1	CDI.net (web-based reporting)	15,906	2,863	2,400	21,169	0	0	16	0	0	16
3	Image Enabler (ICR not included)	Included	2,163	6,000	8,163	0	0	40	0	0	40
1	Workflow Engine	Included	Included	6,000	6,000	0	0	40	0	0	40
2	Substitute Time Minute	8,000	1,440	4,800	14,240	0	0	32	0	0	32
	Subtotal	\$588,660	\$108,121	\$286,200	\$982,981	442	142	616	462	256	1,908
	Educational / A51* Discount (20%)	-177,732			-177,732						
	Net Total	\$470,928	\$108,121	\$286,200	\$865,249						

**SCHEDULE A
TO SOFTWARE LICENSE AGREEMENT**

Itemized list of Software and associated Professional Services

CUSTOM PROFESSIONAL SERVICES

SUNGARD BI-TECH - CUSTOM PROJECT SERVICES	Hourly Rate	Hours	Total	M/WBE Vendor
Account Manager @ SunGard BI-Tech	N/A	Fixed Fee	10,000	
On-Site Accounting Consultant	150	500	75,000	
On-Site Financial/Disbursements Consultant #1	150	800	120,000	
HR / Payroll Consultant(s)	150	1920	288,000	
Reporting Consultant (custom report development)	150	160	24,000	
Interface Development (Estimated)	150	200	30,000	
Software Installation & Technical Training / System Level Setup	150	88	13,200	
Undefined Special Needs Consulting	150	200	30,000	
Live Assistance and Post-Implementation Support	150	175	26,250	
Potential Software Modifications (Estimated)	150	236	35,400	
Total SunGard BI-Tech - Custom Project Services		4,279	651,850	

SCHAFER AND ASSOCIATES - CUSTOM PROJECT SERVICES	Hourly Rate	Hours	Total	M/WBE Vendor
On-Site Financial/Disbursements Consultant #2	150	350	52,500	Y
End-User Training Assistance	150	300	45,000	Y
Total Schafar and Associates - Custom Project Services		650	\$97,500	

AEKO - CUSTOM PROJECT SERVICES	Hourly Rate	Hours	Total	Local M/DBE Vendor
Custom Documentation/Procedures Development	150	225	33,750	Y
Report Development / Workflow Evaluation	150	250	37,500	Y
End-User Training Assistance / Post Live Assistance	150	300	45,000	Y
Total AEKO - Custom Project Services		775	\$116,250	

**SCHEDULE B
TO SOFTWARE LICENSE AGREEMENT
Payment Schedule and Terms**

B-1. PAYMENT SCHEDULE

B-1.1. Due upon execution of the IFAS Software License Agreement and the delivery of the Software and reference manuals.

30% of all applicable IFAS License Fees	\$ 141,278.40
100% of Fixed Fee Services for Account Management	10,000.00

If applicable, 100% of the sales/use tax due on the taxable amount for the entire Agreement.

B-1.2. Due on November 1, 2001.

40% of all applicable IFAS License Fees	\$ 188,371.20
100% IFAS Maintenance	108,121.00

B-1.3 Due on December 31, 2001

30% of all applicable IFAS License Fees	\$ 141,278.40
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B-1.4 Due monthly as services are performed.

100% of Professional Service Fees (excluding Fixed Fee Services)	\$ 1,141,800.00
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B-2. PAYMENT TERMS

B-2.1 License Fees. Customer shall pay to SunGard license fees in the amount stated in Schedule A, in accordance with the Payment Schedule and Terms stated herein.

B-2.2 Annual Support Agreement. Upon the initial Software installation, Customer shall pay annual Software support fees (as described in Schedule E herein) in the amount stated on Schedule A (which fees shall not be reduced or increased based on the extent of use or lack of use of any module) as increased from year to year as follows: Support fees will be subject to increase annually in accordance with the increases in the percentage of the San Francisco Regional Office CPI Adjustment published by the U.S. Department of Labor and Statistics with the prior year as the baseline plus two percent (2%).

B-2.3 Professional Services.

- (a) Fixed Fee Services for Account Management as per D-3.1(e). SunGard's Account Manager services shall be provided by SunGard on a one-time fee basis and not on a charge-by-the-hour basis. Payment of the one-time Account Manager fee shall be paid as provided in B-1.1.
- (b) Other Professional Services. SunGard will deliver those services identified in Schedule A and further described in Schedule D. If the Customer desires services from SunGard or its Subcontractors, which are not identified in Schedules A or D, then the Customer shall have the option of purchasing additional services from SunGard at SunGard's professional services fee rates which are in effect at that time. Professional services shall be invoiced monthly as services are rendered.

B-2.4. Expense Reimbursements. Whenever any services are provided by SunGard or its Subcontractors at a Customer location or any other location requested by Customer other than one of SunGard's locations, Customer shall reimburse SunGard for its reasonable travel (including travel from origination points other than SunGard's headquarters location), lodging, meal and related expenses incurred by SunGard personnel in providing such services. Airfares shall be coach or economy. Meals (including tips) will average no more than \$35.00 per day. Ground transportation may include rental cars (intermediate or economy), bus, taxi/shuttle (including tips) and/or personal car mileage (at current IRS rate). Lodging arrangements will be made with safety, cost, proximity to the Customer, and reputation of the facility in mind. Items of a personal nature will not be charged to the Customer, such as, but not limited to; alcoholic beverages, medications, personal entertainment, health club facilities, spouse/companion travel, traffic violations, and telephone calls not related to the Customer.

The Customer will be provided with a copy of the Traveler's expense report; however copies of receipts will not be provided without an additional handling charge.

B-2.5. Additional Concurrent Users. If Customer elects to increase the number of Concurrent Users of the Software, then Customer shall pay to SunGard the then current rates in effect for such additional Software use and the associated software support.

B-2.6. Taxes. The fees and other amounts payable by Customer to SunGard under this Agreement do not include any taxes of any jurisdiction that may be assessed or imposed upon the copies of the Software and Documentation delivered to Customer, the license granted under this Agreement or the services provided under this Agreement, or otherwise assessed or imposed in connection with the transactions contemplated by this Agreement, including sales, use, excise, value added, personal property, export, import and withholding taxes, excluding only taxes based upon SunGard's net income. Customer shall directly pay any such taxes assessed against it, and Customer shall promptly reimburse SunGard for any such taxes payable or collectable by SunGard.

B-2.7. Amounts Due. Initial payments under this Agreement are due as per this Schedule B Section B-1. Future annual maintenance fees shall be invoiced by SunGard annually in advance. All other fees and all expense reimbursements shall be invoiced by SunGard as and when incurred. Customer's payments shall be due within thirty (30) days after receipt of invoice. Interest at the rate of eighteen percent (18%) per annum (or, if lower, the maximum rate permitted by applicable law) shall accrue on any undisputed amount not paid by Customer to SunGard when due under this Agreement, and shall be payable by Customer to SunGard on demand. Interest on amounts, which are in dispute, shall be suspended until the issue in dispute is resolved as per Section 5.6 of this Agreement. Except as provided in Section 4.2(c), all fees and other amounts paid by Customer under this Agreement are non-refundable, including license fees paid for third party products.

SCHEDULE C
TO SOFTWARE LICENSE AGREEMENT
Scope of Software Use, Limitations, and Notices

C-1. LIMITED CONCURRENT USERS

Software use is limited by the number of Concurrent Users named in Schedule A and defined in Section 1, as amended from time to time.

C-2. LIMITED TO CUSTOMER'S OWN USE

The Software licensed under this Agreement is for use by the Customer on the Customer's computers for its own internal processing. Customer shall not use the Software to conduct any type of service bureau or time-sharing operation or to provide remote processing, network processing, network telecommunications or similar services to any person, whether on a fee basis or otherwise.

C-3. TERM OF SOFTWARE LICENSE

The Software License granted herein shall continue from year to year so long as Customer is paying Annual Support fees as per Schedule B.

C-4. NOTICES AND CERTIFICATIONS

Customer shall promptly complete and return to SunGard periodic certifications which SunGard, in its sole discretion, may from time to time send to Customer, certifying that Customer has complied and is then in compliance with the Software Use Limitations of this Agreement. Customer shall give written notice to SunGard (and pay added user fees as applicable) if Customer exceeds the authorized number of Concurrent Users.

(a) SunGard may, at its expense and by giving reasonable advance written notice to Customer, enter Customer locations during normal business hours and audit the number of Concurrent Users of the Software, and other information pertaining to Customer's compliance with the provisions of Section 2 and Section 5 and this Schedule C. If SunGard discovers that there is an unauthorized number of Concurrent Users or that Customer is not in compliance with the provisions of Sections 2 and 5 and Schedule C in any material respect, then Customer shall reimburse SunGard for the expenses incurred by SunGard in conducting the audit.

(b) If the Customer violates the terms of Section 2 or Section 5 or this Schedule C, SunGard shall have the right, in addition to any other remedies available to them, to injunctive relief enjoining use of the Software and termination of this Agreement.

C-5. CUSTOMER INITIATED PROCUREMENT

Should the Customer enter a new procurement cycle, which requires a proposal and/or demonstration of Software licensed by this Agreement, Customer agrees to pay re-licensing fees if Customer's evaluation results in the continuing use of Software.

SCHEDULE D
TO SOFTWARE LICENSE AGREEMENT
Timeline, Scope of Work, and Specific Obligations

D-1 TIMELINE

Both SunGard and the Customer will participate in the creation of a detailed implementation plan during the first eight weeks after the execution of this Agreement. This jointly created implementation timeline shall establish goal dates for live use of the Software and the staff resources to be provided by Customer and SunGard. The Parties acknowledge that substantial implementation effort from Customer and from SunGard are required to complete the implementation. The quantity of implementation staff resources provided by SunGard are dependent upon the amount of staff resources provided by Customer. To assist with this implementation, SunGard will provide Professional Services beyond those listed in Schedule A at a fixed rate of \$150.00 per hour (excluding Project Management services) and \$188.00 per hour for Project Management services, for the first 18 months after the execution of this Agreement.

D-2 SCOPE OF WORK (General Obligations)

The implementation of Software is to be completed by shared effort from SunGard and from the Customer, which includes but is not limited to the following:

D-2.1. SunGard's primary roles are to:

- (a) Provide the Software and install the Software on the Customer's computer server;
- (b) To provide data conversion programming as identified in Schedule A (no programming for software modification is included);
- (c) To provide consulting and training services as identified in Schedule A to assist the Customer in its configuration and use of the Software;
- (d) Provide on-going Issue Resolution and Software Update Support as per Schedule E.

D-2.2. The Customer's primary roles are to:

- (a) Provide the infrastructure to support the Software (e.g. Client PCs and Network);
- (b) Provide specifications to enable SunGard to fulfill its duties for data conversion programming, or consulting support identified in Schedule A;
- (c) Provide adequate training facilities during the implementation;
- (d) Configure the Software to the Customer's own specification;
- (e) Test the Software configuration for accuracy;
- (f) Operate the Software for its own business practices within the parameters of this Agreement.

D-3. SCOPE OF WORK (Specific Obligations)

D-3.1. SunGard's Specific Obligations.

- (a) **Delivery of Software and Services.** SunGard shall deliver the Software and Documentation, and the Customer shall accept such delivery, FOB shipping point, within thirty (30) days of the execution of this Agreement.
- (b) **Software Installation.** SunGard will provide installation of the Software on the Customer's ASP UNIX Server located at SunGard's facility in Chico, CA. SunGard will install Software, including Third Party software listed on Schedule A on one UNIX server, one NT server, and two client PCs. The Customer will do Software installation on other PCs.

(c) Training and Consulting.

1. Distance Learning. SunGard will deliver training and consulting by Distance Learning, or by classes held at SunGard (Class Hours) or by consulting at the Customer's location (On-Site Hours). Schedule A identifies the allocation of training and consulting among the three delivery methods. Schedule A also identifies the Conversion Hours, and Task Hours which are included in this Agreement.

Distance Learning sessions shall be delivered remotely via teleconferencing. Each Distance Learning session shall consist of a two (2) hour remote training (plus approximately 45 minutes set-up/follow-up) beginning with a call from the Customer. Classes held at SunGard (except the Accounting Consultation and the Payroll/Human Resource Overview) are limited to three attendees. Additional students may attend classes at SunGard on a space-available basis at the then current training rate. Students from at least two other customers will be present in class at SunGard. Classes held at Customer's location should be limited to 10 students, and each should have a training workstation.

2. Training Through Certified Subcontractors. SunGard, at its option may provide training or consulting personnel through certified sub-contractors. SunGard will assume responsibility to assure the same level of competency is available to Customer whether training or consulting is provided by SunGard or by a certified sub-contractor. If Customer is not satisfied with the technical competence of SunGard's assigned trainers, they may request a different trainer.
3. The allocation of training between Distance Learning, Training at SunGard, Task Hours, and Training at the Customer location may be adjusted from one category to another, by SunGard as may be in the best interest of a successful implementation.

- (d) The initial implementation includes only those services listed in Schedule A. If software modifications or other direct labor outside the scope of Schedule A are needed they shall be provided at SunGard's rates then in effect. However, the Agreement does include SunGard services to develop two report definition files: one for the Balance Sheet and one for the Income Statement. The allocation of time to provide forms for purchasing, accounts payable, payroll, cash receipts, and accounts receivable assumes that the forms used will be standard forms selected from SunGard's standard book of forms.

- (e) Account Management. An Account Manager stationed at SunGard shall be assigned to coordinate all SunGard related implementation activities.

- (f) Consulting and Other Services. At Customer's reasonable request and subject to the availability of SunGard's personnel, SunGard shall provide to Customer consulting services, custom modification programming, support services relating to custom modifications, assistance with data transfers, system restarts and re-installations, and other specialized support services with respect to the Software. These services shall be provided by SunGard at SunGard or at Customer location(s) if and when SunGard and Customer agree that on-site services are necessary. Such services shall be offered at the then current professional services rates in effect.

D-3.2. Customer's Specific Obligations

- (a) **Procurement of Hardware.** Customer intends to contract with SunGard for ASP Services (Application Hosting Services). If Customer does not contract with SunGard for ASP Services, then Customer shall be responsible, at its expense, for procuring and maintaining adequate hardware and system software and for updating the hardware and system software as may be needed from time to time.

- (b) **Access to Facilities and Employees.** Customer shall provide to SunGard access to Customer's equipment and employees, and shall otherwise cooperate with SunGard, as reasonably necessary for SunGard to perform its installation, training, support and other obligations under this Agreement. Customer shall devote all equipment, facilities, personnel and other resources reasonably necessary to (a) implement the Software, (b) be trained in the use of the Software and (c) begin using the Software in production on a timely basis as contemplated by this Agreement.

- (c) **Customer Staff Roles and Responsibilities.** Customer will provide competent staff as identified by the titles below:
 - 1. Project Manager
 - 2. Accountant—General Ledger
 - 3. Accountant—Subsystems
 - 4. Payroll Specialist
 - 5. HR Specialist
 - 6. Programmer/Analyst—Specifications for conversion
 - 7. Network Administrator—Network Management
 - 8. Data Entry—for historical data not programmatically converted.

Primary tasks for that Customer staff identified in this Section are listed below:

- 1. Manage installation and operation of hardware and network
 - 2. Perform third party software and SunGard provided Software configuration
 - 3. Document software configuration
 - 4. Test software configuration
 - 5. Provide written specifications (e.g. Data Conversion, etc.)
 - 6. Provide flat files of any data to be converted by SunGard
 - 7. Validate and test any converted data
 - 8. Core implementation team to become functional experts
 - 9. Core implementation team to train all end users
 - 10. Test all system processing before live operation
- (d) **Customer Facility.** Customer shall provide a suitable training environment for system training classes held at Customer's location including Distance Learning training. Customer shall provide an Internet connection (at least 128 kilobytes of bandwidth) and a conference phone which will be dedicated to Distance Learning.

SCHEDULE E
TO SOFTWARE LICENSE AGREEMENT
Annual Support Agreement
(Remote Assistance, and Software Updates)

E-1. CUSTOMER ASSISTANCE

- E-1.1. Remote Assistance.** SunGard shall provide to Customer, from 5a.m. to 5p.m. PT, Monday through Friday (SunGard Holidays excepted), telephone, fax, and e-mail supported assistance regarding Customer's authorized use of the Latest Software Update. Customer agrees to attempt to locate information provided in Documentation prior to use of Remote Assistance. In addition, SunGard shall provide self service-based assistance via SunGard's Technical Support Web Page.
- E-1.2. Resolution Assistance.** Customer shall provide to SunGard reasonably detailed documentation and explanation of issues to be resolved, together with underlying data, to substantiate any problem or failure and to assist SunGard in its efforts to diagnose, reproduce and correct the problem or failure.
- E-1.3. Non Software Assistance.** Non Software Assistance requests (e.g. requests for assistance with hardware, operating systems, database management systems, networks, printer configuration, etc.) are outside the scope of this Annual Support Agreement. However, at Customer's request, Non Software Assistance may be provided on a time and materials basis, as available, at the sole discretion of SunGard.

E-2. SOFTWARE UPDATES

- E-2.1. Software Updates.** SunGard shall provide to the Customer Software Updates for UNIX server based Software via Hassle Free Support™ (HFS). HFS means that SunGard will log-on to Customer's designated UNIX server, with authorization from Customer, and load the UNIX server-based Software Update into a single Account for the Customer. If Customer utilizes SunGard's ASP Service, then SunGard will log-on to Customer's ASP Server, with authorization from Customer, and load the UNIX server-based Software Update into two Accounts (Production Account and Test Account) for the Customer. HFS is strictly Internet delivered. Therefore, the exchange of magnetic/optical media for UNIX server-based Software Updates is not available. If SunGard, in its sole discretion, determines that delivery of the UNIX server based Software Update via Internet is not practical, then Customer will receive magnetic/optical media along with instructions on assisting SunGard in applying the UNIX server based Software Update. For Software Updates for Windows™ based Software, media will be sent to Customer, including Customer loading instructions. Software Updates shall be accompanied by updates to the Documentation on optical media whenever SunGard determines, in its sole discretion, that such updates are necessary. Customer agrees to accept Software Updates as they become available and to remain current on the Latest Software Update. In addition, between Software Updates, service packs may be available for Customer download and installation. For those Customer's that choose not to utilize the HFS method of Software Update delivery, the Software Updates are available for download by the Customer from SunGard's FTP site.
- E-2.2.** From time to time new optional features may be added to the Software as a result of a Software Update. Optional features may require the use of third party software or hardware. Customer shall have the option to procure or not to procure such third party products to enable such optional features.

- E-2.3. The Customer agrees to maintain, for the duration of this Agreement, an Internet connection (consisting of FTP and TELNET allowing SunGard access to Customer's server system) to facilitate Software Updates and remote support of the UNIX server based Software and to maintain remote control software (as specified by SunGard) to support the Windows™ based Software. Security will be based upon SunGard's unique IP address. If, after a good faith effort, Customer cannot maintain an Internet connection, then SunGard will provide Software Updates to Customer on magnetic/optical media. Customer agrees to maintain at least a 33600 baud modem connection and to make available competent personnel to assist SunGard in transferring the Software Updates to the server. Customer assistance may be required during non-standard work hours, such as evenings, weekends and/or holidays. A nominal handling charge will apply to cover the cost of the media and shipping charges.
- E-2.5. SunGard shall provide Customer with Software Updates to maintain the compatibility of the Software with new releases of the operating system under which the Software is licensed.
- E-2.6. This Agreement specifically does not include any custom modifications to the Software.
- E-2.7. Any modifications not made by SunGard, and the results caused thereby to the Software shall be the sole responsibility of the Customer.
- E-2.8. SunGard will use commercially reasonable efforts to provide Software Updates to cause the Software to continue to conform to GASB and GAAP requirements, and to maintain accurate Federal and State payroll tax tables (as published by the taxing authorities) and their related calculation processes. In the event that original programming is required to meet any other mandated Software change (including State, Federal, or Local mandated changes), the development costs will be borne by all Customers who utilize that Software change.

Basic Directions

Additional directions and related documents are in the School Operations Library (<http://intranet.ousd.k12.ca.us>)

Services cannot be provided until the contract is fully approved and a Purchase Order has been issued.

- Contractor and OUSD contract originator (principal or manager) reach agreement about scope of work and compensation.
- Ensure contractor has OUSD Vendor Number and meets the consultant requirements (including insurance and background check)
- Contractor and OUSD contract originator complete the contract packet together and attach required attachments.
- OUSD contract originator creates the requisition.
- Within 2 weeks of creating the requisition the OUSD contract originator submits complete contract packet for approval.

Attachment Checklist	<input type="checkbox"/> For individual consultants: HRSS Pre-Consultant Screening Letter for current fiscal year
	<input type="checkbox"/> For individual consultants: Proof of negative tuberculosis status within past 4 years
	<input type="checkbox"/> For All Consultants: Statement of qualifications (organization); or resume (individual consultant)
	<input type="checkbox"/> For All Consultants: Proof of Commercial General Liability insurance naming OUSD as an Additional Insured
	<input type="checkbox"/> For All Consultants with employees: Proof of workers compensation insurance

OUSD Staff Contact *Emails about this contract should be sent to:*

Contractor Information

Contractor Name	SUNGARD PUBLIC SECTOR	Agency's Contact	DAVID MADEA			
OUSD Vendor ID #	1024393	Title	VP OF FINANCE			
Street Address	3 WEST BROAD STREET	City	BETHLEHEM	State	PA	Zip 18018
Telephone	(866) 905-8989	Email				
Contractor History	Previously been an OUSD contractor? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		Worked as an OUSD employee? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			

Compensation and Terms – Must be within the OUSD Billing Guidelines

Anticipated start date	12/01/2011	Date work will end	11/30/2012	Other Expenses	
Pay Rate Per Hour (required)	\$	Number of Hours		Total Contract Amount	\$ 123,217.63

Budget Information

If you are planning to multi-fund a contract using LEP funds, please contact the State and Federal Office before completing requisition.

Resource #	Resource Name	Org Key	Object Code	Amount
9220	Microsoft Settle	9869220167	5846	\$ 123,217.63
			5825	\$
			5825	\$
Requisition No.	R0202656		Total Contract Amount	\$ 123,217.63

Approval and Routing (in order of approval steps)

Services cannot be provided before the contract is fully approved and a Purchase Order is issued. Signing this document affirms that to your knowledge services were not provided before a PO was issued.

1.	Administrator / Manager (Originator)	Name	GEE KIN CHOU	Phone	(510) 879-8872
	Site / Department	TECHNOLOGY SERVICES		Fax	(510) 451-1695
	Signature			Date Approved	12/4/11
2.	Resource Manager , if using funds managed by: <input type="checkbox"/> State and Federal <input type="checkbox"/> Quality, Community, School Development <input type="checkbox"/> Complementary Learning / After School Programs				
	<input type="checkbox"/> Scope of work indicates compliant use of restricted resource and is in alignment with school site plan (SPSA)				
	Signature			Date Approved	
3.	Regional Executive Officer				
	<input type="checkbox"/> Services described in the scope of work align with needs of department or school site				
	<input type="checkbox"/> Consultant is qualified to provide services described in the scope of work				
4.	Deputy Superintendent Instructional Leadership / Deputy Superintendent Business Operations				<input type="checkbox"/> Consultant Aggregate Under \$50,000
	Signature			Date Approved	1/6/12
	5. Superintendent, Board of Education <i>Signature on the legal contract</i>				
Legal Required if not using standard contract	Approved			Denied - Reason	
Procurement	Date Received			Date	12/19/11
		PO Number			

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