

**ADDENDUM TO
EDEN SYSTEMS, INCORPORATED
SOFTWARE LICENSE AND USE AGREEMENT**

ORIGINAL AGREEMENT DATE: October 30th, 1998
BETWEEN: Eden Systems, Inc., Licenser
City of Indian Wells, CA, Licensee

WHEREAS the above-named parties entered into a Software License and Use Agreement and amended it on the dates shown above; and

WHEREAS, the parties now desire to modify the exhibits to said agreement; and

WHEREAS, the purchase of the one InForum Gold Cashiering Station, as shown in Exhibit A and Exhibit B

IT IS HEREBY mutually agreed that the Exhibits to the Agreement dated October 30th, 1998 shall remain in effect, and said exhibits shall be augmented by Exhibits A and B included herein.

Except as modified herein, the parties hereby confirm and ratify all the terms, conditions, and provisions of their Software License and Use Agreement.

EDEN SYSTEMS, INCORPORATED
Licenser

City of Indian Wells, CA
Licensee

By: 
Authorized Corporate Officer

By: 
Authorized Officer

Name: Jonathan E Jackson

Name: _____

Title President

Title _____

Date 7-16-04

Date _____

Exhibit A - Eden Systems Deliverables
City of Indian Wells, California Adding 1 Cashiering Station

Products, Service & Equipment	License Fee (Support Basis)	License Fee (No Support)	Discount Amount	Net License Fee	On-Site Trips	Train & Install Days	Data Conv. Days	Proj Mgmt Days	Other Days	Total Service Cost	Expenses & Taxes	Total Cost
Database, Tools, Setup	\$	\$	\$	\$						\$	\$	\$
System Administration				-								-
Database Setup				-								-
Hardware, O/S Setup				-								-
Web E-Commerce Setup				-								-
				-								-
				-								-
Supported Applications				-								-
Financial Products				-								-
Core Financial Module				-								-
G/L, A/P				-								-
Purchasing				-								-
Requisitioning				-								-
Budget Preparation				-								-
Accounts Receivable				-								-
Project Accounting				-								-
Fixed Assets				-								-
Inventory Control				-								-
				-								-
Payroll Products				-								-
Payroll				-								-
Position Budgeting				-								-
Human Resources				-								-
				-								-
GIS Products				-								-
Parcel Manager				-								-
Permits & Inspections				-								-
Utility Billing				-								-
Business Licensing				-								-
				-								-
Other Products & Services				-								-
Eden Menus				-								-
Data Dictionaries				-								-
C/R Interface				-								-
Standard Forms Creation				-								-
Cashiering (1 Station)	12,000.00			12,000.00	1	3.0		0.5		3,500.00	1,150.00	16,650.00
IG Cashiering Hardware (One receipt printer without imaging.)	1,000.00			1,000.00								1,000.00
Sales Tax				-								-
Totals	\$ 13,000	\$ -	\$ -	\$ 13,000	1	3.0	-	0.5	-	\$ 3,500.00	\$ 1,150.00	\$ 17,650.00

Notes to Exhibit A – City of Colton, CA
Addition of one InForum Gold Cashiering Station module
Eden Systems Deliverables

- **This addendum is to provide Licensee with full license rights to the InForum Gold products outlined herein. It augments the Licensee's previous license agreement which provided for use of other InForum Gold products.**

- **The items in Exhibit A are products and services delivered to Licensee from Licensor. Product support and maintenance is obtainable directly from Licensor for those items totaled under the "License Fee (Support Basis)" column only. All support and maintenance for other items priced under the column "License Fee (No Support)" must be obtained by Licensee directly from the original manufacturer or supplier.**

- **This is an estimate of the travel costs associated with this implementation. Although we will make every effort to utilize trainers from the closest office, schedules may sometimes dictate that we use trainers from other parts of the country. You will be billed for the actual costs as documented.**

- **Please note that the requirements for Service days are estimates. You will be billed for the actual costs as documented. Eden will provide an accounting of the employees who performed the work and the work they performed.**

**Exhibit B - Payment Schedule
City of Indian Wells, CA**

Product, Service, Equipment	On Execution	On Delivery	As Accepted	As Progress Occurs	Totals
					\$ -
License Fees		12,000.00			12,000.00
Training & Installation				3,500.00	3,500.00
Data Conversion					-
Project Management					-
Forms Customization					-
Additional Implementation Services					-
Undesignated Programming Services					-
Third-party Products		1,000.00			1,000.00
Expenses - (Estimated)				1,150.00	1,150.00
Sales Tax					-
Totals	\$ -	\$ 13,000.00	\$ -	\$ 4,650.00	\$ 17,650.00

Eden Systems, Incorporated Software License and Use Agreement

THIS AGREEMENT, made and entered into by and between Eden Systems, Incorporated (hereinafter "Eden"), a corporation duly authorized and existing under the State of Washington and having its principal offices at 5015 Tieton Drive; Suite A; Yakima, Washington 98908, and the City of Indian Wells, (hereinafter "City"), a government organization having its principal offices at 44950 El Dorado Drive, Indian Wells, CA 92210.

Eden desires to grant to City, and City desires to acquire from Eden a non-exclusive right and license to use certain computer software as hereinafter defined. Both parties agree they are able to comply with and will satisfy the terms and conditions as set forth in this Agreement. Both parties, intending to be legally bound, agree to the following:

SECTION 1 - DEFINITIONS

The definition of terms set forth in this section shall apply when such terms are used in this Agreement, its exhibits, and any amendments:

- 1.1 **"Licensed Program."** The computer program designated by Eden as *InForum Gold™*, *InForum™*, or *Command Series™* including object code, as well as related procedural code, and documentation of any type which describes it. City shall receive, at no additional license fee or fee for conversion of data relating to the upgrade of those modules designated within Exhibit A, in the License Fee (Support Basis) column, and named as Financial Core Products, and Payroll/Benefits/Position Control, the first InForum Gold™ version of the above mentioned modules.
- 1.2 **"Licensed Documentation."** The system user manuals, and other documentation made available by Eden, for the Licensed Program.
- 1.3 **"Enhancements."** Changes or additions, other than Maintenance Modifications, to the Licensed Program or Licensed Documentation that add significant new functions or substantially improved performance thereto by changes in system design or coding. Enhancements generally offered to all cities at no charge shall be offered to City at no charge, unless City specifically arranges to pay for Eden's services in developing such Enhancement.
- 1.4 **"Error."** Problem caused by incorrect operation of the computer code of the Licensed Program or an incorrect statement or diagram in Licensed Documentation that produces incorrect results or causes incorrect actions to occur.
- 1.5 **"Error Correction."** Either a software modification or addition that, when made or added to the Licensed Program, establishes material conformity of the Licensed Program to the functional specifications, or a procedure or routine that, when observed in the regular operation of the Licensed Program, eliminates the practical adverse effect on City of such non-conformity.
- 1.6 **"Maintenance Modifications."** Modifications or revisions to the Licensed Program or Licensed Documentation that correct Errors. Maintenance Modifications generally offered to all cities at no charge shall be offered to City at no charge, unless City specifically arranges to pay for Eden's services in developing such Maintenance Modification.
- 1.7 **"Specifications."** The functional performance parameters of the Licensed Program effective on the date of this Agreement, as set forth in on-line documentation imbedded within the Licensed Program.
- 1.8 **"Proprietary Information."** Unpublished "know-how" and "trade secrets" which shall include (without limitation) computer programs, program designs, algorithms, subroutines, system specifications, test data, charts, graphs, operation sheets, and all other technical information, owned by Eden or under its control, relating to the development and production or use of the Licensed Program and the design, configuration, programming, and protocol of the Licensed Program.

- 1.9 "Normal Working Hours."** The hours between 8AM and 5PM PST (Pacific Standard Time) or PDT (Pacific Daylight Time), whichever is applicable, on the days Monday through Friday, excluding regularly scheduled holidays of Eden.
- 1.10 "Releases."** New versions of the Licensed Program, which new versions may include both Error Corrections and Enhancements.
- 1.11 "Support Agreement Term."** A fiscal year, commencing on July 1 and ending on June 30, during which certain support and services are provided subject to the terms and conditions set forth in Section 9, *Software Support*.
- 1.12 "Eden's Project Manager."** Eden's Project Manager shall be the main point of contact for this project. The Project Manager's responsibilities include, but are not limited to project staffing, allocation of staff, timeline development, conflict resolution, performance tracking and reporting, and general communications with the City regarding project status. The Eden Project Manager shall be available for the duration of the initial project implementation via normal software support channels and during normal business hours and will make his/her best efforts to return each call promptly.

SECTION 2 - GRANT OF LICENSE

- 2.1 Scope of License.** Subject to compliance by City with the terms hereof, Eden hereby grants to City, in perpetuity unless terminated as provided herein, a personal, non-exclusive, nontransferable license (without the right of sublicense), to:
- a. Install, use, and execute the Licensed Program on computers owned or leased and used by City at its facilities at 44950 El Dorado Drive, Indian Wells, CA 92210 and is licensed for use on a Windows NT, single host system for up to fifteen (15) concurrent users, for the sole and express purpose of supporting the internal business activities of City; and
 - b. Use the Licensed Documentation only in conjunction with installation and use of the Licensed Program.
 - c. Prepare Maintenance Modifications or Enhancements to the source code of the Licensed Program, provided source code is offered and included in this Agreement, and use such works only as authorized in Sections 2.1(a) and 2.1(b).
- 2.2 Delivery of Materials.** Eden shall deliver one copy of the Licensed Program and Licensed Documentation to City within a reasonable time following final execution of this Agreement.
- 2.212.21 Source Code.** Upon installation, Eden shall provide to City, without cost, one set of complete and current version of the Licensed Program, with all source code, inclusive of any and all modifications committed herein to City, in media readable by City's hardware. Upon acceptance by City, City shall be provided an updated copy of the Licensed Program every six months thereafter, until and unless City discontinues Eden's software support or such software support is discontinued by Eden, at which time Eden shall provide the City with a final copy of the Licensed Program.
- 2.3 Necessity for third-party Software.** City acknowledges that in order to be executed, the Licensed Program requires certain third-party software not provided by Eden, including, but not limited to, Operating Systems, C-Compilers, ODBC Drivers, Quadrant Systems Cash Register Receipting and TCP/IP. The acquisition of necessary licenses and support for this software shall be the sole responsibility of City. City acknowledges that Eden software support does not cover third party software unless otherwise specified.
- 2.4 Limited Support of Licensed Program.** Eden shall furnish to City such Maintenance Modifications as may be developed by Eden generally for Cities of the Licensed Program
- 2.5 Assignment of Rights in City Maintenance and Enhancement Modifications.** All right, title, and interest in all Maintenance and Enhancement Modifications developed by City during the term hereof remains with Eden. City

agrees that such modifications shall be used by City, and will not be distributed or otherwise made available to any third party other than Eden.

- 2.6 Availability of Eden Enhancements.** Eden agrees to offer to City a license to Enhancements that Eden develops and offers generally to Cities of the Licensed Program at its announced license fees for such Enhancements.
- 2.7 City Notification and Delivery of Materials.** City shall notify and deliver to Eden one copy of any Maintenance and Enhancement Modifications developed by City within a reasonable period after development.

SECTION 3 - TITLE TO MATERIALS

- 3.1 Title to Licensed Program and Licensed Documentation.** All right, title, and interest in and to the Licensed Program and Licensed Documentation, including the media on which the same are furnished to City, are and shall remain with Eden. City acknowledges that no such rights, title, or interest in or to the Licensed Program and the Licensed Documentation is granted under this Agreement, and no such assertion shall be made by City. City is granted only a limited right of use of the Licensed Program and Licensed Documentation as set forth herein, which right of use is not coupled with an interest and is revocable in accordance with the terms of this Agreement.
- 3.2 Title to Enhancements and Maintenance Modifications; Restrictions on Use, Disclosure, Access, and Distribution.** All right, title, and interest in and to any Enhancements and Maintenance Modifications developed by either Eden or by City shall be and remain with Eden. City shall treat all such Enhancements and Maintenance Modifications, whether developed by Eden or by City, in accordance with the restrictions and limitations set forth herein respecting Licensed Programs and Licensed Documentation.

SECTION 4 - FEES AND PAYMENTS

- 4.1 License Fee.** In consideration of the licenses granted hereunder, City shall pay Eden a one-time license fee as well as other associated costs as further defined in Exhibit A, attached hereto.
- 4.2 Support Fee.** Software Support is subject to the terms and conditions of Section 9, *Software Support*, and may be offered, at Eden's sole option, on a year by year basis.
- 4.3 Per Diem.** Charges for meals and incidental expenses associated with the delivery of the Licensed Program will be charged on a per diem basis. The rate for such per diem shall be the maximum meals and incidental expenses allowed for City's locality as specified in 41 CFR Section 301 Appendix A of the code of Federal Regulations. Partial days (1/2 day or less) will be billed to City at one half the applicable rate.
- 4.4 Other Costs.** Other costs, including but not limited to air/train/taxi fare, lodging, car rental, parking, freight costs and reproduction charges incurred by Eden on account of this Agreement, shall be billed to the City. Eden shall have the right to charge a 5% administrative fee for all fees and charges over thirty (30) days past due specified in this Section. Eden shall maintain records and receipts for all costs submitted to City.
- 4.5 Payment.** The License fee set forth herein shall be paid by City according to the payment schedule set forth in Exhibit B.

The fees and charges specified in this section are exclusive of any federal, state, or local excise, sales, use, and similar taxes assessed or imposed with respect to the service and support provided hereunder. City shall pay any such amounts upon request of Eden accompanied by evidence of imposition of such taxes.

SECTION 5 - PROPRIETARY PROTECTION OF MATERIALS

5.1 Acknowledgment of Proprietary Materials; Limitations on Use. City acknowledges that the Licensed Program and Licensed Documentation are unpublished works for purposes of federal copyright law and embody valuable confidential and secret information of Eden, the development of which required the expenditure of considerable time and money by Eden. City shall treat the Licensed Programs and Licensed Documentation in confidence and shall not use, copy, or disclose, nor permit any of its personnel to use, copy, or disclose the same for any purpose that is not specifically authorized under this Agreement.

In the event of a public records request for the Licensed Program and Licensed Documentation, City shall promptly provide a copy of such request to Eden so that it has at least seven business days from Eden's receipt of such copy in which to seek an order restraining the City from disclosing the Licensed Program and Documentation pursuant to such public records request.

If Eden does not obtain a restraining order within such period of time, City may disclose the Licensed Program and Licensed Documentation pursuant to such public request as City deems appropriate.

5.2 Secure Handling. Except for copies of the Licensed Program installed and operated upon its computers as permitted hereunder, City shall require that the Licensed Program and Licensed Documentation be kept on City's premises which shall be maintained in a manner so as to reasonably preclude unauthorized persons from gaining access thereto, and City shall permit access only as necessary for either party's use thereof in accordance with the terms of this Agreement.

5.3 Proprietary Legends. City shall not permit anyone other than Eden to remove any proprietary or other legend or restrictive notice contained or included in any material provided by Eden. City may reproduce the written documentation provided by Eden, provided that such reproductions are for the private internal use of City, and all such reproductions bear Eden's copyright notices and other proprietary legends.

5.4 City's Obligations Respecting Access. City shall limit use of and access to the Licensed Program and Licensed Documentation to such personnel of City as are directly involved in the use thereof by City. City shall prevent all City personnel from having access to any such information that is not required in the performance of their duties for City. City shall, as requested by Eden, provide Eden with written notice of all personnel of City who have been accorded access to the Licensed Programs and Licensed Documentation in the course of their employment by City.

5.5 Injunctive Relief. City recognizes and acknowledges that any use or disclosure of the Licensed Program or Licensed Documentation by City in a manner inconsistent with the provision of this Agreement may cause Eden irreparable damage for which remedies other than injunctive relief may be inadequate, and City agrees that in any request to a court of competent jurisdiction by Eden for injunctive or other equitable relief seeking to restrain such use or disclosure, City will not urge that such remedy is not appropriate under the circumstances.

5.6 Technical Protections. Eden may from time to time prescribe password protection as an additional security measure for the Licensed Program, and City shall cooperate with Eden in connection therewith.

5.7 Security Audit. Eden shall have the right to make visits to the City's computer facilities to review security measures respecting the Licensed Program and Licensed Documentation, and, if deficiencies are identified by Eden, City shall implement such additional security practices as are reasonably necessary to adequately ensure the security of the Licensed Program and Licensed Documentation.

5.8 Survival of Terms. The provisions of Sections 5.1 through 5.7 shall survive termination of this Agreement for any reason.

SECTION 6 - LIMITED WARRANTY, LIMITATION OF LIABILITY, AND INDEMNITY

- 6.1 Limited Warranty Against Infringement.** Eden warrants that the Licensed Program and Licensed Documentation as delivered to City do not infringe any third-party rights in patent, copyright, or trade secret in the United States.
- 6.2 Limited Warranty of Conformity.** Eden warrants, for the benefit only of City, that for the life of the Agreement, the Licensed Program will conform in all material respects to the Licensed Documentation (except for modifications made by City or by Eden at the request of City), but only if City maintains uninterrupted Software Support. Eden assumes no responsibility for obsolescence of the Licensed Program nor for lack of conformity occurring from City's failure to update the Licensed Program with distributed Enhancements, Maintenance Modifications, or Error Corrections.
- 6.3 Exclusive Remedy.** As the exclusive remedy of City for any nonconformity or defect constituting an Error in the Licensed Program for which Eden is responsible, Eden shall use commercially reasonable efforts to provide Maintenance Modifications with respect to such Error. However, Eden shall not be obligated to correct, cure, or otherwise remedy any Error in the Licensed Program resulting from any (1) modification of the Licensed Program by City, or (2) failure of City to notify Eden of the existence and nature of such nonconformity or defect promptly upon its discovery.
- 6.4 Disclaimer.** EXCEPT AS SPECIFICALLY SET FORTH HEREIN, EDEN MAKES NO WARRANTIES, WHETHER EXPRESS OR IMPLIED, REGARDING OR RELATING TO THE LICENSED PROGRAM OR LICENSED DOCUMENTATION OR TO ANY OTHER MATERIALS FURNISHED OR PROVIDED TO CITY HEREUNDER. EDEN SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO SAID MATERIALS OR THE USE THEREOF.
- 6.5 Limitation of Liability.** EXCEPT WITH RESPECT TO LIABILITY ARISING FROM CLAIMS OF INFRINGEMENT OF THIRD-PARTY RIGHTS IN THE UNITED STATES IN COPYRIGHT, TRADE SECRET, OR PATENT, IN NO EVENT SHALL EDEN BE LIABLE UNDER ANY CLAIM, DEMAND, OR ACTION ARISING OUT OF OR RELATING TO ITS PERFORMANCE OR LACK THEREOF UNDER THIS AGREEMENT FOR ANY SPECIAL, INDIRECT, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, WHETHER OR NOT EDEN HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH CLAIM, DEMAND, OR ACTION.
- 6.6 City Indemnification.** City shall and does hereby agree to indemnify, hold harmless, and save Eden from liability against any claim, demand, loss or action (1) resulting from City's use or modification of the Licensed Program and Licensed Documentation and (2) alleging that any Maintenance Modifications made by City infringe any third-party rights in the United States respecting copyright, trade secret, or patent. The foregoing indemnification is predicated upon Eden (1) fully cooperating with City in the defense or settlement of such actions and (2) giving City prompt written notice of any claim, demand, or action for which indemnification is sought.
- 6.7 Eden Indemnification.** Eden shall and does hereby agree to indemnify, hold harmless, and save City from liability against any claim, demand, loss, or action alleging that the Licensed Program and Licensed Documentation or any Maintenance Modifications or Enhancements made by Eden infringe any third-party rights in the United States respecting copyright, trade secret, or patent. The foregoing indemnification is predicated upon City (1) fully cooperating with Eden in the defense or settlement of such actions and (2) giving Eden prompt written notice of any claim, demand, or action for which indemnification is sought.
- 6.8 Survival of Terms.** The provisions of Sections 6.1 through 6.7 shall survive termination of this Agreement for any reason.

SECTION 7 - TERM AND TERMINATION

- 7.1 Term.** This Agreement shall commence on the date and year contained herein and shall continue until terminated in accordance with the terms thereof. City shall retain in perpetuity, the License granted by Eden for the Licensed Program, regardless of any expiration or termination of support.
- 7.2 Termination by Either Party.** Either party may terminate this Agreement upon 60 days written notice to the other party if the other party commits a breach of any term hereof and fails to cure said breach within that 60-day period. Such notice shall set forth the basis of the termination.
- 7.3 Actions Upon Termination.** Upon termination of this Agreement for any reason, City shall immediately cease use of, and return forthwith to Eden, the Licensed Program and Licensed Documentation, and any copies or portions thereof, including Maintenance Modifications or Enhancements.

SECTION 8 - MISCELLANEOUS

8.1 Entire Agreement. This Agreement, including Licensee's Request for Proposal (RFP), Licensor's Response to said RFP, appendices, addendum, and referenced attachments, incorporated herein by reference, constitute the entire Agreement between the parties and supersedes all proposals, presentations, representations, and communications, whether oral or in writing, between the parties on this subject. Neither party shall be bound by any warranty, statement, or representation not contained herein. In the event of any conflict in the terms and conditions, the documents shall control in the following order:

1. This Software License and Use Agreement;
2. Licensor's Response to Licensee's Request for Proposal, if applicable;
3. Licensee's Request for Proposal, if applicable.

8.2 No Assignment. City shall not sell transfer, assign, or subcontract any right or obligation hereunder without the prior written consent of Eden. Any act in derogation of the foregoing shall be null and void; provided, however, that any such assignment shall not relieve City of its obligations under this Agreement.

8.3 Force Majeure. Excepting provisions of this Agreement relating to payment of license fees, and protection of Eden's Proprietary Information, neither party shall be in default of the terms hereof if such action is due to a natural calamity, or similar causes beyond the control of such party.

8.4 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the state of Washington. Venue will be deemed appropriate in the county of Yakima, Washington.

8.5 Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the remaining provisions of this Agreement will remain in full force and effect.

8.6 Notice. Any notice required or permitted to be made or given by either party under this Agreement shall be made in writing and delivered by hand or by certified mail, postage prepaid, addressed as first set forth above or to such other address as a party shall designate by written notice given to other party.

8.7 Acceptance Testing. Within ten (10) business days of Eden's notification to City that the Licensed Program or portion thereof is installed and the applicable training administered, City shall begin performance of Acceptance Testing, for the sole and express purpose of determining whether the Licensed Program operates as described in the Licensed Documentation. Module and Project acceptance are defined below:

Module: A module will be considered accepted by the City contingent upon: a) that module meeting the functionality described in Eden's licensed documentation and b) validation of the application being performed and accepted by the City utilizing City's test data on Eden's system against City's existing systems.

Project: The project will be considered complete upon conclusion of installation, training, and acceptance of all Eden's integrated functional modules by the City for said project.

8.8 Failure of Acceptance Testing, Retesting. If the parties agree that the Licensed Program does not successfully pass Acceptance Testing, the City shall notify Eden in writing ("first notice of failure") and shall specify with as much detail as possible in which respects the Licensed Program failed to pass the Acceptance Testing. Eden shall make such necessary corrections and modifications in the Licensed Program to establish a reasonable basis for additional Acceptance Testing within a period of thirty (30) days from the first notice of failure.

Eden shall notify City when such retesting can begin and the City shall complete Acceptance Testing within a period of twenty (20) business days from the date of notification. If the parties agree that the Licensed Program continues to fail Acceptance Testing, the City shall notify Eden in writing of the City's intention to terminate and if Eden fails to remedy the defect within (60) days of receipt of said notification, the City has the right, at its option, to terminate the Agreement by giving written notice of such termination to Eden.

Upon the City's termination of this Agreement due to failure of the second Acceptance Test, the City shall promptly return the Licensed Program and documentation and all related materials to Eden, and Eden shall return all License Fees paid for Licensed Program.

8.9 Acts of Insolvency. The City may terminate this Agreement by written notice to Eden if Eden becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, becomes subject to any proceeding under any domestic bankruptcy or insolvency law or publicly announces liquidation proceedings.

8.10 Insurance. During the term of this Agreement, Eden shall maintain an appropriate level of insurance against all personal and property damage caused by Eden's employees while on City's premises and shall exhibit certificates of evidence of such insurance upon request by City.

8.11 Equal Opportunity Employer. Eden shall not discriminate in its recruiting, hiring, promotion, demotion, or termination practices on the basis of race, religious creed, color, national origin, ancestry, sex, age, or physical handicap in the performance of this Agreement.

8.12 Year 2000 Warranty. Eden represents and warrants that their product is and will continue to be Year 2000 compliant. Without limiting the generality of the foregoing, Eden further represents and warrants that all date processing by product will include Four Digit Year Format and recognize and correctly process dates for Leap Year.

8.13 Windows NT Conversion. Eden certifies that it is in good faith working to convert its existing financial software (as offered in this Agreement) to operate in a Windows NT Environment. The Windows NT Conversion certification of the RFP, dated July 23, 1998 is hereby incorporated by reference.

SECTION 9 - SOFTWARE SUPPORT

9.1 Scope of Service. Eden shall render support and services during Normal Working Hours for the following :

- a. **Telephone Support** – Calls related to operation of the Licensed Program, reporting of a potential error condition or abnormal termination of a program, or request for minor assistance related to the Licensed Program. The parties agree to use the following as it pertains to Eden's response to City's support calls:
 1. Eden shall make every effort to respond to City's support telephone calls within an average response time of (2) hours, with such average calculated based on support calls received over each successive, complete calendar month;
 2. Eden will make every effort to resolve support requests within four (4) business hours.
- b. **Support Enhancements** – Selected Enhancements, the nature and type of which shall be determined solely by Eden. Such provision shall not preclude Eden from providing other Enhancements of the Licensed Program for license fees, training charges, and other related service fees and charges as specified elsewhere in this Agreement.
- c. **VCS (Version Control System) Maintenance** – Library of Licensed Program for City complete with modifications authorized by City, performed by Eden, and delivered to City site for use.

9.2 Fees and Charges. City shall pay Eden annual support charges for basic support for the Licensed Program based on an annual rate determined by Eden for each Support Agreement Term, and the amounts listed in the Support Basis column of Exhibit "A". The current amount based on Exhibit A is \$12,534.00.

Eden reserves the right to change its support rate at the beginning of each Support Agreement Term, provided that no such change shall be an increase of greater than 5% of the support rate for the prior year. City shall not be subject to any support increase until the Support Agreement Term beginning July 1, 2002.

All annual support charges are due and payable within thirty (30) days of the first day of each Support Agreement Term. Failure to make such payment shall constitute cancellation and termination of support by City and no further service or support will be provided by Eden.

Software support shall commence and be billable to City upon acceptance of each, individual module. Support amounts shall be prorated based on the date of individual module acceptance in relation to the fiscal year (e.g. if the Payroll/Benefits/Position Control module is accepted April 1 for the fiscal year 1999-00, support shall commence on that date and the City shall pay the current support rate of the software licensing fee for that module multiplied by 25% to achieve the support rate for the remaining three months of the 1999-00 fiscal year.)

The fees and charges specified in this section are exclusive of any federal, state, or local excise, sales, use, and similar taxes assessed or imposed with respect to the service and support provided hereunder. City shall pay any such amounts upon request of Eden accompanied by evidence of imposition of such taxes.

9.3 City Responsibilities. City shall be responsible for procuring, installing, and maintaining all equipment, telephone lines, communications interfaces, and other hardware necessary to operate the Licensed Program and to obtain from Eden the services called for according to Eden's then existing policy.

9.4 Proprietary Rights. To the extent that Eden may provide City with any Error Corrections or Enhancements or any other software, including any new software programs or components, or any compilations or derivative works of the Licensed Program prepared by Eden, City may (1) install one copy of the Licensed Program, in the most current form provided by Eden, in City's own facility; (2) use such Licensed Program in a manner consistent with the requirements of the Agreement, for purposes of serving City's internal business needs; and (3) make up to three (3) copies of the Licensed Program in machine-readable form for nonproductive backup purposes only. City may not use, copy, or modify the Licensed Program, or make any copy, adaptation, transcription, or merged portion thereof, except as expressly authorized by Eden.

The Licensed Program is and shall remain the sole property of Eden, regardless of whether City, its employees, or contractors may have contributed to the conception of such work, joined in the effort of its development, or paid Eden for the use of the work product. City shall from time to time take any further action and execute and deliver any further instrument, including documents of assignment or acknowledgment, that Eden may reasonably request in order to establish and perfect its exclusive ownership rights in such works. City shall not assert any right, title, or interest in such works, except for the non-exclusive right of use granted to City at the time of its delivery or on-site development.

9.5 Disclaimer of Warranty and Limitation of Liability. EXCEPT AS EXPRESSLY SET FORTH HEREIN, EDEN EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES CONCERNING THE SYSTEM OR THE SERVICES TO BE RENDERED HEREUNDER, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

9.6 Termination of Support. Support may be terminated as follows:

- a. Upon the termination of the License Agreement; or
- b. Upon expiration of the then current Support Agreement Term, provided that at least 60 days' prior written notice is given to the other party; or

- c. Upon 60 days' prior written notice if the other party has materially breached the provisions of this Agreement and has not cured such breach within such notice period.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as set forth below.

[Eden]

By: Christopher P. Salts

[City]

By:

Signature:

Signature:

Title: Contract Administrator

Title:

Date:

Date:

By:

Signature:

Title:

Date:

11-30-98

Exhibit A
Deliverables

Products, Services and Equipment Setup/Training=[]; Trips=0	License Fee (Support Basis)	Disct. %	Discount Amount	Misc. Services Third-Party	On-Site Services	Total
Products:						
V2 Financial Core Products [19]; (6)	\$41,505.00	25%	-\$4,042.50		\$19,000.00	\$56,462.50
V2 Payroll, Benefits, Position Control [13]; (4)	\$31,870.00	25%	-\$3,745.00		\$13,000.00	\$41,125.00
V3 Fixed Assets [3]; (1)	\$9,685.00	25%	-\$310.00		\$3,000.00	\$12,375.00
Cash Receipting Interface [1/2]; (0)	\$500.00	25%	-\$125.00		\$500.00	\$875.00
Services:						
Consulting/Management - Estimate			\$ -	\$3,000.00		\$3,000.00
Data File Conversion Services-Estimate			\$ -	\$12,750.00		\$12,750.00
Equipment, 3rd Party Apps, Dbase, Tools						
SCO, 10 User Pack of TCP/IP, Shiva NetModem			\$ -	\$5,660.00		\$5,660.00
Informix, Tools [4]; (2)			-\$2,745.00	\$13,725.00	\$4,000.00	\$14,980.00
Report Writer [3]; (1)			\$ -	\$2,000.00	\$3,000.00	\$5,000.00
Eden Menus			\$ -	\$1,250.00		\$1,250.00
IQ Data Dictionaries			\$ -	\$1,000.00		\$1,000.00
Other:						
Travel and Expenses - Estimate			\$ -	\$13,150.00		\$13,150.00
Total	\$83,560.00		-\$10,967.50	\$52,535.00	\$42,500.00	\$167,627.50

Exhibit B
BILLING/PAYMENT SCHEDULE

<i>Product/Service</i>	<i>On Execution</i>	<i>As Installed Trained & Accepted</i>	<i>As It Occurs</i>	<i>Project Accepted</i>	<i>Total</i>
Financials – General Ledger	\$5,057.44	\$5,057.44		\$1,123.87	\$11,238.75
Financials – Accounts Payable	\$5,057.44	\$5,057.44		\$1,123.87	\$11,238.75
Financials – Budgeting	\$2,528.72	\$2,528.72		\$561.94	\$5,619.38
Financials – Purchasing	\$2,528.72	\$2,528.72		\$561.94	\$5,619.38
Financials – Accounts Receivable	\$1,685.81	\$1,685.81		\$374.62	\$3,746.24
Payroll/Benefits/ Position Control	\$12,656.25	\$12,656.25		\$2,812.50	\$28,125.00
Fixed Assets	\$4,218.75	\$4,218.75		\$937.50	\$9,375.00
Cash Receipting Interface	\$168.75	\$168.75		\$37.50	\$375.00
Consulting/Management			\$3,000.00		\$3,000.00
Data File Conversion Services			\$12,750.00		\$12,750.00
SCO, 10 User Pack of TCP/IP, Shiva NetModem	\$5,660.00				\$5,660.00
Informix, tools	\$10,980.00				\$10,980.00
Report Writer	\$2,000.00				\$2,000.00
Eden Menus	\$562.50	\$562.50		\$125.00	\$1,250.00
Data Dictionaries	\$450.00	\$450.00		\$100.00	\$1,000.00
Onsite Services	\$19,125.00	\$19,125.00		\$4,250.00	\$42,500.00
Travel, Expenses - Estimate			\$13,150.00		\$13,150.00
Totals	\$72,679.38	\$54,039.38	\$ 28,900.00	\$12,008.74	\$ 167,627.50

Exhibit C
DATABASE SOFTWARE, TOOLS

<i>Product/Service</i>	<i>Qty</i>	<i>Price Ea.</i>	<i>Total</i>
<i>Informix Work Group Server</i>	<i>15</i>	<i>\$295.00</i>	<i>\$4,425.00</i>
<i>Informix 4GL-C Runtime</i>	<i>12</i>	<i>\$300.00</i>	<i>\$3,600.00</i>
<i>Informix 4GL-C Development</i>	<i>3</i>	<i>\$900.00</i>	<i>\$2,700.00</i>
<i>Informix 4GL-RDS Development</i>	<i>3</i>	<i>\$900.00</i>	<i>\$2,700.00</i>
<i>Informix 4GL-ID</i>	<i>1</i>	<i>\$300.00</i>	<i>\$300.00</i>
<i>Discount</i>			<i>-\$2,745.00</i>
Total			\$10,980.00

Exhibit D **SERVICES**

Enhancements, Consulting/Management, Travel, Expenses - Based on Eden's perception of the enhancements, consulting/management, travel and expenses required by City at the time of execution of this Agreement, the estimate provided could vary depending on a fuller understanding of the requirements as the project unfolds. If the nature of the requirements causes a change in excess of 25% of the original estimate for any one or an aggregate of the named services, Eden will immediately notify the City and both parties will negotiate an adjusted cost to provide the product before any work may proceed.

All Estimated Services - All estimated services described within this Exhibit D shall be invoiced to City by Eden, due and payable as such services are delivered to City regardless of whether or not such services have been delivered in their entirety.

Onsite Services

Training, Installation, and Setup - All training is to be administered in either a) 'train the trainer' fashion; or b) seminar or 'group' fashion; to maximize the usefulness of time and resources. The training costs herein assume that training is to be provided on-site in the City's offices and that the City can provide suitable training room facilities and make City's personnel available on the dates and times agreed to by the parties.

The training, installation, and setup specified herein is intended to provide a maximum of forty-two and one-half (42.5) days to administer such services to City personnel and the need for additional services, as determined by the City, will be charged to City at Eden's then-going hourly rate. Such additional services and the payment for same shall be authorized via Eden's AFPS (Authorization For Professional Services) and no additional such services shall be administered without a fully executed AFPS by the City.

Written acknowledgment of acceptance or full payment of the license fee for any module listed in Exhibit A shall signify full satisfaction of the commitment for related services under this Agreement.

Installation and setup charges assume the City will ship, at its expense for all shipping and related costs, all necessary operating software, equipment and related tools to Eden in order that Eden place the Licensed Program on the City's computer system named herein and make sure that the Licensed Program will work with the operating system provided. This will constitute 'installation and setup' and will be performed for the price quoted herein.

In order to provide onsite services Eden must schedule visits in advance. If the scheduled visit is canceled by the City for any reason without first having given Eden a minimum of two weeks advance notice of such cancellation, Eden may charge the City for the scheduled service and dissolve the liability for that portion of the scheduled service.

Exhibit E
DATA CONVERSION

Data File Conversion Services - It is agreed by both parties that data file conversion services are difficult to estimate and are dependent on a variety of factors including legal access to data; availability of sufficient documentation describing the data to be converted; proper definition of the desired result; expertise capable of writing suitable conversion programs or devise technical processes to convert the data into a form suitable for conversion to the new format; time and schedule constraints; testing and data quality control; and others.

Because the estimate provided herein is not based on any in-depth analysis City agrees to provide any and all data in a standard magnetic form and format prescribed by Eden, which is compatible with Eden's standard conversion programs and database setup. The data conversion will consist of the magnetic data presented by City being passed through Eden's conversion program and written out in the data formats acceptable to the Licensed Program.

It is the City's sole and complete responsibility to ensure that the data presented to Eden's conversion program is complete and accurate, and any cost for services, third-party and other costs associated with the need for additional hours other than those estimated below shall be exclusively the City's responsibility. The estimate provided is given for data of the current year and previous year.

Should City be unable, for any reason, to provide data in EDEN's prescribed formats, City may request assistance from EDEN in extracting legacy data and formatting it according to EDEN standards. City understands the requirement of such services may cause the the cost of the data conversion to exceed the estimate given below. In this case, additional data conversion will be billed to City according to EDEN's then standard hourly rate and will be in addition to the conversion estimate provided herein.

Conversion efforts described herein cover effort only for the City and no rights are extended to any other agencies, sub-agencies, affiliates, or associations or businesses other than those named below and the authorization by Eden of such agencies, sub-agencies, affiliates, associations or businesses shall result in additional conversion charges based on the hours/cost estimate provided below. An annual support upcharge of 10% shall be added to Eden's basic annual support charge for each such Sub-agency authorized below.

Application Module	Hours Estimate	Cost Estimate
Financials	80	\$10,000.00
Fixed Assets	22	\$2,750.00
Total Estimate	102	\$12,750.00

Exhibit E
DATA CONVERSION (continued)

Authorized Sub-Agencies. The following are considered authorized Sub-agencies of this Agreement and City is authorized to use the Licensed Program and Licensed Documentation on City's premises for the purpose of supporting the internal business practices of the named Sub-agencies.

	Authorized Sub-Agencies
None Authorized	

Exhibit G
Tentative Installation Schedule

Licensor and Licensee agree that the following schedule is a preliminary schedule, subject to change, and shall be used as a guideline. Eden will give their best efforts in meeting these installation dates but the dates are contingent upon the customer fulfilling their installation obligations. Both parties agree that in comparing actual progress against this schedule, if such progress is not in conjunction with the suggested dates set forth in this exhibit, Licensor and Licensee shall meet in a timely fashion and discuss a new plan of implementation suitable to both party's needs.

Module	Tentative Start	Tentative Installation
Financial Core Products	January, 1999	March, 1999
Payroll/Benefits/Position Control	March, 1999	May, 1999
Fixed Assets	April, 1999	April, 1999