

FOR BOARD ACTION

Agenda Item # 8

Meeting Date:

3/26/13

SUBJECT:

IMPLEMENTATION OF SAP HCM

PREPARED BY:

Debra Donahue, Business Services Supervisor

ITEM DESCRIPTION:

Our current AS400 based timekeeping system will no longer be supported after 2013. The functionality is outdated and limited requiring staff to create and maintain several additional data sources to provide the various, required employee-related reporting. The project team compiled a list of organizational requirements related to time entry, payroll, managing employee data, scheduling, safety and training. We then worked with SAP to ensure these requirements would be satisfied with the functionality available within the Human Capital Management (HCM) module.

We distributed seven RFPs to various service vendors and received four responses. The project team thoroughly reviewed each response and identified two vendors for on-site interviews. After obtaining several, relevant references and careful consideration, the project team selected Sparta Consulting, Inc. They are a SAP certified GOLD partner with utility specific experience and will utilize a best practice based philosophy.

The project is divided into two phases:

Phase 1 - Time Entry / Payroll and ESS / MSS	\$432,720
Phase 2 - Success Factors	\$ 68,310
	\$501,030

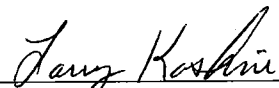
Pricing is fixed, and implementation is scheduled to begin May 2013 after completion of the SAP technical upgrade. The timeline for each phase is approximately 16 weeks, with a target completion of December 2013.

FOR CAPITAL PURCHASES/BIDS/MAJOR PROJECTS:

This project is included in the 2013 budget.

UTILITY BOARD ACTION REQUESTED:

Management recommends that the Board approve the Sparta Consulting, Inc. statement of work for implementation of SAP HCM. A master services agreement has been approved by the City Attorney and executed by the RPU General Manager and the Mayor.


General Manager

3-21-13
Date



Statement of Work
SAP HRIS Time Entry and Payroll-Implementation
Services
Rochester Public Utilities (RPU)
February 8, 2013

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MAXIMIZING YOUR VALUE

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1 Overview

This Statement of Work (SOW) is entered into between Sparta Consulting, Inc. ("Sparta") and Rochester Public Utilities (RPU) pursuant to the terms and conditions of the Master Services Agreement (the "Agreement") dated February 6, 2013 executed by such parties. Sparta and RPU agree that Sparta shall provide the Services and Deliverables described herein. In the event of a conflict among the terms of this SOW and the Agreement, the terms of the Agreement shall prevail. This SOW describes the work that will be performed for RPU for the SAP HRIS Time Entry and Payroll-Implementation Services project and any mutual expectation for the project. This document will be used to govern the project scope. Any changes to the Statement of Work should be processed according to the process described in Appendix A - Change Order Process of this document.

The following information is pertinent to this project:

Project Name:

Date of Statement of Work:

Expected Start Date:

Expected Project Go-Live Date:

Expected Warranty Completion Date:

RPU Program Manager:

2 Project Summary

Sparta will provide professional services to implement the following SAP modules based on the functionality of SAP ECC 6.0 with Enhancement Package 6, NetWeaver Platform 7.31 and NetWeaver Business Client 4.0 (NWBC):

- Cross Application Time Sheet (CATS)
- Employee Self Service (ESS) – CATS and Leave Request
- Manager Self Service (MSS) – approvals for CATS and Leave Request
- Personnel Administration (PA)
- Organizational Management (OM)
- Time Management (TM)
- Gross Payroll (PY-US)

The key drivers of this implementation are to provide RPU employees with a web-based method for entering and maintaining working time and absences through SAP ESS and CATS. By utilizing SAP MSS, RPU managers will be provided a web-based method to review and approve the time submitted by their subordinates. The approved time will then be used to calculate gross payroll in SAP. An Excel flat file (format to be determined) will also be generated for manual upload to JD Edwards (JDE). To accomplish this process, a certain amount of employee data must be maintained in SAP HCM requiring implementing portions of PA, OM, and TM. Only those employee master data fields required to calculate gross payroll such as salary will be considered as part of this scope.

To prepare for this implementation, RPU agrees to adopt as much “best practice” or Standard-delivered functionality within SAP HCM to minimize customization. Sparta will configure the SAP HCM functionality and assist RPU with scope as discussed in detail within this SOW.



Statement of Work

SAP SuccessFactors Implementation Services for Rochester Public Utilities (RPU)

March 19, 2013

SPARTA

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MAXIMIZING YOUR VALUE

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Sparta Consulting
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1 Overview

The use of the abbreviation "RPU" or the term "customer" throughout this document is meant to refer to Rochester Public Utilities.

This Statement of Work (SOW) is entered into between Sparta Consulting, Inc. ("Sparta") and Rochester Public Utilities ("RPU") pursuant to the terms and conditions of the **Master Services Agreement** dated February 6, 2013 (the "Agreement 1") executed by such parties. Sparta and RPU agree that Sparta shall provide the Services and Deliverables described herein. In the event of a conflict among the terms of this SOW and the Agreement 1, the terms of the Agreement shall prevail. This SOW describes the work that will be performed for RPU for the SAP SuccessFactors Implementation Services project and any mutual expectation for the project. This document will be used to govern the project scope. Any changes to the Statement of Work should be processed according to the process described in the Project Change Control section of this document.

This Statement of Work (SOW) is to further clarify the implementation of the SuccessFactors Inc. ("SuccessFactors") Hosted Service for Rochester Public Utilities ("Customer"). The services described herein will be provided by SuccessFactors pursuant to the terms and conditions of the **Subscription Agreement** between SuccessFactors and Customer dated _____ ("Agreement 2"). Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Agreement 2. Unless expressly modified herein, the terms of the Agreement 2 remain unmodified and in full force and effect. In the event of a conflict between this SOW and the Agreement 2, the terms and conditions of this SOW shall prevail unless expressly stated otherwise.

All functions described in this SOW are to be implemented during the timeframe outlined in the Project Timeline section below. Any functions not implemented in that timeframe will result in a Change Order.

The following information is pertinent to this project:

Project Name:

Date of Statement of Work:

Expected Start Date:

Expected Project Go-Live Date:

Expected Warranty Completion Date:

2 Project Summary

2.1 Modules

Sparta will provide professional services to implement the following SAP SuccessFactors modules:

2.1.1 SuccessFactors Learning Management System (LMS)

For detailed module descriptions please see the following datasheets:

- SuccessFactors Learning Management System
- SuccessFactors Analytics & Reporting

Core Deliverables

Sparta will deliver the following core configuration elements as part of a standard implementation:

- Core learning functionality to include Items, Curricula, Scheduled Offerings, Catalogs, Assignment Profiles, and Reporting
- Application reference values (Drop down values)
- User and Administrator roles
- Standard Connectors to support interfaces and data migrations:
 - Users/ HR Connector
 - Items
 - Item Learning History
 - Curricula
 - Schedule Offerings / Enrollments
 - Domains
 - Organizations

High Level Configuration Scope

Sparta SuccessFactors team will facilitate the following meetings/workshop sessions:

- Business process discussions to map desired future processes for learning management
- Training sessions
- Regular team checkpoints/working sessions

Sparta SuccessFactors team will configure the following:

- Admin Roles (Central System Admin, Distributed Training Admin, Scheduler, Report)
- 1 Domain
- 1 Public Catalog and Assignment Profile
- Direct Supervisor Approval Process
- Two-level Supervisor Approval Process
- Item Types (COURSE, DOC, OJT, OTHER)
- Completion Statuses
- Assignment Types (REQUIRED, OPTIONAL)
- True/False Question Template

- Multiple Choice Question Template
- Sample Exam

Sparta SuccessFactors team will configure the following optional features if requested:

- Single Sign On -provided Customer approach is supported by SuccessFactors
- FTP site to send data files
- System wide configuration settings (i.e. password policy)

Additional implementation tasks not included in base scope

- Configuration of modules other than Learning Management System
- Integration with a Virtual Learning System (VLS)
- Standard Credit card integration
- Integrations or data migrations outside of the listed Standard Connectors
- Support for online content integration

Implementation Considerations -

The following factors will impact the estimate or schedule:

- Overall implementation complexity including integration requirements, implementation timeline / phased implementation approach, validation or regulatory requirements, and related implementation factors.
- Lack of Customer dedicated resources
- Complex rules or business processes
- Business process change requiring significant organizational change management
- Deviation from the defined scope may necessitate additional discovery to validate scope, assumptions and resource requirement

High Level Timeline

Estimated at 16 weeks:

- Initiation 1 week
- Planning 2 weeks
- Executing 11 weeks
- Delivery and close 2 week

MASTER SERVICES AGREEMENT

THIS MASTER SERVICES Agreement ("Agreement") is made by and between Sparta Consulting, Inc., a California corporation ("Sparta") and the City of Rochester, Minnesota, a Minnesota municipal corporation, acting through its Public Utility Board ("Client"), as of February 6, 2013. Sparta and Client are each a party to this Agreement and are sometimes referred to herein collectively as the "parties."

Recitals

WHEREAS, Client desires to obtain certain IT related services from Sparta;

WHEREAS, Client and Sparta desire to make this Agreement to set forth the terms and conditions under which Sparta will provide and Client will obtain such services;

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants and agreements herein contained, Sparta and Client agree as follows:

1. SERVICES.

1.1. Provision of Services. Subject to the terms and conditions of this Agreement, Sparta agrees to staff and perform certain services (the "Services"), in accordance with the "Statement of Work" attached hereto as Schedule A. The Statement of Work includes a description of the tasks and deliverables for which the Services will be expended, as well as provisions for a timeframe in which the Services will be performed.

1.2. Changes to Statement of Work. The Statement of Work provides the specifics of a particular contract for services between Sparta and Client. The parties may subsequently enter into additional contracts for different or additional services by jointly executing one or more additional Statements of Work. Unless otherwise agreed, each subsequently executed Statement of Work shall, by this reference, be incorporated into this Agreement and shall be subject to all of the terms and conditions of this Agreement. Neither party has any obligation to enter into any additional Statements of Work.

1.3. Resolution of Inconsistencies. If there are any inconsistencies or conflicts between the provisions of this Agreement and the provisions of a Statement of Work, the provisions of this Agreement shall prevail, unless the Statement of Work specifically states that the provisions of the Statement of Work shall prevail.

1.4. Place of Performance. The Services will be performed by employees or contractors of Sparta ("Sparta Personnel") at locations determined by Sparta. The location may include Client's facilities indicated on Schedule A. Should Sparta Personnel perform Services at Client's location, Client will provide reasonable facilities for the personnel.

1.5. Client's Cooperation and Contact. Client acknowledges that Sparta's performance of Services is dependent upon Client's timely cooperation, feedback and provision of accurate and complete information. Client agrees to provide such cooperation, feedback and information. Client agrees to designate a qualified and authorized contact ("Client Contact") who will act as a liaison for Client in all important communications with Sparta. Client's Client Contact is specified on Schedule A.

2. FEES AND EXPENSES; TAXES.

2.1. Fees. Client agrees to pay Sparta fees equal to the total amount of time expended on all work necessary to perform the Services, multiplied by the hourly rate(s) set forth on Schedule A for the person performing the work. Time expended will be tracked in minimum increments of one half hour.

2.2. Sparta Invoices. Sparta shall invoice Client for the fees due hereunder on a weekly basis, based on the Sparta Personnel time worked for the immediately preceding weekly period. Each invoice shall indicate the dates when Services were performed, the number of hours (or partial hours) worked by Sparta Personnel and the applicable hourly rate(s). Payment of each invoice shall be due within thirty (30) days after the date of invoice. Client agrees to pay the invoiced amount when due. In exceptional circumstances, as determined by Sparta, Sparta shall have the right to require advance payment of fees from Client as a condition to Sparta providing or continuing Services under this Agreement.

2.3. Expenses. Client agrees to reimburse Sparta for reasonable expenses incurred by Sparta or Sparta Personnel in connection with performance of the Services including travel, lodging and meal expenses. Sparta will invoice Client for these expenses. Client agrees to pay the amount invoiced within thirty (30) days after the date of the invoice.

2.4. Late Fees. Amounts not paid by Client when due shall be subject to a late payment fee equal to 1.5% of the outstanding unpaid balance, per month; provided however, that if the foregoing late fee is determined to be unenforceable under applicable law, then the late fee shall be an amount equal to the maximum rate of interest allowed to be charged by law and shall accrue on the outstanding unpaid balance until paid. Client agrees to pay the late payment fee upon Sparta's invoice of the late fee.

2.5. Taxes. Client will be responsible for and pay when due all sales, use, service, value-added, lease, personal property, excise, consumption, withholding or other taxes or duties, including VAT ("Service Taxes"), due or payable in connection with any property or services acquired, used or consumed in connection with the transactions under this Agreement. If Sparta pays or advances any of the Service Taxes, Sparta may invoice Client and Client shall pay Sparta the amount of the Service Taxes, plus any interest and penalties. Client agrees to provide Sparta with all information reasonably requested by Sparta as being necessary for Sparta to calculate any such Service Taxes.

3. NO RESTRICTIONS ON SPARTA; INTELLECTUAL PROPERTY RIGHTS.

3.1. No Restrictions on Sparta. This Agreement does not prohibit or otherwise restrict Sparta from: (i) providing to any other person or entity any services or software that is the same

as or similar to the Services or software provided to Client hereunder or (ii) using any ideas, concepts, know how, logic, models, utilities, routines, methodologies, processes, algorithms, templates, designs, tools or other items that arise out of or are improved by any performance of Sparta Personnel hereunder.

3.2. Intellectual Property Rights- Definition. As used herein, "Intellectual Property Rights" means copyrights, trademarks, patents, inventions, trade secrets and all other intellectual property rights as may exist now or hereafter come into existence and all renewals and extensions thereof and improvements and modifications thereto.

3.3. Ownership of Intellectual Property Rights.

(a) All preexisting Intellectual Property Rights of either Sparta or third parties that are utilized in connection Sparta's performance of this Agreement shall remain the sole and exclusive property of Sparta or the third parties, as the case may be.

(b) All new Intellectual Property Rights that may be authored or otherwise created by Sparta Personnel or third parties individually, or jointly with others, in connection with Sparta Personnel's performance under this Agreement shall be and shall remain the sole and exclusive property of Sparta or the third parties, as the case may be.

3.4. Irrevocable License to Client. Notwithstanding the provisions of section 3.3, above, upon Sparta's receipt from Client of all fees and expenses due and payable by Client to Sparta hereunder, Sparta irrevocably grants to Client a perpetual, non-terminable, fully paid-up, nonexclusive right to use and reproduce for Client's own internal business purposes, in both source code and object code form, the computer software code and related user documentation that Sparta creates for and delivers to Client as deliverables hereunder.

3.5. Indemnification. Sparta shall defend at its expense any third party notices, allegations, claims, suits or proceedings against the Client, its departments, officers, agents or employees, alleging that the Client's use of Sparta's services as permitted by this Agreement infringes, violates or misappropriates the Intellectual Property Rights of any third party, and to pay costs and damages finally awarded in any such suit or agreed to by Sparta in settlement with such third party (including reasonable attorney's fees and expenses) provided that Sparta is notified promptly in writing of the suit and at Sparta's request and at its expense is given control of said suit and all requested reasonable assistance for defense of same. Sparta agrees that it shall not settle any such suit unless the Client, its departments, officers, agents or employees are unconditionally released from any liability as part of any settlement.

4. CONFIDENTIALITY.

4.1. Confidential Information - Definition.

(a) As used herein, a party's "Confidential Information" is the party's proprietary information that is not generally known or available to the public and that the party specifically identifies to the other party as "confidential" or "proprietary" by means of a legend on the materials or in a written notice given at or immediately following the time of disclosure.

(b) However, in no event shall Confidential Information include any of the following: (i) information known to the other party prior to the disclosure by the party; (ii) information which is or which becomes generally available or known to the public; (iii) information that becomes available to the other party on a non-confidential basis from a source other than the party; (iv) information that is independently developed by the other party without use of or reference to party's Confidential Information; or (v) information that is declared by the Minnesota Government Data Practices Act to be public information.

4.2. Mutual Confidentiality Obligations. In connection with the performance of this Agreement a party may disclose to the other party Confidential Information of the party. Each party agrees not to disclose or use the other party's Confidential Information, except in connection with the party's performance under this Agreement or except as may be required in order to comply with law or court order.

5. TERM AND TERMINATION; PERIOD OF PERFORMANCE.

5.1. Term of Agreement. The term of this Agreement shall commence on the date set forth above and shall terminate on the "Agreement Termination Date" specified on Schedule A, unless terminated earlier as provided in section 5.2, below, or unless extended by mutual written agreement of the parties.

5.2. Termination for Breach or Mutual Agreement or Client's Bankruptcy.

(a) Either party may terminate this Agreement if the other party is in breach of a material obligation under this Agreement and fails to cure the breach within ten (10) days after being notified of the breach. The termination will be effective upon the non-breaching party's written notice of termination given at any time after the ten (10)-day cure period, so long as the other party remains in breach.

(b) The parties may agree to terminate this Agreement at any time by delivering a termination agreement signed by both parties.

(c) Sparta shall have the right to terminate this Agreement upon notice to Client if Client suffers a Bankruptcy Event. A "Bankruptcy Event" shall be deemed to occur if:

(1) Client shall (i) apply for or consent to the appointment of a receiver, trustee, liquidator or custodian of itself or of all or a substantial part of its property, (ii) be unable, or admit in writing its inability, to pay its debts generally as they mature, (iii) make a general assignment for the benefit of its or any of its creditors, (iv) be dissolved or liquidated, (v) become insolvent (as such term may be defined or interpreted under any applicable statute), or (vi) commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or consent to any such relief or to the appointment of or taking possession of its property by any official in an involuntary case or other proceeding commenced against it; or

(2) Proceedings for the appointment of a receiver, trustee, liquidator or custodian of Client or of all or a substantial all of the property thereof, or an involuntary case or other

proceedings seeking liquidation, reorganization or other relief with respect to Client or the debts thereof under any bankruptcy, insolvency or other similar law now or hereafter in effect shall be commenced and an order for relief entered or such proceeding shall not be dismissed or discharged within 30 days of commencement.

5.3. Suspension. In addition to Sparta's rights of termination as set forth in section 5.2, above, Sparta shall have the option of suspending its performance of Services during the time in which Client is in arrears in any payment due hereunder or fails to perform Client's obligations set forth in section 1.5, above unless the Client challenges the validity of the claim for payment and the parties are involved in mediation in an attempt to resolve that challenge.

5.4. Certain Rights and Obligations Upon Termination. Termination shall not relieve a party of any obligation or liability incurred or accrued prior to termination. Neither party shall be liable to the other for damages of any sort resulting solely from terminating or suspending this Agreement in accordance with its terms permitting termination or suspension. Upon termination of this Agreement for reasons other than Client's breach of this Agreement, and subject to Client's payment of fees and expenses, Sparta shall deliver to Client work-in-progress constituting partially complete deliverables.

6. INSURANCE.

6.1 Sparta shall take appropriate measures to ensure that Sparta Personnel are covered by workers' compensation insurance, as required by applicable law. Sparta shall also obtain, as a minimum, the following described types and limits of insurance coverage. All policies called for herein shall become effective before Sparta undertakes any work under this Agreement. Further, Sparta shall furnish City with an insurance certificate or certificates at the time the agreement is consummated between the parties, evidencing such insurance coverage prior to work commencing on said project. Each of said certificates shall provide the following:

- a. A 30-day notice of cancellation and/or non-renewal.
- b. Liability Insurance. Sparta shall obtain and maintain a commercial liability insurance policy with limits of at least \$1,000,000 each occurrence/\$3,000,000 aggregate for both bodily injury & property damage liability to cover claims for injury or damage resulting or arising from the actions of Sparta, its officers, employees or agents during the term of the contract. Products and completed operations coverage is to be included within the required limits.
- c. Excess Umbrella Liability. Sparta shall obtain and maintain an umbrella policy with limits of at least \$1,000,000 to cover the excess above the underlying policies requested in this insurance section.
- d. Auto Insurance. Sparta shall obtain and maintain commercial auto insurance policy with limits of at least \$1,000,000 each occurrence for both bodily injury & property damage liability to cover claims for injury or damage resulting or arising from the actions of Sparta, its officers, employees or agents, including hired and non-owned vehicles, during the contract.

e. Professional Liability Insurance. Sparta shall obtain and maintain a professional liability insurance policy with limits of at least \$1,000,000 each occurrence/\$2,000,000 aggregate to cover claims for injury, repairs or damages arising out of professional errors or omissions.

f. The liability insurance policies shall name the City of Rochester as an additional insured for claims from work conducted pursuant to this Agreement. Contractor's liability insurance shall be primary to any insurance held by the City of Rochester.

Certificate holder shall be listed as:
City of Rochester
Acting Through Its Public Utility Board
4000 East River Road NE
Rochester MN 55906-2813

7. LIMITED WARRANTY AND EXCLUSIVE REMEDY.

7.1. Limited Warranty.

(a) Sparta makes the following limited warranty to Client. Sparta warrants that the Services will be performed in a professional manner and that the computer software code delivered by Sparta hereunder in conjunction with or incidental to the Services (the "Code"), when properly used, will perform substantially in accordance with the descriptions of the Code set forth in the user documentation for the Code provided by Sparta. The time period for the foregoing limited warranty shall be a period of ninety (90) days following the delivery of the Code to Client. Sparta does not warrant that the Code will meet Client's requirements or that the operation of the Code will be secure, uninterrupted or error free or that all defects will be corrected. This limited warranty does not apply to or cover third party software or content.

(b) Notwithstanding the foregoing limited warranty, Sparta shall have no obligation under the limited warranty if: (i) Client subjects the Code to accident or abuse, (ii) the non-compliance with the limited warranty is caused by system alterations, third party products, hardware malfunctions or the acts or omissions of Client or Client's employees or agents, (iii) Client or any third party attempts any alteration, modification or misuse of the Code, (iv) Client uses the Code in combination with non-compatible products, (v) Client is in breach or default of any of the provisions of this Agreement, or (vi) this Agreement is terminated. Upon any termination of this Agreement, Sparta shall have no obligation to complete or continue providing any warranty obligations.

7.2. Repair, Replace or Refund as Exclusive Remedy. If Client believes there is a defect in the Services such that it does not meet the limited warranty provided above, then Client must notify Sparta in writing within the ninety (90)-day limited warranty period. Sparta's entire liability and Client's exclusive remedy with regard to the limited warranty, shall be, at Sparta's sole discretion, *either* re-performance of the Services, *or* a refund to Client of the amount paid by Client to Sparta as fees hereunder for the Services.

7.3. DISCLAIMER OF OTHER WARRANTIES. EXCEPT FOR THE LIMITED WARRANTY SPECIFICALLY PROVIDED ABOVE IN SECTION 7.1, SPARTA MAKES NO EXPRESS OR IMPLIED WARRANTIES OR REPRESENTATIONS WITH RESPECT TO THIS AGREEMENT, THE SERVICES, THE CODE OR ANY OTHER DELIVERABLES PROVIDED BY SPARTA HEREUNDER. SPARTA SPECIFICALLY DISCLAIMS ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, DESIGN AND NONINFRINGEMENT.

7.4. EXCLUSIVE REMEDY. THE LIMITED WARRANTY AND REPAIR/REPLACE OR REFUND REMEDY SET FORTH ABOVE IN SECTIONS 7.1 AND 7.2 ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES AND REMEDIES, ORAL OR WRITTEN, EXPRESSED OR IMPLIED. NO EMPLOYEE OR AGENT OF SPARTA IS AUTHORIZED TO MODIFY OR ADD TO THE LIMITED WARRANTY OR EXCLUSIVE REMEDY.

8. DISCLAIMER OF LIABILITY.

SPARTA SHALL NOT BE LIABLE FOR ANY (A) SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF PROFITS ARISING FROM OR RELATED TO THE SERVICES, THE CODE OR OTHER DELIVERABLES BY SPARTA HEREUNDER OR A BREACH OF THIS AGREEMENT, INCLUDING DAMAGES ARISING FROM LOSS OF DATA OR PROGRAMMING, LOSS OF REVENUE OR PROFITS, LOSS OF GOODWILL, LOSS OF SYSTEM USE, INTERRUPTIONS TO BUSINESS OR OPERATIONS, FAILURE TO REALIZE SAVINGS OR OTHER BENEFITS, DAMAGE TO EQUIPMENT, AND CLAIMS AGAINST CLIENT BY ANY THIRD PARTY, EVEN IF SPARTA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; (B) DAMAGES (REGARDLESS OF THEIR NATURE) FOR ANY DELAY OR FAILURE BY SPARTA TO PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT DUE TO ANY CAUSE BEYOND SPARTA'S REASONABLE CONTROL; OR (C) CLAIMS MADE A SUBJECT OF A LEGAL PROCEEDING AGAINST OR MEDIATION WITH SPARTA MORE THAN TWO (2) YEARS AFTER ANY SUCH CAUSE OF ACTION FIRST AROSE.

9. LIMITATION OF LIABILITY.

NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, SPARTA'S LIABILITIES UNDER THIS AGREEMENT UNDER ANY THEORY OF LIABILITY, WHETHER BASED IN CONTRACT LAW, TORT LAW, NEGLIGENCE (ACTIVE OR PASSIVE), PRODUCT LIABILITY, INDEMNIFICATION OR OTHERWISE SHALL BE LIMITED TO THE DIRECT DAMAGES RECOVERABLE BY CLIENT UNDER LAW NOT TO EXCEED THE AMOUNT OF FEES PAID BY CLIENT TO SPARTA FOR THE SERVICES, CODE OR OTHER DELIVERABLES THAT CAUSED SUCH LIABILITY OR THAT ARE OTHERWISE THE SUBJECT OF SUCH LIABILITY.

10. ECONOMIC BASIS FOR LIMITATIONS; SURVIVAL.

10.1. Acknowledgement of Economic Basis for Limitations. Client acknowledges and agrees that the fees charged to Client under this Agreement have been negotiated and determined to reflect the fact that Client's remedies and Sparta's liabilities will be limited as expressly set forth in this Agreement. Client acknowledges and agrees that, if the remedies and liabilities were not limited as provided in this Agreement, then the fees charged by Sparta to Client under this Agreement would have been substantially higher.

10.2. Survival of Certain Provisions. The provisions of sections 2, 3, 4, 5, 7, 8 and 9, above, sections 11 and 12, below, and this section 10 shall survive the termination or expiration of this Agreement.

11. NON-SOLICITATION OF SPARTA PERSONNEL.

11.1. Neither Client nor its employees, agents or affiliates shall hire or solicit or endeavor to influence any Sparta Personnel (or other prospective workers whom Sparta introduced to Client and with whom Client had no prior professional contact) to seek employment or a contractor relationship with Client or its employees, agents or affiliates while this Agreement is in effect and for a period of twelve (12) months after termination or expiration of this Agreement, without Sparta's prior written consent.

12. MISCELLANEOUS.

12.1. Governing Law. This Agreement and the rights and obligations of the parties under it shall be governed by, construed and enforced in accordance with the laws of the State of Minnesota without regard to its conflict of law rules.

12.2. Relationship of Parties. The relationship between Sparta and Client is that of independent contractors. Nothing in this Agreement shall be construed as creating an employer-employee relationship, a partnership, or a joint venture between the parties.

12.3. Counterparts; Faxed Signatures. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same instrument. If this Agreement is signed by a party and then faxed, the faxed copy shall be as good as an original, wet-ink signed copy for all intents and purposes.

12.4. Force Majeure. Sparta shall not be in default or breach hereunder or liable to Client for any delay, failure in performance or interruption resulting directly or indirectly from any fire, flood, explosion, natural disaster, power outage, labor trouble, inevitable accident, war, embargo, act of terror, act of God, act or omission of carriers, legal restriction, governmental regulation or order, commercially unreasonable act taken by third parties or any other cause, force or incident beyond Sparta's reasonable control.

12.5. Third Party Beneficiaries. This Agreement is made solely for the benefit of Sparta and Client and their respective permitted successors and assigns. No third party shall have the right to make any claim or assert any right hereunder, and no third party shall be deemed a beneficiary of this Agreement.

12.6. Waiver. The failure of either party at any time to require performance by the other party of any provision of this Agreement shall not affect in any way the full right to require performance at any time thereafter. Nor shall the waiver by either party of a breach of any provision of this Agreement be taken or held to be a waiver of the provision itself. No waiver shall be binding unless executed in writing by the party making the waiver.

12.7. Client's Representations. Client represents and warrants to Sparta that (i) Client has all requisite capacity, power and authority to execute and deliver this Agreement and to perform Client's obligations hereunder; (ii) this Agreement has been duly and validly executed and delivered by Client, and constitutes a valid and binding obligation of Client, enforceable against Client in accordance with its terms; and (iii) in entering this Agreement, Client did not rely on any representations or warranties other than the limited warranty set forth in section 7.1, above.

12.8. Severability. If any provision of this Agreement is determined to be illegal, invalid or unenforceable for any reason: (i) such provision will be fully severable; (ii) this Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement; (iii) the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement; and (iv) in lieu of such illegal, invalid or unenforceable provision, there will be added automatically as a part of this Agreement a legal, valid and enforceable provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible.

12.9. Legal Compliance; Export Controls.

(a) Client shall comply with the provisions of all applicable federal, state, county, and local laws, ordinances, regulations, and codes relative to its use of the Code and any other deliverables provided by Sparta hereunder.

(b) Client acknowledges that the Code and all related technical information are subject to export controls under the U.S. Export Administration Regulation. Client will (i) comply strictly with all legal requirements established under these controls, (ii) cooperate fully with Sparta in any official or unofficial audit or inspection that relates to these controls, and (iii) not export, re-export, divert, transfer, or disclose, directly or indirectly, any Code or related technical information or direct products thereof to any country so restricted by the U.S. Export Administration Regulations, as modified from time to time, or to any national or resident thereof, except in a manner that fully complies with such regulations.

12.10. Interpretation.

(a) Whenever the context of this Agreement requires, the masculine gender includes the feminine or neuter, and the singular number includes the plural. The headings to the sections of this Agreement are solely for the convenience of the parties, and are not intended as an aid in the interpretation of the instrument. Any typographical errors herein are subject to correction.

(b) References to "or" are used in the inclusive sense of "and/or." Whenever the words "include," "includes" or "including" are used in this Agreement they shall be deemed to be

followed by the words "without limitation." The words "hereof," "herein" "hereunder" and "herewith" and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement as a whole and not to any particular provision of this Agreement. Where a word or phrase is defined herein, each of its other grammatical forms has a corresponding meaning.

12.11. Jurisdiction and Venue; Attorneys' Fees.

(a) Subject to the provisions of section 12.12, below, jurisdiction and venue in the event of any litigation or action commenced by one party against the other hereunder, including any litigation pertaining to the enforceability of the below mediation provisions, shall be only in a United States district court or a Minnesota state court having subject matter jurisdiction located in Olmsted County, Minnesota. Each party hereby consents to the personal jurisdiction of the foregoing courts and to venue in either of the foregoing courts. Each party deliberately and affirmatively waives its right to request the United States court located in Hennepin or Ramsey County, Minnesota, to transfer any litigation to a United States court located elsewhere.

(b) Subject to the provisions of section 12.12, below, if any legal action, mediation or other proceeding is instituted to enforce or declare rights under this Agreement, or because of an alleged dispute, breach or default under or in connection with this Agreement, then the prevailing party shall be entitled to recover reasonable attorneys' fees and other costs incurred in that action, mediation or proceeding, in addition to any other relief to which the party may be entitled. The term "attorneys' fees and other costs" shall include attorneys' fees and other costs incurred to enforce or collect any award or judgment or in connection with any bankruptcy proceedings or any appeals of judgments or awards.

12.12. Mediation.

(a) Any controversy or claim arising out of or relating to this Agreement or the parties' rights and remedies under this Agreement shall be decided by mediation or the use of traditional legal proceedings.

12.13. Successors and Assigns. Client may not assign, delegate or otherwise transfer by operation of law, conversion, merger or otherwise this Agreement or any rights or obligations under this Agreement without the prior written consent of Sparta. Subject to the preceding sentence, this Agreement shall be binding upon and shall inure to the benefit of the parties, their successors and permitted assigns.

12.14. Entire Agreement; Amendments. This Agreement, together with Schedules A attached hereto and incorporated herein, constitutes the entire Agreement and understanding between Sparta and Client concerning the subject matter hereof, and cancels, terminates and supersedes all prior or contemporaneous written and oral understandings, agreements, proposals, promises, warranties and representations of the parties respecting any and all subject matter contained herein. This Agreement shall not be altered or amended except by an instrument in writing signed by both of the parties to this Agreement.

12.15. Notices. All notices required or permitted to be given under this Agreement shall be in writing and delivered personally or sent by pre-paid, first class, certified mail, return receipt requested. Any such notice shall be deemed to have been duly given immediately upon personal

delivery or three (3) days after mailing (if mailed by certified mail in accordance herewith). The addresses of the parties for purposes of notices are set forth in the signature blocks below. A party may change its address by giving notice thereof in accordance with this section 12.15. A party may give written notice by other means, which notice shall be effective upon actual receipt.

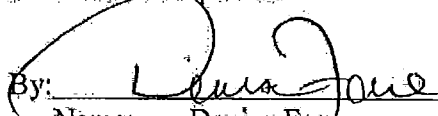
12.16. Concurrence. By executing this Agreement, the parties acknowledge that they: (a) enter into and execute this Agreement knowingly, voluntarily and willingly of their own volition with such consultation with legal counsel as they deem appropriate; (b) have had a sufficient amount of time to consider this Agreement's terms and conditions, and to consult an attorney before signing this Agreement; (c) have read this Agreement, understand all of its terms, appreciate the significance of those terms and have made the decision to accept them as stated herein; and (d) have not relied upon any representation or statement not set forth herein.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above.

[Signatures follow on next page]

SPARTA:

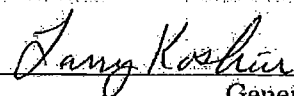
SPARTA CONSULTING, INC.,
a California corporation

By: 
Name: Denise Ferre
Title: CFO

Address: 111 Woodmere Road,
Suite 200
Folsom, CA 95630

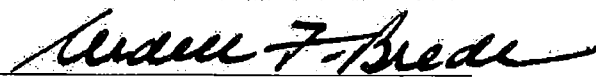
CLIENT:

ROCHESTER PUBLIC UTILITIES


General Manager

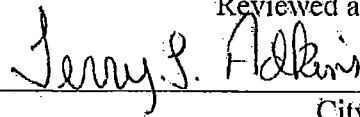
Larry Koshive
Printed Name

CITY OF ROCHESTER


Mayor

Ardeell F. Breda
Printed Name

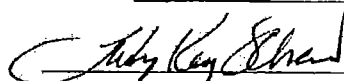
Reviewed as to Form:


City Attorney

Terry L. Adkins
Printed Name

Attest:

Dated: 03-07-13


City Clerk

SCHEDULE A
to
MASTER SERVICES AGREEMENT

Statement of Work

Project Details:

Client/Address:

Consultant Name:

Hourly Bill Rate:

Project Start Date:

Project Duration:

Expenses:

Approval:

SPARTA CONSULTING, INC.,
a California corporation

By: _____

Name: _____

Title: _____

Date: _____

By: _____

Name: _____

Title: _____

Date: _____

ACKNOWLEDGMENT OF CORPORATION

AUTHORIZED SIGNATURE
Form 004544-01

STATE OF California }

COUNTY OF Sacramento }

On this 11 day of February, 2013, before me appeared

Denise Ferre to me personally known, who, being by me
Name of Officer

Duly sworn, did say that he/she is the Chief Financial Officer of Sparta Consulting, Inc.
Title *Name of Corporation*

111 Woodmere Road, Suite 200, Folsom, CA, 95630
Address *City & State* *Zip Code*

A corporation; and that said instrument was executed in behalf of said corporation

by authority of its Board of Directors; and that said Denise Ferre
Name of Officer

Acknowledge said instrument to be the free act and deed of said corporation.

NOTARIAL SEAL

See Attached

Notary Public

County

My Commission Expires: _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1180

State of California

County of Sacramento

On February 11, 2013 before me, Mercedes L. Walker, Notary Public

Here Insert Name and Title of the Officer

personally appeared Denise Ferre

Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(x) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: Mercedes R. Walker

Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Acknowledgement of Corporation

Document Date: 2/11/13

Number of Pages: 1

Signer(s) Other Than Named Above: N/A

Capacity(ies) Claimed by Signer(s)

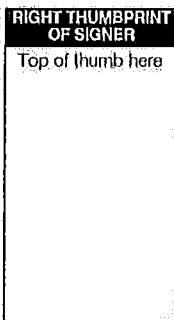
Signer's Name: Denise Ferre

Signer's Name: N/A

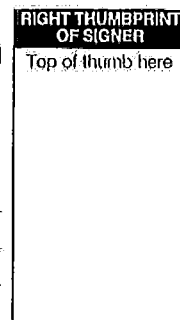
Corporate Officer - Title(s): CFO

Corporate Officer - Title(s):

- Individual
 Partner - Limited General
 Attorney in Fact
 Trustee
 Guardian or Conservator
 Other:



- Individual
 Partner - Limited General
 Attorney in Fact
 Trustee
 Guardian or Conservator
 Other:



Signer Is Representing: Sparta Consulting, Inc.

Signer Is Representing:



RESOLUTION

BE IT RESOLVED by the Public Utility Board of the City of Rochester, Minnesota, to approve a contract agreement with Sparta Consulting, Inc. and to request the Mayor and the City Clerk to execute the statement of work for

IMPLEMENTATION OF SAP Human Capital Management (HCM)

The amount of the statement of work agreement to be FIVE HUNDRED ONE THOUSAND, THIRTY AND 00/100 DOLLARS (\$501,030.00).

Passed by the Public Utility Board of the City of Rochester, Minnesota, this 26th day of March, 2013.

President

Secretary