

FOR BOARD ACTION

Agenda Item # 10

Meeting Date:

9/26/06

SUBJECT: Addendum to SAP contract and Implementation of SAP's CCS Module

PREPARED BY: Patty Hanson, Manager of Marketing and External Affairs

ITEM DESCRIPTION:

Our customer information system (CIS) is an "in-house" system which was developed in the early 1980's and currently runs on an AS400 platform. Traditionally, it has been defined as the tool used by the Customer Service area to track customer activity and bill processing for our commodity services; electric and water.

The system has matured to a point where it requires a significant amount of manual intervention in order to complete processing. The structure of the system is interfering with our ability to effectively modify and extend the functionality to support self-service tools, offerings, complex pricing, expanded billing options, and relationship management. Due to the enormous resource commitment it takes to make changes, add new program offerings, and maintain integration points between other non-CIS applications, it is no longer feasible to invest additional functionality into the existing architecture.

SAP was selected as the software to replace our existing CIS system. Our existing general ledger and plant maintenance systems are SAP. The total project cost is \$3,000,000. Price components of the project include:

Software cost	\$ 273,000
Hardware	\$ 200,000
Implementation cost	\$2,259,672
External resources	\$ 247,480
Training	\$ 20,000

There is \$800,000 in the 2006 budget which will go towards the software and hardware. The additional costs will be part of the 2007 budget. Approval of the total project costs will allow staff to complete the project schedules and development the approach. Staff will make a presentation on the project.

UTILITY BOARD ACTION REQUESTED:

The Board is requested to approve the Addendum to the existing SAP contract and project components costs for a total of \$3,000,000 and request the Common Council to approve and authorize the Mayor and the City Clerk to execute the Addendum subject to the approval of the 2007 RPU budget by the Board and Council for the 2007 portion of the project costs and review of the documents by the City Attorney.

Larry Kashine 9-22-06
General Manager Date
by R. Wilson

ROCHESTER PUBLIC UTILITIES

Appendix 3
effective September 19, 2006 ("Appendix")
to
SAP PUBLIC SERVICES, INC. ("SAP")
(FORMALLY SAP PUBLIC SECTOR AND EDUCATION, INC.)
SOFTWARE LICENSE AGREEMENT effective February 2, 1998 ("Agreement")
with
The City of Rochester, a Minnesota Municipal Corporation, Acting Through Its Rochester Public Utility Board
("Licensee")

This Appendix is hereby annexed to and made a part of the Agreement specified above. In each instance in which provisions of this Appendix contradict or are inconsistent with the provisions of the Agreement, the provisions of this Appendix shall prevail and govern.

1. NAMED USER DEFINITIONS:

- 1.1 "SAP Application Professional User" is a Named User who performs operational related roles supported by the Software and includes the rights granted under the Employee User.
- 1.2 "SAP Application Limited Professional User" is a Named User who is an employee of Business Partners performing limited operational roles supported by the Software.
- 1.3 "SAP Application Developer User" is a Named User who uses development and administration tools provided with the Software for the purpose of modifying, deploying and managing SAP Software. The Developer User (1) does include the rights granted under the Employee User and (2) does not include the rights granted under the (a) Professional User and/or (b) Limited Professional User.

2. LICENSED SOFTWARE: The Software licensed to Licensee pursuant to this Appendix consists of the components identified below and specified as being licensed ("Software"). Only individuals licensed as Named Users hereunder are permitted to Use the SAP Software and third party Software licensed herein (including optional Software). Such Use shall be in accordance with their respective Named User type and in accordance with identified licensed Level. At SAP's request, Licensee shall deliver to SAP a report, as defined by SAP, evidencing Licensee's usage of the Software. SAP agrees that the initial request for such report will occur twenty-four (24) months following the effective date of the Agreement or twelve (12) months following the effective date of this Appendix, whichever occurs first, and will continue annually thereafter.

Licensed SAP Software may utilize limited functionality of other SAP Software products. Unless Licensee has expressly licensed (under this or a separate Appendix) the other SAP software utilized by the licensed SAP Software, Licensee's Use of such other SAP Software is limited to access by and through the other SAP Software for the sole purpose of enabling performance of the licensed SAP Software.

There are no applicable country/language specific versions licensed by Licensee from SAP hereunder. In the event Licensee Uses the SAP Software to build and/or operate a custom developed or third party application, additional license fees may be required.

2.1 SAP APPLICATION

2.1.1 SAP APPLICATION NAMED USERS:

	Total Number of Named Users Licensed:		
<u>SAP Application Professional</u> ⁽¹⁾	<u>SAP Application Limited Professional</u>	<u>SAP Application Developer</u>	
SAP Named Users	25	175	1

(1) Minimum of ten SAP Application Professional Users required.

2.1.2 SAP GENERIC APPLICATION PACKAGES LICENSED:

ERP ⁽¹⁾	<u>Yes</u> X	<u>No</u>
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(1) Required to be licensed for all Software listed below except Software identified with an “*”.

2.2 OPTIONAL CROSS INDUSTRY SOFTWARE LICENSED:

“X” if Licensed	Software	License Metric	Licensed Level
X	Payroll Processing ⁽¹⁾	Master Records	500

(1) Excludes U.S. Payroll Tax Processing which, if licensed from SAP, must be licensed via a separate Appendix and must equal or exceed the Licensed Level for Payroll Processing.

2.3 OPTIONAL INDUSTRY SOFTWARE LICENSED:

Utilities Packages:

“X” if Licensed	Industry Software	License Metric	Licensed Level
X	SAP Technical Asset Management for Utilities	Number of Points of Deliveries (PODs) (Ten Thousands) Number of Plant Units	1 2
X	SAP Energy Data Management for Utilities	Number of Points of Deliveries (PODs) (Ten Thousands)	9
X	SAP Customer Relationship & Billing for Utilities	Number of Contracts (Ten Thousands)	6
X	SAP Customer Financial Management for Utilities	Number of Contract Accounts (Ten Thousands)	6
X	SAP Collaborative Services Management for Utilities	Number of Points of Deliveries (PODs) (Ten Thousands)	9

SAP NetWeaver:

“X” if Licensed	Industry Software	License Metric	Licensed Level
X	Exchange Infrastructure (XI) Base Engine ⁽¹⁾	Number of Gigabyte’s per Month	1000

(1) Exchange Infrastructure Base Engine includes use of the following Standard Technical Protocol Adapters: SAP NetWeaver Adapter for IDOCs, RFCs, File/FTP, Http(s), SOAP, JMS, JDBC, Mail Protocols (pop,imap,smtp), SAP BC Protocol to connect Software, and to non-SAP applications. Additional types of adapters are available for additional license fees.

2.4 OPTIONAL SUPPLEMENTARY SOFTWARE LICENSED:

X	Interactive Forms based on Adobe	Number of SAP Named Users	Up to 200
		Number of Interactive Form Templates	Up to 20

2.5 DATABASE: MS SQL

3. LICENSE FEE AND PAYMENT: The Net License Fee to Licensee for the Software specified above is USD 563,045. SAP agrees to provide a conversion/migration of USD 321,165 for previous Licensee paid for SAP Software which results an invoice payable amount of USD 241,880 which shall be invoiced on or before September 28, 2006 and is payable net thirty (30) days from date of invoice.

4. INSTALLATION: For Software to be installed on a specific Licensee or Affiliate Designated Unit within the Territory, Licensee shall provide SAP with written notice of the type/model and serial number and location of each Designated Unit and the number of Users allocated to each such Designated Unit prior to such installation. Such notice shall be in

a form materially similar to Schedule 1 attached hereto and is to be sent to: SAP Contracts Department, Attention: Director of Contracts, 3999 West Chester Pike, Newtown Square, PA 19073.

5. **DELIVERY:** Delivery of the above-specified Software and Documentation is estimated to take place in September, 2006. Physical delivery will be free on board shipping point to the Licensee at the following location:
-
6. **MAINTENANCE FEE AND PAYMENT:** Maintenance service offered by SAP is set forth in the Maintenance Schedule to the Agreement. Maintenance at the site(s) specified in the Maintenance Schedule to the Agreement shall commence as of the first day of the month following initial delivery of the Software.
- The Maintenance Fee for the Software licensed under this Appendix is priced at the then current factor in effect (currently 17%) multiplied by the then current Net License Fee for the licensed Software. The current annual Maintenance Fee for the Software licensed under this Appendix is USD 95,717 (17% of USD 563,045). Maintenance Fees are subject to change once during a calendar year upon ninety (90) days notice to Licensee. Maintenance fees set forth above do not include federal, state or local taxes. Maintenance Fees are invoiced on an annual basis effective January 1 of a calendar year and payable Net 30 days from date of invoice. Any Maintenance Fees due prior to January 1 are invoiced on a pro-rata basis for the given calendar year in effect.
7. **THIRD-PARTY DATABASE:**
- Software licensed hereunder currently requires a third-party database, which has been licensed hereunder as a runtime version. Such runtime version shall be limited to Use by Licensee solely in conjunction with Use of the Software licensed hereunder, and cannot be used to run any third party software not licensed hereunder.
- In the event Licensee uses the licensed database other than as specified above, a full license, including programming tools provided through such third-party supplier must be licensed directly from a third party database supplier.
8. **PUBLICITY:** In consideration of the additional Software discount, Licensee agrees to participate in reference activities for the Software including but not limited to reference calls and stories, press testimonials, site visits, SAPPHIRE participation, etc., at times mutually agreeable to the parties. SAP will make reasonable efforts to avoid having the reference services unreasonably interfere with Licensee's business.
9. **R/3 CONVERSION.** Notwithstanding anything else in this Appendix 3 to the contrary, Licensee also remains licensed to Use, in accord with the User types as defined in this Appendix 3, all R/3 Software previously licensed by Licensee under Appendix 1 to the Agreement effective February 2, 1998 and all such R/3 Software shall be deemed included in the SAP Software which is licensed herein in Section 2 of this Appendix.
10. **VALIDITY OF OFFER:** The validity of this Appendix will expire September 28, 2006, unless sooner executed by Licensee, or extended in writing by SAP.

Accepted by:
SAP Public Services, Inc.
(SAP)

By: _____

Title: _____

Date: _____

Accepted by:
Rochester Public Utilities
(Licensee)

By: _____

Title: _____

Date: _____

Schedule 1 to Appendix 3 effective September 19, 2006

Designated Unit Information

1. Name of Licensee or Subsidiary where Designated Unit is located: _____

2. Designated Unit(s) to be identified by Licensee to SAP in writing.

Type/Model No.: _____

Serial No.: _____

Location of Designated Unit: _____

Telephone Number: _____

Software Delivery Contact Person: _____

3.

Hardware Information		Operating System		Database*	
Manufacturer	Model	Manufacturer	Release	Manufacturer	Release

* Note: When Database is licensed from the vendor directly, insert P.O. Number _____, Invoice Number _____ and Date _____

Name Date

Title

(Licensee)

Appendix 4
effective September 19, 2006 ("Appendix")
to
SAP PUBLIC SERVICES, INC. ("SAP")
(FORMALLY SAP PUBLIC SECTOR AND EDUCATION, INC.)
SOFTWARE LICENSE AGREEMENT effective February 2, 1998 ("Agreement")
with

The City of Rochester, a Minnesota Municipal Corporation, Acting Through Its Rochester Public Utility Board ("Licensee")

This Appendix is hereby annexed to and made a part of the Agreement specified above. The following Articles and Provisions of the Agreement are specifically incorporated herein by reference: 1 (Definitions), 2 (License Grant), 4 (Price and Payment), 5 (Term and Termination), 6.2 (SAP Proprietary Information), 6.2 (Protection of Proprietary Information), 7.4 (Express Disclaimer), 10 (Limitation of Liability), 12 (Assignment) and 13 (General Provisions). Unless stated otherwise herein, all other provisions of the Agreement are specifically excluded with respect to this Appendix. In each instance in which provisions of this Appendix contradict or are inconsistent with the incorporated provisions of the Agreement, the provisions of this Appendix shall prevail and govern.

1. LICENSE GRANT:

1.1 Software licensed by Licensee from SAP hereunder is as follows:

RWD Info Pak™ Suite with Simulator Or Simulator only

LICENSED:
NUMBER of LICENSED SAP USERS
Professional and
Limited Professional Users

RWD Info Pak™ Bundled Package with Simulator (including Publisher, Glossary, Web Architect and Simulator)	200
RWD Info Pak™ Help Launchpad	200

DATABASE: MS SQL Server

2. LICENSE FEE AND PAYMENT: The Net License Fee to Licensee for the RWD software licensed in Item 1 above is USD 19,120, which shall be invoiced on September 28, 2006, and is payable net thirty (30) days of the date of invoice.

In the event Licensee exceeds the License Grant specified herein, and/or Licensee desires to expand the License Grant specified herein to include additional Affiliates, divisions or business units not identified herein Licensee agrees to provide written notice to SAP. SAP reserves the right to modify the Agreement to reflect such increase in the License Grant, recalculate the Net License Fee and Maintenance Fee accordingly and invoice Licensee for such increased license and maintenance fees based on SAP's then current pricing in effect.

Upon SAP's reasonable request, Licensee shall deliver to SAP a report, as defined by SAP, evidencing Licensee's usage of the RWD software licensed under this Agreement.

3. INSTALLATION: For the RWD software to be installed at a specific Licensee and/or Affiliate site within the Territory, Licensee shall provide SAP with written notice of the location of each computer and the number of Users, licensed in Item 1, allocated to each such device within sixty (60) days of the use of such device. Such notice shall be sent to: SAP Contract Department, Attention: Director of Contracts, 3999 West Chester Pike, Newtown Square, PA 19073 Licensee shall be responsible for installation of the RWD Software.

4. DELIVERY: Delivery of the above-specified RWD software is by download only through the SAP Service Marketplace website and estimated to be available to Licensee through the website in September, 2006. Initial delivery of the above specified Software will be to the following location: _____

5. MAINTENANCE FEE AND PAYMENT:

5.1 To the degree RWD makes such maintenance services generally available to SAP, Licensee may request and SAP shall provide maintenance service ("Maintenance") with respect to the RWD software, so long as Licensee is subscribing for and paying for Maintenance. Maintenance currently includes the delivery of releases and versions of the RWD software made available to SAP, support via telephone, coordination of defect correction with RWD, and SAP's Online Software Services. Maintenance, from SAP, for the RWD software licensed hereunder is limited to the United States sites previously identified in the Agreement and related Appendices. Notwithstanding anything to the contrary in the Agreement, Licensee acknowledges RWD's

standard hours of maintenance service are Monday through Friday, 8:30 a.m. to 5:30 p.m., eastern standard time, except for holidays as observed by RWD; further, Licensee acknowledges that for each release, RWD will offer maintenance services through SAP only for the most recent version and the version immediately prior thereto. After a new release becomes commercially available, RWD will provide maintenance services through SAP only for such new release and, until a new version of the new release becomes available, for the latest version of the prior release. In order to receive Maintenance hereunder, Licensee must make all required remote support connections to each Designated Unit, at its expense, as requested by SAP.

Licensee shall appoint no more than 5 individuals who are knowledgeable in the operation of the RWD Software to serve as primary contacts in the event that Licensee needs to contact RWD for support. The identification and number of Key Users will be specified in Schedule 1 to this Appendix. All of Licensee's support inquiries shall be initiated solely through these Key Users. Licensee shall have the right to appoint substitute individuals to serve as Key Users provided the names of the new individuals and the individuals being substituted are communicated to SAP in writing. Licensee shall have the right to appoint additional individuals to serve as Key Users upon mutual agreement of the Licensee and SAP.

5.2 Maintenance at such United States site(s) shall commence October 1, 2006. Maintenance Fees for the Software licensed under this Appendix, for the total number of Users specified above, is USD 3,250 per year. Maintenance fees are subject to change upon ninety (90) days notice to Licensee. Maintenance fees set forth above do not include federal, state or local taxes. Maintenance Fees are invoiced on an annual basis effective January 1 of a calendar year and payable Net thirty (30) days from date of invoice. Any Maintenance Fees due prior to January 1 are invoiced on a pro-rata basis for the given calendar year in effect.

5.3 In the event Licensee elects not to commence Maintenance upon the first day of the month following initial delivery of the RWD software, or Maintenance is otherwise declined for some period of time, and is subsequently requested or reinstated, SAP will invoice Licensee the accrued maintenance service fees associated with such time period plus a reinstatement fee.

6. **LIMITATION OF LIABILITY:** In no event shall SAP's total liability for damages of any kind or nature in any way arising from or related to the RWD software licensed hereunder exceed an amount equal to the Net License Fee identified in Item 2 hereof.

7. **THIRD-PARTY DATABASE:**

7.1 Software licensed hereunder currently requires a third-party database, which has been licensed hereunder as a runtime version. Such runtime version shall be limited to Use by Licensee for Productive and Non-Productive Use of the software licensed hereunder. Licensee may Use the SAP development workbench to customize the database scheme and to create Modifications and Extensions to the software, as well as writing in-house developments. In the event Licensee uses the licensed database other than as specified above, a full license, including programming tools provided through such third-party supplier must be licensed directly from a third party database supplier.

8. **VALIDITY OF OFFER:** The validity of this Appendix will expire September 28, 2006, unless sooner executed by Licensee, or extended in writing by SAP.

Accepted by:

SAP Public Services, Inc.
SAP

By: _____

Title: _____

Date: _____

Accepted by:

Rochester Public Utilities
Licensee

By: _____

Title: _____

Date: _____

**Schedule 1
to Appendix 4 effective September 19, 2006**

Software and User Allocation

Licensee -- please assist with inserting this information

Contact Data

Customer Name:	
*Shipping Address:	
City/State/Zip:	
Contact Name:	
Contact Phone Number:	Contact Fax Number:
Contact E-Mail Address:	

* Shipping address must be a street address, PO Box is not sufficient.

Products Licensed:

	NUMBER of LICENSED SAP Professional and Limited Professional USERS	NUMBER of LICENSED SAP Employee USERS
RWD Info Pak Bundled Package with Simulator	200	
RWD Info Pak Bundled Package without Simulator		
RWD Info Pak Launchpad	200	
RWD Info Pak Publisher / Glossary Only		
RWD Omni Help Only		
RWD Info Pak Simulator Only		

Account Executive Name:		Phone No.:	
		Fax No.:	
Date Form Completed:	Contract Start Date:	Maint. Start Date:	
		Maint Fee:	

Appendix 5
effective September 19, 2006 ("Appendix")
to
SAP PUBLIC SERVICES, INC. ("SAP")
(FORMALLY SAP PUBLIC SECTOR AND EDUCATION, INC.)
SOFTWARE END-USER LICENSE AGREEMENT effective February 2, 1998 ("Agreement")
with

The City of Rochester, a Minnesota Municipal Corporation, Acting Through its Rochester Public Utility Board ("Licensee")

This Appendix is hereby annexed to and made a part of the Agreement specified above. The following Articles and Provisions of the Agreement are specifically incorporated herein by reference: 1 (Definitions), 2 (License Grant), 4 (Price and Payment), 5 (Term and Termination), 6.1 (SAP Proprietary Information), 6.2 (Protection of Proprietary Information), 7.4 (Express Disclaimer), 10 (Limitation of Liability), 12 (Assignment) and 13 (General Provisions). Unless stated otherwise herein, all other provisions of the Agreement are specifically excluded with respect to this Appendix. In each instance in which provisions of this Appendix contradict or are inconsistent with the incorporated provisions of the Agreement, the provisions of this Appendix shall prevail and govern.

1. LICENSE GRANT:

1.1 Software licensed by Licensee from SAP hereunder is as follows:

BSI SOFTWARE PRODUCT LICENSED:

	<u>Master Records Licensed</u>
U.S. Payroll Tax Processing (TaxFactory)	500

1.2 The BSI Software is licensed for Use in conjunction with the payroll functionality contained in the Software by appropriately licensed Named Users for the number of HR Master Records identified above. In addition, the license for the BSI Software is limited for Use on a single Platform at a time (with the exception of a Platform migration period as BSI may allow). For purposes herein, the term "Platform" shall mean a single BSI Supported Configuration of the following; a single database, single server, single client software, and single operating system. For purposes herein, "BSI Supported Configuration" shall mean a configuration for which BSI makes support available for SAP Licensees of the BSI Software. Unless expressly stated otherwise herein, this Appendix does not include a license to use such third party database, server, client software, and operating system. If Licensee wishes to change the Platform, SAP shall allow such change to the extent and under the conditions BSI generally makes available to SAP. As of the effective date of this Appendix, a Platform change can be made for a fee of USD 500. Licensee shall pay SAP such fee net thirty (30) days from date of invoice.

1.3 DATABASE: MS SQL Server

2. LICENSE FEE AND PAYMENT: The total Net License Fee to Licensee for the BSI Software licensed in Item 1 above is USD 12,000 which shall be invoiced on or before September 28, 2006 and is payable net thirty (30) days from date of invoice.

In the event Licensee exceeds the License Grant specified herein, and/or Licensee desires to expand the License Grant to additional Affiliates, divisions or business units not identified herein, Licensee agrees to provide written notification to SAP. SAP reserves the right to modify the Agreement to reflect such increase in the License Grant, recalculate the Net License Fee and Maintenance Fee accordingly and invoice Licensee for such increased license and maintenance fees, based on SAP's then current pricing in effect.

Upon SAP's reasonable request, Licensee shall deliver to SAP a report, as defined by SAP, evidencing Licensee's usage of the Software licensed under this Agreement.

3. INSTALLATION: For Software to be installed at a specific Licensee and/or Affiliate site within the Territory, Licensee shall provide SAP with written notice of the location of each computer and the number of Master Records, licensed in Item 1, allocated to each such device within sixty (60) days of the use of such device. Such notice shall be in a form materially similar to Schedule 1 attached hereto and is to be sent to: SAP Contract Department, Attention: Director of Contracts, 3999 West Chester Pike, Newtown Square, PA 19073. Licensee shall be responsible for installation of the BSI Software.

4. DELIVERY: Delivery of the BSI Software is available only by electronic download. Initial delivery of the above-specified BSI Software is estimated to take place in September 2006, for planned Use on the following Platform:

Operating System _____,
 Database System _____,
 Server _____

Client Software _____,

Initial delivery of the above specified Software will be to the following person for the following location:

Contact Name _____
Contact Title _____
Contact Phone No. _____
Contact Fax No. _____
Contact e-mail _____
Contact Address _____

5. MAINTENANCE FEE AND PAYMENT:

5.1 To the degree BSI makes such services generally available to SAP, Licensee may request and SAP shall provide maintenance service ("Maintenance") with respect to the BSI Software. Maintenance currently includes the delivery of releases and versions of the BSI Software made available to SAP, support via telephone, coordination of defect correction with BSI, and SAP's Online Software Services. Maintenance, from SAP, for the BSI Software licensed hereunder is limited to the sites previously identified in the Agreement and related Appendices, and is limited to a single Platform. In order to receive Maintenance hereunder, Licensee must make all required remote support connections to each Designated Unit, at its expense, as requested by SAP.

5.2 Maintenance at such site(s) shall commence upon the first day of the month following initial Delivery of the BSI Software. Maintenance Fees for the Software licensed under this Appendix, for the total number of Users specified above is USD 5,040 (42% of USD 12,000) per year. Maintenance Fees are subject to change upon ninety (90) days notice to Licensee. Maintenance fees set forth above do not include federal, state or local taxes. Maintenance Fees are invoiced on an annual basis effective January 1 of a calendar year. Any Maintenance Fees due prior to January 1 are invoiced on a pro-rata basis for the given calendar year in effect.

5.3 In the event Licensee elects not to commence Maintenance upon the first day of the month following initial delivery of the BSI Software, or Maintenance is otherwise declined for some period of time, and is subsequently requested or reinstated, SAP will invoice Licensee the accrued Maintenance Fees associated with such time period plus a reinstatement fee.

6. LIMITATION OF LIABILITY: In no event shall SAP's total liability for damages of any kind or nature in any way arising from or related to the BSI Software licensed hereunder exceed an amount equal to the Net License Fee identified in Item 2 hereof.

7. THIRD-PARTY DATABASE:

Software licensed hereunder currently requires a third-party database, which has been licensed hereunder as a runtime version. Such runtime version shall be limited to Use by Licensee for Productive and Non-Productive Use of the Software licensed hereunder. Licensee may Use the SAP development workbench to customize the database scheme and to create Modifications and Extensions to the Software, as well as writing in-house developments.

In the event Licensee uses the licensed database other than as specified above, a full license, including programming tools provided through such third-party supplier must be licensed directly from a third party database supplier.

8. GENERAL PROVISIONS:

Notwithstanding anything herein to the contrary, SAP may assign the BSI Software license granted herein, including maintenance, to BSI upon written notice to Licensee. In the event of such assignment, should Licensee desire Maintenance, Licensee should negotiate a separate service agreement directly with BSI.

9. VALIDITY OF OFFER: The validity of this Appendix will expire September 28, 2006, unless sooner executed by Licensee, or extended in writing by SAP.

Accepted by:

SAP Public Services, Inc.
(SAP)

By: _____

Title: _____

Date: _____

Accepted by:

Rochester Public Utilities
(Licensee)

By: _____

Title: _____

Date: _____

(Appendix 5)

Amendment 1
issued September 19, 2006
to
SAP PUBLIC SERVICES, INC ("SAP")
(FORMALLY SAP PUBLIC SECTOR AND EDUCATION, INC.)
SOFTWARE END-USER LICENSE AGREEMENT effective February 2, 1998 ("Agreement")
with

The City of Rochester, a Minnesota Municipal Corporation, Acting Through Its Rochester Public Utility Board ("Licensee")

As of the issuance date of September 19, 2006, this Amendment modifies the above referenced Agreement between the parties. In each instance in which the provisions of this Amendment contradict or are inconsistent with the provisions of the Agreement, the provisions of this Amendment shall prevail and govern.

SAP and Licensee agree that the Agreement, effective February 2, 1998, is modified as follows:

1. Section 1, **DEFINITIONS**, of the Agreement:

(a) Delete the following definitions in their entirety:

- 1.1 APAB/4 Development Workbench Users
- 1.3 Basis/Workflow Users
- 1.8 Enterprise Office/HR Users
- 1.10 Information Users
- 1.18 Requisition/Confirmation Users
- 1.20 Session Users
- 1.26 Users

(b) In 1.12, delete the definition of "Named Users or Operational Users" in its entirety and insert the following in lieu thereof:

"1.12 **Named Users**" means any combination of users licensed under this Agreement."

2. Section 2., **License Grant**, of the Agreement:

In 2.1(b), delete this provision in its entirety and insert the following in lieu thereof:

"(b) Licensee agrees to install the Software only on hardware identified by Licensee pursuant to this Agreement that has been previously approved by SAP in writing or otherwise officially made known to the public as appropriate for Use or interoperation with the Software (the "Designated Unit"). Any individuals that Use the Software including employees or agents of Subsidiaries and Business Partners, must be licensed as Named Users. Use may occur by way of an interface delivered with or as a part of the Software, a Licensee or third-party interface, or another intermediary system.

3. Section 4.1, **License Fees**, delete this section in its entirety and insert the following in lieu thereof:

"4.1 **License Fees**. Licensee shall pay to SAP license fees for the Software and maintenance fees on the terms in Appendices hereto. Fees for Services will be paid as set forth in the Professional Services Schedule hereto. Any fees not paid when due shall accrue interest at the rate of 18% per annum, but not to exceed the maximum amount as allowed by law.

4. Section 6.2, **Proprietary Information**, of the Agreement, delete the words "including identifiable Business Third Parties" in their entirety from the penultimate sentence.

5. Exhibit B, **AFFILIATE USE AGREEMENT**, to the Agreement, delete in its entirety and insert the attached Exhibit B in lieu thereof.

6. The parties agree that the attached Appendix 3, issued September 19, 2006 will supersede in all respects Appendix 1 effective February 2, 1998 and Appendix 2 effective February 15, 2000, between Licensee and SAP. The parties hereby terminate Appendix 1 effective February 2, 1998 and Appendix 2 effective February 15, 2000, and notwithstanding its provisions, none of its terms or conditions shall survive termination. All Proprietary Information provided to Licensee thereunder shall be covered under the terms and conditions of the Agreement and Appendix 3, issued September 19, 2006.

EXCEPT AS HEREIN PROVIDED, NONE OF THE PROVISIONS OF THE AGREEMENT SHALL BE AFFECTED BY THIS AMENDMENT.

Accepted By:

SAP Public Services, Inc.
(SAP)

By: _____

Title: _____

Date: _____

Accepted By:

Rochester Public Utilities
(Licensee)

By: _____

Title: _____

Date: _____

SAP CONFIDENTIAL & SUBJECT TO NON-DISCLOSURE

EXHIBIT B
to
SAP PUBLIC SERVICES, INC. ("SAP")
SOFTWARE END-USER LICENSE AGREEMENT effective February 2, 2006 ("Agreement")
with

The City of Rochester, a Minnesota Municipal Corporation, Acting Through Its Rochester Public Utility Board ("Licensee")

AFFILIATE USE AGREEMENT

This Affiliate Use Agreement is made effective as of the _____ day of _____, 200_ between SAP Public Services, Inc., a Delaware Corporation, with offices at 3999 West Chester Pike, Newtown Square, PA 19073 ("SAP") and _____ a _____ ("Affiliate").
corporation, with offices at _____

1. Affiliate is entitled to have Named Users Use the Software on the Designated Unit(s) identified in the SAP Public Services, Inc./Rochester Public Utilities Software End-User License Agreement ("Agreement").
2. Affiliate agrees to abide by and be bound by all of the terms and conditions of the Agreement applicable to Affiliate and applicable to Licensee. SAP may directly enforce all such terms and conditions against it directly.
3. Affiliate agrees that it's right to Use SAP Software and receive Maintenance services shall be governed solely by the Agreement. In the event that the Agreement is terminated, this Affiliate Use Agreement is terminated or if Affiliate ceases to meet the definition of "Affiliate" therein, Affiliate agrees that all of its rights to the Software will cease effective as of the termination date.

IN WITNESS WHEREOF, the undersigned, intending to be legally bound, have dully executed this Affiliate Use Agreement.

SAP Public Services, Inc
(SAP)

(Affiliate)

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____



RESOLUTION

BE IT RESOLVED by the Public Utility Board of the City of Rochester, Minnesota, that the Common Council of the said City is requested to approve an Addendum in the amount of \$273,000.00 to the existing contract with SAP Public Services, Inc. (SAP), subject to the approval of the 2007 RPU budget by the Board and Council for the 2007 portion of the project costs and review of the documents by the City Attorney, and that the Common Council authorize the Mayor and the City Clerk to execute the agreement for:

Software and Hardware
As described in the attached documents labeled
Appendices 3, 4, 5, Amendment 1, and Exhibit B

BE IT FURTHER RESOLVED that the implementation, external resources and training for the SAP CCS module not exceed \$2,727,000.00, and the total project not to exceed \$3,000,000.00.

Passed by the Public Utility Board of the City of Rochester, Minnesota, this 26th day of September, 2006.

President

Secretary