RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE CHIEF INFORMATION OFFICER TO ENTER INTO AN AGREEMENT WITH APPLICATIONS SOFTWARE TECHNOLOGY (AST) CORPORATION TO UPGRADE THE CURRENT ORACLE E-BUSINESS SUITE (EBS) 11.5.10.2 to R12.1.3 AT A FIXED FEE COST OF SEVEN HUNDRED FORTY-SEVEN THOUSAND NINE HUNDRED NINETY-FIVE DOLLARS ($747,995.00).

_____

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, that the Chief Information Officer is hereby authorized to enter into an agreement with Applications Software Technology (AST) Corporation to upgrade the current Oracle E-Business Suite (EBS) 11.5.10.2 to R12.1.3 at a fixed fee cost of $747,995.00, and provide related assistance for Retro Pay and OAB enrollment.

The R12 upgrade is a technological upgrade for all current modules with customizations only as required to maintain current functionality and to be ready in time for required federal government regulatory changes to be implemented, that are expected to begin in November of 2013. Equipment and licensing cost is $338,217.00 to be purchased from existing state contracts.

ADOPED: _____, 2012

/mms

City of Chattanooga

Resolution/Ordinance Request Form

Date Prepared: November 1, 2012

Preparer: Information Systems

Brief Description of Purpose for Resolution/Ordinance: Res./Ord. # _____ **Council District #**

A resolution authorizing the City of Chattanooga to enter into an agreement with AST (Application Software Technology), Inc.

to upgrade the current city-wide Oracle E-Business Suite (EBS) from Release 11.5.10.2 to Release 12.2 (R12), and provide related

assistance for Retro Pay and OAB enrollment. The R12 upgrade is a technological upgrade for all current modules with customizations

only as required to maintain current functionality and to be ready in time for required federal government regulatory changes to be

implemented, that are expected to begin in November of 2013.

Name of Vendor/Contractor/Grant, etc.	AST	New Contract/Project? (Yes or No) Yes
Total project cost $	747,995.00	Funds Budgeted? (YES or NO)
Total City of Chattanooga Portion $		Provide <u>Fund</u>
City Amount Funded $		Provide <u>Cost Center</u>
New City Funding Required $		Proposed Funding Source if not budgeted
City's Match Percentage %		Grant Period (if applicable)

List all other funding sources and amount for each contributor.

Amount(s)   Grantor(s)

$ _____   _____

$ _____   _____

$ _____   _____

Agency Grant Number

CFDA Number if known

Other comments: (Include contingency amount, contractor, and other information useful in preparing resolution)

AST Cost - 747,995

Equipment & Licensing Cost - 338,217 (to be purchase from existing state contracts)

Approved by: _____

Reviewed by: FINANCE OFFICE   DESIGNATED OFFICIAL/ADMINISTRATOR

Please submit completed form to @budget, City Attorney and City Finance Officer

Revised: 1/26/09

MASTER AGREEMENT

For Oracle R12 Upgrade Services

Between

City of Chattanooga, TN

And

Applications Software Technology (AST) Corporation.

Table of Contents

This **MASTER AGREEMENT** ("Agreement") is made and entered into as of ___ day of November ___, 2012 ("Effective Date"), by and between the City of Chattanooga, situated at 101 East 11ᵗʰ Street, Chattanooga, TN, hereinafter referred to as the "CUSTOMER," and Applications Software Technology Corporation, an Illinois corporation, (d.b.a. AST Corporation), hereinafter referred to as "CONTRACTOR."

WITNESSETH THAT:

In consideration of the mutual covenants and provisions contained herein, the parties hereto agree as follows:

1.   Definitions

"Additional Services" means the services described in Section 2.5 of this Agreement.

"Change Order" means a document describing potential or actual changes to the scope of the Services, as further defined in Section 20 of this Agreement.

"Completion Date" means the date of acceptance of a Deliverable as shown in the Exhibit A – Statement of Work.

"CONTRACTOR Confidential Information" means any CONTRACTOR information referenced in Section 8.2 or that constitutes a trade secret and is designated in this Agreement or in writing as a trade secret or as CONTRACTOR Confidential Information by CONTRACTOR.

"CONTRACTOR Project Manager" means the CONTRACTOR Person designated to manage the day-to-day provisions of the project and delivery of services.

"CONTRACTOR Personnel" means the CONTRACTOR Project Manager, the Key Personnel, all other employees of CONTRACTOR, and all employees of Subcontractors of CONTRACTOR, who are providing the Services at any time during the Project Term. An individual within such description is a "CONTRACTOR Person."

"CUSTOMER Confidential Information" means any CUSTOMER information deemed confidential including but not limited to security systems, personnel and any other non-public information designated confidential in writing by the CUSTOMER.

"CUSTOMER Project Manager" means the designated manager to coordinate CUSTOMER's contributions, approve and oversee their deliverables and resolve issues of resource, participation, and other project related matters on a day-to-day basis, as designated in this Agreement.

"Deliverables" means the milestones or tasks identified as "Deliverables" in the Statement of Work.

"Documentation" means, collectively: (i) all of the written, printed, electronic, or otherwise formatted materials that relate to the ERP System provided by the CONTRACTOR as set out in the Statement of Work; (ii) all user, operator, system

administration, technical, support, and other manuals and all other written, printed, electronic, or other format materials that describe the functional, operational, and/or performance capabilities of the ERP System; and (iii) all Specifications, materials, flow charts, notes, outlines, manuscripts, writings, pictorial materials, schematics, and other documents that represent, demonstrate, or explain the Services and Work Product.

"ERP System" means the Oracle E-Business Suite software modules used by the CUSTOMER that will be upgraded as per the Statement of Work, including software modifications, configurations, and custom programming and any other Work Product necessary to fulfill the requirements of this Agreement.

"Fees" means the compensation payable by the CUSTOMER to CONTRACTOR hereunder in consideration of CONTRACTOR's provision of the Services, as listed in Exhibit B – Fee Schedule.

"Final Acceptance" means the description provided in Section 5 of this Agreement.

"Go-Live Date" means the date on which the Software Components associated with the ERP System have entered Productive Use.

"Initial Project Plan" means a project timeline and plan included with the RFP response.

"Notice-to-Proceed Date" means the date on which the CUSTOMER, by written notice, authorize CONTRACTOR to begin performing the Services for the project hereunder.

"Productive Use" means use of the ERP System to run the business of the CUSTOMER in a production environment.

"Services" means the installation, implementation, integration, configuration, and other services with respect to the ERP System that CONTRACTOR is engaged to perform pursuant to this Agreement, as described in Section 2 of this Agreement.

"Software Component" means a portion or module of ERP System more specifically described in Exhibit A - Statement of Work.

"Software Vendor" means providers of software packages that will be implemented or upgraded by the CONTRACTOR.

"Specifications" means the descriptions of the ERP System and all other Deliverables hereunder, and their components, capacities, functions and/or methods, set forth in this Agreement (including all Exhibits hereto) and the Documentation, or as otherwise provided to the CUSTOMER by CONTRACTOR in writing.

"Statement of Work" means a document incorporated into this Agreement which describes, in more detail, the Services, Deliverables, and schedule for delivering the Services and Deliverables. The Statement of Work is attached to this Agreement as Exhibit XX. The parties may, from time to time, amend this Agreement with additional Statements of Work as provided in Section 18.

"Third Party Software" means non Oracle E-Business Suite software specifically described in the Statement of Work.

"Work Product" means the description provided in Section 19 of this Agreement.

2. CONTRACTOR Services

2.1 Services. The CUSTOMER retains the CONTRACTOR, and the CONTRACTOR agrees to perform the Services and all of its obligations related thereto, in accordance with the terms of this Agreement and the Exhibits hereto. The scope of Services, including the performance standards, timetables, staffing plan, and Deliverables are defined in the "Exhibit A - Statement of Work" and the other Exhibits attached to this Agreement and incorporated herein by reference.

2.2 Initial Project Plan set out in "Exhibit A – Statement of Work" that has been proposed and determined jointly by the parties as the preliminary timeline for the go-live of various components of the ERP system. To manage the day to day execution of the project the Project Plan will be updated and maintained jointly by the CUSTOMER's and CONTRACTOR's Project Managers.

2.3 Substitution of Deliverables. If requested by the CUSTOMER in writing, the parties may substitute the Deliverables, Services, or tasks that are described in the Statement of Work for new Deliverables, Services, or tasks that are reasonably and substantially equivalent to those Deliverables, Services, or tasks being substituted and any such substitution shall not result in any adjustment to the Fees, unless otherwise mutually agreed by the parties. Any substitution of Deliverables shall only be done after an approved Change Order is signed in accordance with Section 20.

2.4 Independent CONTRACTOR Status. The CONTRACTOR is and shall remain an independent CONTRACTOR and is neither agent, employee, partner, nor joint venture of CUSTOMER.

2.5 Additional Services. The CUSTOMER may elect to have CONTRACTOR perform Services that are not specifically described in "Exhibit A - Statement of Work" hereto. CONTRACTOR shall perform such Additional Services either on a time-and-materials basis, at an hourly rate described in "Exhibit A – Statement of Work", or on a fixed price basis as approved by the CUSTOMER and accepted by CONTRACTOR pursuant to a Change Order process.

3. Personnel

3.1 CONTRACTOR Project Manager. CONTRACTOR represents that CONTRACTOR's Project Manager, and any replacement CONTRACTOR Project Manager, shall be knowledgeable as to the ERP System implementation and shall direct the efforts in fulfilling CONTRACTOR's obligations under this Agreement.

3.2 Replacement of Personnel. The CUSTOMER, on a reasonable basis, shall have the right to request the removal and replacement of any of the CONTRACTOR Personnel, including the CONTRACTOR Project Manager, at any time during the Term of this

Agreement. The CUSTOMER shall notify CONTRACTOR in writing to request such an action.

4. Compensation

4.1　Pricing. The CUSTOMER shall pay the Fees to the CONTRACTOR on a "fixed fee" basis as set forth in Exhibit A. As used in this section, "fixed fee" means that CONTRACTOR will perform its obligations under this Agreement even if it is required to expend more than the number of hours used to determine the Fees set forth in Exhibit A and will not charge the CUSTOMER for such excess hours or expenses unless otherwise permitted under this Agreement.

4.2　Travel Expenses. All travel related expenses incurred by CONTRACTOR Personnel in the performance of Services have been included in the Fixed Fee listed in the Exhibit A.

4.3　Project Timing. In addition to the Scope of Services, Fixed Fee contract is subject to the agreed upon timing of the Services to be provided by CONTRACTOR. If the project duration or Timing is altered during the course of the project or during contract negotiations, the parties will amend the Fees set forth in Exhibit A to reflect the extended duration for which CONTRACTOR Personnel will be required to provide the services.

4.4　Payment. CONTRACTOR will invoice the CUSTOMER on a Deliverable basis, meaning invoices will be sent to the CUSTOMER upon the acceptance of specified Deliverables as per the acceptance procedure specified in Section 5 "Acceptance of Deliverables." The Deliverables subject to payment and their associated payments are set forth in "Exhibit B – Fee Schedule" attached hereto. The CUSTOMER will pay invoiced amounts that are not the subject of a good faith dispute within thirty (30) calendar days of receipt of the invoice.

5. Acceptance of Deliverables

5.1　Acceptance of Deliverables.   Upon Consultant's written notification to the CUSTOMER that Consultant has completed a Deliverable, the CUSTOMER will review the Deliverable against the criteria defined in Exhibit A, Section 5.2 ("Deliverable Definitions & Acceptance Criteria"), and approve or notify the Consultant of the discrepancies and errors found in the Deliverable, within ten (10) consecutive business days, unless otherwise mutually agreed by the parties. If revision of the Deliverable is required based on feedback from the CUSTOMER, the Consultant will submit a revised Deliverable or satisfactorily explain the reasons for Accepting the Deliverable "as is." Upon acceptance of the revised Deliverable or receiving a satisfactory explanation for the deficiencies identified, the CUSTOMER Project Manager will sign a Deliverable Acceptance form and shall return it to the Consultant Project Manager within five (5) consecutive business days, unless otherwise mutually agreed by the parties. CUSTOMER shall not use the Deliverable in a production environment or in the ordinary course of the conduct of their business prior to Acceptance of the Deliverable and such use shall, without the written consent of Consultant, be deemed Acceptance of such Deliverable. In the event that the Consultant Project Manager does not receive written comments or a

signed Deliverable Acceptance form within the periods set out herein, the Deliverable will be considered accepted.

5.2 <u>Final Acceptance</u>. The CUSTOMER will be deemed to have accepted the system upon the use of upgraded ERP System in production environment in the ordinary course of the conduct of their business or upon satisfaction of the following conditions:

a) The upgraded Oracle R12 system is upgraded by the mutually agreed upon live production date; and

b) All system testing and documentation has been completed to CUSTOMER's satisfaction; and

Upon Final Acceptance the CUSTOMER will deliver a Certificate of Acceptance to the CONTRACTOR.

5.3 <u>Failure of User Acceptance Testing</u>. If after testing the Software Components or the ERP System, the Software Components or the ERP System do not function in a manner that meets, in all material respects, the applicable requirements of this Agreement, CUSTOMER shall have the option, upon written notice to CONTRACTOR to:

a) Require the CONTRACTOR to provide Product Stabilization and Support for such period as mutually agreed upon by the Parties in writing which shall not be less than seven (7) consecutive calendar days for errors or non-conformities defined as a Severity Level 1 error as defined in 11.4 of this Agreement; or

b) Accept the ERP System or Software Component at its then level of performance; or

c) Accept those portions of the ERP System or Component which pass the acceptance criteria and require CONTRACTOR to correct the remaining portions, in which event CUSTOMER shall not be liable for any payments associated with the implementation of such remaining portions until they have been accepted.

6. Term of Agreement

6.1 <u>Term.</u> The term of this Agreement shall commence after it has been fully executed by duly authorized representatives of all parties confirming that all certification or approval of this Agreement required by statute, ordinance, or established policy of the CUSTOMER has been obtained.

6.2 <u>Disengagement</u>. In connection with any expiration or termination of the term of this Agreement or of the provision of any of the Services provided hereunder, CONTRACTOR shall take all actions necessary to accomplish a complete and timely transition from CONTRACTOR to the CUSTOMER. CONTRACTOR shall provide the CUSTOMER with all information regarding the Services or as is otherwise needed for Disengagement, subject to maintaining the confidentiality of CONTRACTOR confidential information.

7. <u>Termination</u>

7.1 <u>CONTRACTOR Default Provisions</u>

    7.1.1 <u>Events of Default by CONTRACTOR</u>. Any of the following shall constitute a "CONTRACTOR Event of Default" hereunder: (i) the CONTRACTOR fails to perform or observe any of the other material provisions of this Agreement; (ii) the CONTRACTOR fails to deliver the System by mutually agreed Go-Live Date;

    7.1.2 <u>Provisions for Remedies of CUSTOMER</u>. Upon the occurrence of a CONTRACTOR Event of Default as set out in Section 6.1.1, the CUSTOMER shall provide written notice of such CONTRACTOR Event of Default to the CONTRACTOR ("Notice to Cure"), and the CONTRACTOR shall have thirty (30) consecutive calendar days after receipt of a Notice to Cure or commence reasonable steps to correct, cure, and/or remedy the CONTRACTOR Event of Default described in the written notice. If it is not possible to cure the Default within this thirty (30) day time period, the CONTRACTOR will provide to the CUSTOMER within fifteen (15) consecutive calendar days after receipt of Notice to Cure a written plan, including a timeline, to correct, cure, and/or remedy the CONTRACTOR Event of Default. The CONTRACTOR shall proceed to cure the Default in accordance with the approved plan.

7.2 <u>CUSTOMER Default Provisions</u>

    7.2.1 <u>Events of Default by CUSTOMER</u>. Any of the following shall constitute a "CUSTOMER Event of Default" hereunder: (i) the CUSTOMER fail to perform its tasks outlined in the Statement of Work, provide the staffing levels outlined in the Statement of Work, and maintain the timelines specified in this Agreement; (ii) the CUSTOMER fail to make timely payments as described in this Agreement; or (iii) the CUSTOMER fails to perform any of the other material provisions of this Agreement.

    7.2.2 <u>Provisions for Remedies of CONTRACTOR</u>. Upon the occurrence of a CUSTOMER Event of Default as set out in Section 7.2.1, the CONTRACTOR shall provide written notice of such CUSTOMER Event of Default to the CUSTOMER ("Notice to Cure"), and the CUSTOMER shall have thirty (30) consecutive calendar days after receipt of a Notice to Cure to correct, cure, and/or remedy the CUSTOMER Event of Default described in the written notice.

7.3 <u>Termination for Cause</u>

    7.3.1 <u>Termination for Cause by the CUSTOMER</u>. In the event the CONTRACTOR fails to cure a CONTRACTOR Event of Default as authorized herein, the CUSTOMER may terminate this Agreement in whole or in part effective on receipt by the CONTRACTOR of written notice of termination pursuant to this provision.

    7.3.2 <u>Termination for Cause by the CONTRACTOR</u>. In the event the CUSTOMER fail to cure a CUSTOMER Event of Default as authorized herein, the

CONTRACTOR may terminate this Agreement in whole or in part effective on receipt by the CUSTOMER of written notice of termination pursuant to this provision.

7.4   <u>Termination for Convenience</u>. Either party may terminate this agreement for convenience upon thirty (30) consecutive calendar days' written notice to the other party.

7.5   <u>Obligations on Termination</u>

        7.5.1   Upon termination of this Agreement for Cause or for Convenience, CONTRACTOR shall perform its Disengagement obligations hereunder to the extent applicable and as defined in Section 6.3. CONTRACTOR shall have no further obligation to provide any services.

        7.5.2   The CONTRACTOR shall terminate all subcontracts to the extent they relate to the Agreement and settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts.

        7.5.3   CONTRACTOR shall be entitled to compensation for fees and services rendered up to and including the applicable Termination Date. The services shall be paid on a time and materials basis, at an hourly rate not to exceed the rate set forth in Exhibit B - Fee Schedule.

        7.5.4   The CUSTOMER shall cause payments to be made to CONTRACTOR within thirty (30) consecutive calendar days.

        7.5.5   The CONTRACTOR shall deliver to the CUSTOMER, as directed by the CUSTOMER, any: (i) Completed Deliverables; (ii) Partially completed Deliverables; related to the terminated portion of this Agreement; and (iii) any plans, working papers, forms and documentation for which the CUSTOMER have paid the Fees to the CONTRACTOR.

7.6   <u>Excusing Events</u>. Notwithstanding anything to the contrary contained herein, the failure (or prospective failure) of either party to perform its obligations under this Agreement shall be excused if, and to the extent that, such failure is caused by one of the following (an "Excusing Event"):

a) A Force Majeure Event as defined in Section 15;

b) A breach by the other party under this Agreement;

If an Excusing Event occurs, Completion Dates for Deliverables in the Project Plan, Fees will be adjusted accordingly on an equitable basis through a Change Order process outlined in Section 20 herein.

8.   <u>Confidential Information</u>

8.1   <u>CUSTOMER Confidential Information</u>. CONTRACTOR shall not disclose to any third party CUSTOMER Confidential Information that CONTRACTOR, through its CONTRACTOR Personnel, has access to or has received from the CUSTOMER pursuant

to its performance of Services pursuant to the Agreement, unless approved in writing by the CUSTOMER Project Manager. All such CUSTOMER Confidential Information will be held in trust and confidence from the date of disclosure by the CUSTOMER, and discussions involving such CUSTOMER Confidential Information shall be limited to the CONTRACTOR's Personnel.

8.2   CONTRACTOR Confidential Information.   All CONTRACTOR Confidential Information received by the CUSTOMER from the CONTRACTOR will be held in trust and confidence from the date of disclosure by the CONTRACTOR and discussions involving such CONTRACTOR Confidential Information shall be limited to the members of the CUSTOMER' staff who require such information in the performance of this Agreement. CONTRACTOR herby notifies the CUSTOMER, and the CUSTOMER acknowledges receipt of said notification, that the CONTRACTOR Confidential Information may constitute a trade secret as defined by applicable state Law.

The CUSTOMER acknowledge that disclosure of source codes, methodology and other confidential information to any third parties will result in irreparable harm to CONTRACTOR for which monetary damages would be an inadequate remedy and agree that no such disclosure shall be made to anyone without first notifying and receiving written consent of CONTRACTOR, except as otherwise provided by law.

The CUSTOMER further acknowledge and agree to respect the copyrights, registrations, trade secrets and other proprietary rights of CONTRACTOR and CONTRACTOR's Subcontractors during and after the term of the Agreement and shall at all times maintain the confidentiality of the CONTRACTOR Confidential Information provided to the CUSTOMER.

8.3   Survival. The obligations hereunder with respect to each item of CUSTOMER Confidential Information and CONTRACTOR Confidential Information shall survive the termination of this Agreement.

8.4   Notwithstanding Section 8.1, 8.2 or 8.3 hereof, neither CUSTOMER Confidential Information nor CONTRACTOR Confidential Information shall include information which the recipient can demonstrate by competent written proof:

a) is now, or hereafter becomes, through no act or failure to act on the part of the recipient, generally known or available or otherwise part of the public domain;

b) is rightfully known by the recipient without restriction on use prior to its first receipt of such information from the disclosing party as evidenced by its records;

c) is hereafter furnished to the recipient by a third party authorized to furnish the information to the recipient, as a matter of right and without restriction on disclosure; or

d) is the subject of a written permission by the disclosing party to disclose.

8.5   Notwithstanding Section 8.1, 8.2 or 8.3 hereof, disclosure of CUSTOMER Confidential Information or CONTRACTOR Confidential Information shall not be precluded if:

a) such disclosure is in response to a valid order of a court or other governmental body of the United States or any political subdivision thereof; provided, however, that the recipient of such confidential information shall first have given notice to the other party and shall have made a reasonable effort to obtain a protective order requiring that the information to be disclosed be used only for the purposes for which the order was issued;

b) such disclosure is necessary to establish rights or enforce obligations under this Agreement, but only to the extent that any such disclosure is necessary for such purpose; or

c) the recipient of such confidential information received the prior written consent to such disclosure from the disclosing party, but only to the extent permitted in such consent.

9. **Insurance**

9.1   CONTRACTOR shall procure and maintain in effect during the term of this Agreement the following insurance coverage with an insurance company or companies approved by the CUSTOMER:

a) Workers' Compensation and Employers Liability insurance with liability limits of not less than One Hundred Thousand Dollars ($100,000) per accident, One Hundred Thousand Dollars ($100,000) per employee; and Five Hundred Thousand Dollars ($500,000) aggregate.

b) Commercial General Liability with limits of not less than One Million Dollars ($1,000,000) each occurrence; and Two Million Dollars ($2,000,000) aggregate.

c) Comprehensive Automobile Liability including bodily injury and property damage in the amount of not less than a combined single limit of One Million Dollars ($1,000,000).

d) Errors and Omissions including coverage for professional malpractice, cyber and privacy protection liability in the amount of not less than One Million Dollars ($1,000,000).

e) The required limits for insurance may be achieved through a combination of primary and umbrella policies.

f) Prior to commencing work on the project, CONTRACTOR shall provide CUSTOMER with a Certificate of Insurance naming CUSTOMER as an Additional Insured.

10. **Indemnification**

10.1   The CONTRACTOR shall indemnify, defend, and hold harmless the CUSTOMER, its agents, elected officials and employees from and against all claims, actions, liabilities, losses, costs, including attorney's fees, arising out of any actual or alleged bodily injury, sickness, disease or death, or injury to or destruction of tangible property including the loss of use resulting therefrom, or violation of law, statute, ordinance, governmental administration order, rule or regulation by the CONTRACTOR in the performance of the work.

10.2   CUSTOMER shall defend, at its own expense, and indemnify and hold CONTRACTOR, and CONTRACTOR's Affiliates harmless from and against any and all losses, claims, expenses (including reasonable attorney's fees), suits, damages, costs, demands, or liabilities arising out of or relating to any claim by a Third Party to the extent based on any negligent act or omission of CUSTOMER.

11.   **Warranties**

11.1   Professional Services Warranty.   CONTRACTOR represents and warrants that all Services provided by CONTRACTOR shall be performed in a professional manner and shall be of a high grade, nature and quality. All software components developed by CONTRACTOR shall in accordance with the development standards of the industry.

11.2   Warranty Period: Professional Services Warranty by CONTRACTOR will end upon thirty (30) days after Go-Live Date.

11.3   Warranty Exclusions and Limitations.

11.3.1 The Professional Services Warranty becomes null and void if:

   a) The CUSTOMER modify the CONTRACTOR delivered software configuration or programs (software code);
   b) The CUSTOMER modify or alter the hardware environment;
   c) The CUSTOMER install any additional third-party software that are incompatible with the software implemented as part of the Statement of Work;
   d) The CUSTOMER change their business processes, organizational structure or approval hierarchy, rules and regulations causing the delivered software solution to be deficient or non-functional.

11.4   Warranty Remedy.   The CUSTOMER' sole and exclusive remedy with respect to a violation of the warranties described in this Agreement, any Exhibits and Attachments shall be as follows:

11.4.1 CUSTOMER shall provide CONTRACTOR with written notification of the error with any available system audit log and/or screen prints to help identify the source of the error.

11.4.2 CONTRACTOR shall take prompt action to resolve the issue in accordance with Exhibit A – Statement of Work. The remedial actions shall include but not be limited to the following:

   a) Report of help report the problem to the Software Vendor, if the issue relates to Software Component provided by the Software Vendor;
   b) Help apply the software fix provided by the Software Vendor;
   c) Provide a system fix or update for programs or documentation delivered by CONTRACTOR;
   d) Provide a correction to the system setup, if applicable;

e) Provide a workaround for the error that allows the ERP System to support the CUSTOMER' business operations;

f) Provide instructions, directions and documentation for manual processing to accomplish the desired business function.

11.4.3 CUSTOMER shall provide access to their staff and systems/network to facilitate the CONTRACTOR in replicating, isolating and resolving the error.

11.4.4 If the error or deficiency is determined to be not under warranty, the CUSTOMER shall initiate a Change Order, pursuant to the Change Order provisions described in Section 20, to reimburse the CONTRACTOR for the actual costs incurred in analyzing the error or deficiency.

12. Limitation of Liability

The Warranties in this Agreement are the exclusive Warranties of CONTRACTOR. CONTRACTOR hereby disclaims all other Warranties, whether express, implied or statutory and disclaims any implied Warranty of Merchantability or of Fitness. Neither party will be liable for any indirect, incidental, special or consequential damages, or for any loss or damages related to the operation, delay or failure of software or equipment or for any inaccuracy of data incurred by either party or any third party, however arising, whether in Contract or Tort, even if it has been advised of the possibility of such damages. Either party's liability for damages to the other under this Contract shall be limited to the Implementation Services Fee agreed to under this agreement.

13. Assignment of Contract

The CONTRACTOR shall not assign, sublet or transfer or otherwise dispose of its interest in this Agreement without the prior written consent of the CUSTOMER.

14. Covenant Not To Hire

For a period of one (1) year following expiration of the term of this Agreement, neither party shall directly solicit employment of the other party's employees who are directly involved in the performance of this Agreement. Employees of one party may reply to generally circulated job postings of the other party.

15. Force Majeure

Notwithstanding anything herein to the contrary, the parties hereto shall not be deemed in default with respect to the performance of, or compliance with the terms, covenants, agreements, conditions, or provisos of the Agreement, if the failure to perform or comply shall be due to any strike, lockout, civil commotion, invasion, rebellion, hostilities, sabotage, acts of God or causes otherwise beyond the control of the parties.

16. Waiver

No waiver by either party of any breach or violation of any covenant, term, condition, or provision of this Agreement or of the provisions of any ordinance or law, shall be

construed to waive any other term, covenant, condition, provisions, ordinance or law, or of any subsequent breach or violation of the same.

17. Governing Law and Venue

This Agreement is made pursuant to, and shall be, resolved in, governed by and construed in accordance with the laws of the State of Illinois. Jurisdiction and venue shall be exclusively found in a court of competent jurisdiction located in the state of Illinois or the Federal District Court for the state of Illinois, as appropriate.

18. Exhibits and Attachments

The following documents are incorporated by reference into this Agreement:

- Exhibit A – Statement of Work

This Master Agreement and the Exhibits shall, to the extent possible, be interpreted as consistent among each other. If there is any inconsistent provision, the terms and conditions of this Master Agreement shall have precedence over the Exhibits.

19. Ownership of Work Product

Except for CONTRACTOR's Confidential Information and pre-existing intellectual property such as but not limited to methodology, tools and templates, all Deliverables originated or prepared by CONTRACTOR pursuant to this Agreement, including documentation, charts, and computer programs to the extent that such materials are described in or required by the Statement of Work (collectively, the "Work Product") shall be considered works for hire when Final Acceptance has occurred and the CUSTOMER has made final payment of the Fees due therefore.

20. Change Orders

All Change Orders shall be governed by the terms and conditions of this Agreement, including either the hourly rates for consulting Services, or fixed fees, as directed by the CUSTOMER. If the CUSTOMER requires the performance of Services that are not within the originally defined Statement of Work (Exhibit A), or if either party requests a change to the existing timeline or services, the CONTRACTOR Project Manager shall deliver a Change Order to the CUSTOMER, specifying the proposed work with sufficient detail to enable the CUSTOMER to evaluate it. CONTRACTOR shall provide the CUSTOMER with an evaluation of the Change Order containing the following:

(a) an estimate of the CONTRACTOR and CUSTOMER Personnel's efforts required to complete the requested services;

(b) implementation timeframe for performance;

(c) specifications, viability, recommendations and acceptance criteria, as applicable; and

(d) the estimated price for such performance, based on the applicable charges set forth in this Agreement.

The CUSTOMER shall notify CONTRACTOR in writing if the CUSTOMER elects to proceed by issuing a Change Order or a "Notice to Proceed." If the CUSTOMER gives notice to CONTRACTOR not to proceed, or fail to give any notice to CONTRACTOR, then the Change Order shall be deemed withdrawn and CONTRACTOR shall take no further action with respect to it.

21. **Notices**

All notices, authorizations, and requests in connection with this Agreement shall be deemed given on the day they are: (i) deposited in the U.S. mails, postage prepaid, certified or registered, return receipt requested; or (ii) sent by prepaid courier service (e.g., Fedex, UPS, etc.) or (iii) sent via email and addressed as set forth below the signatures of this Agreement, which designated person(s) may be amended by either party by giving written notice to the other party:

For CUSTOMER:	For CONTRACTOR:
City of Chattanooga	AST Corporation
Attn: Michael McMahan	Attn: Martin H. Small
City Attorney	V.P., Business Development
101 East 11th Street, City Hall	1755 Park Street, Suite 100
Chattanooga, TN 37402	Naperville, IL 60563
Fax: 423-757-0949	630-778-1179

22. **Severability**

In the event that any provision, clause, term, or condition hereof shall be held to be illegal or void, such determination shall not affect the validity or legality of the remaining terms and conditions, and notwithstanding any such determination, this Agreement shall continue in full force and effect unless the particular clause, term, or condition held to be illegal or void renders the balance of the Agreement impossible to perform.

23. **Entire Agreement/No Modification**

This Agreement constitutes the entire Agreement between the parties and supersedes all prior negotiations, representations or agreements either oral or written. It may not be modified except by a writing signed by the parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

City of Chattanooga

Approved as to form and legal sufficiency

By: _____   By: _____
Daisy Madison, Chief Financial Officer   Michael McMahan, City Attorney

ATTEST:

By: _____
Purchasing Agent, Artie Prichard

Applications Software Technology Corporation

By: _____   11/14/2012
Pravin Kumar, President & CEO   Date

ATTEST:

By: _____   11/14/2012
Corporate Secretary   Date

Statement of Work

Oracle E-Business Suite Release 12 Upgrade

City of Chattanooga, TN

File Name:	Statement of Work
Version:	Draft v11.13.12
Revision Date:	November 13, 2012

Table of Contents

1. Executive Summary

This Statement of Work (SOW) is intended to document the scope, roles, responsibilities, tasks and timeframe for the upgrade of the Oracle E-Business Suite (EBS) Release 11i system and related technologies to the latest Release 12 of the software.

City of Chattanooga has been live on Oracle E-Business Suite for the last several years, and is currently on Release 11.5.10 or the applications. The City intends to undertake a "like for like migration" to Release 12, where implementation of new modules, enhancements and business processes changes (like Chart of Accounts reorganization) are not considered within the scope of the project.

The following EBS modules are currently used by the City:

- General Ledger
- Fixed Assets
- Procurement
- Payroll
- Self Service HR
- Cash Management
- Oracle Alerts
- Web ADI

- Payables
- Inventory
- iProcurement
- Human Resources
- Advanced Benefits
- Payroll
- Oracle Workflow
- Reporting Tools - FSG, EiS, XML Publisher and Discoverer

The following high-level timeline has been planned for the upgrade project.

Figure 1- Project Timeline
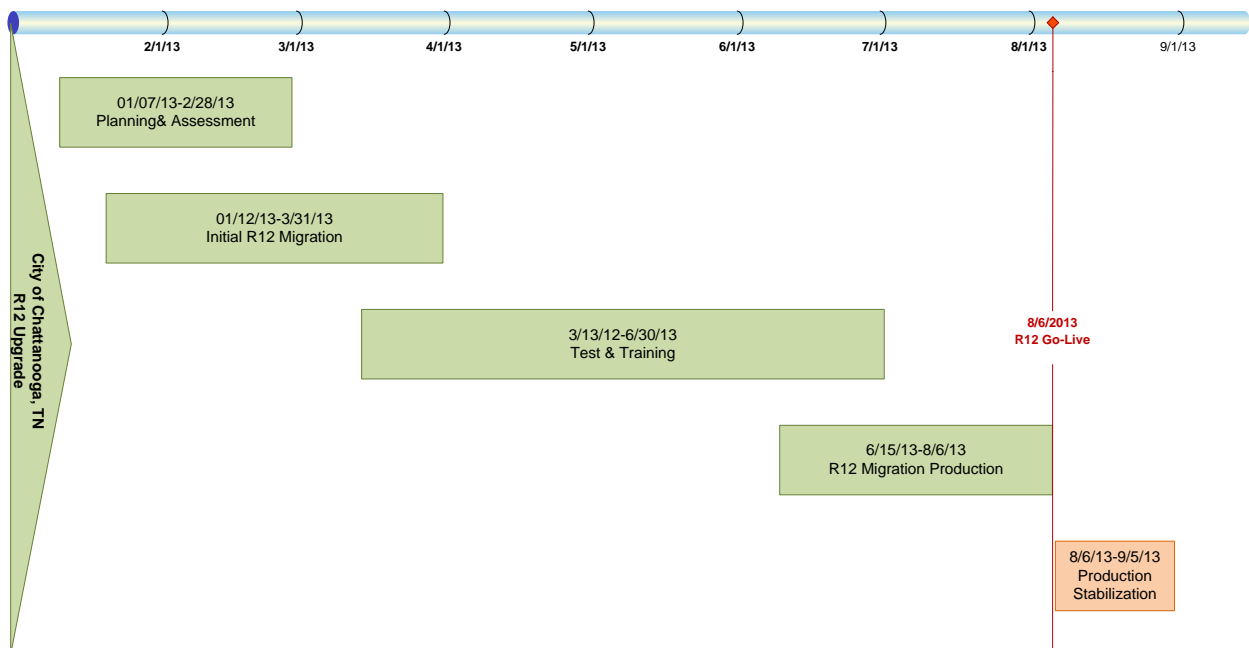
2.   Scope of Services

The City of Chattanooga is undertaking the upgrade of its Oracle E-Business Suite 11.5.10 to Release 12 in order to ensure that its applications are supported, and to fully and efficiently utilize the Oracle software and leverage its investment, and to realize the full potential of the comprehensive Financials, Procurement, Projects & HCM applications. Overall project objectives have been outlined in the RFP response; the key among them are:

- Perform a "Like-for-Like" upgrade not losing any current functionality of any module.
- Recommend standard system seeded functionality to the most effective extent possible.
- Ensure that the integration between modules continue to function after upgrade.
- Install and Train the Users on the UPK documentation tool
- Configure the standard Retro Pay functionality in Oracle Payroll module
- Assist with the 2013 Open Enrollment process and train the users in the new R12 features related to the Open Enrollment process.

The scope of services provided by AST Corporation shall consist of the following:

Project Management

AST project manager will work with the City's designated project manager to create and maintain a detailed project plan and manage day to day execution of the project. Project management services shall include:

- Creation, maintenance, and sign off where applicable of project plan and deliverables.
- Assist the scheduling and efficient utilization of City's staffing resource including subject matter experts (SMEs), users and IT personnel.
- Supervision and assignment of appropriate AST consulting resources.
- Management and control of the project scope, timeline and budget.
- Management of project risks and issues, whether technical or otherwise.
- Status reporting and communication on a weekly basis with the City management.
- Quality assurance of deliverables including organizational change management and training

Technical Upgrade

AST's DBA will be responsible for the technology stack upgrade. They will work closely with the City's DBA and technical staff to ensure the transfer of knowledge. Technology upgrade consists of:

- Upgrade of Oracle database, application and web servers, and developer tools to the latest supported version of the software to be compatible with Release 12 of the EBS applications.
- Upgrading the Oracle EBS software to the latest Release 12 and application of module specific patches.
- Creation of all non-production environments including development, test and training.
- Assistance with resolution of technical issues faced during the upgrade or reported by project team.
- Assistance with migration of data and custom objects.
- Application of patches as per the requirements of the project team.

- Assist the City IT staff with the testing and configuration of peripherals (printers, scanners as identified by the City) after the upgrade to ensure that they continue to work with Oracle EBS R12.
- Document any site specific manual steps required to complete the upgrade and to ensure that the production upgrade goes smoothly.
- Perform multiple iteration of the upgrade to get an accurate downtime estimate for the production environment.

R12 Application Configuration

Application configuration will include the following key tasks:

- Performance of functional pre-upgrade and post-upgrade steps required to complete the upgrade.
- Assist the City SMEs in deciding any application setup changes that are required in R12.
- Test the business functions after the system is upgraded to R12, including the ones required by self-service users and external business partners.
- Assist the City in user acceptance testing and integration testing of the R12 environment.
- Assistance with resolution of product issues faced during the upgrade or reported by the users.
- Assisting the business users with updating setup documents where required

CEMLI Migration

- Test all customizations including forms, reports, workflows and interfaces to ensure that they are functioning properly in the upgraded R12 environment.
- Identification of any undocumented customization through the execution of the AST script/tool ensuring that such customizations become documented and follow the Oracle EBS development standards.
- Review all documentation and update any design documents where customizations require changes to work in the R12 environment.
- Assist the City with testing any third party tools that integrate with Oracle EBS, e.g, Vertex, STR Fax, Web ADI, Crystal Reports. Upgrade or patching of third party tools will be City's responsibility.
- Test the successful migration of all custom database objects and data, e.g., City Tables, Fleet Fuel Interface, PSB custom forms with the assistance of City of Chattanooga's technical staff.

Training

Training will be a joint responsibility of AST and the City and include the following tasks:

- Create training material for Release 12 new features and procedure changes training.
- Conduct technical training for R12 maintenance and technology stack changes.
- Conduct functional training for the City's SMEs/trainers.
- Assist the City Core Team with end user training as needed.

Documentation

- Assist with updating process documentation.
- Assist with updating setup documents for R12 changes.
- Assist technical staff in maintaining and updating CEMLI documentation.

Production Migration and Support

- Assist City DBAs and technical staff with production migration.
- Assist City SMEs with production configuration changes.
- Assist City technical staff and SMEs with issue resolution during post production support.

AST consultants, under direction from the AST Project Manager, will utilize the AST Methodology to configure, model, adapt, test and deploy the system to support the City's agreed upon requirements. AST consultants will work collaboratively with the City project team members to accomplish all jointly assigned tasks. AST will determine the method, details, and means of performing the Services and providing the Work Products.

Change Management

The focus of the change management services will be to facilitate a smooth transition to the newly implemented Oracle system by involving, educating and informing stakeholders and users of the changes that will occur as a result of the new system. The change management team (members of City Core Team and AST consultants assigned to each module) will be a joint responsibility and incorporate the adoption of the following three key elements during the upgrade:

- Policy and Procedure
- Roles and Responsibilities
- Communication and Support Structure

Discoverer Reporting Migration

The City will be assuming the responsibility for Discoverer tools and reports migration.

3.   Roles and Responsibilities

Detailed roles and responsibilities for City staff members and AST consultants are listed below.

Table 1: *Project Roles and Responsibilities*

Role	Responsibility	Role Type
AST Project Manager	Project Planning & Management	Lead
	Status Reporting	Lead
	Issues Escalation & Resolution	Lead
	Consulting Resource Allocation	Lead
	City Resource Allocation	Assist
	Scope Control	Lead
	Change Management	Lead
	Quality Assurance	Lead
AST Functional Leads	Project Team R12 Orientation Training	Lead
	R12 Migration Assessment and Gap-Fit Analysis	Lead
	Functional Issues Resolution	Lead
	Functional Design	Lead
	Create Test Plan and Scripts	Assist
	Unit Testing of Functionality	Lead
	System Testing	Lead
	Acceptance Testing	Assist
	User Procedure Changes Documentation	Assist
	Training Material Development	Lead
	Training Delivery	Assist
	Knowledge Transfer of R12 functionality	Lead
AST Technical Team	CEMLI Migration Assessment	Lead
	Review R12 Architectural Changes	Lead
	Technical Team Orientation	Lead
	Technical Design & Development	Lead
	Unit Testing of Technical Components	Lead
	Integration Testing	Lead
	Technical Issue Resolution	Lead
	Knowledge Transfer of technical components	Lead
AST Applications DBA	Instance Planning, Sizing & Architecture	Lead
	Application Upgrade Dry Runs	Lead
	Modify and Test Backup/Recovery Plan	Lead
	Review and Modify Disaster Recovery	Lead
	Stress Testing & Performance Tuning	Lead
	Production Upgrade	Assist
	Knowledge Transfer to City DBAs	Lead
City Project Manager	Project Planning & Management	Assist
	Issues Escalation and Resolution	Assist
	City Resource Allocation	Lead

Role	Responsibility	Role Type
	Consulting Resource Allocation	Assist
	Scope Control / Change Management	Assist
	Project Communication	Assist
	Production Migration	Lead
	Knowledge Transfer	Assist
City Module Coordinators **Subject Matter Expert (SMEs)**	Migration Assessment and Gap-Fit Analysis	Assist
	Customizations, Interface and Reports Migration	Assist
	System Testing	Assist
	Acceptance Testing	Lead
	User Procedure Documentation Update	Lead
	Training Material Development	Assist
	R12 delta Training for End Users	Lead
	Knowledge Transfer	Assist
City Applications DBA	Instance Planning, Sizing & Architecture	Assist
	Application Upgrade Dry Runs	Assist
	Modify and test Backup/Recovery Plan	Assist
	Upgrade any 3rd Party Tools and Systems	Lead
	Review and Modify Disaster Recovery	Assist
	Stress Testing & Performance Tuning	Assist
	Production Upgrade	Lead
	Knowledge Transfer	Assist
City Technical Staff and Programmers	CEMLI Migration Assessment	Assist
	Review R12 Architectural Changes	Assist
	Technical team Orientation	Assist
	Technical Design & Development	Assist
	Unit Testing	Assist
	Integration Testing	Assist
	Technical Issue Resolution	Assist
	Knowledge Transfer	Assist
City O/S & Network Administrator	Network & O/S Support	Lead
	Desktop Configuration	Lead
	Setup Network Printers/Scanners/Peripherals	Lead
City Users/Staff	Attend R12 Delta Training Sessions	Participate
	System and User Acceptance Test	Participate

4. Deliverables & Payment Schedule

The following are the key deliverables that will be used for payment milestones.

Table 2: Deliverables & Payment Schedule

Deliverable	Expected Due Date	Deliverable Amount ($)
01 Upgrade Project Plan Created	01/31/13	37,400
02 Project Charter Complete	02/05/13	74,800
03 CEMLI Migration List Complete	02/21/13	52,360
04 First R12 Upgrade Complete	02/28/13	74,800
05 Unit Test of R12 Apps Complete	03/15/13	52,360
06 UPK Installation and Training Complete	03/31/13	49,875
07 R12 Train-The-Trainer Training Complete	04/30/13	52,360
08 2013 Benefits Enrollment Complete	06/30/13	15,000
09 CRP Complete	06/30/13	97,240
10 CEMLI Migration Tested	05/01/13	74,800
11 System Test Complete	07/15/13	44,880
12 User Acceptance Test Complete	07/31/13	54,800
13 Production Upgrade Complete	08/06/13	44,880
14 Post Production Support Complete	09/05/13	22,440
Grand Total		**747,995**

Travel expenses are included in the deliverable cost and will not be billed separately.

Hourly Billing Rate

The following hourly rates will be locked for the initial contract period or for one year from the contract execution date, whichever may be earlier.

Table 3: Hourly Rate

Resource Type	Hourly Rate (Off Site)	Hourly Rate (On Site, Includes Travel) *
Project Manager	$ 175	$ 200
Functional Consultant	$ 165	$ 190
Technical Consultant	$ 150	$ 175
Oracle Applications DBA	$ 155	$ 180

* Assumes 40 hour work week and engagement minimum of 1 business week.

5.   Assumptions

The following assumptions have been made in developing the work plan to meet the RFP requirements and to support the proposed services, effort level and fixed cost proposal.

Scope and Objective Assumptions

1. The scope of work, deliverables and timeline are fixed. AST and the City are committed to executing the project based upon the agreed upon timeline. Any change in timeline or scope will affect the cost and will be handled via the normal change order process.

2. City technical resources will take ownership of Discoverer reports and CEMLI migration with guidance on latest release 12 and tools from AST technical lead.

3. If any major project milestones are missed due to a delay in the deliverables or tasks that are the City's responsibility, the overall timeline may be impacted and additional cost may be applicable.

4. Warranty for AST work products will be provided for 30-days after go live and does not replace or overlap with software warranty provided by Oracle or any other vendor.

5. It is understood that consulting staff deployment at the City's premises on as needed basis and will work remotely to the extent possible in order to limit travel related expenses.

Resource Assumptions

6. The City's management, including City's project manager and key users, will be able to make timely decisions concerning issues raised by the project team. The City project manager will approve the deliverables within ten (10) business days of AST submission. If the City suggests or requires changes in a deliverable, City feedback is due back to AST within ten (10) business days of submission as outlined in section 5.1 of the master agreement.

7. The City will provide sufficient resources to deliver the tasks and perform the roles defined as the City's responsibilities by the dates outlined in the project timeline.

8. The consulting resources will generally follow the staffing profile submitted with this response. If needed, AST management will assign additional personnel to complete AST deliverables by project timeline deadlines. Some work will be performed remotely.

9. We understand that the City wishes to eliminate existing customizations, to the extent possible. This may require that the City make changes in certain business processes and operating procedures. The City will make reasonable efforts to accommodate these changes.

10. No new customizations have been scoped. If additional customizations are identified, applicable incremental cost will be presented to the City for approval, prior to undertaking the new work.

Infrastructure Assumptions

11. The City will provide adequate workspace and infrastructure for the consultants assigned to the project, including but not limited to computers, servers, printers, telephone, internet, connection to the City network, VPN and existing documentation.

12. The City is responsible for timely hardware procurement, and installation. The City will maintain the hardware in a stable environment for the project team.