

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION AUTHORIZING THE DEPUTY INFORMATION SYSTEMS OFFICER TO ENTER INTO A RENEWAL CONTRACT WITH AST CORPORATION FOR PROFESSIONAL AND TECHNICAL SERVICES FOR ORACLE EBUSINESS SUITES, FOR A TOTAL AMOUNT NOT TO EXCEED NINE HUNDRED THOUSAND DOLLARS (\$900,000.00).

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BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, that the Deputy Information Systems Officer is hereby authorized to enter into a renewal contract with AST Corporation for professional and technical services for Oracle eBusiness Suites, for a total amount not to exceed \$900,000.00.

ADOPTED: \_\_\_\_\_, 2013

/mms

# City of Chattanooga



## Resolution/Ordinance Request Form

Date Prepared: 11/21/13

Preparer: Jana Keil

Department: Information Services

Brief Description of Purpose for Resolution/Ordinance: Res./Ord. # \_\_\_\_\_ Council District # \_\_\_\_\_

Renewal of Blanket Contract with AST Corporation for Professional and Technical Services for Oracle eBusiness Suites

Name of Vendor/Contractor/Grant, etc. AST Corporation  
Total project cost \$ 900,000  
Total City of Chattanooga Portion \$ 900,000  
City Amount Funded \$ 900,000  
New City Funding Required \$ \_\_\_\_\_  
City's Match Percentage % \_\_\_\_\_

New Contract/Project? (Yes or No) no  
Funds Budgeted? (YES or NO) yes  
Provide Fund 4013  
Provide Cost Center C30043  
Proposed Funding Source if not budgeted \_\_\_\_\_  
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)

Approved by: \_\_\_\_\_

Reviewed by: FINANCE OFFICE \_\_\_\_\_ DESIGNATED OFFICIAL/ADMINISTRATOR \_\_\_\_\_  
Please submit completed form to @budget, City Attorney and City Finance Officer

Revised: October, 2011

# Purchase Order BLANKET



**City of Chattanooga**  
101 East 11th Street, Suite G13  
Chattanooga, TN 37402

<b>V E N D O R</b>	Vendor Number: Vendor Alternate ID: 25781  AST Corporation 1755 Park Street Suite 100 Naperville, IL 60563
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PO Date: 27-NOV-12 Buyer: Mark McKeel FOB: DESTINATION Terms: Immediate	Purchase Order Number <b>518550</b>  INVOICES: Direct invoices in DUPLICATE to the Invoice address shown below.
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<b>S H I P T O</b>	City Hall Annex 100 East 11th Street Chattanooga, TN 37402
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<b>I N V O I C E</b>	Accounts Payable Division City of Chattanooga 101 East 11th Street, Suite 101 Chattanooga, TN 37402
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Requestor		Requisition Number		Bid Number	
Line Nbr	Item ID - Item Description	Quantity	Unit	Unit Price	Total
Requisition No.: 65006 Ordering Dept.: Information Services Buyer: Mark McKeel Phone No.: 423-757-4759  Items Being Purchased: Oracle R12 Upgrade  ATTACHMENTS: City of Chattanooga (COC) Terms and Conditions posted on Website <a href="http://www.chattanooga.gov/Gen_Serv/4060_StandardTermsandConditions.htm">http://www.chattanooga.gov/Gen_Serv/4060_StandardTermsandConditions.htm</a> If you can't download call buyer for a copy.  This Shall Be A Twelve (12) Month Blanket Contract To Supply/Implement the Oracle R12 Upgrade for the City of Chattanooga. The Contract Term May Be Renewed For An Additional Four (4) Twelve (12) Month Term Under The Same Terms And Conditions By Mutual Agreement. The City Of Chattanooga And The Contractor May Bilaterally Extend The Contract By Providing Written Confirmation Of Agreement By Both Parties At Least 30 Days Prior To The Contract's Current Expiration Date Into Any Successive Term As Provided Herein.  Purchase Order issued in accordance with AST Corporation RFP received on September 21, 2012  Vendor Contact: Rick McGaughy AST Corporation 630-778-1180, Ext 227 email: rmcgaughy@astcorporation.com  Contract Terms: January 7, 2013 - January 6, 2014  Approved by City Council on November 20, 2012. Resolution No. 27321					

\*\*\*\*\* NOTICE \*\*\*\*\*

TERMS AND CONDITIONS set forth in our Bid or Quotation, see conditions attached or incorporated herein by reference become a part of this order. This Purchase Order valid only when signed or electronically approved by the Finance Officer.

Electronic approval is on record in the purchasing information system which asserts that unencumbered appropriation is available to meet the expenditure covered by this Purchase Order; and further authorizes payment upon proper certification of receipt of goods and/or services.

# Purchase Order BLANKET



**City of Chattanooga**  
101 East 11th Street, Suite G13  
Chattanooga, TN 37402

<b>V E N D O R</b>	Vendor Number: Vendor Alternate ID: 25781  AST Corporation 1755 Park Street Suite 100 Naperville, IL 60563
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Requestor			Requisition Number		Bid Number
Line Nbr	Item ID - Item Description	Quantity	Unit	Unit Price	Total
1	Professional Services	0.00	Each	\$ 518,520.0000	\$ 0.00
2	Project Management	0.00	Each	\$ 69,600.0000	\$ 0.00
3	Functional Support (Included in Professional Services)	0.00	Each	\$ 0.0000	\$ 0.00
4	Technical Support (Included in Professional Services)	0.00	Each	\$ 0.0000	\$ 0.00
5	Training (Includes in Professional Services)	0.00	Each	\$ 0.0000	\$ 0.00
6	Travel Expenses	0.00	Each	\$ 95,000.0000	\$ 0.00
7	Retro Pay (Included Standard Functionality)	0.00	Each	\$ 0.0000	\$ 0.00
8	OAB (Open Enrollment 11.i Support)	0.00	Each	\$ 49,875.0000	\$ 0.00
9	UPK (Installation & Training)	0.00	Each	\$ 15,000.0000	\$ 0.00

**TOTAL: \$ .00**

\*\*\*\*\* NOTICE \*\*\*\*\*

TERMS AND CONDITIONS set forth in our Bid or Quotation, see conditions attached or incorporated herein by reference become a part of this order. This Purchase Order valid only when signed or electronically approved by the Finance Officer.

Electronic approval is on record in the purchasing information system which asserts that unencumbered appropriation is available to meet the expenditure covered by this Purchase Order; and further authorizes payment upon proper certification of receipt of goods and/or services.



# CERTIFICATE OF LIABILITY INSURANCE

OP ID: RC

DATE (MM/DD/YYYY)

01/07/13

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER <b>JOHN J. MATSOCK &amp; ASSOC. INC.</b> 1750 N WASHINGTON ST NAPERVILLE, IL 60563 Brian J. McClowry		630-505-7888	CONTACT NAME: PHONE (A/C, No, Ext): E-MAIL ADDRESS: PRODUCER CUSTOMER ID #: <b>APPLI-7</b>	FAX (A/C, No):
INSURED <b>APPLICATIONS SOFTWARE TECHNOLOGY CORPORATION</b> 1755 PARK ST STE 100 NAPERVILLE, IL 60563		INSURER(S) AFFORDING COVERAGE INSURER A : HARTFORD CASUALTY INS COMPANY		NAIC # <b>29424</b>

**COVERAGES****CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	GENERAL LIABILITY	X		83SBQUQ0884	03/01/12	03/01/13	EACH OCCURRENCE	\$ 2,000,000
	COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 300,000
A	CLAIMS-MADE <input type="checkbox"/> OCCUR <input checked="" type="checkbox"/>			83SBQUQ0884	03/01/12	03/01/13	MED EXP (Any one person)	\$ 10,000
	CONTRAC LIABILITY						PERSONAL & ADV INJURY	\$ 2,000,000
GEN'L AGGREGATE LIMIT APPLIES PER:							GENERAL AGGREGATE	\$ 4,000,000
<input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC							PRODUCTS - COMP/OP AGG	\$ 4,000,000
								\$
A	AUTOMOBILE LIABILITY	X		83SBQUQ0884	03/01/12	03/01/13	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
	<input type="checkbox"/> ANY AUTO						BODILY INJURY (Per person)	\$
	<input type="checkbox"/> ALL OWNED AUTOS						BODILY INJURY (Per accident)	\$
	<input checked="" type="checkbox"/> SCHEDULED AUTOS						PROPERTY DAMAGE (Per accident)	\$
	<input checked="" type="checkbox"/> HIRED AUTOS							\$
A	<input checked="" type="checkbox"/> NON-OWNED AUTOS						\$	
A	<input checked="" type="checkbox"/> UMBRELLA LIAB			83SBQUQ0884	03/01/12	03/01/13	EACH OCCURRENCE	\$ 1,000,000
	<input checked="" type="checkbox"/> EXCESS LIAB						AGGREGATE	\$ 1,000,000
	DEDUCTIBLE							\$
<input checked="" type="checkbox"/> RETENTION \$ 10,000								\$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	Y/N	N/A	83WECEJ0289	03/01/12	03/01/13	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS	OTH-ER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)							\$ 1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below							\$ 1,000,000
	CORP OFFICERS EXCLUDED							\$ 1,000,000
A	ERRORS & OMISSIONS			00TE024894208	03/10/12	03/01/13		2,000,000
A	CONTENTS			83SQUUQ884SA	03/01/12	03/01/13	\$500 DED	61,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)  
 ADDITIONAL INSURED WHERE REQUIRED BY WRITTEN CONTRACT SUBJECT TO POLICY TERM  
 CONDITIONS: CITY OF CHATTANOOGA COVERAGE IS PRIMARY AND NON CONTRIBUTORY

**CERTIFICATE HOLDER****CANCELLATION**

CHATTAN

CITY OF CHATTANOOGA  
 101 E 11TH ST  
 CHATTANOOGA, TN 37402

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

*Brian McClowry*

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**MASTER AGREEMENT**

*For Oracle R12 Upgrade Services*

*Between*

City of Chattanooga, TN

*And*

Applications Software Technology (AST) Corporation.

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This **MASTER AGREEMENT** ("Agreement") is made and entered into as of 3<sup>rd</sup> day of January, 2013 ("Effective Date"), by and between the City of Chattanooga, situated at 101 East 11<sup>th</sup> 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 A. 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 (“Acceptance of Deliverables”), 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 Final Acceptance. 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 Failure of User Acceptance Testing. 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 Term. The term of this Agreement shall be for one (1) year to commence on the Effective Date, with the option to review the Agreement for five (5) additional periods of one (1) year each; 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 Disengagement. 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. Termination

### 7.1 CONTRACTOR Default Provisions

7.1.1 Events of Default by CONTRACTOR. 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 Provisions for Remedies of CUSTOMER. 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 CUSTOMER Default Provisions

7.2.1 Events of Default by CUSTOMER. 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 Provisions for Remedies of CONTRACTOR. 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 Termination for Cause

7.3.1 Termination for Cause by the CUSTOMER. 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 Termination for Cause by the CONTRACTOR. 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 Termination for Convenience. Either party may terminate this agreement for convenience upon thirty (30) consecutive calendar days' written notice to the other party.

7.5 Obligations on Termination

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 Excusing Events. 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. Confidential Information

8.1 CUSTOMER Confidential Information. 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 hereby 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 Five Hundred Thousand Dollars (\$500,000) per accident, Five Hundred Thousand Dollars (\$500,000) per employee; and One Million Dollars (\$1,000,000) 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 To the extent permitted by State of Tennessee laws, 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, provided that nothing herein shall be deemed the waive any claims that the City may have under the insurance policies set forth in Section 9.1, Page 10

## **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 Tennessee. Jurisdiction and venue shall be exclusively found in a court of competent jurisdiction located in the state of Tennessee or the Federal District Court for the state of Tennessee, 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:**

City of Chattanooga  
Attn: Michael McMahan  
City Attorney  
101 East 11<sup>th</sup> Street, City Hall  
Chattanooga, TN 37402

*Fax:* 423-643-8255

**For CONTRACTOR:**

AST Corporation  
Attn: Nick Vlahos  
Chief Operating Officer  
1755 Park Street, Suite 100  
Naperville, IL 60563

*Fax:* 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.

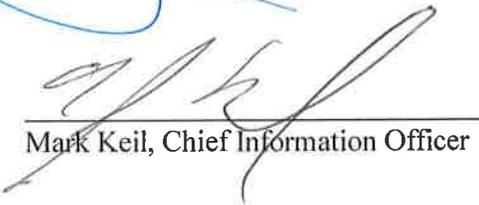
IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

City of Chattanooga, TN

Approved as to form and legal sufficiency

By:   
Daisy Madison, Chief Financial Officer

By:   
Michael McMahan, City Attorney

By:  1/02/13  
Mark Keil, Chief Information Officer

ATTEST:

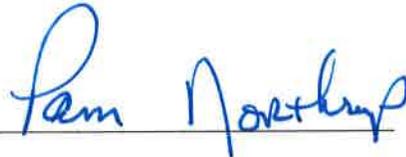
By:   
Purchasing Agent, Artie Prichard

Applications Software Technology Corporation

By:   
Pravin Kumar, President & CEO

01/03/2013  
Date

ATTEST:

By: 

01/03/2013  
Date

