



City of Palo Alto

City Council Staff Report

(ID # 10117)

Report Type: Consent Calendar

Meeting Date: 6/10/2019

Summary Title: Renewal of Oracle Licenses and Technical Support

Title: Approval of a One-year Contract Renewal With Oracle America, Inc., Contract Number C19174703 for Software Program Technical Support Services in the Amount of \$119,57;, and Approval and Authorization of the City Manager or Designee to Approve up to a 10 Percent Contingency Amount Not to Exceed \$11,957

From: City Manager

Lead Department: IT Department

Recommendation

Staff recommends that Council consider the following motions:

1. Authorize the City Manager or designee to execute the attached one-year license and support renewal contract with Oracle America, Inc., in an amount not to exceed \$119,574 subject to the annual appropriation of funds (Attachment A: Oracle Support Service Number 1844903 Renewal Quote, Attachment B: Oracle Technical Support Services Agreement, Attachment C: Amendment One and Exhibit A to Technical Support Services Agreement); and
2. Approve and authorize the City Manager or designee to approve up to a 10% contingency in the event additional services are required in an amount not to exceed \$11,957.

Executive Summary

The City has been using Oracle databases since 2000 for various data systems around the City such as our SAP and SCADA systems. This contract is necessary to continue receiving updates to software, software patches and technical support for the Oracle products licensed under this contract. The existing license and support contract expired on March 16th, 2019 (contract C11139794, [CMR:4454](#), <https://www.cityofpaloalto.org/civicax/filebank/documents/39707>).

A solicitation would be impractical and unavailing at this time as the Oracle licenses are required to run some of the City's most critical and necessary programs. The absence of

these licenses at this time would not allow core City systems to be accessed and business processes would stop. For these reasons, Staff is requesting an exemption from competitive solicitation as being impractical and unavailing under PAMC 2.30.360(b)(2).

Discussion

Council approved an upgrade to the City's ERP system (CMR 10033) on March 4, 2019. With this upgrade, staff will have the ability to remove some of the Oracle licenses currently in use and will reduce the cost of the City's overall Oracle licensing spend. Over the course of this next term year, staff will evaluate which licenses can be removed due to the ERP upgrade.

If Council's authorization of this contract is not obtained, the City will be out of compliance with its Oracle maintenance and licensing agreement.

Resource Impact

The funds for the payment of this contract are budgeted in the IT Technology Fund and were approved during the FY2019 budgeting cycle.

Environmental Review

Approval of these contracts do not constitute a project under the California Environmental Quality Act (CEQA); therefore, no Environmental Assessment is required.

Attachments:

- Attachment A: Oracle Support Service Number 1844903 Renewal Quote
- Attachment B: Oracle Technical Support Agreement
- Attachment C: Amendment One and Exhibit A to Technical Support Agreement



TECHNICAL SUPPORT SERVICES RENEWAL ORDER

GENERAL INFORMATION

OFFER EXPIRATION	ORACLE: Oracle America, Inc.
Support Service Number: 1844903 Offer Expires: 16-Mar-19	Oracle Contact Information: Ann Tran Telephone: 408.556.4833 Fax: 408.556.4833 Email: ann.tran@oracle.com
CUSTOMER: CITY OF PALO ALTO	
CUSTOMER QUOTE TO Account Contact: Sherrie Wong Account Name: CITY OF PALO ALTO Address: INFORMATION TECHNOLOGY SERVICES 250 HAMILTON AVENUE SECOND FLOOR PALO ALTO CA 94301 United States Telephone: 650 617-3152 Fax: 650 690-0775 E-mail: Sherrie.Wong@cityofpaloalto.org	CUSTOMER BILL TO Account Contact: ACCOUNTS PAYABLE Account Name: CITY OF PALO ALTO Address: PO BOX 10250 PALO ALTO CA 94303 United States Telephone: Fax: E-mail:

"You" and "Your" as used in this renewal order, refer to the Customer listed above.

Please take a minute to make sure the email information entered above is correct. Your email address is particularly important because Oracle may email You certain notices about technical support services. If You need to make any changes to the Customer information above, You can either login to your [Oracle Store](#) account and select "Update Quote to Information" to edit Your "Quote To" information and You can edit Your "Bill To" information at check out. Alternatively, this information can be updated by providing Your current information along with Your support service number 1844903, to Oracle per the General Information section above.

SERVICE DETAILS

Program Technical Support Services							
Service Level: Software Update License & Support							
Product Description	CSI #	Qty	License Metric	License Level / Type	Start Date	End Date	Price
Application Server Enterprise Edition - Concurrent Device	3069563	1100		FULL USE	17-Mar-19	16-Mar-20	4,724.12
Application Server Enterprise Edition - Universal Power Unit	3069563	960		FULL USE	17-Mar-19	16-Mar-20	6,903.98
Designer - Developer	3069563	1		FULL USE	17-Mar-19	16-Mar-20	1,889.64
DEVELOPER REL1.0	3069563	1	DEVELOPER	FULL USE	17-Mar-19	16-Mar-20	1,417.23
DIAGNOSTICS PACK 1.5	3069563	1100	CONCURRENT DEVICE	FULL USE	17-Mar-19	16-Mar-20	2,362.06
Discoverer Administration Edition - Named User	3069563	2		FULL USE	17-Mar-19	16-Mar-20	1,080.45
Forms Server - Universal Power Unit	3069563	500		FULL USE	17-Mar-19	16-Mar-20	433.05
Oracle Database Enterprise Edition - Universal Power Unit	3069563	960		FULL USE	17-Mar-19	16-Mar-20	20,786.10
Oracle Diagnostic Management Pack - Universal Power Unit	3069563	960		FULL USE	17-Mar-19	16-Mar-20	3,593.76
Oracle Tuning Management Pack - Universal Power Unit	3069563	960		FULL USE	17-Mar-19	16-Mar-20	3,593.77
Programmer - Developer	3069563	19		FULL USE	17-Mar-19	16-Mar-20	1,771.54
Reports Server - Universal Power Unit	3069563	500		FULL USE	17-Mar-19	16-Mar-20	433.05
REPORTS V2.5	3069563	1	DEVELOPER	FULL USE	17-Mar-19	16-Mar-20	881.60
SQL*PLUS - Developer	3069563	13		FULL USE	17-Mar-19	16-Mar-20	3,070.67
TUNING PACK 1.5	3069563	1100	CONCURRENT DEVICE	FULL USE	17-Mar-19	16-Mar-20	2,362.06
WebDB Enterprise Edition - Nonstandard User	3069563	4		FULL USE	17-Mar-19	16-Mar-20	389.74
Oracle Database Standard Edition - Named User Plus Perpetual	13920513	50		FULL USE	17-Mar-19	16-Mar-20	3,452.58
Oracle Database Enterprise Edition - Processor Perpetual	18309686	4		FULL USE	17-Mar-19	16-Mar-20	19,045.29
Oracle Partitioning - Processor Perpetual	18309686	4		FULL USE	17-Mar-19	16-Mar-20	4,761.33
Oracle Spatial and Graph - Named User Plus Perpetual	18309686	50		FULL USE	17-Mar-19	16-Mar-20	1,190.33

Program Technical Support Services							
Service Level: Software Update License & Support							

Product Description	CSI #	Qty	License Metric	License Level / Type	Start Date	End Date	Price
ORACLE SERVER EE 8i 8.1	19893780	1100	CONCUR RENT DEVICE	FULL USE	17-Mar-19	16-Mar-20	35,430.83

Program Technical Support Fees: USD 119,573.18

Total Price: USD 119,573.18

Plus applicable tax

NOTES

- If Oracle accepts Your renewal order, the start date set forth in the Service Details table above shall serve as the commencement date of the technical support services and the technical support services ordered under this renewal order will be provided through the end date specified in the table for the applicable programs and/ or hardware ("Support Period").
- If any of the fields listed in the Service Details table above are blank, then such fields do not apply to Your renewal.

TECHNICAL SUPPORT SERVICES TERMS

If the Customer and the Customer Quote To name identified in the General Information table above are not the same, CITY OF PALO ALTO represents that Customer has authorized CITY OF PALO ALTO to execute this renewal order on the Customer's behalf and to bind the Customer to the terms contained in this renewal order. CITY OF PALO ALTO services ordered are for the sole benefit of Customer and shall only be used by Customer. CITY OF PALO ALTO agrees to advise Customer of the terms of this renewal order as well as any communications received from Oracle regarding the services.

If the Customer and the Customer Bill To name identified in the General Information table above are not the same, Customer agrees that: a) Customer has the ultimate responsibility for payments under this renewal order; and b) any failure of CITY OF PALO ALTO to make timely payment per the terms of this renewal order shall be deemed a breach by Customer and, in addition to any other remedies available to Oracle, Oracle may terminate Customer's technical support service under this renewal order.

Technical support is provided under Oracle's technical support policies in effect at the time the services are provided. The technical support policies are subject to change at Oracle's discretion; however, Oracle will not materially reduce the level of services provided for supported programs and/or hardware during the period for which fees for technical support have been paid. You should review the technical support policies prior to entering into this renewal order.

The current version of the technical support policies may be accessed at <http://www.oracle.com/us/support/policies/index.html>.

The technical support services renewed under this renewal order are governed by the terms and conditions of the applicable agreement identified below ("agreement"):

- The agreement that You executed for technical support services for the programs and/or hardware listed in the Service Details section above with Oracle or a vendor acquired by Oracle. Any use of the programs and/or hardware, which includes updates and other materials provided or made available by Oracle as a part of technical support services, is subject to the rights granted for the programs and/or hardware set forth in the order in which the programs and/or hardware were acquired; or
- If You do not have an existing agreement for technical support services with Oracle, You agree that the terms of the Online Transactional Oracle Master Agreement located at <https://www.oracle.com/corporate/contracts/contract-documents/master-agreement.html>, that is in effect at the time You accept Your renewal order, govern the provision of technical support services ordered under this renewal order, as well as Your rights to use updates and other materials provided or made available by Oracle under technical support services. If applicable, You should review the Online Transactional Oracle Master Agreement prior to entering into this renewal order.

This renewal order incorporates the agreement by reference. In the event of inconsistencies between the terms contained in this renewal order and the agreement, this renewal order shall take precedence.

RENEWAL PROCESSING DETAILS

Please renew the technical support services on this renewal order on the [Oracle Store](#).

If You are unable to renew using the Oracle Store, You can renew using the options below. Your renewal order is subject to Oracle's acceptance. Your renewal is considered complete when You provide Oracle with payment details for the renewal as detailed below or an executed Oracle Financing contract. Once completed, Your renewal cannot be cancelled and Your payment is nonrefundable, except as provided in the agreement. Oracle will issue an invoice to You upon receipt of a purchase order or a form of payment acceptable to Oracle.

Please note that if the pre-tax value of this renewal is USD \$2,000 or less, the technical support services ordered must be paid by credit card; or You must renew Your support on the [Oracle Store](#).

Technical Support fees are invoiced Quarterly in Arrears. All fees payable to Oracle are due within 30 NET from date of invoice.

You agree to pay any sales, value-added or other similar taxes imposed by applicable law, except for taxes based on Oracle's income. If CITY OF PALO ALTO is a tax exempt organization, a copy of CITY OF PALO ALTO's tax exemption certificate must be submitted with CITY OF PALO ALTO's purchase order, check, credit card or other acceptable form of payment.

PAYMENT DETAILS

Purchase Order

If You are submitting a purchase order for the payment of the renewal of the technical support services on this renewal order, the purchase order must be in a non-editable format (e.g., PDF) and include the following information:

- Support Service Number: 1844903
- Total Price: USD 119,573.18 (excluding applicable tax)
- Local Tax, if applicable

In issuing a purchase order, CITY OF PALO ALTO agrees that the terms of this renewal order and the agreement supersede the terms in the purchase order or any other non-Oracle document, and no terms included in any such purchase order or other non-Oracle document will apply to the technical support services renewed under this renewal order.

Please contact Oracle per the General Information section above to issue Your purchase order.

Credit Card

If You wish to use a credit card to pay for the renewal of the technical support services on this renewal order, please contact Oracle per the General Information section above. Please note that Oracle is unable to process credit card transactions of USD \$100,000 or greater or transactions that are not in USD.

Check

If You are submitting a check for the payment of the renewal of the technical support services on this renewal order, the check must include the following information:

- Support Service Number: 1844903
- Total Price: USD 119,573.18 (excluding applicable tax)
- Local Tax, if applicable

In issuing a check, CITY OF PALO ALTO agrees that only the terms of this renewal order and the

agreement shall apply to the technical support services renewed under this renewal order. No terms attached or submitted with the check will apply.

Checks for technical support services renewed under this renewal order should be sent to:

AK, AZ, CA, HI, ID, NV, OR, UT, WA:

Oracle America, Inc
PO Box 44471
San Francisco, CA 94144-4471

All Other States:

Oracle America, Inc
PO Box 203448
Dallas, TX 75320-3448



Spotlight on Support Services & Special Offers

Extended Support puts you in control of your Database, Middleware, and Applications upgrade strategy by providing additional maintenance and upgrades for Oracle Database, Oracle Fusion Middleware, and Oracle Applications for an additional fee. For more information contact Oracle per the per the General Information section above or click the Learn more about Extended Support button below.

[Learn more about Extended Support](#)

Are you looking to **reduce your application management costs** while improving the performance and security of your on premises Oracle Applications? With Oracle Managed Applications Unlimited you can realize these benefits with no upfront costs and a smooth transition of your business critical Oracle applications to Oracle Cloud.

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Limited-time Training promotion from Oracle University: Save 20% on a prepaid Learning Credit account that you can use towards any Oracle University product or service, including Oracle Learning Subscription services, which offer anytime, anywhere training for you to maximize productivity while you learn. This promotion is valid 90 days prior to and 30 days following the expiration date specified above. This promotion is not valid in conjunction with any other Oracle University discounts or promotions, for US public-sector customers, or as otherwise prohibited by law. A minimum order of USD 5,000 is required. Please visit <http://education.oracle.com/renewaloffer> for more details and to purchase your prepaid Learning Credit account.

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ORACLE PUBLIC SECTOR TECHNICAL SUPPORT SERVICES AGREEMENT

This Oracle Public Sector Technical Support Services Agreement (this "Agreement") is between Oracle America, Inc. ("Oracle") and the entity identified below in the signature block ("You").

1. DEFINITIONS

1.1 "**Agreement**" refers to this Oracle Public Sector Technical Support Services Agreement (including any amendments thereto). This Agreement governs Your use of the Technical Support Services (defined below) ordered from Oracle.

1.2 "**Hardware**" refers to the computer equipment, including components, options and spare parts.

1.3 "**Integrated Software**" refers to any software or programmable code that is (a) embedded or integrated in the Hardware and enables the functionality of the Hardware or (b) specifically provided to You by Oracle and specifically listed (i) in accompanying documentation, (ii) on an Oracle webpage or (iii) via a mechanism that facilitates installation for use with Your Hardware. Integrated Software does not include and You do not have rights to (a) code or functionality for diagnostic, maintenance, repair or technical support services; or (b) separately licensed applications, operating systems, development tools, or system management software or other code that is separately licensed by Oracle. For specific Hardware, Integrated Software includes Integrated Software Options separately ordered.

1.4 "**Operating System**" refers to the software that manages Hardware for Programs and other software.

1.5 "**Products**" refers to Programs, Hardware, Integrated Software and Operating System.

1.6 "**Programs**" refers to (a) the software owned or distributed by Oracle that You have ordered, (b) Program Documentation and (c) any Program updates acquired through technical support. Programs do not include Integrated Software or any Operating System or any software release prior to general availability (e.g., beta releases)

1.7 "**Program Documentation**" refers to the Program user manual and Program installation manuals. Program Documentation may be delivered with the Programs. You may access the documentation online at <http://oracle.com/documentation>.

1.8 "**Separate Terms**" refers to separate license terms that are specified in the Program Documentation, readmes or notice files and that apply to Separately Licensed Third Party Technology.

1.9 "**Separately Licensed Third Party Technology**" refers to third party technology that is licensed under Separate Terms and not under the terms of this Agreement.

1.10 "**Technical Support Services**" refers to technical support services which You have ordered in accordance with this Agreement.

1.11 "**You**" and "**Your**" refers to the entity that has executed these General Terms.

2. AGREEMENT TERM

Orders may be placed under this Agreement for five years from the Effective Date (indicated below in Section 18).

3. TECHNICAL SUPPORT

3.1 If ordered, annual Technical Support Services (including first year and all subsequent years) for Programs is provided under Oracle's Software Technical Support Policies in effect at the time the Technical Support Services are provided. You agree to cooperate with Oracle and provide the access, resources, materials, personnel, information and consents that Oracle may require in order to perform the Technical Support Services. The

Oracle Software Technical Support Policies are incorporated in this Agreement and are subject to change at Oracle's discretion; however, Oracle policy changes will not result in a material reduction in the level of Technical Support Services provided for supported Programs during the period for which fees for Technical Support Services have been paid. You should review the policies prior to entering into the order for the applicable Technical Support Services. You may access the current version of the Oracle Software Technical Support policies at <http://oracle.com/contracts>. If You decide to purchase Technical Support Services for any Program license within a license set, You are required to purchase Technical Support Services at the same level for all licenses within that license set. You may desupport a subset of licenses in a license set only if You agree to terminate that subset of licenses. The technical support fees for the remaining licenses will be priced in accordance with the technical support policies in effect at the time of termination. Oracle's license set definition is available in the current technical support policies. If You decide not to purchase technical support, You may not update any unsupported Program licenses with new versions of the Program.

3.2 If ordered, annual Technical Support Services (including first year and all subsequent years) for Hardware is provided under Oracle's Hardware and Systems Support Policies in effect at the time the Technical Support Services are provided. You agree to cooperate with Oracle and provide the access, resources, materials, personnel, information, and consents that Oracle may require in order to perform the Technical Support Services. The Oracle Hardware and Systems Support Policies are incorporated in this Agreement and are subject to change at Oracle's discretion; however, Oracle will not materially reduce the level of Technical Support Services provided during the period for which fees for Technical Support Services have been paid. You should review the policies prior to entering into the order for Technical Support Services. You may access the current version of the Oracle Hardware and Systems Support Policies at <http://oracle.com/contracts>.

3.3 The Technical Support Services start date set forth in Your order shall serve as the commencement date of the Technical Support Services and the Technical Support Services ordered will be provided through the end date specified in Your order for the applicable Programs and/or Hardware.

4. OWNERSHIP

Oracle or its licensors retain all ownership and intellectual property rights to the Programs, Operating System, Integrated Software and anything developed or delivered under this Agreement.

5. WARRANTIES, DISCLAIMERS AND EXCLUSIVE REMEDIES

5.1 Oracle warrants that the Technical Support Services ordered and provided under this Agreement will be provided in a professional manner consistent with industry standards. You must notify Oracle of any Technical Support Service warranty deficiencies within 90 days from performance of the deficient Technical Support Services.

5.2 FOR ANY BREACH OF THE ABOVE WARRANTY, YOUR EXCLUSIVE REMEDY AND ORACLE'S ENTIRE LIABILITY SHALL BE REPERFORMANCE OF THE DEFICIENT TECHNICAL SUPPORT SERVICES; OR, IF ORACLE CANNOT SUBSTANTIALLY CORRECT THE DEFICIENCY IN A COMMERCIALY REASONABLE MANNER, YOU MAY END THE DEFICIENT TECHNICAL SUPPORT SERVICES AND RECOVER THE FEES YOU PAID TO ORACLE FOR THE DEFICIENT TECHNICAL SUPPORT SERVICES.

5.3 TO THE EXTENT NOT PROHIBITED BY LAW, THIS WARRANTY IS EXCLUSIVE AND THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS, INCLUDING WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

6. INDEMNIFICATION

6.1 To the extent not prohibited by law and subject to sections 6.5, 6.6 and 6.7 below, if a third party makes a claim against either You or Oracle ("Recipient" which may refer to You or Oracle depending upon which party received the Material), that any information, design, specification, instruction, software, data, hardware, or material (collectively, "Material") furnished by either You or Oracle ("Provider" which may refer to You or Oracle depending on which party provided the Material) and used by the Recipient infringes the third party's intellectual property rights, the Provider, at the Provider's sole cost and expense, will defend the Recipient against the claim and indemnify the Recipient from the damages, liabilities, costs and expenses awarded by the court to the third party claiming infringement or the settlement agreed to by the Provider, if the Recipient does the following:

- a. notifies the Provider promptly in writing, not later than 30 days after the Recipient receives notice of the claim (or sooner if required by applicable law);

- b. gives the Provider sole control of the defense and any settlement negotiations, to the extent permitted by law; and
- c. gives the Provider the information, authority and assistance the Provider needs to defend against or settle the claim.

6.2 If the Provider believes or it is determined that any of the Material may have violated a third party's intellectual property rights, the Provider may choose to either modify the Material to be non-infringing (while substantially preserving its utility or functionality) or obtain a license to allow for continued use, or if these alternatives are not commercially reasonable, the Provider may end the license for, and require return of, the applicable Material and refund any fees the Recipient may have paid to the other party for it and, if Oracle is the Provider of an infringing Program, any unused, prepaid technical support fees You have paid to Oracle for the license of the infringing Program, if any. If such return materially affects Oracle's ability to meet its obligations under the relevant order, then Oracle may, at its option and upon 30 days prior written notice, terminate the order.

6.3 Notwithstanding the provisions of section 6.2 and with respect to hardware only, if the Provider believes or it is determined that the hardware (or portion thereof) may have violated a third party's intellectual property rights, the Provider may choose to either replace or modify the hardware (or portion thereof) to be non-infringing (while substantially preserving its utility or functionality) or obtain a right to allow for continued use, or if these alternatives are not commercially reasonable, the Provider may remove the applicable hardware (or portion thereof) and refund the net book value and, if Oracle is the Provider of infringing Hardware, any unused, prepaid technical support fees You have paid to Oracle for the Hardware, if any.

6.4 In the event that the Material is Separately Licensed Third Party Technology and the associated Separate Terms do not allow termination of the license, in lieu of ending the license for the Material, Oracle may end the license for, and require return of, the Program associated with that Separately Licensed Third Party Technology and shall refund any Program license fees You may have paid to Oracle for the Program.

6.5 Provided You are a current subscriber to Oracle Technical Support Services for the Operating System (e.g., Oracle Premier Support for Systems, Oracle Premier Support for Operating Systems or Oracle Linux Premier Support), then for the period of time for which You were a subscriber to the applicable Oracle Technical Support Services (a) the phrase "Material" above in section 6.1 shall include the Operating System and the Integrated Software and any Integrated Software Options that You have licensed and (b) the phrase "Program(s)" in this section 6 is replaced by the phrase "Program(s) or the Operating System or Integrated Software or Integrated Software Options (as applicable)" (i.e., Oracle will not indemnify You for Your use of the Operating System and/or Integrated Software and/or Integrated Software Options when You were not a subscriber to the applicable Oracle Technical Support Services). Notwithstanding the foregoing, with respect solely to the Linux operating system, Oracle will not indemnify You for Materials that are not part of the Oracle Linux covered files as defined at <http://www.oracle.com/us/support/library/enterprise-linux-indemnification-069347.pdf>.

6.6 The Provider will not indemnify the Recipient if the Recipient alters Material or uses it outside the scope of use identified in the Provider's user documentation or if the Recipient uses a version of Material which has been superseded, if the infringement claim could have been avoided by using an unaltered current version of Material which was provided to the Recipient, or if the Recipient continues to use the applicable Material after the end of the license to use that Material. The Provider will not indemnify the Recipient to the extent that an infringement claim is based upon any information, design, specification, instruction, software, data, or material not furnished by the Provider. Oracle will not indemnify You for any portion of an infringement claim that is based upon the combination of any Material with any products or services not provided by Oracle. Solely with respect to Separately Licensed Third Party Technology that is part of or is required to use a Program and that is used: (a) in unmodified form; (b) as part of or as required to use a Program; and (c) in accordance with the license grant for the relevant Program and all other terms and conditions of this Agreement, Oracle will indemnify You for infringement claims for Separately Licensed Third Party Technology to the same extent as Oracle is required to provide infringement indemnification for the Program under the terms of this Agreement. Oracle will not indemnify You for infringement caused by Your actions against any third party if the Program(s) as delivered to You and used in accordance with the terms of this Agreement would not otherwise infringe any third party intellectual property rights. Oracle will not indemnify You for any intellectual property infringement claim(s) known to You at the time license rights are obtained.

6.7 This section provides the parties' exclusive remedy for any infringement claims or damages.

7. TERMINATION

7.1 If either of us breaches a material term of this Agreement and fails to correct the breach within 30 days of written specification of the breach, then the breaching party is in default and the non-breaching party may terminate this Agreement. If Oracle terminates this Agreement as specified in the preceding sentence, You must pay within 30 days all amounts which have accrued prior to such termination, as well as all sums remaining unpaid for Technical Support Services received under this Agreement plus related taxes and expenses. Except for nonpayment of fees, the non-breaching party may agree in its sole discretion to extend the 30 day period for so long as the breaching party continues reasonable efforts to cure the breach. You agree that if You are in default under this Agreement, You may not use those Technical Support Service ordered.

7.2 You may terminate this Agreement at any time without cause by giving Oracle 30 days prior written notice of such termination. If You end this Agreement as specified in the preceding sentence, You agree You must pay within 30 days all amounts which have accrued prior to the end of this Agreement, as well as all sums remaining unpaid for Technical Support Services received under this Agreement plus applicable related taxes and expenses (if any).

7.3 If You have used a contract with Oracle or an affiliate of Oracle to pay for the fees due under an order and You are in default under that contract, You may not use the Technical Support Services that are subject to such contract.

7.4 Provisions that survive termination or expiration are those relating to limitation of liability, infringement indemnity, payment and others which by their nature are intended to survive.

8. FEES AND TAXES; PRICING, INVOICING AND PAYMENT OBLIGATION

8.1 All fees payable to Oracle are due within 30 days from the invoice date. You agree to pay any sales, value-added or other similar taxes imposed by applicable law that Oracle must pay based on the Technical Support Services You ordered, except for taxes based on Oracle's income. Reimbursement of expenses related to the provision of any Technical Support Services, if any, will be addressed in the relevant order and/or statement of work for such Technical Support Services.

8.2 You understand that You may receive multiple invoices for the Technical Support Services You ordered. Invoices will be submitted to You pursuant to Oracle's Invoicing Standards Policy, which may be accessed at <http://oracle.com/contracts>.

9. NONDISCLOSURE

9.1 By virtue of this Agreement, the parties may have access to information that is confidential to one another ("**Confidential Information**"). We each agree to disclose only information that is required for the performance of obligations under this Agreement. Confidential Information shall be limited information clearly identified as confidential at the time of disclosure.

9.2 A party's Confidential Information shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the other party; (b) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on the disclosure; or (d) is independently developed by the other party.

9.3 Subject to the applicable law, we each agree not to disclose each other's Confidential Information to any third party other than those set forth in the following sentence for a period of three years from the date of the disclosing party's disclosure of the Confidential Information to the receiving party. We may disclose Confidential Information only to those employees or agents or subcontractors who are required to protect it against unauthorized disclosure in a manner no less protective than under this Agreement. Nothing shall prevent either party from disclosing the terms or pricing under this Agreement or orders submitted under this Agreement in any legal proceeding arising from or in connection with this Agreement or disclosing the Confidential Information to a governmental entity as required by law. In the event You receive a valid request for Oracle's Confidential Information pursuant to applicable law, You will provide Oracle with reasonable notice of such request and give Oracle an opportunity to object to or limit any such disclosure.

10. ENTIRE AGREEMENT

10.1 You agree that this Agreement and the information which is incorporated into this Agreement by written reference (including reference to information contained in a URL or referenced policy), together with the applicable order, are the complete agreement for the Technical Support Services ordered by You and supersede all prior or contemporaneous agreements or representations, written or oral, regarding such Technical Support Services.

10.2 It is expressly agreed that the terms of this Agreement and any Oracle order shall supersede the terms in any purchase order, procurement internet portal or any other similar non-Oracle document and no terms included in any such purchase order, portal or other non-Oracle document shall apply to the Technical Support Services ordered. In the event of any inconsistencies between the terms of an order and this Agreement, the order shall take precedence. This Agreement and orders may not be modified and the rights and restrictions may not be altered or waived except in a writing signed or accepted online through the Oracle Store by authorized representatives of You and of Oracle. Any notice required under this Agreement shall be provided to the other party in writing.

11. LIMITATION OF LIABILITY

NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF PROFITS, REVENUE, DATA, OR DATA USE. ORACLE'S MAXIMUM LIABILITY FOR ANY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR YOUR ORDER, WHETHER IN CONTRACT OR TORT, OR OTHERWISE, SHALL BE LIMITED TO THE AMOUNT OF THE FEES YOU PAID ORACLE UNDER THE ORDER GIVING RISE TO THE LIABILITY, AND IF SUCH DAMAGES RESULT FROM YOUR USE OF TECHNICAL SUPPORT SERVICES, SUCH LIABILITY SHALL BE LIMITED TO THE FEES YOU PAID ORACLE FOR THE DEFICIENT TECHNICAL SUPPORT SERVICES GIVING RISE TO THE LIABILITY.

12. EXPORT

Export laws and regulations of the United States and any other relevant local export laws and regulations apply to the Technical Support Services. You agree that such export laws govern Your use of any Technical Support Services deliverables provided under this Agreement, and You agree to comply with all such export laws and regulations (including "deemed export" and "deemed re-export" regulations). You agree that no data, information, Product and/or materials resulting from Technical Support Services (or direct product thereof) will be exported, directly or indirectly, in violation of these laws, or will be used for any purpose prohibited by these laws including, without limitation, nuclear, chemical, or biological weapons proliferation, or development of missile technology.

13. FORCE MAJEURE

Neither of us shall be responsible for failure or delay of performance if caused by: an act of war, hostility, or sabotage; act of God; pandemic, electrical, internet, or telecommunication outage that is not caused by the obligated party; government restrictions (including the denial or cancellation of any export, import or other license); other event outside the reasonable control of the obligated party. We both will use reasonable efforts to mitigate the effect of a force majeure event. If such event continues for more than 30 days, either of us may cancel unperformed Technical Support Service and affected orders upon written notice. This section does not excuse either party's obligation to take reasonable steps to follow its normal disaster recovery procedures or Your obligation to pay for Technical Support Services ordered or delivered.

14. GOVERNING LAW AND JURISDICTION

This Agreement is governed by the laws of State of California.

15. NOTICE

If You have a dispute with Oracle or if You wish to provide a notice under the Indemnification section of this Agreement, or if You become subject to insolvency or other similar legal proceedings, You will promptly send written notice to: Oracle America, Inc., 500 Oracle Parkway, Redwood City, California, United States, 94065, Attention: General Counsel, Legal Department.

16. ASSIGNMENT

You may not assign this Agreement or give or transfer any Technical Support Services or an interest in them to another individual or entity. If You grant a security interest in any Technical Support Services deliverables, the secured party has no right to use any Technical Support Services deliverables, and if You decide to finance Your acquisition of any Technical Support Services, You will follow Oracle's policies regarding financing which are at <http://oracle.com/contracts>. The foregoing shall not be construed to limit the rights You may otherwise have with respect to the Linux operating system, third party technology or Separately Licensed Third Party Technology licensed under open source or similar license terms.

17. OTHER

17.1 Oracle is an independent contractor and we agree that no partnership, joint venture, or agency relationship exists between us. We each will be responsible for paying our own employees, including employment related taxes and insurance.

17.2 If any term of this Agreement is found to be invalid or unenforceable, the remaining provisions will remain effective and such term shall be replaced with a term consistent with the purpose and intent of this Agreement.

17.3 Except for actions for nonpayment or breach of Oracle's proprietary rights, no action, regardless of form, arising out of or relating to this Agreement may be brought by either party more than two years after the cause of action has accrued.

17.4 Products and Technical Support Services deliverables are not designed for or specifically intended for use in nuclear facilities or other hazardous applications. You agree that it is Your responsibility to ensure safe use of Products and Technical Support Services deliverables in such applications.

17.5 The Uniform Computer Information Transactions Act does not apply to this Agreement or orders placed under it.

17.6 You understand that Oracle's business partners, including any third party firms retained by You to provide consulting services, are independent of Oracle and are not Oracle's agents. Oracle is not liable for nor bound by any acts of any such business partner unless (i) the business partner is providing services as an Oracle subcontractor in furtherance of an order placed under this Agreement and (ii) only to the same extent as Oracle would be responsible for the performance of Oracle resources under that order.

17.7 For software (i) that is part of Programs, Operating Systems, Integrated Software or Integrated Software Options (or all four) and (ii) that You receive from Oracle in binary form and (iii) that is licensed under an open source license that gives You the right to receive the source code for that binary, You may obtain a copy of the applicable source code from <https://oss.oracle.com/sources/> or <http://www.oracle.com/goto/opensourcecode>. If the source code for such software was not provided to You with the binary, You may also receive a copy of the source code on physical media by submitting a written request pursuant to the instructions in the "Written Offer for Source Code" section of the latter website.

18. AGREEMENT EFFECTIVE DATE

The Effective Date of this Agreement is 21-MAHY-2019. (DATE TO BE COMPLETED BY ORACLE)

CITY OF PALO ALTO	Oracle America, Inc.
Signature _____	Signature  _____
Name _____	Name <u>Jake Camarillo</u>
Title _____	Title <u>Centralized workflow Manager</u>
Signature Date _____	Signature Date <u>5/21/2019</u>
	Agreement No: US-PS-TSSA-2103261



**AMENDMENT ONE
TO THE
ORACLE PUBLIC SECTOR TECHNICAL SUPPORT
SERVICES AGREEMENT
BETWEEN
CITY OF PALO ALTO
AND
ORACLE AMERICA, INC.**

This Oracle Public Sector Technical Support Services Agreement Amendment One (this "Amendment One") amends the Oracle Public Sector Technical Support Services Agreement, US-PS-TSSA-2103261 dated 21-MAY-2019 (To be completed by Oracle) and all amendments and addenda thereto (the "Agreement") between City of Palo Alto ("You") and Oracle America, Inc. ("Oracle").

The parties agree to amend the Agreement as follows:

1. **Section 9. NONDISCLOSURE**

a. Delete Subsection 9.1 of section 9 Nondisclosure in its entirety and replace with the following:

"9.1 By virtue of this Agreement, the parties may have access to information that is confidential to one another ("**Confidential Information**"). We each agree to disclose only information that is required for the performance of obligations under this Agreement. Confidential Information shall be limited to information clearly identified as confidential at the time of disclosure and "Personal Information" of a California resident as defined in California Civil Code section 1798.81.5 provided, that You follow all operational instructions in the Oracle My Oracle Support ("MOS") customer portal regarding the provision of Personal Information when submitting a Support Request. The Global Customer Support Business Associate Agreement is attached as Exhibit A."

b. Delete Subsection 9.3 of section 9 Nondisclosure in its entirety and replace with the following:

"9.3 Subject to the applicable law, we each agree not to disclose each other's Confidential Information to any third party other than those set forth in this Section 9.3 for a period of three years from the date of the disclosing party's disclosure of the Confidential Information to the receiving party, except for Personal Information, which shall be treated as Confidential Information for as long as the receiving party retains the Personal Information, provided that You follow all operational instructions in the Oracle My Oracle Support ("MOS") customer portal regarding the provision of Personal Information when submitting a Support Request. You agree to disclose to Oracle only such Personal Information as is reasonably believed to be necessary for Oracle to perform its obligations under this Agreement. We may disclose Confidential Information only to those employees or agents or subcontractors who are required to protect it against unauthorized disclosure in a manner no less protective than under this Agreement. Nothing shall prevent either party from disclosing the terms or pricing under this Agreement or orders submitted under this Agreement in any legal proceeding arising from or in connection with this Agreement or disclosing the Confidential Information to a governmental entity as required by law. In the event You receive a valid request for Oracle's Confidential Information pursuant to applicable open records law(s), You will provide Oracle with reasonable notice of such request and give Oracle an opportunity to object to or limit any such disclosure. If either party is required to disclose Confidential Information pursuant to a court order, subpoena, search warrant, summons or other operation of law, prior to disclosing Confidential Information, such party shall, if permitted by law, give reasonable notice to the disclosing party of such order of law and an opportunity to object to or limit such production."

2. **Global Customer Support Business Associate Agreement**

The Global Customer Support Business Associate Agreement, attached to this Amendment One as Exhibit A, is incorporated into the Agreement.

Subject to the modifications herein, the Agreement shall remain in full force and effect.

The Effective Date of this Amendment One is 21-MAY-2019. (to be completed by Oracle)

City of Palo Alto

Oracle America, Inc.

DocuSigned by:

Jake Camarillo

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Authorized Signature: _____

Authorized Signature: _____

Name: _____

Name: Jake Camarillo

Title: _____

Title: Centralized workflow Manager

Signature Date: _____

Signature Date: 5/21/2019

APPROVED AS TO FORM:

By: _____

Cassie Coleman

Assistant City Attorney

Date: _____

**EXHIBIT A TO
AMENDMENT ONE
OF THE
ORACLE PUBLIC SECTOR TECHNICAL SUPPORT
SERVICES AGREEMENT
BETWEEN
CITY OF PALO ALTO
AND
ORACLE AMERICA, INC**

**Global Customer Support
Business Associate Agreement**

This Exhibit A to Amendment One of the Oracle Public Sector Technical Support Services Agreement is incorporated into the Oracle Public Sector Technical Support Services Agreement, US-PS-TSSA-2103261, and all amendments and addenda thereto (the "Agreement") between City of Palo Alto ("You") and Oracle America, Inc. ("Oracle").

WHEREAS in order to receive technical support services from Oracle, You would like to provide Oracle with electronic protected health information (as defined by 45 C.F.R. § 160.103) ("PHI") that is subject to the Health Insurance Portability and Accountability Act of 1996 as amended by the Health Information Technology for Economic and Clinical Health Act of 2009 and all implementing regulations of the U.S. Department of Health & Human Services (collectively "HIPAA");

WHEREAS Oracle recognizes that You may have obligations under HIPAA to require service providers that create, receive, maintain or transmit PHI to agree to certain contractual terms and conditions in a Business Associate Agreement ("BAA") designed to maintain the privacy and security of such PHI;

THEREFORE, the parties agree to the following:

- I. This BAA applies only to PHI that You provide to Oracle in order to receive standard technical support services for licensed Oracle Programs and Hardware and not any other Oracle service offerings including cloud services, consulting, or advanced customer services. You will not provide Oracle with any PHI under this BAA unless You follow the operational requirements specified in Section II.
- II. When You provide Oracle with PHI under this BAA, Oracle will protect the privacy and security of such PHI in accordance with the terms specified in Section III provided that You:
 - A. Submit PHI only in service request ("SR") attachments on the Oracle My Oracle Support ("MOS") customer portal (or if renamed, its successor);
 - B. Do not include PHI in the body of the SR; and
 - C. When prompted in MOS, indicate that the SR attachment may contain PHI.
- III. When You follow the operational requirements specified in Section II, Oracle will take the following measures designed to protect the privacy and security of PHI You submit, unless otherwise required by law:
 - A. Not use or further disclose such PHI other than as permitted or required by this BAA.
 - B. Use appropriate administrative, physical, and technical safeguards designed to protect the confidentiality, integrity, and availability of such PHI and comply, where applicable to Oracle in its performance of the technical support services, with 45 C.F.R. § 164 Subpart C, to prevent the use or disclosure of such PHI other than as provided under this BAA; additional information concerning such measures may be specified in this BAA.
 - C. Report to You any use or disclosure of such PHI/ePHI in violation of the terms of this BAA of which Oracle becomes aware, including Breaches of Unsecured Protected Health Information as required by 45 C.F.R. § 164.410 (as those terms are

defined by 45 C.F.R. § 164.402) and Security Incidents (as defined by 45 CFR 164.304). Such report shall include the identification of each individual, to the extent known by Oracle, whose unsecured protected health information has been, or is reasonably believed by Oracle to have been, accessed, acquired or disclosed during such breach. To the extent known, Oracle shall also provide You with: a brief description of what happened, including the date of the breach and the date of the discovery of the breach; a description of the types of unsecured PHI that were involved in the breach; and a brief description of what Oracle is doing to investigate the breach, remediate its cause, and protect against any further breaches of the same or similar nature.

- D. In accordance with 45 C.F.R. § 164.502(e)(1)(ii) and § 164.308(b)(2), ensure that any subcontractors that access, receive, maintain, or transmit such PHI on Oracle's behalf in its provision of technical support services under this BAA agree in all material respects to the same restrictions and conditions that apply to Oracle with respect to such PHI under this BAA.
- E. Make available to You any requests received by Oracle from individuals to inspect or obtain a copy of their PHI in accordance with 45 C.F.R. § 164.524.
- F. Make available to You any requests received by Oracle from individuals to have their PHI amended in accordance with 45 C.F.R. § 164.526.
- G. Make available to You any requests received by Oracle from individuals for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.
- H. Make its internal practices, books and records relating to the use and disclosure of such PHI available to the Secretary of the United States Department of Health and Human Services or his or her designee for purposes of determining Your compliance with 45 C.F.R. § 164 Subpart E .
- I. At the end of the term of the Technical Support Services Agreement or upon termination thereof in accordance with its terms, if feasible and at Your request, Oracle shall return or destroy any such PHI then in its possession in any form, and retain no copies of such PHI. If such return or destruction is not feasible, Oracle will extend the protections specified in the order under which the technical support services were acquired to such PHI and limit further uses and disclosures to those purposes that make its return or destruction of such PHI infeasible.

IV. Additional Terms

- A. You may terminate this BAA if Oracle is in material breach of the obligations stated herein and fails to correct the breach within 30 days of written specification of the breach.
- B. If Oracle knows of a pattern of activity or practice of a subcontractor that constitutes a material breach of the subcontractor's obligation of the contract executed with Oracle in accordance with Section III.D above, Oracle will promptly require the subcontractor to cure the breach or end the violation, as applicable, and if such steps are unsuccessful, terminate the contract, if feasible.
- C. The terms and conditions of this BAA shall survive termination of the Technical Support Services Agreement.
- D. When using or disclosing such PHI or when requesting such PHI from You, the parties shall make reasonable efforts to limit PHI to the minimum necessary to accomplish the intended purposes of the use, disclosure or request.