

BEFORE THE METRO CONTRACT REVIEW BOARD

FOR THE PURPOSE OF AUTHORIZING) RESOLUTION NO. 01-3072
AMENDMENT NUMBER 4 OF THE)
PERSONAL SERVICES AGREEMENT WITH) Introduced by
PeopleSoft USA Inc) Executive Officer Mike Burton

WHEREAS, Metro Regional Services entered into a Software License and Services Agreement with PeopleSoft USA Inc, effective June 14, 1996 for software; and

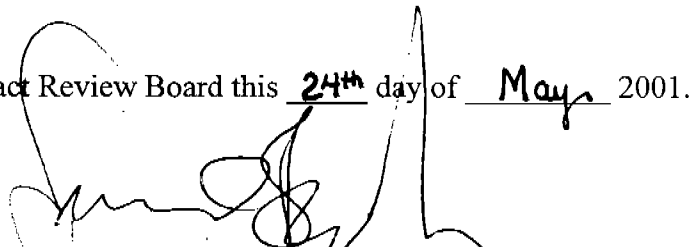
WHEREAS, PeopleSoft was selected as the provider pursuant to a competitive process; and

WHEREAS, Metro Council and the Executive Officer desire to increase the amount of the PeopleSoft Agreement to provide for software products to upgrade the existing software; now, therefore,

BE IT RESOLVED:


That the Metro Contract Review Board authorizes the Executive Officer to enter into Amendment No. 4 to the Software License and Services Agreement with PeopleSoft USA Inc in a form substantially similar to that shown in Exhibit A.

ADOPTED by the Metro Contract Review Board this 24th day of May 2001.



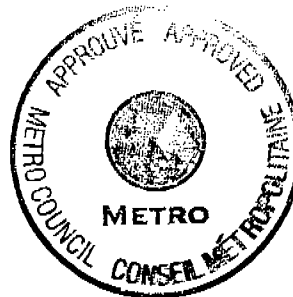
David Bragdon, Presiding Officer

APPROVED AS TO FORM:



Daniel B. Cooper, General Counsel

I:SM/PeopleSoft



UPGRADE AMENDMENT

**to
SOFTWARE LICENSE AND SERVICES AGREEMENT
for
EXTENDED ENTERPRISE CAPABILITIES**

This upgrade amendment (“**Upgrade Amendment**”) to the Software License and Services Agreement dated June 14, 1996 and all applicable addenda, amendments and Schedules thereto (collectively the “**License Agreement**”) is made and entered into as of _____, 2001 (“**Upgrade Amendment Effective Date**”) by and between PeopleSoft USA, Inc¹. (“**PeopleSoft**”) and Metro (“**Licensee**”).

1. SOFTWARE/SERVICES

	Mfr.	Provided Copies	Fee
Extended Enterprise Capabilities HRMS			
Human Resources	PeopleSoft, Inc.	1	Included
Payroll	PeopleSoft, Inc.	1	Included
Extended Enterprise Capabilities Financials			
General Ledger	PeopleSoft, Inc.	1	Included
Receivables	PeopleSoft, Inc.	1	Included
Payables	PeopleSoft, Inc.	1	Included
Billing	PeopleSoft, Inc.	1	Included
Purchasing	PeopleSoft, Inc.	1	Included
Extended Enterprise License Fee			
First Year Annual Support Services Fee			
TOTAL FEES			

2. License to Deploy and Use the Extended Enterprise Capabilities.

Territory	United States
Version	American English Language/United States Public Sector Functionality

¹ PeopleSoft, Inc. assigned all United States licenses to its wholly owned subsidiary, PeopleSoft USA, Inc. on January 1, 1998 and as of such date, PeopleSoft USA, Inc. is the successor-in-interest to the License Agreement between the parties.

2.1 PeopleSoft grants Licensee the right to deploy and use the Extended Enterprise Capabilities in the Software listed above for access by Employees and Designates on one or more servers and/or workstations located at facilities owned or leased by Licensee, in the Territory, subject to the limitations contained herein and in the License Agreement and solely to access Licensee's internal data for Licensee's purpose, as permitted herein. Licensee's use of the Software is restricted for the Size Metrics most recently specified in this Upgrade Amendment and thereafter, as re-established during annual certification as specified in the section entitled "Certification" below. A breach by a Designate will be considered a breach by Licensee hereunder.

2.2 If Licensee desires to use the Software beyond the scope of the License Agreement or this Upgrade Amendment, Licensee shall obtain a license for the additional rights from PeopleSoft, which may or may not be granted.

2.3 Licensee shall be responsible for acquiring and paying for any database providers' and/or external third party software license requirements, including any additional fees to any such third parties that may be affected by this Upgrade Amendment.

2.4 Licensee shall not use any functionality or any version of the Software not expressly licensed by Licensee, including any functionality of a version not applicable to the Territory. PeopleSoft reserves all rights not expressly granted herein.

3. **Size Metrics.** Licensee's use of the Software is limited to the following Size Metrics:

Employee Count	Reported Budget
One thousand thirty-two (1,032)	One hundred forty-five million dollars (\$145,000,000)

4. **License Fee for Extended Enterprise Capabilities.** Licensee shall pay PeopleSoft a license fee of \$100,000 for the rights set forth herein for Licensee's use of the Software modules listed above. This fee is based on Licensee total Employee Count of one thousand thirty-two (1,032) and total Reported Budget of one hundred forty-five million dollars (\$145,000,000).

5. **Payment Terms.**

5.1 Licensee shall pay PeopleSoft the TOTAL FEES shown above in U.S. dollars within thirty (30) days from the date of PeopleSoft's invoice. Except as otherwise provided herein, all payment obligations are non-contingent, non-cancelable and non-refundable. Payments which are not received within thirty (30) days from the date of the invoice shall bear interest at the lesser of eighteen percent (18%) per annum or the maximum rate allowed under applicable law.

5.2 Excluding taxes based on PeopleSoft's income, Licensee is liable for all taxes, duties and customs fees relating to the Software and Support Services provided hereunder whether or not PeopleSoft invoices Licensee for such taxes, duties or customs fees.

5.3 PeopleSoft reserves the right to change its credit terms at any time on notice to Licensee. In addition, PeopleSoft reserves the right to withhold performance of any obligations, whether arising under this Upgrade Amendment or otherwise, in the event of Licensee's nonpayment

when due of any amounts owed to PeopleSoft. This is in addition to any other remedies available to PeopleSoft.

5.4 Licensee represents and warrants that if its internal procedures require that a purchase order be issued as a prerequisite to payment of any amounts due to PeopleSoft, it will timely issue such purchase order and inform PeopleSoft of the number and amount thereof and that it will take all action necessary to effect payment to PeopleSoft on the date specified in Section 5.1 above. Licensee agrees that the absence of a purchase order, other ordering document or administrative procedure may not be raised as a defense to avoid or impair the performance of any of Licensee's obligations hereunder, including payment of amounts owed to PeopleSoft.

6. Support Services Terms. Licensee shall pay in advance the First Year Annual Support Services Fee as specified in Section 1 above for the Extended Enterprise Capabilities for the Software listed herein for a period of one (1) year commencing on the Upgrade Amendment Effective Date. Thereafter, subject to the terms and conditions of the Software Support Services Terms and Conditions as attached to the License Agreement, Licensee may elect to continue Support Services for the Extended Enterprise Capabilities for the Software by paying PeopleSoft the Support Services fee in effect on the date Support Services are renewed, calculated as of the commencement of each year of Support Services taking into account Employee Count and Reported Budget and any Incremental License Fees owed thereon, as of the date of renewal of the Support Services.

7. Incremental License Fee - HRMS. Licensee's licensed use of the Software listed herein is based on Licensee's Size Metrics as shown in this Upgrade Amendment. Each year prior to the Anniversary Date, PeopleSoft will send Licensee a statement to verify Licensee's total Employee Count as of such date. Licensee shall pay PeopleSoft an additional non-refundable, non-cancelable license fee of \$12,280 for each incremental increase of 206 in Licensee's Employee Count from one Anniversary Date to the next. Upon receipt of such license fees in the amount of \$12,280, Licensee's Employee Count shall be modified to increase by 206.

Incremental License Fee - Financials. Licensee's licensed use of the Software listed herein is based on Licensee's Size Metrics as shown in this Upgrade Amendment. Each year prior to the Anniversary Date, PeopleSoft will send Licensee a statement to verify Licensee's total Annual Budget as of such date. Licensee shall pay PeopleSoft an additional non-refundable, non-cancelable license fee of \$23,920 for each incremental increase of \$29 million in Licensee's Annual Budget from one Anniversary Date to the next. Upon receipt of such license fees in the amount of \$23,920, Licensee's Annual Budget shall be modified to increase by \$29 million.

8. Certification. On an annual basis, PeopleSoft shall send Licensee a statement in the form of a written request to verify Licensee's Size Metrics as of such Anniversary Date. Licensee shall promptly respond by providing PeopleSoft with a certification signed by an authorized representative of Licensee, either (a) verifying PeopleSoft's statement and confirming the Size Metrics as set forth in such statement; or (b) providing PeopleSoft with Licensee's then-current Size Metrics. If Licensee's Size Metrics have expanded, Licensee shall pay PeopleSoft the applicable Incremental License Fees as set forth herein.

9. **Audit:** PeopleSoft reserves the right to audit the use of the Software by Licensee no more than once in any twelve (12) month period at PeopleSoft's expense, upon thirty days notice. All audits shall be conducted during regular business hours. If any such audit discloses an underpayment of fees due for the period which the discrepancy has arisen, Licensee will pay the underpayment along with the interest accrued from the date of payment was originally due at the lesser of eighteen percent (18%) per annum or the maximum permitted by law. Licensee will also reimburse PeopleSoft for all reasonable costs and expenses associated with the audit if the audit shows that Licensee has underreported any Size Metrics.

10. **General.** The terms and conditions of this Upgrade Amendment apply only to the Software listed herein. In the event of conflict or inconsistency, this Upgrade Amendment shall take precedence over the License Agreement. The License Agreement and this Upgrade Amendment constitute the entire agreement between the parties concerning the Software listed herein. All amendments to this Upgrade Amendment must be in writing and signed by both parties authorized signatories. Transmitted Copies are considered documents equivalent to original documents. This Upgrade Amendment may be executed in counterparts.

11. **Definitions.** Unless otherwise defined herein, capitalized terms used in this Upgrade Amendment shall have the same meaning as those used in the License Agreement. To the extent there is any conflict between the definitions in the License Agreement and the definitions below, the definitions below will control and supercede the definitions in the License Agreement.

"Anniversary Date" means one year after the effective date of this Upgrade Amendment.

"Designates" means Licensee's customers, suppliers, vendors, benefits providers and other such external parties providing goods or services to Licensee that access the Software consistent with the terms of this Upgrade Amendment. In no event shall a Designate have the right to (i) install the Software on a server, workstation or other computer, or (ii) access the source code for the Software. A breach by a Designate will be considered a breach by Licensee hereunder.

"Employees" mean Licensee's and all related entities' full or part time employees from whom Licensee withholds payroll taxes. Employees are calculated based on the number of full time equivalent employees. For the purpose of this calculation, an employee includes any records identified by a unique social security number and assigned to an active status. These employees may be characterized by being active, permanent, permanent part-time, faculty, adjunct faculty, student employee, wage temporary, retired with health benefits administered by Licensee, etc. This term does not include employee records for separated employees, employees on leave without pay and benefits, employee dependents, retired employees not participating in retiree health or pension plans administered by Licensee, and records placed in archival (inactive) files which are periodically viewed, but not updated.

"Employee Count" shall mean the sum of all Employees and contractors who are or would be deemed employees under applicable laws.

"Extended Enterprise Capabilities" means the expanded use rights incorporated in the Software to enable Licensee's usage and deployment of the Software through the use of Licensee's fire-wall secured intranet, internet or extranet.

"Reported Assets" means Licensee's consolidated assets from all sources as reflected in an audited statement from its external accounting firm.

“Reported Budget” means Licensee's operating budget, including funding from all sources and grants and endowments as reflected in an audited statement from its external accounting firm.

“Reported Revenues” means Licensee’s consolidated gross revenues reflected in an audited statement from its external accounting firm.

“Size Metrics” means one or more of the following, as applicable: Employee Count, Reported Revenues, Reported Budget or Reported Assets.

“Software” means all or any portion of the applicable Version for the Territory of the binary computer software programs and related source code (except as otherwise provided in the applicable Schedule), listed on the applicable Schedule(s) to the License Agreement as being licensed by Licensee, available as of the Amendment Effective Date, which is delivered by PeopleSoft to Licensee. Software does not include Third Party Software or source code for Third Party Software or Tools. Unless specifically stated otherwise, all Software is delivered to Licensee only if and when generally commercially available.

“Support Services” means PeopleSoft's standard services in effect at the time such services are rendered, which are designed to support the Software.

“Territory” means the geographic area set forth in the applicable Schedule in which Licensee may install and run the Software on servers or workstations located at its facilities for use by Employees and Designates who are regularly employed in such geographic area.

“Third Party Software” means all or any portion of the then commercially available version of the binary computer software programs, but not source code, licensed by PeopleSoft from third parties and sublicensed to Licensee, as specified in the applicable Schedule, which are not embedded in the Software.

“Tools” means the underlying architecture from which the Software is designed, and includes software application programming tools in object code form, including PeopleTools and PeopleTools, but does not include source code, which is delivered by PeopleSoft to Licensee.

“Transmitted Copies” means this Upgrade Amendment, and other ordering documents which are (i) copied or reproduced and transmitted via photocopy, facsimile or process that accurately transmits the original documents; and (ii) accepted by PeopleSoft.

“Version” means the specific territorial functionality of the Software licensed by Licensee as listed herein.

12. Expiration of Pricing. All terms and conditions, including the fees referenced in this Upgrade Amendment shall expire on XXXXX, 2001 if this Upgrade Amendment is not executed by Licensee by such date.

13. Miscellaneous Information

<u>SHIPPING INFORMATION</u>	<u>BILLING INFORMATION</u>	<u>SITE INFORMATION</u>
Contact: Ms. Rachel Coe Enterprise Application Supervisor	Contact: Same	Contact: Same
Address: 600 North East Grand Avenue	Address:	Address:
Portland, OR 97232		
Phone:503 797 1598	Phone:	Phone:
Fax:	Fax:	Fax:

The undersigned represent and warrant that they are authorized as representatives of the party on whose behalf they are signing to sign this Upgrade Amendment and to bind their respective party thereto.

Metro

PeopleSoft USA, Inc.

Authorized signature

Authorized signature

Printed name and title

Printed name and title

STAFF REPORT

CONSIDERATION OF RESOLUTION NO. 01-3072 FOR THE PURPOSE OF AUTHORIZING AMENDMENT NUMBER 4 OF THE PERSONAL SERVICES AGREEMENT WITH PEOPLESOFT USA Inc,

Date: May 8, 2001

Prepared by: David Biedermann

DESCRIPTION: Would amend the existing Software License and Services Agreement with PeopleSoft USA Inc for software products and services. The upgrade amendment would increase the contract by no greater than \$194,373, and the total contract amount would become no greater than \$744,923.

The amendment is for the following items:

The Enterprise Extended License: \$129,554
Annual Maintenance: \$23,320
Government Portal: \$41,500.

EXISTING LAW: Metro Code 2.04.046 requires Personal Services contract amendments over \$25,000 be approved by the Metro Contract Review Board.

BACKGROUND: Using computers to manage major financial and human resource systems began in the 1970's and 1980's with the mainframe/terminal system (one single large computer with many "dumb" desktop terminals using the mainframe for all actions). This distributed the information, but required very expensive main frame computers.

In the late 1980's and 1990's the "client-server" model emerged; desktop computers with local access software coupled with strong and powerful smaller sized servers distributing the computing load. This eliminated the main frame cost, but increased the need for desktop support.

Through a Request for Proposal, Metro secured the services of PeopleSoft on June 14, 1996, to provide software to manage and administer Metro's agency-wide financial and human resources business administration needs. The cost of the original contract was \$550,550. An annual maintenance fee of 18% of the purchase price (with inflation adjustments) is part of the contract, which includes 7 day/24-hour support for critical issues, intermediate upgrades and improvements, and general technical consulting services.

Complex business computing is evolving now to Internet-based technology providing simpler and user-friendlier software. This combines the best of both earlier approaches; distributed computing not requiring labor-intensive desktop software to support it. The new approach does not require users to have special interface software at their desktops, thus significantly reducing a very labor intensive support cost.

The Enterprise Extended License allows use of the Internet-based software provided by PeopleSoft. Use of the client-server-based software is permitted under the current license. However, PeopleSoft will not be developing newer versions of software in the client-server model.

There are four options available to Metro.

- Metro could choose to stay with the current client-server version for the indefinite future.

The version of software Metro currently uses will be supported by the vendor until June of 2002, and likely until mid-2003. As time goes on, fixing problems and adjusting to departmental needs, requirements and requests will become more difficult.

With the end of support, fixing system problems goes on a time and material basis—consulting from PeopleSoft is currently \$250-300 an hour. Since the vendor will train their employees in newer systems, knowledge of our older software will be significantly less available. Payroll tax upgrades would no longer be available, requiring significantly more Metro staff time to design and implement. Updates available at no cost via the Web would be unavailable.

- Metro could sue to force PeopleSoft through existing contract language to provide the new software at no charge.

General Counsel advises us we are unlikely to succeed in a claim that the original agreement entitles Metro to extended enterprise-licensing software at no cost.

- Metro could conduct a Request-for-Proposal process to acquire another manufacturer's software.

The cost would include the cost of the software and implementation costs for both consulting and Metro staff. Experience of both Metro and other agencies indicates this would cost between \$2 and \$3 million and take 24-36 months to acquire and implement.

- Metro could pay the license fees for the expanded enterprise license product.

Enterprise Extended License: \$129,554----By way of background, the three most prominent firms (Oracle, SAP, and PeopleSoft) providing this high level of complex financial and human resource software worldwide priced their new product lines to account for the cost of technology change.

The PeopleSoft license cost is based on the size of the operating budget and the number of regular employees. The original amount quoted by PeopleSoft for Metro was over \$200,000 for the Extended Enterprise License alone. Through clarification of terms and negotiation, IT management and General Counsel achieved a reduction of \$70,000 to the current figure of \$129,554.

With agreement to pay promptly, we may be able to reduce that by another \$30,000, and reduce the maintenance agreement by over \$5,000. The license includes products that can significantly automate the recruitment process, deliver customized financial, payroll and employee information to managers.

Annual Maintenance: \$23,320---The additional annual maintenance portion is associated with the services provided by PeopleSoft to support these enhanced technologies and is based on a percentage of the license cost.

Government Portal: \$41,500---This amendment would allow purchase of the PeopleSoft Government Portal. This is the Web-based component that allows one-stop access to financial and human resource information for managers, employees, and potentially outside customers. (This is done with appropriate security controls.) It does so without the need for special software on customer computers, or for customers to understand and learn complex reporting setup and coding language.

The long-term benefits are to broaden the ability of Metro staff to use the PeopleSoft products for better management of financial and human resources, to simplify the level of training necessary to accomplish that broader use, and to reduce the cost of maintaining PeopleSoft on desktop computers.

A copy of the drafted contract amendment is attached.

OUTSTANDING QUESTIONS : There are no outstanding questions.

BUDGET IMPACT: Based on the current situation, funding is available in the Information Technology Department FY00-01 operating budget (through keeping positions open and contract management) and the FY01-02 Capital Improvement Plan. A portion of this amendment is anticipated in the FY2002-2005 Capital Improvement Plan. Payment arrangements with PeopleSoft can be made to accommodate that funding pattern.

This amendment would add \$23,320 maintenance costs to the annual Information Technology Department budget, which is funded through allocations from all departments. We expect to pay \$120,000 in current maintenance fees for PeopleSoft products now in use.

Implementation of these products would be done with Information Technology staff while maintaining current PeopleSoft systems. Next years CIP includes funds to accomplish that. No additional staffing is anticipated.

RECOMMENDED ACTION: The Executive Officer recommends approval of Resolution 01-3072.