

AGREEMENT FOR CUSTOMER INFORMATION SYSTEM SOFTWARE

Agreement No. 08-8830

This Agreement is made as of AUGUST 7, 2008, between the City of Santa Rosa, a charter city ("CITY"), and N. Harris Computer Corporation ("CONTRACTOR") a Canadian Corporation

RECITALS

- A. CITY desires to retain the CONTRACTOR to provide customer information system software for the City of Santa Rosa.
- B. CONTRACTOR represents to CITY that it is fully qualified to provide the above described services.
- C. The parties have negotiated upon the terms pursuant to which CONTRACTOR will provide such services and have herein reduced such terms to writing.

AGREEMENT

NOW, THEREFORE, the CITY and CONTRACTOR do hereby agree as follows:

1. SCOPE OF SERVICE

CONTRACTOR shall provide customer information system software.

The above services and activities are described with particularity in the CITY's Request for Proposals 07-54 Customer Information System Software dated November 2, 2007, CONTRACTOR's Project Scope of Work, CONTRACTOR's Software License, Support, and Maintenance Agreement, and CONTRACTOR's proposal dated December 7, 2007, all of which are attached hereto as Exhibits A, B, C, and D respectively (in order of precedence) which are incorporated by reference as though fully set forth herein. In case of any conflict between the terms of these documents, the terms of this Agreement shall control and prevail.

- 2. **ENTIRE AGREEMENT**: This Agreement consists of the following documents, in order of precedence, all which as hereby referenced are incorporated herein and made part of this Agreement, and shall be the entire agreement between parties:
 - a. This Agreement (including Attachment One – Insurance Requirements);
 - b. Exhibit A – CITY's Request for Proposals 07-54 Customer Information System Software dated November 2, 2007
 - c. Exhibit B - CONTRACTOR's Project Scope of Work
 - d. Exhibit C - CONTRACTOR's Software License, Support, and Maintenance Agreement

e. Exhibit D - CONTRACTOR's proposal dated December 7, 2007

3. TERM OF AGREEMENT

CONTRACTOR shall begin work within two weeks after receipt of a Notice to Proceed from CITY. CONTRACTOR shall thereupon work diligently to provide all the required services and activities described herein with the exception of the annual support and maintenance. The services and installation shall be completed within ten (10) months from commencement of the work, which means "Go Live" as defined in the License Agreement at Exhibit C. Regarding the annual support and maintenance, the terms shall be as defined in Schedule "D" of the License and Support Agreement,

4. COMPENSATION

- a. As compensation for all services of CONTRACTOR in performance of this Agreement, CITY shall pay CONTRACTOR as described in the Software License Agreement at Exhibit C.
- b. Compensation to be paid hereunder for completion of all tasks set forth in this agreement, is comprised of the following:

\$874,000	--	Software licenses, planning, installation, implementation, training (Schedule C of Exhibit C).
	--	Estimated Expenses (travel, photocopying, etc., for implementation period)
\$71,850		
\$63,000	--	Year 1 Annual support and maintenance*
\$63,000	--	Year 2 Annual support and maintenance
\$63,000	--	Year 3 Annual support and maintenance
\$65,520	--	Year 4 Annual support and maintenance (including max. 4% increase)
\$68,140	--	Year 5 Annual support and maintenance (including max. 4% increase)
<u>\$1,268,510</u>	--	<u>Total</u>

*First maintenance payment is due at Software Installation, as described in the License and Maintenance Agreement, and then on each anniversary thereafter.

- c. The City Director of Finance is authorized to pay all proper claims from Charge Number 8387.

5. PAYMENT TO THE CONTRACTOR

Payment will be made as stated in Section 4 above in accordance with Exhibit C. The CONTRACTOR shall submit invoices to the City of Santa Rosa, Accounts Payable, P.O. Box 1678, Santa Rosa, CA 95402.

In connection with any cash discount specified on CONTRACTOR'S Proposal, time will be computed from the date correct invoices are received in the City Finance Office. For the purpose of earning the discount, payment is deemed to be made on the date of mailing of the City warrant or check.

6. NOTICES

Except as otherwise specifically provided in this Agreement, any notice, submittal or communication required or permitted to be served on a party hereto, may be served by personal delivery to the person or the office of the person identified below. Service may also be made by mail, by placing first-class postage affixed thereto, and addressed as indicated below, and depositing said envelope in the United States mail to:

CITY

Purchasing Agent
City of Santa Rosa
630 3rd St., 2nd Floor
Santa Rosa, CA 95404
(707) 543-3700
Fax (707) 528-3624

CONTRACTOR

Steve Hammond, Executive V.P.
N. Harris Computer Corporation
1 Antares Drive, Suite 400
Ottawa, Ontario, Canada K2E8C4
(613) 226-5511
Fax (613) 226-3377

7. MODIFICATION

This Agreement shall not be modified, except in writing, by contract amendment, executed by all parties. Oral change orders are not permitted. No change in this Agreement shall be made unless the City of Santa Rosa gives its prior written approval. Any specification change not properly ordered by written modification to this Agreement executed by CITY shall be void at the sole option of the CITY and CONTRACTOR shall be liable for all costs or expenses arising therefrom and/or for satisfactorily correcting or replacing same.

8. TERMINATION OF CONTRACT FOR DEFAULT

If at any time 1) CONTRACTOR fails to conform to the requirements of this contract; 2) CONTRACTOR seeks relief under any law for the benefit of insolvents or is adjudicated bankrupt; 3) any legal proceedings are commenced against CONTRACTOR which may interfere with the performance of the contract; or 4) CONTRACTOR has failed to supply an adequate working force, or material of proper quality, or has failed in any other respect to prosecute the work with the diligence and force specified and intended in and by the terms of this Agreement, which default is not fully corrected or remedied to the reasonable satisfaction of CITY within ten (10) days following the date a written notice thereof by CITY, then CITY shall have the right and power, at its option and without prejudice to any other rights or remedies it may have, to terminate this Agreement. Any cost or expense incurred by CITY arising out of CONTRACTOR's breach or default hereunder, and for CITY's enforcement of these rights, shall be the obligation of CONTRACTOR and shall not exceed the total amount that CONTRACTOR would be entitled to under this agreement if fully performed, and at CITY's discretion, be deducted from any amounts that may then be owing to CONTRACTOR under this Agreement. In the event CITY terminates this agreement without cause, CONTRACTOR shall submit to the CITY an itemized statement of services performed to the date of termination.

10. ASSIGNMENT AND SUBCONTRACTING

The CONTRACTOR shall not assign or subcontract the work, or any part thereof, without the previous written consent of the CITY, nor shall he assign, by power of attorney or otherwise, any of the money payable under this Agreement unless written consent of the CITY has been obtained. No right under this Agreement, or claim for money due or to become due hereunder, shall be asserted against the CITY, or persons acting for the CITY, by reason of any so-called assignment of this Agreement or any part thereof and CONTRACTOR hereby agrees to indemnify and hold CITY harmless against any and all such claims. In the event CONTRACTOR obtains the prior written consent of CITY to assign monies

due or to become due under this Agreement, CONTRACTOR shall provide CITY a copy of the instrument of assignment duly executed by CONTRACTOR, which shall contain a clause subordinating the claim of the assignee to all prior liens for services rendered or materials supplied for the performance of work.

Upon notice and request by the CITY, CONTRACTOR shall promptly remedy, to include termination of any subcontract as appropriate and necessary, any default or fail to perform in a satisfactory manner the work undertaken by any subcontractor. CONTRACTOR shall be fully responsible and accountable to the CITY for the acts and omissions of its subcontractors, and of persons directly or indirectly employed by them, to the same extent that CONTRACTOR is for the acts and omissions of persons directly employed by CONTRACTOR. Nothing contained in this Agreement shall create any contractual relation between any subcontract and the CITY. CONTRACTOR shall not, without the consent of the CITY, either:

- 1) Substitute any person as subcontractor in place of the subcontractor designated in CONTRACTOR's Proposal;
- 2) Permit any subcontract to be voluntarily assigned or transferred or allow the work to be performed by anyone other than the original subcontractor listed in CONTRACTOR's Proposal; or
- 3) Sublet or subcontract any portion of the work in excess of one-half of one percent (.5%) of the total proposal as to which the CONTRACTOR's Proposal did not designate a subcontractor.

11. INDEMNIFY AND HOLD HARMLESS AGREEMENT

CONTRACTOR shall indemnify, defend and hold harmless CITY and its employees, officials, and agents, from and against any liability, (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, interest, defense costs, and expert witness fees), where same arises out of the performance of this Agreement by CONTRACTOR, its officers, employees, agents, and sub-contractors, excepting only that resulting from the gross negligence or intentional misconduct of CITY, its employees, officials, or agents. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for CONTRACTOR or its agents, under workers' compensation acts, disability benefits acts or other employees' benefits acts.

12. INSURANCE REQUIREMENTS

CONTRACTOR shall maintain in full force and effect all of the insurance coverage described in, and in accordance with, Attachment One, "Insurance Requirements", which is attached hereto and hereby incorporated and made part of this Agreement by this reference. Maintenance of the insurance coverage as set forth in Attachment One is a material element of this Agreement and a material part of the consideration provided by CONTRACTOR in exchange for the CITY's agreement to make the payments prescribed hereunder. Failure by CONTRACTOR to (i) maintain or renew coverage, (ii) provide the CITY notice of any changes, modifications, or reductions in coverage, or (iii) provide evidence of renewal, may be treated by the CITY as a material breach of this Agreement by CONTRACTOR, whereas the CITY shall be entitled to all rights and remedies at law or in equity, including but not limited to immediate termination of this Agreement. Notwithstanding the foregoing, any failure by CONTRACTOR to maintain required insurance coverage shall not excuse or alleviate CONTRACTOR from any of its other duties or obligations under this Agreement. In the event CONTRACTOR, with approval of the CITY pursuant to Section 10 above, retains or utilizes any subcontractors or sub-consultants in the provision of any services to the CITY under this Agreement, CONTRACTOR shall assure that any such subcontractor has first obtained, and shall maintain, all of the insurance coverage requirements set forth in the Insurance Requirements at Attachment One.

13. INDEPENDENT CONTRACTOR

The parties intend that CONTRACTOR, in performing services herein specified, shall act as an independent contractor and shall have control of its work and the manner in which it is performed. It shall be free to contract for similar services to be performed for other employers while it is under contract with CITY. CONTRACTOR is not to be considered an agent or employee of CITY and is not entitled to participate in any pension plan, medical, or dental plans, or any other benefit provided by CITY for its employees.

14. SUCCESSORS AND ASSIGNS

CITY and CONTRACTOR each binds itself, its partners, successors, legal representatives and assigns to the other party to this Agreement and to the partners, successors, legal representatives and assigns of such other party in respect of all promises and agreements contained herein.

15. LEGAL REQUIREMENTS AND PERMITS

CONTRACTOR shall perform all services described herein in compliance with all applicable federal, state and local laws, rules, regulations, and ordinances, including but not limited to, (i) the Americans With Disabilities Act (ADA) of 1990, (42 U.S.C. 12101, et seq.), and any regulations and guidelines issued pursuant to the ADA, which prohibits discrimination against individuals with disabilities and may require reasonable accommodations; and (ii) and Labor Code Sections 1700-1775, which require prevailing wages (in accordance with DIR schedule at www.dir.ca.gov) be paid to any employee performing work covered by Labor Code Section 1720 et seq.. It shall be the sole obligation hereunder of CONTRACTOR to obtain any and all licenses, permits and/or clearances necessary and appropriate for performance of the work.

16. RETENTION OF RECORDS

CONTRACTOR shall be required to retain any records necessary to document the charges for goods to be provided or services to be performed and make such records available to the CITY for inspection at the CITY's request for a period of not less than four (4) years.

17. LEGALITY

If any provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

18. CALIFORNIA LAW; VENUE

This Agreement shall be governed according to the laws of the State of California. Because this Agreement is to be performed in the County of Sonoma, the parties hereto agree that the forum for the adjudication of any dispute regarding the Agreement or enforcement shall be brought exclusively and solely in Sonoma County, California.

19. BINDING PARTIES

The CITY and CONTRACTOR each binds itself, its partners, successors, legal representatives and assigns to the other party to this Agreement and to the partners, successors, legal representatives and assigns of such other parties respect of all promises and Agreements contained herein.

20. **WAIVER**

A waiver of a breach or default under this Agreement shall not be a waiver of any other or subsequent default.

21. **AUTHORITY; SIGNATURES REQUIRED FOR CORPORATIONS**

CONTRACTOR hereby represents and warrants to the CITY that it is (a) is a duly organized and validly existing corporation, formed and in good standing under the laws of Canada and registered to do business in the State of California, (b) has the power and authority and the legal right to conduct the business in which it is currently engaged, and (c) has all requisite power and authority and the legal right to consummate the transactions contemplated in this Agreement. CONTRACTOR hereby further represents and warrants that this Agreement has been duly authorized, and when executed by the signatory or signatories listed below, shall constitute a valid agreement binding on CONTRACTOR in accordance with the terms hereof.

If this Agreement is entered into by a corporation, it shall be signed by two corporate officers, one from each of the following two groups: a) the chairman of the board, president or any vice-president; b) the secretary, any assistant secretary, chief financial officer, or any assistant treasurer. The title of the corporate officer shall be listed under the signature.

The City of Santa Rosa and contractors name have each caused this Agreement to be executed by their duly authorized officers as of the day and year first above written.

CITY OF SANTA ROSA
A Charter City

By [Signature]
Chairman of the Board

Attest: [Signature]
Recording Secretary

APPROVED AS TO FORM:

[Signature]
City Attorney

N. HARRIS COMPUTER CORPORATION
A Canadian Corporation

By [Signature]

Name Steven Hammond

Title Executive Vice President

By [Signature]

Name Melanie Judge

Title Chief Financial Officer

Taxpayer ID# _____

**ATTACHMENT ONE
INSURANCE REQUIREMENTS FOR CONTRACTOR**

CONTRACTOR shall, at all times during the terms of this Agreement, maintain and keep in full force and effect, the following policies of insurance with minimum limits as indicated below and issued by insurers with AM Best ratings of no less than A-:VI or otherwise acceptable to the City.

A	Commercial general liability at least as broad as ISO CG 0001 With an edition date prior to 2004 or its equivalent	(per occurrence) (aggregate) ¹	<u>\$1,000,000</u> <u>\$2,000,000</u>
B	Business auto coverage at least as broad as ICO CA 0001 ²	(per accident)	\$1,000,000
C	Workers Compensation ³ Employer's Liability		Statutory \$1,000,000

¹ If insurance applies separately to this project/location, aggregate may be equal to per occurrence amount. Limits may be met by a combination of primary and excess insurance but excess shall provide coverage at least as broad as specified for underlying coverage.

² Auto liability insurance shall cover owned, nonowned and hired autos. If CONTRACTOR owns no vehicles, auto liability coverage may be provided by means of a nonowned and hired auto endorsement to the general liability policy.

³ Sole Proprietors must provide representation of their exempt status

Endorsements:

All policies shall contain or be endorsed to contain the following provisions:

Coverage shall not be canceled by either party, except after thirty (30) days prior written notice has been provided to the entity unless canceled for non-payment, then ten (10) days notice shall be given.

Commercial General Policies are to contain, or be endorsed to contain the following provisions:

For any claims related to this project, the **CONTRACTOR's insurance coverage shall be primary** and any insurance or self-insurance maintained by the CITY shall be excess of CONTRACTOR'S insurance and shall not contribute with it.

The City of Santa Rosa, its officers, officials, employees and volunteers are to be named as **additional insured** on a form equivalent to CG20 10 with an edition date prior to 2004.

Other Insurance Provisions

No policy required by this section shall prohibit CONTRACTOR from waiving any right of recovery prior to loss. CONTRACTOR hereby waives such right with regard to the indemnitees.

All insurance coverage and limits provided by CONTRACTOR and available or applicable to this Agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement limits the application of such insurance coverage.

Self-insured retentions and/or deductibles above \$5,000 must be approved by the CITY. At the CITY's option, CONTRACTOR may be required to provide financial guarantees.

Verification of Coverage and Certificates of Insurance

CONTRACTOR shall furnish the CITY with original certificates and endorsements effecting coverage required above. Certificates and endorsements shall make reference to policy numbers. All certificates and endorsements are to be received and approved by the CITY before work commences and must be in effect for the duration of the Agreement. The CITY reserves the right to require complete, copies of all required policies and endorsements.