



**SOFTWARE LICENSE AGREEMENT  
("Agreement")**

Item 140466

11/6/14 - GM Regular

This Agreement is made effective as of the 29 day of September, 2005, by and between SAP Public Services, Inc., a Delaware corporation, with offices at 3999 West Chester Pike, Newtown Square, PA 19073 ("SAP"), and the City of Gainesville, d/b/a Gainesville Regional Utilities, a Florida municipal corporation with offices at 301 SE 4<sup>th</sup> Avenue, Gainesville, FL 32601 ("Licensee" or "GRU")

**1. DEFINITIONS.**

- 1.1 "Business Partner" means an entity that requires access to the Software in connection with the operation of Licensee's business, such as customers, distributors and suppliers.
- 1.2 "Documentation" means SAP's documentation which is delivered to Licensee under this Agreement.
- 1.3 "Modification" means a change to the Software that changes the delivered source code, or an enhancement to the Software that is made using SAP tools or utilizing or incorporating SAP Proprietary Information.
- 1.4 "Named Users" means any combination of users licensed under this Agreement.
- 1.5 "Proprietary Information" means: (i) with respect to SAP and SAP AG (the licensor of the SAP Proprietary Information to SAP), the Software and Documentation, any other third-party software licensed with or as part of the Software, benchmark results, manuals, program listings, data structures, flow charts, logic diagrams, functional specifications; (ii) the concepts, techniques, ideas, and know-how embodied and expressed in the Software and (iii) information reasonably identifiable as the confidential and proprietary information of SAP or Licensee or their licensors excluding any part of the SAP or Licensee Proprietary Information which: (a) is or becomes publicly available through no act or failure of the other party; or (b) was or is rightfully acquired by the other party from a source other than the disclosing party prior to receipt from the disclosing party; or (c) becomes independently available to the other party as a matter of right.
- 1.6 "Software" means (i) all software specified in agreed upon Appendices hereto, developed by or for SAP and/or SAP AG and delivered to Licensee hereunder; (ii) any new releases thereof made generally available pursuant to Maintenance; and (iii) any complete or partial copies of any of the foregoing.
- 1.7 "Subsidiary" means a corporation in the Territory of which Licensee owns more than fifty percent of the voting securities. This entity will be considered a Subsidiary for only such time as such equity interest is maintained.
- 1.8 "Territory" means the United States of America.
- 1.9 "Use" means to activate the processing capabilities of the Software, load, execute, access, employ the Software, or display information resulting from such capabilities.

**2. LICENSE GRANT.**

**2.1 License.**

(a) SAP grants, a non-exclusive, perpetual (unless terminated in accordance with Section 5 herein) license to Use the Software, Documentation, other SAP Proprietary Information, at specified site(s) within the Territory to run Licensee's internal business operations and to provide internal training and testing for such internal business operations and as further set forth in Appendices hereto. This license does not permit Licensee to use the SAP Proprietary Information to provide services to third parties (e.g., business process outsourcing, service bureau applications or third party training). Business Partners may have screen access to the Software solely in conjunction with Licensee's Use and may not Use the Software to run any of their business operations.

(b) Licensee agrees to install the Software only on hardware identified by Licensee pursuant to this Agreement that has been previously approved by SAP in writing or otherwise officially made known to the public as appropriate for Use or interoperation with the Software (the "Designated Unit"). Any individuals that Use the Software including employees or agents of Subsidiaries and Business Partners, must be licensed as Named Users. Use may occur by way of an interface delivered with or as a part of the Software, a Licensee or third-party interface, or another intermediary system.

2.2 The City of Gainesville may purchase additional software from Licensor, subject to the execution of Software License Agreement(s) as may be required.

2.3 Subsidiary Use. Subsidiaries, if any, may Use the Software provided that: (i) the Subsidiary agrees to be bound by the terms herein in the form of Exhibit A attached hereto; and (ii) a breach of such Exhibit by Subsidiary shall be considered a breach by Licensee hereunder.

3. VERIFICATION. SAP shall be permitted to audit (at least once annually and in accordance with SAP standard procedures) the usage of the SAP Proprietary Information. In the event an audit reveals that Licensee underpaid License and/or Maintenance Fees to SAP, Licensee shall pay such underpaid fees based on SAP's list of prices and conditions in effect at the time of the audit.

**4. PRICE AND PAYMENT.**

4.1 License Fees. Licensee shall pay to SAP license fees for the Software and maintenance fees on the terms in Appendices hereto. Fees for Services will be paid as set forth in the Professional Services Schedule hereto. Any fees not paid when due shall accrue interest at the rate of 18% per annum, but not to exceed the maximum amount as allowed by law.

4.2 Taxes. Fees and other charges described in this Agreement, or in SAP's most recent list of prices and conditions, do not include federal, state or local sales, foreign withholding, use, property, excise, service, or similar taxes ("Tax(es)") now or hereafter levied, all of which shall be for Licensee's account. Licensee warrants that it is a tax-exempt entity and will furnish a valid tax-exempt certificate to SAP prior to the execution of this Agreement. If SAP is required to pay Taxes, Licensee shall reimburse SAP for such amounts. Licensee hereby agrees to indemnify SAP for any Taxes and related costs, interest and penalties paid or payable by SAP.

5. TERM.

5.1 Term. This Agreement and the license granted hereunder shall become effective as of the date set forth above and shall continue in effect thereafter unless terminated upon the earliest to occur of the following: (i) thirty days after Licensee gives SAP written notice of Licensee's desire to terminate this Agreement, for any reason, but only after payment of all License and Maintenance Fees then due and owing; (ii) sixty days after SAP gives Licensee notice of Licensee's material breach of any provision of the Agreement (other than Licensee's breach of its obligations under Sections 6 or 10, which breach shall result in immediate termination), including more than thirty days delinquency in Licensee's payment of any money due hereunder, unless Licensee has cured such breach during such sixty day period; (iii) immediately if Licensee files for bankruptcy, becomes insolvent, or makes an assignment for the benefit of creditors.

5.2 End of Term Duties. Upon any termination hereunder, Licensee and its Subsidiaries shall immediately cease Use of all SAP Proprietary Information. Within sixty (60) days after any termination, Licensee shall deliver to SAP or destroy all copies of the SAP Proprietary Information in every form. Licensee agrees to certify in writing to SAP that it and each of its Subsidiaries has performed the foregoing. Sections 3, 4, 6, 7.2, 8, 9, 11.4, 11.5 and 11.6 shall survive such termination. In the event of any termination hereunder, Licensee shall not be entitled to any refund of any payments made by Licensee.

6. PROPRIETARY RIGHTS.

6.1 Protection of Proprietary Information Licensee shall not copy, translate, disassemble, or decompile, nor create or attempt to create, by reverse engineering or otherwise, the source code from the object code of the Software. Except for the rights set forth below, Licensee is not permitted to make derivative works of the Software and ownership of any unauthorized derivative works shall vest in SAP. SAP and Licensee agree to take all reasonable steps and the same protective precautions to protect the Proprietary Information from disclosure to third parties as with its own proprietary and confidential information. Neither party shall, without the other party's prior written consent, disclose, any of the Proprietary Information of the other party to any person, except to its bona fide individuals whose access is necessary to enable such party to exercise its rights hereunder. Each party agrees that prior to disclosing any Proprietary Information of the other party to any third party, it will obtain from that third party a written acknowledgment that such third party will be bound by the same terms as specified in this Section 6 with respect to the Proprietary Information. SAP acknowledges that GRU is a Florida municipal corporation and as such is required to comply with provisions of Florida law, including, but not limited to those laws relating to public records. In complying with the terms of this agreement, GRU shall not be required to perform any act inconsistent with said laws.

6.2 Modifications.

Licensee may make Modifications to the Software, and shall be permitted to use Modifications with the Software in accordance with this Agreement. Licensee shall comply with SAP's registration procedure prior to making changes to the source code. All Modifications and all rights associated therewith shall be the exclusive property of SAP and SAP AG. Licensee agrees to execute those documents reasonably necessary to secure SAP's rights in the foregoing. SAP retains the right to independently develop enhancements to the Software and Licensee agrees not to take any action that would limit SAP's sale, assignment, licensing or use of its own Software or Modifications or enhancements thereto.

7. PERFORMANCE WARRANTY.

7.1 Warranty. SAP warrants that the Software will substantially conform to the functional specifications contained in the Documentation for six months following delivery. The warranty shall not apply: (i) if the Software is not used in accordance with the Documentation; or (ii) if the defect is caused by a Modification, Licensee, third-party software, or third party database. SAP does not warrant that the Software will operate uninterrupted or that it will be free from minor defects or errors that do not materially affect such performance, or that the applications contained in the Software are designed to meet all of Licensee's business requirements.

7.2 Express Disclaimer. SAP AND ITS LICENSORS DISCLAIM ALL OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE EXCEPT TO THE EXTENT THAT ANY WARRANTIES IMPLIED BY LAW CANNOT BE VALIDLY WAIVED.

8. INDEMNIFICATION.

8.1 Indemnification of Licensee. SAP shall indemnify Licensee against all claims, liabilities, and costs, including reasonable attorneys' fees, reasonably incurred in the defense of any claim brought against Licensee in the Territory by third parties alleging that Licensee's Use of the Software and Documentation infringes or misappropriates any United States patent; a copyright; or trade secret rights, provided that: such indemnity shall not apply if the alleged infringement results from Use of the Software in conjunction with any other software, an apparatus other than a Designated Unit, or unlicensed activities and so long as Licensee promptly notifies SAP in writing of any such claim and SAP is permitted to control fully the defense and any settlement of such claim as long as such settlement shall not include a financial obligation on Licensee. Licensee shall cooperate fully in the defense of such claim and may appear, at its own expense, through counsel reasonably acceptable to SAP. SAP may settle any claim on a basis requiring SAP to substitute for the Software and Documentation alternative substantially equivalent non-infringing programs and supporting documentation. Licensee shall not undertake any action in response to any infringement or alleged infringement of the Software and Documentation.

8.2 THE PROVISIONS OF THIS SECTION 8 STATE THE SOLE, EXCLUSIVE, AND ENTIRE LIABILITY OF SAP AND ITS LICENSORS TO LICENSEE, AND IS LICENSEE'S SOLE REMEDY, WITH RESPECT TO THE INFRINGEMENT OF THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS.

9. LIMITATIONS OF LIABILITY.

9.1 Licensee's Remedies. Licensee's sole and exclusive remedies for any damages or loss in any way connected with the Software or Services furnished by SAP and its licensors, whether due to SAP's negligence or breach of any other duty, shall be, at SAP's option: (i) to bring the performance of the Software into substantial compliance with the functional specifications; (ii) re-performance of Services; or (iii) return of an appropriate portion of any payment made by Licensee with respect to the applicable portion of the Software or Services.

9.2 Not Responsible. SAP will not be responsible under this Agreement (i) if the Software is not used in accordance with the Documentation; or (ii) if the defect is caused by Licensee, a Modification, third-party software, or third party database. SAP AND ITS LICENSORS SHALL NOT BE LIABLE FOR ANY CLAIMS OR DAMAGES ARISING FROM INHERENTLY DANGEROUS USE OF THE SOFTWARE AND/OR THIRD-PARTY SOFTWARE LICENSED HEREUNDER.

9.3 Limitation of Liability. ANYTHING TO THE CONTRARY HEREIN NOTWITHSTANDING, EXCEPT FOR DAMAGES RESULTING FROM UNAUTHORIZED USE OR DISCLOSURE OF PROPRIETARY INFORMATION, UNDER NO CIRCUMSTANCES SHALL SAP, ITS LICENSORS OR LICENSEE BE LIABLE TO EACH OTHER OR ANY OTHER PERSON OR ENTITY FOR AN AMOUNT OF DAMAGES IN EXCESS OF THE PAID LICENSE FEES OR BE LIABLE IN ANY AMOUNT FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR INDIRECT DAMAGES, LOSS OF GOOD WILL OR BUSINESS PROFITS, WORK STOPPAGE, DATA LOSS, COMPUTER FAILURE OR MALFUNCTION, OR EXEMPLARY OR PUNITIVE DAMAGES.

9.4 Severability of Actions. IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT EACH AND EVERY PROVISION OF THIS AGREEMENT WHICH PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS INTENDED BY THE PARTIES TO BE SEVERABLE AND INDEPENDENT OF ANY OTHER PROVISION AND TO BE ENFORCED AS SUCH.

10. ASSIGNMENT. Licensee may not, without SAP's prior written consent, assign, delegate, pledge, or otherwise transfer this Agreement, or any of its rights or obligations under this Agreement, or the SAP Proprietary Information, to any party, whether voluntarily or by operation of law, including by way of sale of assets, merger or consolidation. SAP may assign this Agreement to SAP AG and will notify Licensee in writing not less than thirty (30) days prior to such assignment.

11. GENERAL PROVISIONS.

11.1 Severability. It is the intent of the parties that in case any one or more of the provisions contained in this Agreement shall be held to be invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect the other provisions of this Agreement, and this Agreement shall be construed as if such invalid or unenforceable provision had never been contained herein.

11.2 No Waiver. If either party should waive any breach of any provision of this Agreement, it shall not thereby be deemed to have waived any preceding or succeeding breach of the same or any other provision hereof.

11.3 Counterparts. This Agreement may be signed in two counterparts, each of which shall be deemed an original and which shall together constitute one Agreement.

11.4 Export Control Notice. The Software, Documentation and Proprietary Information are being released or transferred to Licensee in the United States and are therefore subject to the U.S. export control laws. Licensee acknowledges its obligation to ensure that its exports from the United States are in compliance with the U.S. export control laws. Licensee shall also be responsible for complying with all applicable governmental regulations of any foreign countries with respect to the use of the Proprietary Information by its Subsidiaries outside of the United States. Licensee agrees that it will not submit the Software to any government agency for licensing consideration or other regulatory approval without the prior written consent of SAP.

11.5 Confidential Terms and Conditions. Licensee shall not disclose the terms and conditions of this Agreement or the pricing contained therein to any third-party. Neither party shall use the name of the other party in publicity, advertising, or similar activity, without the prior written consent of the other, except that Licensee agrees that SAP may use Licensee's name in customer listings or as part of SAP's marketing efforts. SAP acknowledges that GRU is a Florida municipal corporation and as such is required to comply with applicable provisions of Florida law, including, but not limited to public records. In complying with the terms of this agreement, GRU shall not be required to perform any act inconsistent with said laws.

11.6 Governing Law. This Agreement shall be governed by and construed under Florida law without reference to its conflicts of law principles. In the event of any conflicts between foreign law, rules, and regulations, and United States of America law, rules, and regulations, United States of America law, rules, and regulations shall prevail and govern. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this agreement. The Uniform Computer Information Transactions Act as enacted shall not apply.

11.7 Notices. All notices or reports which are required or may be given pursuant to this Agreement shall be in writing and shall be deemed duly given when delivered to the respective executive offices of SAP and Licensee at the addresses first set forth above.

11.8 Force Majeure. Any delay or nonperformance of any provision of this Agreement (other than for the payment of amounts due hereunder) caused by conditions beyond the reasonable control of the performing party shall not constitute a breach of this Agreement, and the time for performance of such provision, if any, shall be deemed to be extended for a period equal to the duration of the conditions preventing performance.

11.9 **Entire Agreement.** This Agreement and each Schedule and Appendix hereto constitute the complete and exclusive statement of the agreement between SAP and Licensee, and all previous representations, discussions, and writings are merged in, and superseded by, this Agreement. This Agreement may be modified only by a writing signed by both parties. This Agreement and each Appendix hereto shall prevail over any additional, conflicting, or inconsistent terms and conditions which may appear on any purchase order or other document furnished by Licensee to SAP.

As of the effective date of this Agreement the following Exhibit, Schedules and Appendices have been attached:

- Exhibit A "Subsidiary Use Agreement"
- Maintenance Schedule
- Professional Services Schedule
- Appendix 1
- Appendix 2
- Appendix 3
- Appendix 4

IN WITNESS WHEREOF, the undersigned, intending to be legally bound, have duly executed this Agreement to become effective as of the date first above written.

SAP Public Services, Inc.  
(SAP)

By: Nancy Bottans

Title: City, Beth Hanss

Date: 9/29/05

City of Gainesville d/b/a  
Gainesville Regional Utilities (Licensee)

By: Ken D. Johnson

Title: AGM, Customer & Administrative Services

Date: 9/29/05

Approved as to form and legality:

Raymond O. Manasco, Jr.  
Raymond O. Manasco, Jr.  
Utilities Attorney

Reviewed by Contracts  
Terry Dougherty T.D.

**EXHIBIT A**  
to  
**SAP PUBLIC SERVICES, INC. ("SAP")**  
**SOFTWARE LICENSE AGREEMENT effective September 29, 2005 ("Agreement")**  
with  
**The City of Gainesville d/b/a Gainesville Regional Utilities ("LICENSEE OR GRU")**

**SUBSIDIARY USE AGREEMENT**

This Subsidiary Use Agreement is made effective as of the 29 day of September between SAP Public Services, Inc., a Delaware Corporation, with offices at 3999 West Chester Pike, Newtown Square, PA 19073 ("SAP") and the City of Gainesville d/b/a Gainesville Regional Utilities, a Florida municipal corporation with offices at 301 S.E. 4<sup>th</sup> Avenue, Gainesville, Florida 32601 ("Subsidiary").

1. Subsidiary is entitled to have Named Users Use the Software on the Designated Unit(s) identified in the SAP Public Services, Inc./Gainesville Regional Utilities Software End-User License Agreement ("Agreement").
2. Subsidiary agrees to abide by and be bound by all of the terms and conditions of the Agreement applicable to Subsidiary and applicable to Licensee. SAP may directly enforce all such terms and conditions against it directly.
3. Subsidiary agrees that its right to Use SAP Software and receive Maintenance services shall be governed solely by the Agreement. In the event that the Agreement is terminated, this Subsidiary Use Agreement is terminated or if Subsidiary ceases to meet the definition of "Subsidiary" therein, Subsidiary agrees that all of its rights to the Software will cease effective as of the termination date.

IN WITNESS WHEREOF, the undersigned, intending to be legally bound, have duly executed this Subsidiary Use Agreement.

SAP Public Services, Inc.  
(SAP)

\_\_\_\_\_  
(Subsidiary)

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Amendment 1 effective February 15, 2010 ("Amendment")**  
**to**  
**Appendix 1 effective September 29, 2005 ("Appendix")**  
**to the**  
**SOFTWARE LICENSE AGREEMENT effective September 29, 2005 ("Agreement")**  
**between**  
**SAP PUBLIC SERVICES, INC. ("SAP")**  
**and**  
**THE CITY OF GAINESVILLE, FL d/b/a GAINESVILLE REGIONAL UTILITIES ("Licensee")**

This Amendment modifies the above-referenced Appendix between the parties. In each instance in which the provisions of this Amendment contradict or are inconsistent with the provisions of the Appendix, the provisions of this Amendment shall prevail and govern and the contradicted or inconsistent provisions shall be deemed amended accordingly.

SAP and Licensee agree that Appendix 1 effective September 29, 2005 to the Agreement is amended as follows:

In Item 2.1 of Appendix 1, 1) delete "15" Professional Users and replace with "27" Professional Users; 2) delete "200" Limited Professional Users and replace with "176" Limited Professional Users (Type 1); and 3) delete "85" Employee Users and replace with "61" Employee Users. Adjusted User totals and types are set forth in the table below:

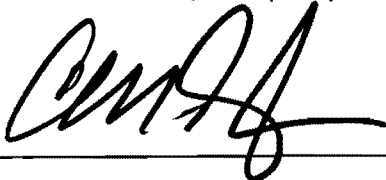
mySAP.com Solution Suite:

<u>"X" if Licensed</u>	mySAP.com Solution Suite	<u>Number of Users Licensed:</u>			
		<u>Professional</u>	<u>Limited Professional</u>	<u>Employee</u>	<u>Developer</u>
<u>X</u>		<u>27</u>	<u>176</u>	<u>61</u>	<u>4</u>

EXCEPT AS HEREIN PROVIDED, ALL OTHER TERMS AND CONDITIONS OF APPENDIX 1 AND THE AGREEMENT REMAIN UNCHANGED.

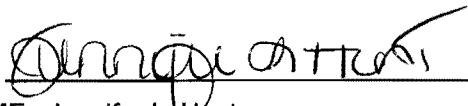
ACCEPTED BY:


SAP PUBLIC SERVICES, INC. (SAP)


BY:   
 NAME: CHRIS PFENDNER  
 TITLE: SENIOR DIRECTOR, CONTRACTS  
 DATE: 3-12-10

ACCEPTED BY:

THE CITY OF GAINESVILLE, FL d/b/a  
 GAINESVILLE REGIONAL UTILITIES  
 (Licensee)

BY:   
 NAME: Jennifer L. Hunt  
 TITLE: Chief Financial Officer  
 DATE: 03/10/10

Reviewed by Contracts  
 Patrick Burch, Jr. 

Approved as to form and legality:  
  
 Raymond O. Manasco Jr.  
 Utilities Attorney

**MAINTENANCE SCHEDULE ("Schedule")**  
to  
**SAP PUBLIC SERVICES, INC. ("SAP")**  
**SOFTWARE LICENSE AGREEMENT effective September 22, 2005 ("Agreement")**  
with  
**The City of Gainesville, d/b/a Gainesville Regional Utilities ("Licensee" or "GRU")**

This Schedule is hereby annexed to and made a part of the Agreement specified above. In each instance in which provisions of this Schedule contradict or are inconsistent with the provisions of the Agreement, the provisions of this Schedule shall prevail and govern.

1. Licensee may request and SAP shall provide, to such degree as SAP makes such services generally available in the Territory, maintenance service ("Maintenance"). Maintenance currently includes the delivery of new releases of the Software and Software correction packages, support via telephone, remote support/update, Early Watch Alert, and SAP's support portal. In order to receive Maintenance, Licensee must make all required remote support and update connections to each Designated Unit as requested by SAP.
2. mySAP Services: Maintenance currently includes a choice of one of the following services per live installation per year:
  - A. One GoingLive Check for any new Software or other SAP application implementation;
  - B. One GoingLive Upgrade Check for an upgrade to a higher functional release (e.g. from R/3 4.0 to 4.6); or
  - C. One GoingLive OS/DB Migration Check. This OS/DB Migration Check assists the Licensee in preparing for a migration of an operating system or database. Migration is the responsibility of the Licensee.

In addition to these options, Maintenance currently includes up to two EarlyWatch Sessions per live SAP installation for the continual optimization of Licensee's already live system.

To schedule GoingLive Check, GoingLive OS/DB Migration Check, or EarlyWatch Sessions, Licensee must contact Americas Customer Support Services at 800-677-7271 or internationally at 610-355-6821 and choose option 6 to schedule these services. To assist Licensee in this, SAP has established the following scheduling pre-requisites:

- A. The Licensee must provide remote access to its productive system.
- B. To receive the GoingLive Check or GoingLive Upgrade Check Licensee must inform SAP at least three months prior to your go live or upgrade date.
- C. To receive the EarlyWatch Sessions, SAP requests a minimum of three months advanced notification. In addition, Licensee must send the EarlyWatch Alert data to SAP on at least a monthly basis and cooperate with SAP in reviewing the data and determining the proper deployment of the EarlyWatch Sessions based on the EarlyWatch Alert data.
- D. To receive the GoingLive OS/DB Migration Check, Licensee must comply with all of the then current pre-Check requirements. These requirements currently include hiring a certified OS/DB migration consultant, proper testing, installation of tools, and advance scheduling. Contact your local SAP Customer Support Representative for more information.

Further information and detail about individual SAP services can be found on SAPNet site (<http://www.service.sap.com/support>).

**FAILURE TO UTILIZE THE MAINTENANCE SERVICES PROVIDED BY SAP MAY PREVENT SAP FROM BEING ABLE TO IDENTIFY AND ASSIST IN THE CORRECTION OF POTENTIAL PROBLEMS WHICH, IN TURN, COULD RESULT IN UNSATISFACTORY SOFTWARE PERFORMANCE.**

3. Licensee agrees to promptly disclose to SAP and maintain adequate and current records of all Modifications and, if needed to provide Maintenance Services, provide such records to SAP.
4. Maintenance from SAP for the Software licensed hereunder is limited to the following site(s): 301 SE 4<sup>th</sup> Avenue, Gainesville, FL 32601; 4322 NW 53<sup>rd</sup> Avenue, Gainesville, FL 32653 and one additional City location, if needed, Customer may reasonably amend these maintenance site locations (but no more than 3 total sites) at any point during the term of the contract by providing advance written notice to SAP of such desire to change.
5. Licensee agrees to establish and maintain Customer Competency Center(s) ("CCC") at the site(s) specified above within twelve months of the Effective Date of this Schedule. Each CCC must maintain an internal Help Desk to provide first level support to Licensee's Named Users. Such internal Help Desk(s) must be staffed with a sufficient number of support consultants trained in the support and administration of the SAP Software during Licensee's normal working hours, but no less than eight hours a day, five days a week. All Named Users may have access to SAP's support portal however, only Licensee CCC employees are authorized to contact SAP after attempting to resolve the matter. Each CCC shall coordinate Licensee's Modification notification and disclosure requirements and shall coordinate Licensee's development requests. Licensee's CCC is responsible for the administration and management of the requirements specified in the Agreement including, but not limited to, performing periodic self audits to ensure Licensee's compliance with the license grant, maintaining master and installation data and managing the release order process. In the event Licensee does not establish and maintain CCC(s) in accordance with the above, SAP reserves the right to increase Licensee's then current maintenance percentage factor then in effect.
6. Maintenance Fees shall be paid annually in advance and shall be specified in Appendices to the Agreement. In addition, Licensee shall be invoiced an annual fee of USD 1,500 for up to three designated SAP compliant remote connections. Maintenance Services offered by SAP may be changed annually by SAP at any time upon three months prior written notice. After Year 1, the Maintenance Fees and any limitations on increases are subject to Licensee's compliance with the CCC requirements specified above. Maintenance may be terminated by either party in writing at any time upon three months' prior written notice and Licensee shall be entitled to a pro-rata refund of prepaid Maintenance Fees. Notwithstanding the forgoing, SAP may terminate Maintenance after sixty (60) days written notice of Licensee's failure to pay Maintenance Fees.
7. In the event Licensee elects not to commence Maintenance upon the first day of the month following initial delivery of the Software, or Maintenance is otherwise declined for some period of time, and is subsequently requested or reinstated, SAP will invoice Licensee the accrued Maintenance Fees associated with such time period plus a reinstatement fee.

PROFESSIONAL SERVICES SCHEDULE effective September 29, 2005 ("Schedule")  
to  
SAP PUBLIC SERVICES, INC. ("SAP")  
SOFTWARE LICENSE AGREEMENT effective September 29, 2005 ("Agreement")  
with  
The City of Gainesville, d/b/a Gainesville Regional Utilities ("Licensee" or "GRU")

The parties agree that this Schedule is hereby annexed to and made a part of the Agreement specified above. In each instance in which provisions of this Schedule contradict or are inconsistent with the provisions of the Agreement, the provisions of this Schedule shall prevail and govern.

1. **Services.** Upon request by Licensee, SAP will provide a Consultant(s) proficient in the installation and implementation of the applicable SAP Software ("Services"). Any Statement(s) of Work ("SOW") more fully describing the project assumptions, scope, duration and fees for the Services shall reference this Schedule. All Services of the SAP Consultant(s) will be coordinated with the designated Licensee representative. Licensee is responsible for making the necessary internal arrangements for the carrying out of the Services on a non-interference basis.
2. **Compensation of SAP.** All Services will be provided by SAP on a time and expense basis at SAP's then current rates, unless otherwise agreed by the parties in a SOW.
3. **Taxes.** Licensee agrees to pay SAP such additional amounts (including individual federal and/or state and/or local income taxes, gross receipts, per capita, etc.) as may be incurred by SAP personnel performing Services and which result from this engagement. Any tax provision set forth in the Agreement shall apply to Services provided hereunder.
4. **Work Product.** Unless otherwise agreed to in writing by the parties in a SOW, SAP shall have the sole and exclusive right, title and ownership to any and all ideas, concepts, and other intellectual property rights related in any way to the techniques, knowledge or processes of the SAP Services and deliverables, whether or not developed for Licensee.
5. **Warranty.** SAP warrants that its Services shall be performed consistent with generally accepted industry standards. SAP MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, NOR ANY OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, IN CONNECTION WITH THIS SCHEDULE AND THE SERVICES PROVIDED HEREUNDER.
6. **Limitation of Liability.** WITH RESPECT TO SERVICES, EXCEPT FOR DAMAGES RESULTING FROM UNAUTHORIZED USE OR DISCLOSURE OF THE PROPRIETARY INFORMATION, UNDER NO CIRCUMSTANCES SHALL SAP ITS LICENSORS OR LICENSEE BE LIABLE TO EACH OTHER OR ANY OTHER PERSON OR ENTITY FOR AN AMOUNT OF DAMAGES IN EXCESS OF THE SERVICES FEES PAID, DUE AND OWING FOR THE APPLICABLE SERVICES OR BE LIABLE IN ANY AMOUNT FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR INDIRECT DAMAGES, LOSS OF GOOD WILL OR BUSINESS PROFITS, WORK STOPPAGE, DATA LOSS, COMPUTER FAILURE OR MALFUNCTION, OR EXEMPLARY OR PUNITIVE DAMAGES.
7. **Termination:** The terms of this Schedule shall be effective as of the Effective Date of the Schedule and shall remain in effect until terminated by either party upon thirty days prior written notice or otherwise in accordance with a particular SOW. Licensee shall be liable for payment to SAP for all Services provided prior to the effective date of any such termination.
8. **General Provisions.**
  - 8.1 SAP may subcontract all or part of the Services to be performed to a qualified third party.
  - 8.2 With respect to the Services provided by SAP under this Schedule and any SOW hereto, the relationship of SAP and Licensee is that of an independent contractor.
  - 8.3 Neither party shall solicit or hire, in any capacity whatsoever, any of the other party's employees involved in a Statement of Work during the term of the applicable Statement of Work and for a period of six months from the termination thereof, without the express written consent of the other party.
  - 8.4 This Schedule, including any applicable SOW's, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements between the parties, whether written or oral, relating to the same subject matter. In the event of any inconsistencies between this Schedule and a SOW, the SOW shall take precedence over the Schedule. Any purchase order or other document issued by Licensee is for administrative convenience only.
9. **Survival:** Sections 2, 3, 4, and 8.3 above shall survive any termination of the Schedule.