



**CITY OF LODI  
COUNCIL COMMUNICATION**

**AGENDA TITLE:** Adopt Resolution Authorizing City Manager to Execute Master Service Agreement for Software Services with Spinnaker Support, LLC of Denver, CO (\$31,250)

**MEETING DATE:** March 20, 2013

**PREPARED BY:** Deputy City Manager

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**RECOMMENDED ACTION:** Adopt Resolution authorizing City Manager to execute Master Service Agreement for software services with Spinnaker Support, LLC of Denver, CO.

**BACKGROUND INFORMATION:** The tax tables supporting the City's current payroll system will no longer be provided under the City's current software maintenance agreement effective January 1, 2014. In order to remain with the current vendor, the City would be required to upgrade the underlying JD Edwards system. The City is currently reviewing proposals to replace the JD Edwards system. Unfortunately, the replacement system will not be in place by January 1, 2014.

Spinnaker Support, LLC has developed a product that will bridge the payroll gap and allow the City to continue using the JD Edwards payroll system until conversion to the replacement system. Spinnaker Support, LLC is the only vendor City staff has identified with a product that will meet this need.

Staff recommends that Council approve the agreement with Spinnaker Support, LLC and authorize the City Manager to execute the agreement.

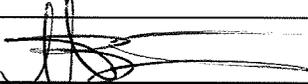
**FISCAL IMPACT:** Project implementation costs of \$23,250 and annual maintenance support of \$8,000 for the solution.

**FUNDING AVAILABLE:** Implementation costs to be absorbed within existing appropriations in the Internal Services Department; Annual maintenance support costs will be included in the FY 2013-14 budget.

  
Jordan Ayers  
Deputy City Manager

JA/ja

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**APPROVED:**   
Konradt Bartlam, City Manager

## MASTER SERVICES AGREEMENT

This **MASTER SERVICES AGREEMENT** (“**Agreement**”) is made as of March 30, 2013 (the “**Effective Date**”), by and between Spinnaker Support, LLC, a Colorado limited liability company with its principal place of business at 231 Milwaukee Street, Suite 200, Denver, Colorado 80206 (“**Spinnaker**”) and the party identified below (the “**Customer**”).

Name of Customer: City of Lodi, California	Contact Name: Jordan Ayers, Deputy City Manager/Internal Services Director
Address: 221 W. Pine Street Lodi, CA 95240	Phone: (209) 333-6700 Fax: (209) 333-6807
State/Country of Corporate Formation: California	E-Mail: jayers@lodi.gov

The terms and conditions of this Agreement (including the attached Standard Terms and Conditions which are incorporated herein by reference) will apply to each business transaction between the parties for Spinnaker providing to Customer the Services described herein. Any different or additional terms of a related purchase order, confirmation or similar form signed by the parties after the date hereof shall have no force or effect on this Agreement or its subject matter, and pre-printed or standard terms of Customer’s purchase order are specifically excluded.

This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original but all of which taken together shall constitute one and the same instrument. Signatures to this Agreement transmitted by facsimile, email, portable document format (.pdf) or by any other electronic means intended to preserve the original graphic and pictorial appearance of this Agreement shall have the same effect as the physical delivery of the paper document bearing original signatures.

**ACCEPTED AND AGREED TO:**

**CUSTOMER:** \_\_\_\_\_

**SPINNAKER SUPPORT, LLC**

Signed: \_\_\_\_\_

Signed: \_\_\_\_\_

Printed: \_\_\_\_\_

Printed: \_\_\_\_\_

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

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

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

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

## STANDARD TERMS AND CONDITIONS

**1. DEFINITIONS.** As used in this Agreement or any attachment hereto:

**1.1 "Deliverable"** means any item provided by Spinnaker to Customer as a result of the Services, which may include, findings, analyses, conclusions, opinions, designs, programs, enhancements, updates, fixes and/or source and object code.

**1.2 "Intellectual Property Rights"** means all known or hereafter existing worldwide copyrights, trademarks, service marks, trade secrets, patents, patent applications, know-how, moral rights, contract rights and other proprietary rights.

**1.3 "Licensor"** means the applicable licensor of a Third Party Product.

**1.4 "Licensor Terms and Conditions"** means the terms and conditions applicable to access and/or use of any Third Party Product, including any confidentiality, license and/or other agreement with the applicable Licensor(s), and any "terms of use" or similar terms imposed by such Licensor(s).

**1.5 "Services"** means the consulting, support, training, integration, implementation and other professional services to be performed by Spinnaker for Customer under this Agreement pursuant to one or more Statement(s) of Work.

**1.6 "Spinnaker Tools"** means (a) all software, documentation, tools, routines, programs, designs, technology, ideas, know-how, processes, techniques and inventions that Spinnaker utilizes in connection with its performance of the Services and that Spinnaker makes, develops, conceives or reduces to practice, either (i) prior to, contemporaneously with, or subsequent to the performance of the Services, or (ii) in the course of performing the Services, and (b) all enhancements, modifications, improvements and derivative works of each and any of the foregoing.

**1.7 "Statement of Work"** means a written statement of work executed by the parties that describes the specific Services to be performed by Spinnaker hereunder.

**1.8 "Third Party Product(s)"** means any third-party licensed software product(s) or other third-party material(s) in Customer's custody and/or control.

**1.9** Capitalized terms not specifically defined in this Section shall have the respective meanings ascribed to them in this Agreement.

## **2. PERFORMANCE OF SERVICES.**

**2.1 Statements of Work.** The specific Services to be performed by Spinnaker under this Agreement shall be set forth in one or more Statements of Work mutually agreed to by the parties. A Statement of Work shall not be binding unless signed by both parties, and upon such signing, shall be attached to and incorporated into this Agreement.

**2.2 Additional Services.** Any additional services required by Customer that are outside the scope of a Statement of Work ("Additional Services") shall be performed at Spinnaker's then-current consulting rates on a time and materials basis; that is, Customer shall pay Spinnaker for the

time spent performing the relevant Additional Services, plus applicable materials, taxes and expenses. Notwithstanding the foregoing, for Additional Services, Spinnaker shall bill a minimum of one (1) labor hour for each new, unique request for assistance placed with Spinnaker (as evidenced by an assigned unique case number), with billing in ¼ hour increments thereafter (rounding up to the next whole ¼ hour of labor).

**2.3 Change Orders; Conflicts.** In the event either party requires a material change to a Statement of Work, such party will provide a written change order to the other for approval, specifying the change required (each a "Change Order"). Each party agrees that a Change Order may necessitate a change in the delivery schedule and/or fees due under the applicable Statement of Work. No Change Order will be binding upon either party until it is signed by the authorized representatives of both parties. Each Statement of Work and Change Order will be governed by the terms of this Agreement. In the event of a conflict between the terms and conditions of this Agreement and those of a Statement of Work or Change Order (if any), the following order of precedence shall apply: (i) Change Order (if any), (ii) Statement of Work, (iii) this Agreement.

## **3. FEES AND PAYMENT.**

**3.1 Fees.** Customer will timely pay Spinnaker all fees as specified in the applicable Statement of Work. Unless otherwise expressly provided in this Agreement or the applicable Statement of Work, all fees are non-refundable.

**3.2 Payment Terms.** Unless otherwise expressly provided in this Agreement or the applicable Statement of Work, Customer will pay Spinnaker all amounts due under this Agreement within fifteen (15) days after the date of the invoice therefore. All payments must be made in U.S. dollars. Any amounts not paid when due will accrue interest at the lesser of one and one-half percent (1½%) per month or the maximum rate permitted by applicable law from the due date until paid. Without limiting any other remedy available to Spinnaker, Spinnaker reserves the right to suspend any Services during any period in which Customer has failed to timely pay any amounts due and payable.

**3.3 Taxes.** Fees exclude, and Customer will make all payments of fees to Spinnaker free and clear of, all applicable sales, use and other taxes and all applicable export and import fees, customs, duties and similar charges. When applicable, Spinnaker may include any taxes that it is required to collect as a separate line item on an invoice. Customer will be responsible for, and will indemnify and hold harmless Spinnaker from, payment of all such taxes (other than taxes based on Spinnaker's net income), fees, duties and charges, and any related penalties and interest, arising from the payment of fees or the performance of Services hereunder.

**3.4 Travel and Other Expenses.** Services provided hereunder shall be provided at Spinnaker's principal places of business. Should Customer request or it be otherwise necessary that Spinnaker send personnel to any Customer site

or other location in connection with the Services, Customer shall pay Spinnaker's reasonable travel, meals and lodging expenses. Under such circumstances, Customer shall also pay actual costs for supplies and other expenses reasonably incurred by Spinnaker, which are not of the sort normally provided or covered by Spinnaker, provided that Customer has approved in advance the purchase of such supplies and other expenses. If Customer so requires, Spinnaker shall submit written evidence of each expenditure to Customer prior to receiving reimbursement of such costs and expenses.

**4. CUSTOMER OBLIGATIONS.** Customer shall provide Spinnaker with such resources, information, software access and assistance as Spinnaker may reasonably request in connection with the performance of the Services. Customer acknowledges and agrees that Spinnaker's ability to successfully perform the Services in a timely manner is contingent upon its receipt from Customer of such information, resources, software access and assistance. Spinnaker shall have no liability for deficiencies in the Services resulting from the acts or omissions of Customer, its agents or employees. Without limiting the generality of the foregoing, Customer acknowledges and agrees that Customer's obligations include the following:

**4.1 Primary Contact.** Customer shall designate one (1) primary point of contact under each Statement of Work who shall be responsible for managing the relationship between Spinnaker and Customer thereunder, including providing reasonable assistance to Spinnaker with technical and non-technical issues related to the applicable Services.

**4.2 Access to Third Party Products.** Customer acknowledges and agrees that Spinnaker is performing the Services solely for the benefit of Customer, and that Spinnaker's ability to perform the Services may require Spinnaker's access (either through remote access or direct physical access on Customer's premises) and use of certain Third Party Products. In connection therewith, Customer hereby represents and warrants that it has the right to provide Spinnaker with access to, and use of, any and all portions of such Third Party Products in connection with Spinnaker's performance of the Services, including, if applicable, the right to customize and/or configure each such Third Party Product for the benefit of Customer. Customer agrees to immediately notify Spinnaker of any changes made (actual or attempted) by the applicable Licensor to Customer's license and access rights to such Third Party Product(s), including changes to the applicable Licensor Terms and Conditions, that may affect Spinnaker's ability to continue performing the Services. Customer shall indemnify, defend and hold Spinnaker, its officers, employees, personnel, agents and representatives harmless from and against any and all claims, liabilities, damages and expenses (including reasonable attorneys' fees), arising out of Customer's breach of this Section, including any breach of Customer's representations and warranties hereunder.

**4.3 Personnel.** Customer shall provide sufficient, qualified and knowledgeable personnel capable of (a) performing Customer's obligations as described in this

Agreement and each Statement of Work and (b) making necessary and timely decisions on behalf of Customer.

## **5. WARRANTIES.**

**5.1 Performance.** Spinnaker warrants to Customer that the Services will be performed in a professional manner consistent with industry standards. Spinnaker shall, as its sole obligation and Customer's sole and exclusive remedy for any breach of the warranty set forth in this Section, re-perform the Services which gave rise to the breach, or at Spinnaker's option, refund the fees paid by Customer for the Services which gave rise to the breach; provided that Customer notifies Spinnaker in writing of the breach within thirty (30) days following performance of the defective Services, specifying the breach in reasonable detail.

**5.2 Disclaimers.** THE EXPRESS WARRANTIES IN THIS SECTION 5 ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, REGARDING THE SERVICES, AND SPINNAKER EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, TITLE AND ANY WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE. NO SPECIFIC RESULTS FROM THE PERFORMANCE OF THE SERVICES ARE ASSURED OR GUARANTEED. CUSTOMER ACKNOWLEDGES THAT IT HAS RELIED ON NO WARRANTIES OTHER THAN THE EXPRESS WARRANTIES PROVIDED HEREIN.

**6. INFRINGEMENT CLAIMS.** Spinnaker will defend at its own expense any action against Customer brought by a third-party to the extent that the action is based upon a claim that Customer's use of any Deliverable infringes any U.S. patent or copyright or misappropriates any trade secret of a third-party, and Spinnaker will pay those costs and damages finally awarded against Customer in any such action that are specifically attributable to such claim or those costs and damages agreed to in a monetary settlement of such action. The foregoing obligations are conditioned on Customer (a) notifying Spinnaker promptly in writing of such action, (b) giving Spinnaker sole control of the defense thereof and any related settlement negotiations and (c) cooperating and, at Spinnaker's request and expense, assisting in such defense. If any Deliverable becomes, or in Spinnaker's opinion is likely to become, the subject of an infringement claim, Spinnaker may, at its option and expense, either (i) procure for Customer the right to continue using the Deliverable, (ii) replace or modify the Deliverable so that it becomes non-infringing or (iii) terminate Customer's right to use the Deliverable and refund Customer the fees paid for such portion of the Deliverable which is allegedly infringing, upon which Customer shall have no further rights in and to the subject Deliverable. Notwithstanding the foregoing, Spinnaker will have no obligation under this Section 6 or otherwise with respect to any infringement claim based upon (A) any use of the Deliverable not in accordance with this Agreement or for purposes not intended by Spinnaker, (B) any use of the Deliverable in combination with other services, products,

equipment, software or data not intended by Spinnaker to be used with the Deliverable, (c) any information, software code or other materials furnished to Spinnaker by Customer, its agents, representatives and suppliers, including Customer's specifications, (d) any unauthorized and/or unlicensed activities by Customer, its agents, representatives and suppliers, including any violation by Customer of Section 4.2, or (e) any modification of the Deliverable by any person other than Spinnaker or its authorized agents or subcontractors; and Customer shall indemnify, defend and hold Spinnaker, its officers, employees, personnel, agents and representatives harmless from and against any and all claims, liabilities, damages and expenses (including reasonable attorneys' fees) based upon any of the foregoing. THIS SECTION 6 STATES SPINNAKER'S ENTIRE LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDY FOR INFRINGEMENT CLAIMS AND ACTIONS RELATED TO THE SERVICES AND ANY DELIVERABLE UNDER THIS AGREEMENT.

## 7. OWNERSHIP.

**7.1 Work Product.** Except as provided in Section 7.2, the parties hereby agree that any and all Customer-specific work product (the "**Work Product**") which is produced as a result of the Services performed by Spinnaker under this Agreement, including any Intellectual Property Rights therein, shall be the property of Customer.

**7.2 Spinnaker Property.** Notwithstanding the foregoing in Section 7.1, as between the parties, Spinnaker shall retain all Intellectual Property Rights in and to any and all Spinnaker Tools which have general applicability apart from the Work Product (collectively, the "**Spinnaker Property**"). Subject to Customer's payment of all applicable fees, Spinnaker grants Customer a non-exclusive, non-transferable license, without rights to sublicense, to use the Spinnaker Property that is incorporated into a Deliverable solely for Customer's own internal business purposes in connection with the use of such Deliverable.

**7.3 Third Party Products.** Notwithstanding anything contained herein to the contrary, Spinnaker acknowledges and agrees that it has no claim of ownership in and to any Third Party Products or any Intellectual Property Rights therein.

**8. LIMITATION OF LIABILITY.** SPINNAKER'S TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH ANY SERVICES PROVIDED UNDER THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR OTHERWISE, WILL NOT EXCEED THE AMOUNT OF FEES PAID TO SPINNAKER UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENTS GIVING RISE TO SUCH LIABILITY. IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, EXEMPLARY, SPECIAL OR INCIDENTAL DAMAGES, INCLUDING ANY LOST DATA, LOST PROFITS OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, ARISING FROM OR RELATING TO THIS AGREEMENT, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY (INCLUDING NEGLIGENCE), EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; PROVIDED,

HOWEVER, THIS LIMITATION SHALL NOT APPLY TO CUSTOMER'S BREACH OF SECTION 4.2. CUSTOMER ACKNOWLEDGES THAT THE FEES REFLECT THE ALLOCATION OF RISK BETWEEN THE PARTIES AND THAT SPINNAKER WOULD NOT ENTER INTO THIS AGREEMENT OR ANY STATEMENT OF WORK WITHOUT THESE LIMITATIONS ON SPINNAKER'S LIABILITY.

## 9. CONFIDENTIALITY.

**9.1 Protection of Confidential Information.** Each party (the "**Disclosing Party**") may from time to time disclose to the other party (the "**Receiving Party**") certain information regarding the business of the Disclosing Party and its suppliers, including technical, marketing, financial, employee, planning and other confidential or proprietary information ("**Confidential Information**"). Any information that the Receiving Party knew or should have known, under the circumstances, is considered confidential or proprietary by the Disclosing Party will be considered Confidential Information of the Disclosing Party. Without limiting the generality of the foregoing, the Spinnaker Tools shall be considered Spinnaker's Confidential Information.

**9.2 Protection of Confidential Information.** The Receiving Party will not use any Confidential Information of the Disclosing Party for any purpose not expressly permitted by this Agreement, and will disclose the Confidential Information of the Disclosing Party only to the employees or contractors of the Receiving Party who have a need to know such Confidential Information for purposes of this Agreement and who are under a duty of confidentiality no less restrictive than the Receiving Party's duty hereunder. The Receiving Party will protect the Disclosing Party's Confidential Information from unauthorized use, access and disclosure in the same manner as the Receiving Party protects its own confidential or proprietary information of a similar nature and with no less than reasonable care.

**9.3 Exceptions.** The Receiving Party's obligations under Section 9.2 with respect to any Confidential Information of the Disclosing Party will terminate if such information: (a) was already known to the Receiving Party at the time of disclosure by the Disclosing Party; (b) was disclosed to the Receiving Party by a third-party who had the right to make such disclosure without any confidentiality restrictions; (c) is, or through no fault of the Receiving Party has become, generally available to the public; or (d) was independently developed by the Receiving Party without access to, or use of, the Disclosing Party's Confidential Information. In addition, the Receiving Party will be allowed to disclose Confidential Information of the Disclosing Party to the extent that such disclosure is (i) approved in writing by the Disclosing Party, (ii) necessary for the Receiving Party to enforce its rights under this Agreement in connection with a legal proceeding; or (iii) required by law or by the order of a court of similar judicial or administrative body, provided that the Receiving Party notifies the Disclosing Party of such required disclosure promptly and in writing and cooperates with the Disclosing Party, at the Disclosing Party's request and expense, in any

lawful action to contest or limit the scope of such required disclosure.

**9.4 Return of Confidential Information.** The Receiving Party will return to the Disclosing Party or destroy all Confidential Information of the Disclosing Party in the Receiving Party's possession or control and permanently erase all electronic copies of such Confidential Information promptly upon the written request of the Disclosing Party and/or upon the expiration or termination of this Agreement (except for any computer records or files that have been created pursuant to the Receiving Party's automatic archiving and back-up procedures and the removal of which is not technically reasonable). Upon request from the Disclosing Party, the Receiving Party will certify in writing signed by an officer of the Receiving Party that it has fully complied with its obligations under this Section 9.4.

**9.5 Confidentiality of Agreement.** Except as expressly permitted hereunder, neither party will disclose any terms of this Agreement to anyone other than its attorneys, accountants and other professional advisors except (a) as required by law, or (b) pursuant to the mutual agreement of the parties, or (c) in connection with a financial investment in such party's business or (d) in connection with a contemplated transfer of such party's business permitted by Section 12.4 (provided that any third-party to whom the terms of this Agreement is to be disclosed is under a duty of confidentiality no less restrictive than the Receiving Party's duty hereunder).

## **10. TERM AND TERMINATION.**

**10.1 Term.** This term of this Agreement shall commence on the Effective Date and shall continue for a period of two (2) years. The term of this Agreement will automatically renew for additional terms of one (1) year, unless either party notifies the other of its intention not to renew at least thirty (30) days before the expiration of the then-current term.

**10.2 Termination.** Either party may terminate this Agreement or any uncompleted Statement(s) of Work if the other party (a) breaches any material provision of this Agreement or the applicable Statement(s) of Work and does not cure such breach within thirty (30) days after receiving written notice thereof; (b) shall formally declare bankruptcy, insolvency, reorganization, liquidation or receivership; or (c) shall have instigated against it bankruptcy, insolvency, reorganization, liquidation or receivership proceedings, and shall fail to remove itself from such proceedings within ten (10) days from the date of institution of such proceedings. Notwithstanding the foregoing, Spinnaker may also terminate this Agreement or any uncompleted Statement(s) of Work immediately upon written notice in the event (i) Customer fails to pay any amounts payable hereunder within ten (10) days after receiving written notice from Spinnaker that payment is due, or (ii) Customer breaches Section 4.2. The termination or expiration of a single Statement of Work shall not cause the automatic termination of any other Statement of Work.

**10.3 Effects of Termination.** Expiration or termination of this Agreement for any reason shall not release either party from liability which at said time has already incurred to the other party. In the event a Statement of Work is still in effect

upon the expiration of this Agreement, such Statement of Work shall remain in effect and shall continue to be governed by the terms and conditions of this Agreement unless and until such Statement of Work is completed or otherwise terminated in accordance with this Agreement. Except as otherwise expressly set forth herein, the following provisions will survive expiration or termination of this Agreement pursuant to their terms, together with any other provisions necessary for their construction and enforcement: Sections 1, 3, 4.2 (with respect to Customer's representations, warranties and indemnity obligations), 5, 6, 7, 8, 9, 10.3 and 12, together with any accrued payment obligations. Without limiting the foregoing, upon termination or expiration of this Agreement or any Statement(s) of Work for any reason, any amounts owed to Spinnaker under this Agreement or the applicable Statement(s) of Work before such termination or expiration will be immediately due and payable, including any amounts due for Services performed and expenses incurred prior to such termination or expiration and any reasonable and necessary travel or out-of-pocket expenses incurred after such termination or expiration, without regard to whether any invoices had or had not been issued.

**11. SUPPORT SERVICES.** In the event the Services hereunder include software support for any Third Party Products ("**Support Services**"), the terms and conditions set forth in this Section (in addition to the other terms and conditions contained herein) shall apply to such Support Services.

**11.1 Supported Products.** As used in this Section or any Statement of Work, "**Supported Product(s)**" means any Third Party Product(s) for which Spinnaker agrees to provide Support Services pursuant to a Statement of Work, including all fixes and updates thereto provided to Customer by the applicable Licensor as part of the standard delivered core product. Except as otherwise stated in the applicable Statement of Work, Supported Products do not include any customizations, modifications or any country or region specific functionality or localizations that were not provided to Customer by the applicable Licensor as part of the standard delivered core product.

**11.2 Customer Obligations.** In addition to those obligations of Customer set forth in Section 4, Customer acknowledges and agrees that Customer's obligations with respect to Support Services include the following:

(a) **Personnel.** Customer shall provide sufficient, qualified and knowledgeable personnel capable of (a) facilitating the testing of software fixes, updates and workarounds for the Supported Products (if applicable) and (b) customizing, installing and configuring code fixes and updates provided by Spinnaker or a third-party as needed for use with the Supported Products (if applicable).

(b) **Final Testing of Fixes and Updates.** For any Spinnaker-provided fixes and/or updates to Supported Products, Customer shall be solely responsible for all final system testing to ensure that such fixes and updates perform as documented with the applicable Supported Products, and Customer shall not move any fixes or updates into a

production environment unless and until Customer has successfully completed all such final system testing.

(c) **No Back-Ups.** Customer acknowledges and agrees that Spinnaker will not make or store copies of any Supported Products for Customer. Customer shall be solely responsible for making and storing emergency backups of the Supported Products.

**11.3 Remote Access to Deliverables and Spinnaker Tools.** Notwithstanding anything contained herein to the contrary, Customer acknowledges and agrees that in the event Spinnaker, as part of any Support Services, provides Customer with remote access to Deliverables or Spinnaker Tools, such access and right to use shall immediately cease upon the expiration or termination of this Agreement or the applicable Statement of Work.

## **12. GENERAL.**

**12.1 On-Site Work.** The parties acknowledge and agree that unless otherwise set forth in the applicable Statement of Work(s), all Services hereunder shall be performed remotely. In the event Services are to be performed on Customer's site, the SOW shall so specify and shall include additional insurance requirements and such other different terms and conditions related to such on-site work as mutually agreed upon by the parties.

**12.2 Publicity.** Spinnaker may, subject to Customer's approval of content (if applicable), not to be unreasonably withheld or delayed, (a) create a general contract announcement press release indicating that the parties have entered into this Agreement, (b) use Customer's business name and logo in written materials identifying Spinnaker's customers and in other appropriate promotional materials, (c) identify Customer in applicable case studies and (d) identify Customer as a reference for prospective customers and the media (provided that Customer shall not be obligated to comment in any way).

**12.3 Compliance.** Customer shall comply with all applicable laws and regulations in its use of the Services and Deliverables, including any such laws and regulations related to export and import controls.

**12.4 Assignments.** Neither party may assign or transfer, by operation of law or otherwise, any of its rights under this Agreement to any third-party without the other's prior written consent. Any attempted assignment or transfer in violation of the foregoing will be null and void. Notwithstanding the foregoing, each party shall have the right, upon providing notice to the other party (but not requiring the other party's consent), to assign this Agreement to any successor to its business or assets to which this Agreement relates, whether by merger, sale of assets, sale of stock, reorganization or otherwise.

**12.5 Force Majeure.** Except for any payment obligations, neither party shall be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder on account of strikes, shortages, riots, insurrection, fires, flood, storm, explosions, acts of God, war, governmental action, labor conditions, earthquakes, material shortages or

any other cause which is beyond the reasonable control of such party.

**12.6 Notices.** All notices required in connection with this Agreement will be in writing and deemed effectively given: (a) upon personal delivery to the party to be notified; (b) on the date on which such notice is delivered by email with confirmation that the email has been received and read; or (c) one (1) business day after deposit with a nationally/internationally recognized overnight courier that provides tracking and verification of delivery. All notices shall be sent to the address set forth on the cover page of this Agreement. Either party may change its address by giving notice of the new address to the other party in writing.

**12.7 Governing Law and Venue.** This Agreement will be governed by and interpreted in accordance with the laws of the State of California, United States, without reference to its choice of laws rules. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. Any action or proceeding arising from or relating to this Agreement shall be brought exclusively in a federal or state court in California and each party irrevocably submits to the jurisdiction and venue of any such court in any such action or proceeding.

**12.8 Remedies.** Except as provided in Sections 5 and 6, the parties' rights and remedies under this Agreement are cumulative. Each party acknowledges that any breach of Sections 4.2, 7, 9 and/or 12.14 of this Agreement would cause irreparable injury to the other party for which monetary damages would not be an adequate remedy, and therefore, the other party will be entitled to injunctive relief. If any legal action is brought by a party to enforce this Agreement, the prevailing party will be entitled to receive its attorneys' fees, court costs and other collection expenses, in addition to any other relief it may receive.

**12.9 Waivers.** All waivers must be in writing. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

**12.10 Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable, such provision will be deemed modified and will be interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions of this Agreement will continue in full force and effect.

**12.11 Subcontractors.** Customer acknowledges and agrees that Spinnaker may hire subcontractors to perform certain Services hereunder. Spinnaker will be responsible for the direction and coordination of the services of each subcontractor and Customer will have no obligation to pay any subcontractor directly.

**12.12 Relationship of Parties.** The relationship of the parties established under this Agreement is that of independent contractors and neither party is a partner, employee, agent or joint venture partner of or with the other, and neither party has the right or authority to assume or create any obligation on behalf of the other party.

**12.13 Construction.** The headings used for the sections of this Agreement are for information purposes and convenience only and in no way define, limit, construe or describe the scope or extent of the sections. The word "including" or any variation thereof means "including, without limitation" and will not be construed to limit any general statement that such word or variation thereof follows. The language used in this Agreement will be deemed to be the language chosen by the parties to express the parties' collective mutual intent, and no rule of strict construction will be applied against any party.

**12.14 Non-Solicitation of Personnel.** Customer recognizes that the employees and independent contractors of Spinnaker, and such employees' and independent contractors' loyalty and service to Spinnaker, constitute a valuable asset of Spinnaker. Accordingly, Customer hereby agrees, during the term of this Agreement and for two (2) years thereafter, not to make any offer of employment to, nor enter into a consulting relationship with, any person who was employed or retained by Spinnaker during the previous two (2) years. Any violation of this provision shall constitute a material breach of this Agreement, and upon any such breach, Customer shall pay to Spinnaker liquidated damages consisting of the amount of all

compensation (e.g., salary, bonuses, fees, etc.) paid or to be paid by Customer to the person during the first twelve (12) months after such person was hired/retained by Customer. Each party acknowledges and agrees that the amount of liquidated damages stated herein is a good faith estimate of the training and personnel related investment costs Spinnaker will lose if a Spinnaker employee or independent contractor is hired or retained by Customer. In the event this Section is deemed unenforceable for any reason, Spinnaker shall nevertheless be entitled to recover its actual damages resulting from Customer's breach.

**12.15 Entire Agreement.** This Agreement, together with any attachments and exhibits hereto (including all Statements of Work), constitutes the entire agreement between the parties regarding the subject matter hereof and supersedes all prior or contemporaneous agreements, understandings and communication, whether written or oral. This Agreement and each Statement of Work shall not be modified except by a subsequently dated written amendment signed on behalf of Spinnaker and Customer by their duly authorized representatives.

## STATEMENT OF WORK #1

### Spinnaker Q Series Integrator Implementation & Ongoing Support

This Statement of Work is attached to, and is made a part of, that certain Master Services Agreement between **SPINNAKER SUPPORT, LLC** (“Company”), and **City of Lodi, California** (“Customer”) executed on March 30, 2013 (the “Agreement”). Unless explicitly stated otherwise in this Statement of Work, any capitalized terms shall have the meaning given to them in the Agreement.

#### 1. Scope and Activities

##### 1.1 Spinnaker Q Series Integrator: Implementation Services and Activities

This section defines the activities to be performed by Customer and Company in support of the implementation of the Spinnaker Q Series Integrator. This Q Series Integrator will be used to interface JD Edwards World Software, A7.3 Cume 16 with the Vertex Payroll Tax Q Series (PTQ) software.

The Objective of this service is to fully implement all components of the Q Series Integrator developed by Company through analysis, development, testing and production go-live. It requires close coordination with the Customer throughout the project. Upon go-live the Q Series Integrator will replace the current interface to the Vertex Payroll Tax L Series software in use by the Customer. The following are the Scope and Activities of this effort:

##### A. Customer Tasks

- Prepare a World Test Environment to be used for development of Q Series Integrator
  - Verify JDE Source Code is available and in the environment
  - Provide adequate payroll test data in the test environment
- Obtain all PTQ Software and Support Material from Vertex. Ensure you indicate that this is for a PTL to PTQ migration for your World Software.
- Install and Configure PTQ into your World Test Environment
- Create Library List with the appropriate libraries included: Vertex, Customer Payroll and Spinnaker source and object libraries.
- Define how Company will access the Test Environment
- Grant Spinnaker users access to the Test Environment—user profiles, library list access. This includes IBM and JDE related authorities
- Grant appropriate command authorities to Spinnaker in order to complete all development and testing activities
- Verify IBM licensed products and PTFs are installed. Minimum OS Level is V5R4
- Provide input and expertise throughout the project as needed by Company to support the implementation
- Provide functional and regression testing
- Provide final acceptance testing and acceptance sign-off
- Coordinate go-live implementation to Production

##### B. Company Tasks

- Assist Customer with above tasks where needed
- Restore and extract the Spinnaker Q Series Integrator library from Save File to Customer iSeries
- Verify authority and ownership of all Q Series Integrator objects
- Verify Test Environment is ready to perform all development activities for the project
- Modify JDE World base programs and related objects required for Q Series Integrator implementation
- Unit Test all program and object changes together with the integration to PTQ

- Functional QA test the integration together with Customer
- Fix/resolve all reported issues found in testing
- Receive final acceptance test and sign-off by customer
- Implement into Production
- Provide IT Training of Q Series Integrator
- Provide Q Series Integrator documentation to Company

### **1.2 Q Series Integrator: Ongoing Support Services**

Upon Q Series Integrator go-live to Production, Ongoing Support Services will be activated. It is the contracting for and payment of the annual Ongoing Support Services fee, defined in Section 10, which grants a Customer the right to use the Q Series Integrator solution and to receive the following post implementation services:

- A. Fixes and/or operational workarounds for issues and defects found in the Spinnaker Tools. This includes the Spinnaker Q Series Integrator and all reported issues as they relate to the interface between JD Edwards Supported Products and the Vertex Payroll Tax Q (PTQ) Series software.
- B. Updates and enhancements to the Q Series Integrator which are required in order to maintain compatibility with Vertex PTQ software and any related updates.
- C. Q Series Integrator product enhancements that may be developed by Company at its sole discretion.
- D. Access to the Company support line for general Q Series Integrator use and/or configuration questions.

## **2. Company Responsibilities**

- A. The Company will review and deliver the above-stated scope of work (Section 1.1 and 1.2) via remote access to Customer's systems, based on work activities described, as necessary and as permitted by the Customer and according to the Customer's policies.
- B. Perform its duties to the highest level of professional standards.
- C. Work closely together with the Customer in the delivery of the implementation and ongoing support activities and services described in this Statement of Work.

## **3. Customer Responsibilities**

- A. The Customer will review, lead and deliver the above-stated scope of work (Section 1) based on work activities and tasks described.
- B. Customer will provide and schedule additional resources and subject matter experts as needed for the project activities
- C. Customer will make timely decisions to support Q Series Integrator implementation timeline
- D. The Customer will provide user acceptance testing and sign-off on all changes prior to moving to production.
- E. Customer will lead the project activities.
- F. Customer will work with Company to coordinate all implementation tasks.
- G. Customer will provide any documentation of current and pertinent future business processes and technology architecture that may impact the structure of the recommended designs.
- H. Customer will ensure adequate backups are performed of the affected environment(s) prior to beginning any development and implementation tasks.

## **4. Deliverables**

- A. All work and related activities defined in sections 1.1 and 1.2
- B. Project plan documentation
- C. Q Series Integrator solution documentation

D. Issue Reporting – tracking and recording of all implementation and ongoing support work through Company ticketing system.

#### 5. Key Assumptions

- A. Customer is required to have a JD Edwards Maintenance Services Agreement in place that includes maintenance support services and tax and regulatory support services.
- B. Unspecified activities or deliverables are considered out of scope.
- C. Customer will work with Company to lead and drive project to completion.
- D. Q Series Integrator implementation scope changes will be reviewed, discussed, and where necessary, approved by Customer Project Manager and by the Company Project Manager.
- E. Customer is committed to the success of this project and will adhere to its defined responsibilities.
- F. All activities under this Statement of Work will be performed remotely. Any work to be performed on Customer’s site will be set forth in a separate Statement of Work mutually agreed upon by the parties.

#### 6. Implementation Schedule

The following implementation schedule will be adhered to by Spinnaker and Customer.

Engagement Milestones	Date
Project Kickoff Meeting	May, 2013
Test Environment Prepared	May, 2013
Spinnaker Development Project Start	May, 2013
Customer Acceptance Test Sign-off	July, 2013
Q Series Integrator Go-live Date	TBD
Q Series Ongoing Support Effective	TBD

#### 7. Company Key Resources

The following Company resources will be assigned to the implementation phase:

- Engagement Manager – Mark Kreutz
- Project Manager – Tom Leier
- Developer— Jim Egger or Equivalent
- Functional Support/QA Testing – Jeff Washburn or Equivalent

#### 8. Customer Key Resources

The following Customer resources will be assigned to the implementation phase:

- Engagement Manager – Jordan Ayers
- Project Manager – TBD
- Functional Support/QA Testing – TBD
- Final Acceptance Sign-off – Jordan Ayers

**9. Company Contacts**

Primary Business Contact	Primary Accounts Payable Contact
Name: Jordan Ayers	Name: Michelle Munoz
Address1: 221 W. Pine Street Lodi, CA 95240	Address1: 221 W. Pine Street Lodi, CA 95240
Country: USA	Country: USA
Phone: (209) 333-6700	Phone: 209-333-6800x2525
Fax: (209) 333-6807	Fax: (209) 333-6807
Email: jayers@lodi.gov	Email: mmunoz@lodi.gov

**10. Fees Schedule**

The following fees will be invoiced for the services defined herein.

Project Type	Amount	Invoice date
Q Series Integrator Solution Fee (Implementation)	\$23,250	March 30, 2013
Q Series Integrator Ongoing Support Fee - Annual	\$8,000	December 31, 2013

- A. Fees are payable in full net 30 days from invoice date.
- B. Fees for any subsequent year(s) of the Q Series Ongoing Support Period shall be equal to the fees for the immediately preceding year plus 6%.

**11. Additional Terms and Conditions**

- Pricing in this Statement of Work expires on March 31, 2013.

IN WITNESS WHEREOF, the duly authorized representatives of Company and Customer have executed this Statement of Work as of:

CUSTOMER: _____	COMPANY: <b>Spinnaker Support, LLC</b> _____
Signature: _____	Signature: _____
Printed: _____	Printed: _____
Title: _____	Title: _____
Date: _____	Date: _____

RESOLUTION NO. 2013-41

A RESOLUTION OF THE LODI CITY COUNCIL  
AUTHORIZING THE CITY MANAGER TO EXECUTE  
A MASTER SERVICE AGREEMENT FOR SOFTWARE  
SERVICES WITH SPINNAKER SUPPORT, LLC,  
OF DENVER, CO

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WHEREAS, tax tables supporting City's payroll system will no longer be provided effective January 1, 2014; and

WHEREAS, Spinnaker Support, LLC has developed a product that will allow the City to continue using its current payroll system after January 1, 2014; and

WHEREAS, Spinnaker Support, LLC is the only vendor City staff has identified that provides this product.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Lodi does hereby authorize the City Manager to execute a Master Services Agreement for software services with Spinnaker Support, LLC in an amount not to exceed \$31,250.00.

Dated: March 20, 2013

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I hereby certify that Resolution No. 2013-41 as passed and adopted by the City Council of the City of Lodi in a regular meeting held March 20, 2013, by the following votes:

AYES: COUNCIL MEMBERS – Hansen, Johnson, Katzakian, Mounce,  
and Mayor Nakanishi

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None

  
RANDI JOHL  
City Clerk