City of
Sherwood
Oregon

Resolution No. 2002-002

A RESOLUTION APPROVING PURCHASE OF SOFTWARE

WHEREAS, an investment in software for finance and municipal court is necessary to perform City functions effectively and efficiently; and
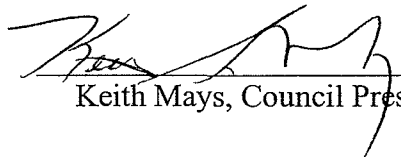
WHEREAS, the Finance Committee recommends purchase of such software; and

WHEREAS, contracts for the purchase, implementation, and training on such software are attached as appendices;

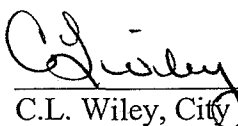**NOW, THEREFORE, THE CITY RESOLVES AS FOLLOWS:**

City staff is authorized to proceed with the purchase finance and municipal court.

Duly passed by the City Council this 12th day of February, 2002.

Keith Mays, Council President

ATTEST:

C.L. Wiley, City Recorder

Resolution No. 2001-
Enter date of Council Meeting
Page 1 of 1 with ___ Exhibit(s)

JUSTICE SYSTEMS, INC.
AGREEMENT

I.   **IN CONSIDERATION** of the mutual promises and agreements provided herein, **Justice Systems, Inc. (JSI),** and **City of Sherwood, Oregon, (Customer)** agree that: JSI will license to **Customer,** rights to use FullCourt®[1] software on a nonexclusive basis for **Customer's** use in the geographical jurisdiction described as the Sherwood Municipal Court.

The following schedules are attached hereto and made a part of this agreement:

1.   **"Schedule A" – FullCourt[1] Software License:** Providing for the license provisions under which the software provided by JSI may be used;

2.   **"Schedule B" – Software Application Specific Sublicense Addendum:** Providing for the use of Oracle®[2] software used in conjunction with FullCourt.

3.   **"Schedule C" -- Software Operating Environment:** Setting forth the operating environment intended to be used to support the FullCourt application plus any additional software required for use by FullCourt software. The parties contemplate any modifications to these items may result in additional cost to the **Customer;**

4.   **"Schedule D" – Services Agreement.** Setting forth the services that shall be provided by **JSI;** as well as any matters specifically excluded from **JSI's** responsibility;

5.   **"Schedule E" – Software Maintenance and Support Agreement for FullCourt:** Setting forth the terms comprising the agreement for maintenance and support to be provided by **JSI** after the initial warranty period has expired.

II.   **COST OF SOFTWARE LICENSE AND SERVICES TO BE PERFORMED:**

Customer shall pay to JSI the sum of as follows:

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a.	*Total License fees in the amount of*	*$8,788*
b.	*Services as set forth in "Schedule D" (includes travel expenses)*	*$14,000*
c.	*Maintenance and Support fees as set forth in "Schedule E"*	*$1,620*
	TOTAL	*$24,408*

Payment is due within 30 days of billing.

Costs and expenses for travel, lodging, transportation etc. are included in the amounts listed above.

III.   **CONFIDENTIAL INFORMATION: Customer** acknowledges that FullCourt **(the Program)** is a copyrighted work; and. that any materials provided by **JSI** including documentation **(Documentation)** may contain proprietary intellectual property rights. **Customer** agrees to keep the Program and Documentation in confidence and to take all reasonable precautions to ensure that no unauthorized persons have access to the Program and/or Documentation and that no unauthorized copies are made. Breach of this provision shall be construed as a material breach of the terms of this Agreement and, **JSI,** at its sole option, may immediately terminate this agreement without further obligation. **Customer** shall not alter any proprietary markings in connection with the Program or Documentation, including copyright, trademark, trade secret, and patent legends.

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[1]FullCourt is a registered tradename of Justice Systems, Inc. The FullCourt software program is copyrighted and protected by law.

[2] Oracle is a registered trademark of Oracle Corporation, Redwood City, CA
Copyright© 1998 Oracle Corporation. All rights reserved.

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Customer's obligations under this section as they relate to the use of the Program and Documentation shall be to advise authorized users of the provisions of this section and immediately halt and report to JSI unauthorized copying, use, distribution, installation, or transfer of possession of the licensed products by any authorized user of which Customer has actual knowledge.

It is understood that receipt of confidential information under this Agreement shall not create any obligations in any way limiting or restricting the assignment of Customer's employees.

III. **DATA CONVERSION:** Conversion of **Customer's** data files from **Customer's** current or prior computer systems shall be the responsibility of **Customer** unless it is specifically agreed between **JSI** and **Customer** to the contrary under "Schedule D--Services Agreement". JSI DISCLAIMS ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WITH REGARD TO CONVERTED DATA FILES. **Customer** acknowledges that the ability to convert data and the accuracy of converted data depends upon elements beyond the control of **JSI**, such as the condition of the original data sought to be converted, the organization and type of data fields to be converted, and other reasons.

IV. **ACCEPTANCE:** The Program shall be deemed accepted when it has been installed and passes JSI's standard installation test procedures.

V. **CUSTOMER'S OBLIGATION FOR DATA PROTECTION:** JSI shall not be responsible for data protection and **Customer** shall be responsible for performing daily back up of data on the computer system used in connection with the Program to minimize likelihood of data loss. **Customer** shall be solely responsible for backup software, hardware procedures and operations. **Customer** shall provide the safe storage of all back up tapes and/or disks. **Customer** shall be responsible for keeping **Customer** computer systems free of computer viruses.

VI. **TERM AND TERMINATION:** This agreement and any supplement shall continue in force unless terminated as set forth herein. Either party may terminate this agreement upon thirty (30) days prior written notice, or immediately by JSI if **Customer** is in breach of any confidentiality obligations, or in violation of any obligations concerning use or protection of the intellectual property rights of **JSI**. Any portion of this agreement and/or the schedules hereto may be independently terminated in the same manner without prejudice to the remaining portions of this agreement.

VII. **INDEMNIFICATION: Customer** will indemnify JSI for any claims or damages awarded against JSI for any claim brought against JSI by any third party arising out of the use of the Program or services rendered under this agreement.

VIII. **MODIFICATIONS:** Any modifications of the Program by **Customer** or anyone other than JSI shall be the full responsibility of **Customer** and shall nullify any warranties that relate to that part of the Program modified.

IX. **SEVERABILITY:** In the event that any provision of this agreement is held by a court of competent jurisdiction to be legally ineffective or unenforceable, the validity of the remaining provisions shall not be affected.

X. **INTEGRATION:** This agreement and any supplements hereto attached as schedules contain the full understanding of the parties with respect to the subject matter hereof and supersedes all prior understandings and writings relating thereto. No waiver, consent, modification, amendment or change of the terms of this agreement and its supplements shall be binding unless in writing and signed by the authorized representatives of **Customer** and JSI.

XI. **ARBITRATION:** Any dispute arising out of this agreement other than claims for preliminary injunctive relief or other prejudgment remedies shall be resolved at the request of either party through binding arbitration. Arbitration shall be conducted in Albuquerque, New Mexico under the rules and procedures of the American Arbitration Association ("AAA"). The arbitration shall be by a panel of three arbitrators and, if feasible, one of the three shall possess knowledge of computer software and its distribution.

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XII. **NOTICE:** Any notice required or permitted to be given in this agreement shall be in writing and shall be sent in a manner requiring a signed receipt, or if mailed, by registered or certified mail, return receipt requested. Notice is effective upon receipt. Unless otherwise set forth in writing. **Customer** designates the address set forth in Section I as the location for delivery of any notifications.

XIII. **NO WAIVER:** The failure of either party to exercise any right, or the waiver by either party of any breach, shall not prevent a subsequent exercise of such right nor be deemed a waiver of any subsequent breach of the same or any other term of the agreement.

XIV. **FORCE MAJEURE:** Neither party shall be deemed in default of this agreement to the extent that performance of their obligations or attempts to cure any breach are delayed or prevented by reason of any act of God, fire, natural disaster, accident, shortages of materials or supplies, or any other cause beyond the control of such party. This provision requires that any party claiming relief under this provision give written notice within fifteen (15) days of discovery thereof. In no event shall the time for performance be extended beyond 90 days.

XV. **DUTIES OF CUSTOMER AND EXCLUDED SERVICES:** In order to ensure adequate performance and operation of FullCourt, and to avoid additional cost under this Agreement **JSI** will not begin installation until **Customer** informs **JSI** that the requisite preparations have been completed. Should **JSI** personnel arrive at **Customers** site and be delayed in installing FullCourt software, conducting training, or performing other contracted services because **Customer** has not adequately performed any portion of the hardware, software or system infrastructure implementation, or other required elements to support FullCourt software, **Customer** will be billed for any delays, extra travel or other expenses incurred and for the stand-by time for personnel. Such delays may necessitate re-scheduling of the installation, training, and/or other services to be performed by **JSI**. Charges occasioned by **Customer's** failure to otherwise comply with this sub-paragraph will be billed in accordance with **JSI's** Standard Professional Services Fees rates, in addition to actual "out-of-pocket" expenses incurred for travel, lodging, etc., and payable upon receipt of an itemized statement therefor.

JSI shall only provide services as specified elsewhere in this agreement. It is expressly understood and agreed by **Customer** that **JSI** will not be responsible for performing the following services:

1. <u>Hardware:</u> hardware installation and setup, work station or server setup, fax-modem or printer installation or setup, local or wide-area networking hardware or setup, back-up system hardware or setup, services related to set up of the networking infrastructure.
2. <u>Other Software:</u> supplying, installing, or integrating any other software, including but not limited to operating or networking systems or setup, word processing system, PC Anywhere or other remote communications software, back-up system software, or any legacy system or other non-FullCourt application.
3. <u>Services related to performance:</u> Because performance is a product of many factors which are not necessarily under **JSI** control, any services required to improve performance, other than tuning the Oracle server, are specifically excluded.

The above listed services are not intended to be all-inclusive. **JSI's** responsibility to provide any other services is limited to those matters enumerated in "Schedule D", "Schedule E", or as may be otherwise agreed to in writing between the parties.

XVI. **LATE FEES, COSTS, ATTORNEYS' FEES:** Late payment charges and fees shall be allowed in the amount of 1.5% per month, compounded monthly, and shall apply to any payments in arrears for a period exceeding thirty (30) days. In any legal action or arbitration brought under this agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs of litigation arbitration, or injunctive relief proceedings necessary to carry out the provisions of this agreement. This provision shall not be construed as limiting the right of **JSI** to demand timely payment; nor shall it require that **JSI** extend time for payment under the provisions of this Agreement.

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XVII. GOVERNING LAW: This agreement shall be governed by and interpreted, construed, and enforced in accordance with the laws of the State of New Mexico.

ACCEPTED BY:

X _____

       (Authorized signature)

_____

       (Type or print name)

_____

       (Title)

_____

       (Date)

JUSTICE SYSTEMS, INC.

X _____

       (Authorized Signature)

_____

       (Type or print name)

_____

       (Title)

_____

       (Date)

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JUSTICE SYSTEMS, INC.
FullCourt[1] Software License
"Schedule A"

Justice Systems, Inc. ("JSI"), a New Mexico corporation, grants to Customer a nonexclusive license to use FullCourt software and documentation ("the Program") and to use other software modules developed and provided by JSI in conjunction with the Program. By use of the FullCourt software, Customer agrees to abide by the terms of this license.

The license granted herein authorizes the use of the Program by no more than 2 users at any one time. A "user" is anyone authorized by Customer who is signed onto the Program through a single computer workstation as permitted by the Program. Customer shall assure compliance with the conditions of this license and will permit JSI to perform reasonable audits and on-site inspections of the Program, and its use. The Program may only be used for Customer's internal business use and only to process information or data of Customer. The Program shall be used only within the geographical jurisdiction of Customer and at such sites as shall be set forth by agreement with JSI. Customer shall not make copies of the Program, nor shall Customer sell, assign, or otherwise convey or allow any other person or entity to use the Program without prior written consent of JSI. Customer shall not cause or permit reverse engineering, disassembly, nor decompilation of the Program nor disclose nor permit access to the Program by any unauthorized third party without the written consent of JSI. Customer shall not disclose results of benchmark tests of the Program. Customer acknowledges that Customer obtains no ownership rights in the Program and that the Program is the proprietary product of JSI and is protected by copyright and other intellectual property laws. Customer shall have the right to use the Program in the operating environment identified by Customer to JSI.

Customer shall abide by any conditions of any licensing or sublicensing agreements of other software that is used in conjunction with the Program.

JSI warrants that for 90 days from the date of installation of the Program: (a) that the Program will substantially perform the functions described in documentation provided by JSI when operated in the designated operating environment. This warranty is exclusive and in lieu of all other warranties, whether express or implied, including implied warranties of merchantability or fitness for a particular purpose. If Customer gives notice of an error or inability of the Program to substantially perform as set forth herein, within the 90 day warranty period, JSI shall, at its option, resolve the error or inability to perform, or refund the license fees paid by customer. JSI shall not be liable for any indirect, incidental, special or consequential damages or other damages for lost revenue, lost opportunity, lost data or data use incurred by Customer or any third party. In any event, any liability of JSI shall not exceed the amount paid by Customer for the license. If any problem, operational failure, or error of the Program has resulted from any alteration of the Program, accident, abuse, misapplication after acceptance, failure to follow correct procedures for starting up the system or shutting it down, or by introduction of any new software to the system not specifically provided by JSI, any warranty provided in this agreement shall be null and void.

Customer recognizes that money damages may not be an adequate remedy for its breach or violation of the terms of this license, or threatened breach or violation, and injunctive relief or other equitable remedies shall be available to JSI as a remedy in addition to any other remedies available under the law. Any dispute relating to the terms of this license other than claims for preliminary injunctive relief or other equitable remedies shall be resolved at the request of either party through binding arbitration. Arbitration shall be conducted in Albuquerque, New Mexico under the rules and procedures of the American Arbitration Association. This provision, and the rights created hereunder, shall survive termination of the Agreement.

JSI may terminate this license agreement if Customer (a) fails to make any License Fee payment as set forth by agreement; (b) commits a material breach of any of its obligations provided for under this license, which breach is not remedied or cured within thirty (30) days after notice thereof by JSI to Customer. Upon termination, Customer shall immediately cease to use the Program and shall immediately deliver to JSI all copies of the Program and documentation or any other property of JSI relating to the Program and shall certify in writing that these terms have been fulfilled.

Customer Initials: _____

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[1] FullCourt is a registered trade name of Justice Systems, Inc. The FullCourt software program is copyrighted and protected by law.

A1

JUSTICE SYSTEMS, INC.
SOFTWARE APPLICATION SPECIFIC SUBLICENSE ADDENDUM
"Schedule B"

Justice Systems, Inc. (JSI) grants to Customer a sublicense to use Oracle® software (ORACLE) in conjunction with FullCourt[1] software provided by JSI to Customer. This sublicense is subject to the "AGREEMENT WITH JUSTICE SYSTEMS , INC." dated _____2000 and the terms and conditions set forth therein as well as the following terms:

For the purposes of this sublicense, ORACLE shall be limited only for use for the purpose of running FullCourt or such other programs provided by JSI to Customer. ORACLE may not be used to create or alter tables or reports except as necessary for operating FullCourt[1] software.

B-I.   The right to use ORACLE is a nonexclusive, nontransferable right granted Customer by JSI to use only the object code of ORACLE provided by JSI with the FullCourt software license granted concurrent hereto and the ORACLE user guides and manuals.

B-II.   ORACLE will be provided by JSI and shall be used only with FullCourt, JSI's Application Program.

B-III.   JSI will install ORACLE as provided by the agreement referred to above.

B-IV.   Each copy of ORACLE shall be for the Customer's own internal use within the limits of its geographic jurisdiction. The ORACLE program shall not be transferred except for temporary transfer in the event of computer malfunction.

B-V.   The Customer shall not transfer, assign, timeshare, rent, or otherwise use ORACLE except with FullCourt.

B-VI.   Oracle Corporation shall retain all title, copyright, and other proprietary rights in ORACLE and any modifications or translations thereof. The Customer does not acquire any rights in ORACLE other than the limited rights specified in this sublicense.

B-VII.   Customer shall not reverse engineer, disassemble, decompile or duplicate ORACLE except for it may duplicate a single backup or archival copy.

B-VIII. Customer shall not hold Oracle Corporation or JSI liable for any damages, whether direct, indirect, incidental, or consequential, arising from the use of ORACLE.

B-IX.   Customer shall, at the termination of the sublicense, discontinue use and destroy or return to JSI all copies of ORACLE and Documentation.

B-X.   Customer shall not publish any results of benchmark tests run on ORACLE.

B-XI.   Customer shall comply fully with all relevant export laws and regulations of the United States to assure that neither ORACLE, nor any direct product thereof, are exported, directly or indirectly, in violation of United States law.

B-XII.   To the extent permitted by law, Oracle Corporation is a third party beneficiary of this sublicense agreement.

B-XIII. JSI does not provide any warranty for ORACLE separate and apart from such warranties as are provided by Oracle Corporation.

B-XIV.   **Products Applicable to this Addendum:**

Item #	Application Specific Program	Description	Qty	Price/Application Specific License	Total Application Specific License Charge
1	**Oracle Standard Edition**	**Oracle Relational Database System Version 8i, Named User Licenses**	**3**	N/C	N/C
					N/C
TOTAL APPLICATION SPECIFIC LICENSE CHARGE				**$**	

Customer Initials: _____

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JUSTICE SYSTEMS, INC.
Software Operating Environment and Additional Software
"Schedule C"

Designated Operating Environment:
      Server: MS NT 4.0 or MS NT 2000
      Clients: MS Windows 98 or MS Windows NT or MS Windows 2000
            MS Word for Windows

Item Number	Style	Description	Qty	License Charge/ Unit	Extended License Charge
1	FullCourt V3	Case Management Software	2	4,394	8,788

Total Amount $ 8,788

Customer Initials: _____

Software Agreement Schedule C 02/06/02 11:50 AM

JUSTICE SYSTEMS, INC.
Services Agreement and Statement of Work
"Schedule D"

Item Number	Service Description	Service Charges

JSI will remotely install FullCourt case management software onto the Customer's Intel server and workstations. Customer, at its own expense will be responsible for the following:

1.) Installation of the printers and other related software.

2.) Assuring that all hardware (server/workstations/Local Area Network/ printers/phone line/tape backup system etc.) is fully tested and operational prior to the FullCourt installation.

3.) Installation of a fax modem on a workstation in order to support PC AnyWhere32 (Version 8 or better) for remote installation and diagnosis.

4.) Providing PC AnyWhere32 (Version 8 or better).

A Justice Systems' training professional will conduct FullCourt end user training, on-site, for 5 days and then, return onsite 4-6 weeks after the initial training to conduct a 2 day follow up training session. Customer acknowledges that training may require a reduced court workload in order to minimize interruptions and maximize the training experience. The FullCourt training includes a complete user manual and training manual for each end user.

Travel expenses related to the Installation and Training are included.

TOTAL SERVICES: $14,000

Customer Initials: _____

[1]PC AnyWhere, Windows, MS Word, Windows NT, and Novell Netware are registered products and are protected by law.

JUSTICE SYSTEMS, INC.
Software Maintenance and Support Agreement for FullCourt®
"Schedule E"

E-I.   **TERM:** Upon expiration of the warranty period and continuing for one year with automatic renewal for successive one year periods until specifically terminated by either party giving thirty (30) days written notice of intent to terminate, the parties agree as follows:

E-II.   **SUPPORT PROVIDED:** JSI will:

    (a) provide Customer with telephone access by which Customer may communicate with JSI for purposes of seeking technical support of the software described in Schedule "C" of this Agreement.

    (b) provide to Customer any maintenance releases to the particular version of FullCourt software covered under this agreement.

    (c) use its best efforts to correct or replace software and/or provide services necessary to remedy any programming error which is attributable to JSI and which significantly affects the use of the software.

    (d) provide Customer with remote diagnostic services.

E-III.   **FEES:** The maintenance and support fee shall be **$1,620** the first year, to be paid as follows:

Full amount due and payable within 30 days from billing.

This fee may be increased in subsequent years at JSI's sole discretion.

E-IV.   **CONDITIONS OF SUPPORT:** Customer acknowledges and agrees that support under this agreement will not be provided for damage or problems to software caused by fire, smoke, water, vandalism, riots, theft, misuse, accidents, power outages, abuse, any acts of war, or acts of God. Customer further acknowledges that this agreement will not cover corrections for difficulties or defects traceable to system changes by Customer, alterations to software other than by JSI, introduction of incompatible programs, hardware, viruses, or any other cause beyond the control of JSI.

Any support rendered by JSI at Customer's request to deal with any problems that lie outside the scope of the support agreement shall be billed and the time and materials rates in effect at JSI at the time the work is completed, plus any travel and expenses incurred in providing such extra support.

Charges for support or work provided to Customer by JSI that lie outside the scope of the support agreement shall be paid within thirty (30) days from the date of billing. Payments not timely made shall bear a penalty of 1 1/2 percent per month until paid.

E1

E-V.   **VERSIONS SUPPORTED:** To receive software maintenance and support for a licensed program, customer must use a version of the licensed software that is current with any enhancements or changes that JSI has provided for that version. It may be necessary to install the latest software releases for the licensed program and it may be necessary to update customer's computer hardware, operating systems and/or other software to achieve compatibility with the currently supported version of the licensed program. JSI shall provide maintenance and support under this agreement so long as the version supported is the most current version of FullCourt or the next previous version. Thereafter, maintenance and support may be provided upon a time and materials basis, subject to the availability of resources.

If customer has not installed any releases that JSI has made in the licensed software or is not using a currently supported version of the licensed program, JSI may suspend provision of software maintenance and support for the licensed program until customer cures this condition. There shall be no refunds of the software maintenance and support fee.

Any installation required for an upgrade to a currently supported version of a licensed program, when performed by JSI, will be charged to customer at JSI's then current hourly rates plus reimbursement for any out-of-pocket costs or expenses incurred by JSI. Such installation charges shall be in addition to other fees or charges that may be due.

E-VI.   **TIME OF SUPPORT:** Maintenance and support services provided under this agreement shall be during the normal working hours of 8:00 a.m. to 5:00 p.m. in Albuquerque, New Mexico excluding weekends, legal holidays, or other days determined by JSI by prior notice to Customer.

Customer shall provide JSI with access to its computer hardware, system software, the licensed program and customer data files with sufficient work space required to perform the software support services that JSI determines will be best provided on site. Customer shall also provide sufficient electrical current, telephone access, and power outlets for JSI use in performing software maintenance and support.

E-VII.   **WARRANTIES:** EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, JSI DOES NOT WARRANT SERVICES AND SUPPORT PROVIDED FOR AND INCLUDED IN THIS AGREEMENT AND THE CUSTOMER HEREBY ACKNOWLEDGES THAT SAID AGREEMENT IS ENTERED INTO AND SAID SERVICES ARE PURCHASED REALIZING THAT NO IMPLIED WARRANTIES ARE MADE OTHER THAN THAT JSI WILL USE REASONABLE EFFORTS TO RESOLVE PROBLEMS, ANSWER QUESTIONS AND HELP CUSTOMER OBTAIN SATISFACTORY PERFORMANCE OF THE SOFTWARE.

E-VIII.   **REMOTE SUPPORT:** Customer agrees to install and maintain for the duration of this agreement a modem, an associated dial up telephone line and remote diagnostics software that is compatible with JSI remote diagnostics system. Customer will pay for installation, maintenance and use of said items. JSI shall use these items in connection with error correction and/or support. Any access by JSI shall be subject to prior approval of customer and in any case access shall be solely for the purpose authorized by customer.

E-IX.   **PROPRIETARY RIGHTS:** Any changes, additions and enhancements in the form of new or partial programs or documentation as may be provided under this agreement shall remain the proprietary property of JSI.

E-X.   **TERMINATION:** In the event of termination of the software license specified above, all maintenance fees or charges payable for the entire term of this agreement shall without notice or demand by JSI immediately becomes due and payable and JSI's obligations under this agreement shall immediately end. JSI may terminate this agreement in the event of the failure of customer to fulfill its obligations thereunder.

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E-XI. **GENERAL:** This agreement is not assignable without prior written consent of JSI. Any attempt by customer to assign any of the rights, duties and obligations of this agreement without such consent is void.

This agreement can be modified only by a written agreement duly signed by persons authorized to sign agreements on behalf of customer and JSI. Variance from the terms and conditions of this agreement except in writing and signed by those persons authorized to sign for the customer and JSI will be of no effect.

If any provision or 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. No action regardless of form arising out of this agreement may be brought by either party more than two years after the cause of action has arisen or in the case of non-payment, more than two years from the date of last payment.

If there is any default or breach of the terms and conditions of this contract by the customer, customer agrees to pay all of JSI reasonable legal fees incurred as a result of the breach or default.

This agreement will be governed by the laws of the State of New Mexico.

Customer Initials: _____

Software Agreement.Schedule E 02/06/02 11:53 AM

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT made this 6 February 2002, by and between eSoftware Professionals (hereinafter referred to as "Dealer") and the City of Sherwood. (hereinafter referred to as "Customer")

The parties agree as follows:

1. Services. Dealer desires to provide and Customer desires to purchase professional services from Dealer from time to time. This Agreement constitutes a basic agreement, the terms and conditions of which shall apply to each work assignment proposed by Customer which is accepted by Dealer for the furnishing of such services. If Dealer has heretofore accepted work assignments from Customer, the terms and conditions of this Agreement will apply to such prior work assignments as well as to all future work assignments from Customer until this Agreement is terminated. Each work assignment will generally be in the form of a Statement of Work, a copy of which is attached hereto as Exhibit "A." The Statement of Work will describe the work to be performed, the period within which the work is to be completed and the amount and method of payment therefor. "Work Product" shall be defined as those changes, modifications, enhancements, revisions and alterations made by or on behalf of Dealer to software programs or any other documentation or reports produced by Dealer.

2. Termination. This Agreement and any work assignment in progress may be terminated by Customer at any time, with or without cause upon thirty (30) days' prior written notice to Dealer; provided, however, in the event of such termination, Customer shall pay Dealer for services rendered through the date of termination on an hourly basis for hourly services agreement and on a pro rata basis for fixed fee agreements. Dealer may terminate this Agreement at any time upon thirty (30) days prior notice to Customer.

3. Status Reports. Dealer will render status reports to Customer as to the progress of any work assignment when and as reasonably requested by Customer.

4. Independent Contractor. Dealer acknowledges and agrees that it is an independent contractor, and is not an employee of Customer. As an independent contractor, Dealer is solely responsible for payment of all taxes relating to its work hereunder, and any of its employees, including, but not limited to, all federal, state and local income taxes, employment related taxes, worker's compensation insurance, social security taxes, and withholding taxes.

5. Modifications. Any modifications of this Agreement must be in writing and signed by both parties.

6. Warranty. Services are warranted to conform to the applicable Statement of Work and to be performed in a professional manner. Any software created by Dealer is warranted for ninety (90) days from delivery to conform to its applicable specifications or documentation. Modifications to other vendor's software created by Dealer are licensed to Customer in accordance with that vendor's License Agreement; other software provided by Dealer to Customer is owned by Dealer and is licensed to Customer on a nonexclusive, nontransferable basis for the Customer's internal business use. Dealer makes no warranty with respect to software written by another vendor and sold by Dealer to Customer, such software being warranted exclusively by the original vendor. With respect to Dealer warranties, the exclusive remedy in the case of services is correction of services, and in the case of Dealer created software is correction or replacement of the software. Dealer makes no other warranties, express or implied, and specifically disclaims any implied warranties of merchantability or fitness for a particular purpose.

LIMITATION OF LIABILITY. Because software is inherently complex and may not be completely free of errors, Customer is advised to verify its work and to make backup copies. In no event will Dealer be liable for indirect, special, incidental, economic, cover or consequential damages arising out of the use of or inability to use the software, user documentation, or related technical support, consulting services, customizations, or other services, including, without limitation, damages or costs relating to loss of profits, business, goodwill, data or computer programs, even if advised of the possibility of such damages. In no case shall Dealer's liability exceed the amount paid by Customer for the software and services. Some states do not allow the exclusion or limitation of implied warranties or limitation of liability for incidental or consequential damages, so the above exclusion or limitation may not apply.

7. Confidentiality. Each party agrees to keep confidential such information of the other party that is identified as confidential or known by the receiving party to be confidential. Such information will not be used or disclosed except as authorized by the providing party. Such information will be disclosed to employees of the receiving party only on a "need to know" basis and only after such employee is informed of the confidential nature of the information and obligated to maintain confidentiality. Confidential information shall not include information which is now or becomes part of the public domain, was already known by the receiving party at the time of disclosure, is independently developed by the receiving party without any use of confidential information, or is lawfully obtained from a third party.

8. Nonsolicitation. During the term of this Agreement and for a period of twelve (12) months following any employee's termination of employment with such party, neither party will, directly or indirectly, employ or solicit the employment of an employee of the other party without the other party's prior written consent. Both parties will take such actions as are reasonably necessary to make this commitment binding on is affiliates. Affiliates for this purpose is defined as any company controlling, controlled by, or under common control with such company, and also includes any majority shareholder of such companies.

9. Disputes. The parties agree to make a good faith effort to resolve any disputes by negotiation. If such efforts are not successful, the dispute will be submitted to mediation in Portland, Oregon, by a mediator appointed by the American Arbitration Association. If mediation is not successful, the dispute will be settled by binding arbitration in Portland, Oregon, pursuant to the Commercial Arbitration Rules of the American Arbitration Association, and judgment on the award may be entered in any court of competent jurisdiction; provided, however, that either party may seek preliminary injunctive or other equitable relief pending arbitration to prevent irreparable harm. Any such litigation shall be conducted exclusively in state or federal courts in Portland, Oregon, and the parties consent to jurisdiction by such courts. The prevailing party in any arbitration or litigation shall be entitled to recover all reasonable expenses thereof, including attorneys' fees in connection with such proceedings or any appeal thereof.

10. Entire Agreement. This is the entire agreement between the parties with respect to its subject matter. It supersedes all prior or contemporaneous agreements, understandings, or representations with respect to the subject matter hereof. This Agreement may not be modified or amended except in writing signed by both parties.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above written.

Dealer: eSoftware Professionals

Signature   _____
            Robynne Davis
Title   Business Development Manager

Customer   City of Sherwood

Signature   _____

Title   _____

Resolution 2002-002
February 12, 2002
Exhibit B (2 pgs)

EXHIBIT "A" TO
PROFESSIONAL SERVICES AGREEMENT

STATEMENT OF WORK

This Statement of Work is a part of the Professional Services Agreement between the City of Sherwood. ("Customer") and eSoftware Professionals ("Dealer") dated February 6, 2002 (the "Agreement").

All work to be performed under this Statement of Work is subject to the terms and conditions of the Professional Services Agreement.

City of Sherwood Pre-Implementation Plan

(1) eSoftware Professionals agrees to provide approx. 40 hours to complete a pre-implementation analysis for an estimate of $7,000.00. Any additional hours will be charged at $175/hr, however, without specific Customer instructions to the contrary, eSoftware Professionals intends to limit the scope of work and the time to 40 hours, excluding travel time.

(2) The Pre-Implementation report will contain the following information:

a) Documented vision and project scope as presented by customer.
b) A high level review of organization processes and workflows.
c) A list of critical requirements and needs as presented by individuals representing the Customer and a review of the Navision Fund Accounting Workflows.
d) A Gap/Fit analysis of Navision Fund Accounting product against the above listed critical requirements and needs.
e) An Impact Assessment listing critical requirements and needs on Customer business.
f) A revised cost estimate of products and services required to meet critical Customer requirements.

(2) The Customer agrees to provide in a timely manner complete information and access to staff members who understand system requirements and who are capable of communicating them.

(3) The customer agrees to pay $3,500.00 upon Pre-Implementation Analysis contract authorization and the balance, plus the charges for any additional hours upon completion of the diagnostic. Customer agrees to reimburse expenses including travel time, mileage, meals, lodging, and any other necessary and reasonable expenses. A copy of the standard travel time policy is attached.

(4) The customer agrees to purchase Navision Fund Accounting Software upon contract authorization for $58,093.00.

(5) Navision Fund Accounting Software annual license maintenance for the first year of $5,809.00 is due upon contract authorization.

(6) An eSoftware Professionals Analyst and Project Manager will be assigned part-time to this project. The services will be performed both at the office of the customer, and at the offices of eSoftware Professionals in Portland. Oregon. There will not be visits to any branch facility. The expected start of this project is February 11, 2002 and the expected completion is February 28, 2002.

Agreed to by the parties:

Dealer   eSoftware Professionals

Signature _____
          Robynne Davis
Title   Business Development Manager

Customer City of Sherwood

Signature _____

Title   _____

License Agreement for Navision Software Products

1   Navision Software Products

This document is an End-User License Agreement between Navision Software US, Inc. and Customer, whereby Navision Software US, Inc., according to the terms and conditions set forth herein, grants Customer a limited license to use the Navision and Navision Financials software products owned by Navision Software US, Inc. or its licensors (hereinafter referred to as Software), which includes modifications, corrections, improvements, enhancements and updates thereto provided now or later by Navision Software US, Inc. as well as any copies, parts, translations, alterations or derivative works thereof or therefrom.

2   Copyright

The software is protected by copyright laws and international copyright treaties and other laws regarding trade secrets and other intellectual property rights. Navision Software US, Inc. or its licensors retains all copyrights and other intellectual property rights to the Software and all copies hereof. Customer owns only the medium on which the Software is recorded. All copies of the Software and any portion of the Software merged into or used in conjunction with another program will continue to be the property of Navision Software US, Inc. or its licensors and are subject to the terms and conditions of this License Agreement. Customer is not entitled to change or remove any marks and notices concerning copyright, trademarks or other rights on or within the Software (including any copies hereof). Customer must reproduce the copyright notice of any copy of the Software merged or integrated into another program.

3   Grant of License

Customer is granted a limited, non-exclusive, restricted and non-transferable right to use the Software under the terms and conditions in the License Agreement for Customer's personal use in Customer's profession or business. The Software may only be used and accessed by Customer's employees and other authorized personnel and outside consultants working for Customer, and Customer is liable for their compliance with the terms and conditions of this License Agreement. Title and ownership of the Software and of the copyright in the Software remains with Navision Software US, Inc. or its licensors. Customer's license and rights to use the Software are limited to the actual product (Navision or Navision Financials), the number of concurrent users, the versions, the platform (operating system) versions and the parts of the Software that Customer has purchased and paid a license fee for. This license grants Customer only the right to start and run one (1) server (database) at any one time, however, Customer may start and run additional servers (databases) provided these are used for development and testing purposes only.

4   Additional Functionality

Customer is allowed to make changes to the Software provided; however, that Customer has rightfully acquired a license to access the facilities in the Software which make such changes possible. If Customer develops additional functionality for the Software, Customer must, prior to starting a development of this nature, purchase a license to the Software corresponding to and/or covering such additional functionality which is being specially developed by Customer, together with the Software required for the running of such additional functionality. If Customer instead acquires such specially developed additional functionality in the Software from a third party, the same obligation shall apply to Customer.

5   Copy Restrictions (backup and installation copy)

Customer is not allowed to copy the Software except for backup and installation purposes. The backup and installation copies must not be used concurrently with the original copy of the Software, but may only be used in case of deterioration or destruction of the original copy. In case Customer's rights to the original copy cease, Customer is obligated to immediately destroy the backup and installation copies.

6   Other Restrictions and Limitations

Customer is not entitled to reverse-engineer, disassemble or decompile the Software or in any other way attempt to investigate and discover the source code or the structural framework of the Software except and only to the extent as explicitly provided for by the laws of the state of Georgia, USA. Customer is not entitled to sell, assign, distribute, license, rent, lease, lend out or in any other way transfer the Software or any rights granted hereto or to disclose the Software to a third party without the prior written consent of Navision Software US, Inc. Customer agrees that unless otherwise agreed upon by Navision Software US, Inc. in writing, Navision Software US, Inc. shall have no responsibility for any services with respect to the Software or which the Navision Solution Center is obligated to provide to Customer with respect to the Software, whether in the nature of training, education, media conversion, installation, modification, support, or otherwise.

7   Limited Warranty

Navision Software US, Inc. does not warrant any upgrading or support of the Software except and as to the extent expressly agreed upon with Customer in writing. Navision Software US, Inc. warrants that (a) the Software in its unmodified form will perform substantially in accordance with the accompanying user documentation for a period of 90 days from the date of receipt; and (b) any media will be free from defects in materials and workmanship under normal use and service for a period of 90 days from the date of receipt. Navision Software US, Inc.'s entire liability and Customer's exclusive remedy under the foregoing warranty shall be at Navision Software US, Inc.'s option: either (a) return of the price paid for the Software or (b) repair or replacement of the Software that does not meet this Limited Warranty and which is returned to Navision Software US, Inc. This Limited Warranty is void if failure of the Software has resulted from accident, abuse, or misapplication. Any replacement of the Software will be warranted for the remainder of the original warranty period or 30 days, whichever is longer. Any modification of the Software by anyone other than Navision Software US, Inc. voids the foregoing warranty. Customer has the sole responsibility and liability for the selection, installation, and use of the Software as well as the results and outcome of the use of the Software. NO OTHER WARRANTIES ARE EXPRESSED AND NONE SHALL BE IMPLIED. NAVISION SOFTWARE US, INC. AND ITS LICENSORS SPECIFICALLY EXCLUDE ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

8   LIMITATION OF LIABILITY

Navision Software US, Inc. and its licensors shall not be liable for any incidental, special, punitive, exemplary or consequential damages arising from or connected with this agreement or customer's use of the Software (including, without limitation, damages for loss of business profits, business interruption, loss of business data and information or other pecuniary loss) arising out of the use or inability to use this Software, even if Navision Software US, Inc. has been advised of the possibility of such damages. In any case, Navision Software US, Inc.'s entire liability under any provision of this License Agreement shall be limited to the amount actually received by Navision Software US, Inc. for the Software.

9   Termination

In the event of Customer's material breach of this License Agreement, Navision Software US, Inc. is entitled to immediately terminate this License Agreement. Customer may at any time terminate this License Agreement by informing Navision Software US, Inc. in writing of Customer's decision. In case of termination, Customer is under the obligation to promptly destroy - without compensation - the Software, including any and all backup copies hereof, and merged portions in any form, including any copy in Customer's computer memory or in data storage devices.

10   Disputes

This License Agreement shall be governed by the laws of the State of Georgia USA. This License Agreement is intended to be for the benefit of Navision Software US, Inc., its successors and assigns, therefore, may be enforced directly by said entity, its successors and assigns. The sole jurisdiction and venue for any litigation arising out of this License Agreement shall be an appropriate federal court in the Northern District of Georgia, Atlanta Division, or a state court located in the state of Georgia, County of Gwinnett

11   U.S. Government Restricted Rights.

The Software is provided with Restricted Rights. Use, duplication or disclosure by the United States Government is subject to restrictions set forth in 48 CFR Section 52.227-14(g)(3)(ii). Contractor/Manufacturer is Navision Software US, Inc. 500 Pinnacle Court, Suite 510, Norcross, GA 30071.

12   Entire Agreement

This Agreement constitutes and expresses the entire agreement and understanding between the parties in reference to all matters referred to herein, and any and all previous agreements, discussions, promises, representations, and understandings between the parties relative thereto are merged herein and superseded hereby.

Resolution 2002-002
February 12, 2002
Exhibit C (4 pgs)

Navision Software US, Inc.
Order Acknowledgement 1-2
ATLANTA-4071510 1

1. Upgrade Agreement

This document represents the Upgrade Agreement between Navision and Customer whereby Navision, in accordance with the terms and conditions set forth herein, grants Customer the right to receive and use Upgrades (hereinafter defined) of the Navision Financials software products (the "Software") released by Navision during the term defined by this Upgrade Agreement. The Upgrade Agreement, first and foremost, represents the mutual understanding on the part of the parties of the following: i) Customer has agreed to use the Software pursuant to a license agreement in the form of an Order Acknowledgment Form Number _____ dated _____, as amended if applicable (the "License Agreement") and ii) Customer has purchased and paid for a license to use the latest version of the Software.

2. Term, Renewal and Termination

The term of this Upgrade Agreement is an annual (one year) period commencing from either: i) the Effective Date of this Upgrade Agreement or ii) from the renewal date as described herein. This Upgrade Agreement will automatically renew for additional annual periods at the conclusion of the initial term and this date will constitute the renewal date. The Upgrade Agreement will continue unless either party provides notice of cancellation of renewal. Written notice must be given within 30 days prior to commencement of another annual period. This Upgrade Agreement will be automatically terminated (i) in the event the License Agreement is terminated; (ii) in the event of a material breach of this Upgrade Agreement by Customer; or (iii) in the event Customer fails to pay the Upgrade Fee (hereinafter defined) for any one (1) year term.

3. Upgrades to the Software

Navision, through its Navision Solution Center listed above, hereby agrees to provide Customer with all Upgrades of the Software during the term of this Upgrade Agreement. For purposes of this Upgrade Agreement, the term "Upgrades" means bug fixes, modifications and new releases of the Software which are commercially released by Navision during the term of this Upgrade Agreement. Navision, in its sole discretion, shall determine (i) the content of all Upgrades, (ii) the release dates for Upgrades, (iii) the method of distribution for the Upgrades, and (iv) the hardware and software platforms and configurations for the Upgrades. Upgrades may include modifications and revisions that: (i) relate to changes in legislation or changes to accounting or bookkeeping practices, (ii) keep the Software up to date with the general technological developments and general demands of the users of the Software or (iii) are otherwise considered appropriate by Navision.

The Upgrades are supplied as is, in the manner products are generally released by Navision to its Customer. Therefore, it is the sole responsibility of the Customer to:

(1) Evaluate and decide whether Customer will use and implement the Upgrades.
(2) Make individual and specific modifications and enhancements and amendments to the Upgrades.
(3) Install and implement the Upgrades.
(4) Operate the Upgrades.

4. License to the Upgrades

In order to permit Customer to use the Upgrade(s), Navision hereby grants to Customer, and Customer accepts, a nontransferable license to use the Upgrade(s) pursuant to the terms and conditions provided for in the License Agreement. Title and ownership of the Upgrade(s) and of the copyright in the Upgrade(s) remains in Navision. Customer acknowledges and agrees that the term "Software" as used in the License Agreement shall specifically include all Upgrades provided to Customer hereunder. The Upgrade(s) Customer is entitled to receive will only be for the granules, versions and parts of the Software for which Customer has an underlying license. In the event the Software license is expanded by Customer to include added functionality or capacity, this Upgrade Agreement will automatically cover this added functionality and capacity.

5. Upgrade Fee

Customer must pay a fee in advance for each one (1) year term during this Upgrade Agreement in order to receive Upgrades for each such term (the "Upgrade Fee"). These fees are according to Navision's then current price list. If Customer expands the underlying license, as identified in Section 4 of the License Agreement for Navision Software Products, the Upgrade Fee will be adjusted accordingly for the term remaining. The Upgrade Fee for the initial term is due and payable by Customer to Navision Solution Center upon the execution of this Upgrade Agreement, and Upgrade Fees for subsequent one year terms are due and payable upon invoice by Navision Solution Center, but in any event prior to the first day of each annual renewal of this Upgrade Agreement. Customer is only entitled to receive Upgrades under this Upgrade Agreement if Customer has paid in full all Upgrade Fees to Navision Solution Center. Customer acknowledges and agrees that such Upgrade Fees may be changed from time to time by Navision during the term of this Upgrade Agreement. The Upgrade Fee is non-refundable.

6. Limited Warranty and Limitation of Liability

Navision does not warrant any upgrading or support of the Software except and as to the extent expressly agreed upon with Customer in writing. Navision warrants that (a) the Software in its unmodified form will perform substantially in accordance with the accompanying user documentation for a period of 90 days from the date of receipt; and (b) any media will be free from defects in materials and workmanship under normal use and service for a period of 90 days from the date of receipt. Navision's entire liability and Customer's exclusive remedy under the foregoing warranty shall be at Navision's option: either (a) return of the Upgrade Fee paid for the current annual period; or (b) repair or replacement of the Software that does not meet this Limited Warranty and which is returned to Navision with a copy of Customer's receipt. This Limited Warranty is void if failure of the Software has resulted from accident, abuse or misapplication. Any replacement of the Software will be warranted for the remainder of the original warranty period or 30 days, whichever is longer. Any modification of the Software by anyone other than Navision voids the foregoing warranty. Customer has the sole responsibility and liability for the selection, installation and use of the Software as well as the results and outcome of the use of the Software. NO OTHER WARRANTIES ARE EXPRESSED AND NONE SHALL BE IMPLIED. NAVISION AND ITS LICENSORS SPECIFICALLY EXCLUDE ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTCULAR PURPOSE.

IN NO EVENT WILL NAVISION, THE NAVISION SOLUTION CENTER OR ANY THIRD PARTY SUPPLIER OF NAVISION BE LIABLE FOR ANY LOST PROFITS OR OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE USE OR INABILITY TO USE THE UPGRADE, EVEN IF NAVISION HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. In any case, Navision's entire liability under any provision of this Agreement shall be limited to the annual Upgrade Fee paid by Customer.

7. Disputes

Any disputes pertaining to or arising out of this Upgrade Agreement shall be settled according to the terms and conditions set forth in the License Agreement unless specifically otherwise provided for by this Upgrade Agreement.

Navision Software US, Inc.

UPGRADE AGREEMENT FOR NAVISION PRODUCTS

CUSTOMER:

_____

Company Name (Customer)

_____

Address

_____

City/State/Zip

_____

Telephone   **Fax**

Navision Software US, Inc. ("Navision") offers customer, through its Navision Solution Center, a Navision Financials Annual Upgrade Agreement covering upgrades, maintenance releases, and service packs (object updates) of the Navision Financials standard product. Customer acknowledges the desire to acquire this Navision Upgrade Agreement and the rights to use these software upgrades. In consideration of being granted such rights, the Customer agrees to the terms and conditions in the Upgrade Agreement for Navision Software Products printed on the reverse side of this agreement. The Navision Solution Center listed below will provide the upgrades to Customer.

_____   _____

Authorized Signature   **Navision Solution Center (Name)**

_____

Print Name (Authorized name)

_____

Title

_____

Navision Financials License Number

_____

Start Date of Upgrade Agreement ("Effective Date")

_____

Annual fee (%)

Navision Software US, Inc.

ORDER ACKNOWLEDGMENT

Order Date: _____

Order No. _____

CUSTOMER:

_____
Company Name (Customer)

_____
Address

_____
City/State/Zip

_____
Telephone   **Fax**

Customer desires to acquire the right to use certain software products owned by Navision Software US, Inc. or its licensors. In consideration of being granted such right, the Customer agrees to the terms and conditions in the License Agreement for Navision Software Products printed on the reverse side of this order acknowledgment. The Navision Solution Center listed below will provide the software products to Customer.

_____   _____
Customer Name (Company)   **Navision Solution Center (Name)**

_____
Authorized Signature

_____
Print Name (Authorized name)

_____
Title