

## PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement ("Agreement") is entered into as of the Effective Date defined below by and between SAP America Public Sector, Inc. a Delaware corporation, with offices at The Ronald Reagan Building, International Trade Center, 1300 Pennsylvania Ave., NW, Suite 500/North Tower/Grey, Washington, DC 20004, (hereinafter "SAP") and Brevard County, Florida, a political subdivision of the State of Florida with offices at 2725 Judge Jamieson Way, Viera, FL 32940 ("hereinafter "Licensee").

### RECITAL

WHEREAS, Licensee requested proposals for an integrated financial software package under a request for proposal number P-1-8-10, dated February 16, 1998 and in response thereto acquired from SAP the right to use SAP R/3 Software System pursuant to the R/3 Software End-User License Agreement ("End-User Agreement") effective NOVEMBER 23, 1998, between SAP and Licensee. All terms set forth in the End-User Agreement and referred to herein shall have the same meaning as set forth in the End-User Agreement unless otherwise specifically modified by this Agreement.

WHEREAS, SAP provides, through its employees and third party contractors ("Consultants"), software consulting and professional services ("Services") in support of installation and implementation of the Software in the United States which Licensee desires to obtain.

NOW, THEREFORE, In consideration of the mutual promises and obligations in this Agreement, the sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, agree as follows:

1. Services To Be Performed. SAP will provide Consultants proficient in the installation and implementation of the applicable SAP Software at Licensee's direction in accordance with Statement(s) of Work that reference this Agreement and are attached hereto and made a part of this Agreement. All Services of the SAP Consultants will be coordinated with the designated Licensee representative. Licensee is responsible for making the necessary internal arrangements for the carrying out of the Services on a non-interference basis. The Statement(s) of Work more fully describes the scope, duration, and fees for the Services. Changes to any Statement of Work may be made upon prior written mutual agreement of the parties hereto.
2. Satisfaction with Performance. If at any time Licensee is dissatisfied with the material performance of an assigned Consultant, Licensee shall immediately report such dissatisfaction to SAP in writing and may request SAP to replace the Consultant. SAP shall use its reasonable discretion in accomplishing any such change.
3. Compensation of SAP. Services will be invoiced in accordance with the fees listed in or referenced in the Statement of Work, Schedules, Exhibits, or Attachments thereto, as applicable.
4. Taxes. The fees listed in the Statement of Work or Schedule thereto do not include federal, state or local sales, use, property, excise, services or other taxes now or hereafter levied. Licensee shall remit such taxes directly to the applicable taxing authorities. Any taxes or amounts in lieu thereof paid or payable by SAP in respect of any such taxes or the fees invoiced in accordance with this Agreement (excepting only taxes on net income) shall be for Licensee's account.
5. Term. This Agreement shall be effective as of the Effective Date, specified below, and shall remain in effect until terminated by either party. Licensee shall be liable for payment to SAP for all Services provided prior to the date of any such termination, in accord with the applicable Statement of Work.
6. Proprietary Information. Both parties shall handle Proprietary Information in accordance with the terms listed in the R/3 Software End-User Value Agreement.

7. Work Product.

7.1 All rights, title and interest in any Extension or Modification shall be governed by the terms set forth in the terms listed in the R/3 Software End-User Value Agreement.

7.2 Licensee agrees that any and all ideas, concepts, or other intellectual property rights related in any way to the techniques, knowledge or processes of the SAP Services and Products provided under this Agreement, whether or not developed for Licensee, are the exclusive property of SAP. SAP shall have the sole and exclusive right, title and ownership to such technology.

8. Limitation of Liability and Indemnification.

8.1 ANYTHING TO THE CONTRARY HEREIN NOTWITHSTANDING, UNDER NO CIRCUMSTANCES SHALL SAP OR ITS CONSULTANTS BE LIABLE TO LICENSEE OR ANY OTHER PERSON OR ENTITY FOR AN AMOUNT OF DAMAGES IN EXCESS OF THE FEES PAID HEREUNDER OR BE LAIBLE FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL OR INDIRECT DAMAGES, LOSS OF GOOD WILL OR BUSINESS PROFITS, WORK STOPPAGE, DATA LOSS, COMPUTER FAILURE OR MALFUNCTION, ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSS, OR EXEMPLARY OR PUNITIVE DAMAGES, EVEN IF SAP HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

8.2 The Limitation of Liability set forth in item 8.1 above does not apply to tangible property damage, or personal injury, including death, caused by the gross negligence of SAP. SAP agrees to indemnify, defend and hold harmless Licensee from and against any and all liabilities, damages, losses, claims, suits or judgments, and expenses (including reasonable attorney fees) that Licensee may incur for injury to or death of persons caused by SAP's gross negligence while providing Services on Licensee's site under this Agreement. With respect to tangible property damage caused by SAP's gross negligence, such indemnity shall be limited to the extent of SAP's insurance coverage.

9. General Provisions.

9.1 This Agreement is a personal services agreement and the performance of any obligation hereunder may not be assigned, delegated or otherwise transferred by either party, provided however, that SAP may assign all or part of the work to be performed under this Agreement to a qualified third party.

9.2 If any provision of this Agreement is found by any court of competent jurisdiction to be invalid or unenforceable, the invalidity of such provision shall not affect the other provisions of this Agreement, and all provisions not affected by such invalidity shall remain in full force and effect.

9.3 The waiver by either party of a breach or default in any of the provisions of this Agreement by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions; nor shall any delay or omission on the part of either party to exercise or avail itself of any right, power or privilege that is has or may have hereunder operated as a waiver of any breach or default by the other party.

9.4 Any notice required or permitted to be given hereunder shall be deemed sufficient if made in writing and deposited in the United States mail, postage prepaid, registered or certified, and addressed to the other party at the address first set forth above.

9.5 The relationship of SAP and Licensee established by this Agreement is that of an independent contractor.

9.6 Any delay or nonperformance of any provision of this Agreement (other than for the payment of amounts due hereunder) caused by conditions beyond the reasonable control of SAP or its Consultants including but not limited to Acts of God, fire, flood disaster etc., shall not constitute a breach of this Agreement, and the time for performance of such provision, if any, shall be deemed to be extended for a period equal to the duration of the conditions preventing such performance.

9.7 During the term of this Agreement and for a period of one (1) year thereafter, Licensee will not directly solicit or hire any Consultant assigned by SAP to perform any of the Service to be provided hereunder. In the event Licensee does hire any such employee without SAP's prior written consent, Licensee will be invoiced at a rate of twenty-five percent (25%) of the employee's annual salary and benefits and Licensee shall make payment within thirty (30) days of date of invoice.

9.8 For Services requiring SAP's presence on any Licensee property. SAP shall during the term of this Agreement and until completion thereof, provide and maintain the following insurance:

a). SAP shall carry workers compensation insurance and liability insurance to protect the from injury sustained by reason of carrying on the work involved in this Agreement.

b). SAP shall carry and maintain during the life of this contract workers compensation and employers liability insurance meeting the requirements of the Florida Workers Compensation Law on all SAP's employees and in the case of any work sublet. SAP shall require subcontractors similarly to provide workers compensation insurance for all of their employees unless such employees are covered by SAP's workers compensation policy. All independent subcontractors must also provide proof of being covered under a workers compensation policy.

c). SAP shall carry and maintain during the life of this contract liability insurance protecting the public from injury or property damages sustained by reason of carrying on the work involved in this contract. The certificate and/or policy shall specifically evidence the following forms of insurance protection.

1. Public liability insurance covering all operations performed by persons directly employed by SAP.
2. Public liability insurance covering all operations performed by any subcontractors to whom a portion of the work may be assigned.
3. Public liability insurance covering all work on the contract performed by any independent subcontractor working under the direction of either the principal SAP or a subcontractor.
4. Automobile bodily injury insurance and property damage insurance on all owned, hired and non-owned motor vehicles employed on the work by SAP.
5. Errors and Omissions Insurance covering all work performed by SAP, anyone directly employed by SAP.

d). The minimum Liability insurance required above under this contract shall have either a combined single limit of at least \$1,000,000 for bodily injury and property damage per occurrence or split limits of at least \$1,000,000 for bodily injury per person per occurrence and \$1,000,000 for property damage per occurrence. The limits of said insurance shall not however, be a limit of the liability of SAP here under.

e). The insurance required by this contract shall be written by non-assessable insurance companies who are rated "B" or better according to the most recent edition of Best's Key Rating Guide and shall be licensed to do business in the State of Florida.

f). The County, its officers and employees shall be named as additional insured on SAP's General Liability Insurance policies and certificates of insurance.

g). SAP shall furnish the County with certificates of insurance. These certificates shall contain a provision that the insurance company shall provide for thirty (30) days written notice prior to expiration, cancellation or material change to be

sent via certified mail to the Brevard County Government, Gino Butto, Director, Information/Communications Systems Dept. Bldg. C. 2nd Floor, 2725 Judge Fran Jamieson Way, Melbourne, FL 3240.

b). All certificates of insurance shall be signed with an original penned signature of the agent and include the typed name of the agent and agency, address, and phone number. Signature stamps shall not be used on the certificates. All insurance documents must be approved by the County Attorney.

Before commencing any performance under this Agreement, SAP shall deliver the Certificates of Insurance of the County certifying that the policies stipulated above are in full force and effect.

9.9 Governing Law.. This Agreement and any disputes arising out of or in connection with this Agreement shall be governed by and construed in accordance with the laws of the State of Florida. In the event of litigation to enforce the terms of this Agreement, or any of the Statements of Work, Exhibits or Schedules hereto, each party shall bear its own attorneys fees and costs, unless otherwise specifically provided for in an indemnification provision, but only with respect to the covenants addressed in the indemnity clause. In the event of any conflicts between foreign law, rules, and regulations, and United States of America law, rules, and regulations, United States of America law, rules, and regulations shall prevail and govern. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

9.10 This Agreement, including all applicable Statements of Work and Schedules thereto, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements between the parties, whether written or oral, relating to the same subject matter. No modifications, amendments, or supplements to this Agreement shall be effective for any purpose unless in writing and signed by the parties. In the event of any inconsistencies between the Agreement and a Statement of Work, the Statement of Work shall take precedence over the Agreement. Any purchase order or other document issued by Licensee is for administrative convenience only. In the event of any conflict between the provisions of this Agreement, and any purchase order, the provisions of this Agreement shall prevail and govern and any additional terms in the purchase order or other document shall be inapplicable.

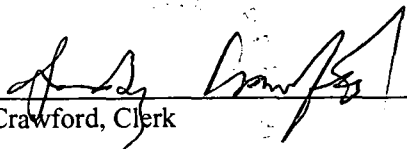
10. Survival. Sections 6, 7, 8 and 9.7 shall survive any termination of this Agreement.

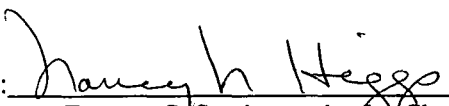
11. Effective Date. This Agreement shall be effective as of November 2, 1998 ("Effective Date").

IN WITNESS WHEREOF, the parties have so agreed as of the Effective Date.

BOARD OF COUNTY COMMISSIONERS  
BREVARD COUNTY, FLORIDA

ATTEST:

  
Sandy Crawford, Clerk

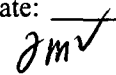
By:   
~~Truman G. Scarborough, Jr., Chairman~~  
(As approved by the Board on October 13, 1998)  
Nancy Higgs, Vice Chairman

SAP America Public Sector, Inc.

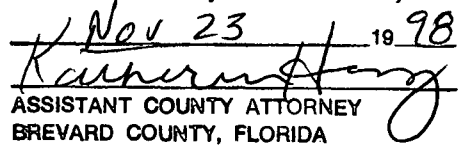
Signature: 

Print name: ROBERT M SAVUCCI

Title: PRESIDENT

Date: 12/17/98  


APPROVED AS TO FORM AND LEGALITY  
for the use and reliance of the  
Brevard County Government only.

Nov 23 19 98  
  
ASSISTANT COUNTY ATTORNEY  
BREVARD COUNTY, FLORIDA