



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY					
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory					
Council Meeting Date:		05/14/2012			
Department:		Purchasing			
Department Head		Diane Palmer-Boeck			
Agenda Coordinator (include phone #): Perry Neeley, Ext. 7376					
CAPTION					
To approve a one (1) year contract by and between the City of Plano and Remote Services, Inc., for a Technical Consultant for the JD Edwards EnterpriseOne ERP System in the amount of \$99,600 and authorizing the City Manager to execute all necessary documents.					
FINANCIAL SUMMARY					
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP					
FISCAL YEAR:	2011-12, 2012-13	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget		0	2,866,574	66,400	2,932,974
Encumbered/Expended Amount		0	-2,607,051	0	-2,607,051
This Item		0	-33,200	-66,400	-99,600
BALANCE		0	226,323	0	226,323
FUND(S): TECHNOLOGY SERVICES FUND					
COMMENTS: This item is included in the approved FY 2011-12 Budget. Expenditures will be made out of the Technology Services Department within approved budget appropriations. The contract amount is \$99,600. STRATEGIC PLAN GOAL: Providing technical support for the City's financial ERP system relates to the City's Goal of Financially Strong City with Service Excellence.					
SUMMARY OF ITEM					
The Finance Department staff recommends the purchase of a one (1) year contract for a Technical Consultant for the JD Edwards EnterpriseOne ERP System from Remote Services, Inc. in the amount of \$99,600.					
Professional Services are exempt from state competitive bidding requirements.					
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies		
Memorandum					
Contract					

MEMORANDUM:

DATE: April 10, 2012

TO: Diane Palmer-Boeck, Purchasing Manager

FROM: Josh Littrell, Financial Systems Manager

SUBJECT: Recommendation of Award to Technical Consultant for JDEdwards EnterpriseOne ERP System

The Financial Systems Administration department is recommending that the City enter into a Professional Services Agreement with Remote Services, Inc. (RSI) for a technical consultant for JD Edwards EnterpriseOne ERP System.

In the past, a Committee reviewed proposals from vendors and made the decision to use our top candidate, Remote Services, Inc. We are in the process of upgrading our Tools Release of JD Edwards EnterpriseOne and it would be prohibitive to switch vendor's midway through that upgrade. We are also researching and testing a switch from our current web server code base on Oracle Application Server (OAS) to the Oracle Web Logic code base as OAS has been discontinued by Oracle.

After entering contract negotiations, an agreement was reached to pay RSI the sum of \$99,600 for a one-year agreement. Next year when we have completed the upgrade on the new Tools Release, we will go back out for qualification statements. Remote Services, Inc. has done an exceptional job for the City of Plano, and we recommend that we continue working with them at this new negotiated rate.

If not awarded, this will affect the city in being able to stay current and up to date on the JD Edwards EnterpriseOne ERP system, which runs our Financials.

Please advise if you have any questions.

Cc: Perry Neeley, Purchasing

**PROFESSIONAL SERVICES AGREEMENT
BY AND BETWEEN THE CITY OF PLANO, TEXAS AND
REMOTE SERVICES, INC.**

THIS AGREEMENT is made and entered by and between the **CITY OF PLANO, TEXAS**, a Home-Rule Municipal Corporation, hereinafter referred to as "City", and **REMOTE SERVICES, INC.**, hereinafter referred to as "Contractor," to be effective from and after the date as provided herein.

WITNESSETH:

WHEREAS, the City desires to engage the services of Contractor to provide technical support of the EnterpriseOne system, hereinafter referred to as the "Project"; and

WHEREAS, Contractor desires to render such services for the City upon the terms and conditions provided herein.

NOW, THEREFORE, for and in consideration of the covenants contained herein, and for the mutual benefits to be obtained hereby, the parties hereto agree as follows:

I. Engagement

The City hereby agrees to retain Contractor to perform professional services in connection with Project, and Contractor agrees to perform such services in accordance with the terms and conditions of this Agreement.

II. Scope of Services

The parties agree that Contractor shall perform such services as are further described in the Scope of Services attached hereto and incorporated herein as Exhibit "A". The parties understand and agree that deviations or modifications in the Scope of Services may be authorized from time to time by the City, but said authorization must be made in writing. Contractor agrees to commence work immediately upon execution of this Agreement, and to proceed diligently with said work until completion.

III. Term of Contract

The initial term of this Contract shall be a period of twelve (12) months commencing upon the effective date hereof.

IV. Compensation/Expenses

Total compensation for Contractor's work on the Project shall be in an amount not to exceed the sum of **NINETY-NINE THOUSAND SIX HUNDRED DOLLARS (\$99,600.00)**.

V. Insurance

Contractor agrees to meet all insurance requirements, and to require all consultants who perform work for Contractor to meet all insurance requirements, as set forth on Exhibit "B", which is attached hereto and thereby made a part of this Agreement.

VI. Indemnity

INDEMNIFICATION: Contractor agrees to defend, indemnify and hold the City and its respective officers, agents and employees, harmless against any and all claims, lawsuits, judgments, fines, penalties, costs and expenses for personal injury (including death), property damage, intellectual property infringement claims (including patent, copyright and trademark infringement) or other harm or violations for which recovery of damages, fines, or penalties is sought, suffered by any person or persons that may arise out of or be occasioned by Contractor's breach of any of the terms or provisions of the contract, violations of law, or by any negligent, grossly negligent, intentional, or strictly liable act or omission of the Contractor, its officers, agents, employees, invitees, subContractors, or sub-subContractors and their respective officers, agents, or representatives, or any other persons or entities for which the Contractor is legally responsible in the performance of the contract. The indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence of City, and its officers, agents, employees or separate Contractors. City does not waive any governmental immunity or other defenses available to it under Texas or federal law. The provisions of this paragraph are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

Contractor, at its own expense, is expressly required to defend City against all such claims. City reserves the right to provide a portion or all of its own defense; however, City is under no obligation to do so. Any such action by City is not to be construed as a waiver of Contractor's obligation to defend City or as a waiver of Contractor's obligation to indemnify City pursuant to this agreement. Contractor shall retain defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this agreement. If Contractor fails to retain

counsel within the required time period, City shall have the right to retain defense counsel on its own behalf and Contractor shall be liable for all costs incurred by City.

In addition to Contractor's intellectual property infringement indemnification and defense requirements herein, if an infringement claim occurs, or in Contractor's opinion is likely to occur, Contractor shall, at its expense: (a) procure for city the right to continue using the product; (b) replace or modify the product so that it becomes non-infringing while providing functionally equivalent performance; or (c) accept the return of the product and grant city a reimbursement for the product. Contractor will proceed under subsection (c) above only if subsections (a) and (b) prove to be commercially unreasonable.

The intellectual property infringement indemnification herein applies to all products provided, supplied or sold under this agreement by Contractor to City whether manufactured by Contractor or a third party. Contractor represents that, to the best of its knowledge, City's use of products that are provided supplied, or sold by Contractor to City as part of this agreement does not constitute an infringement of any intellectual property rights and City has the legal right to use said products. City enters into this agreement relying on this representation.

The indemnification herein survives the termination of the contract and/or dissolution of this agreement including any infringement cure provided by the Contractor.

VII. Independent Contractor

Contractor covenants and agrees that Contractor is an independent Contractor and not an officer, agent, servant or employee of City; that Contractor shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, Contractors, subContractors and consultants; that the doctrine of respondeat superior shall not apply as between City and Contractor, its officers, agents, employees, Contractors, subContractors and consultants, and nothing herein shall be construed as creating a partnership or joint enterprise between City and Contractor.

VIII. Assignment and Subletting

Contractor agrees that neither this Agreement nor the work to be performed hereunder will be assigned or sublet without the prior written consent of the City. Contractor further agrees that the assignment or subletting of any portion or feature of the work or materials required in the performance of this Agreement shall not relieve the Contractor from its full obligations to the City as provided by this Agreement.

IX. Audits and Records

Contractor agrees that at any time during normal business hours and as often as City may deem necessary, Contractor shall make available to representatives of the City for examination all of its records with respect to all matters covered by this Agreement, and will permit such representatives of the City to audit, examine, copy and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement, all for a period of three (3) years from the date of City's acceptance of the final Project, or for such other or longer period, if any, as may be required by applicable statute or other lawful requirement.

X. Prohibited Interest

Contractor agrees that it is aware of the prohibited interest requirements of the City Charter and Code of Conduct and will abide by the same. Further, a lawful representative of Contractor shall execute the affidavit shown in Exhibit "C". Contractor understands and agrees that the existence of a prohibited interest during the term of this Agreement will render the Agreement voidable.

XI. Contract Termination

The parties agree that City shall have the right to terminate this Agreement with or without cause upon thirty (30) days written notice to Contractor. In the event of such termination, Contractor shall deliver to City all finished or unfinished documents, data, studies, surveys, drawings, maps, models, reports, photographs or other items prepared by Contractor in connection with this Agreement. Contractor shall be entitled to compensation for any and all work completed to the satisfaction of City in accordance with the provisions of this Agreement prior to termination.

XII. Ownership of Documents

Upon termination of this Agreement, Contractor shall transfer, assign and make available to City, or its representatives, all property and materials in its possession or control belonging to the City and paid for by the City. In the event that the material, which is the subject of this Agreement, is copyrightable subject matter, Contractor and City agree that for the purposes of this order the material shall be a work made for hire and the property of the City. In the event that the material which is the subject of this Agreement is not copyrightable subject matter, or for any reason is determined not to be a work made for hire, then and in such event Contractor hereby assigns all right, title and interest to said material to City for the fees specified herein.

With the exception of the logo developed for the City, any conceptual work done by Contractor is intended for demonstrational purposes only. Stock photography used for the demonstration of creative concepts is not to be reproduced or published in any way without first negotiating usage rights with the appropriate stock image provider.

XIII. Trade Secrets

In conducting business and in anticipation of conducting business with Contractor, it may be necessary for the City to share trade secrets and/or other confidential and/or proprietary information or matter with Contractor. The parties agree that such information and the materials referenced in the Agreement, the results and developments there from are confidential and/or proprietary information belonging to the City. Contractor agrees not to disclose to any third party any such trade secrets and/or confidential or proprietary information for its own separate benefit. Contractor will be responsible for its employees or agents complying with the provisions of this Agreement.

Similarly the City agrees that the Project created is intended solely for the use and benefit of Plano, Texas and any distribution to another destination marketing organization without the written consent of Contractor is prohibited. The City will be responsible for its employees or agents complying with the provisions of this Agreement.

XIV. Complete Agreement

This Agreement, including the Exhibits lettered "A" through "C", constitute the entire agreement by and between the parties regarding the subject matter hereof and supersedes all prior or contemporaneous written or oral understandings. This Agreement may only be amended, supplemented, modified or canceled by a duly executed written instrument.

XV. Mailing of Notices

Unless instructed otherwise in writing, Contractor agrees that all notices or communications to City permitted or required under this Agreement shall be addressed to City at the following address:

City of Plano, Texas
Finance Department
Attn: Josh Littrell
P.O. Box 860358
Plano, TX 75086-0358

City agrees that all notices or communications to Contractor permitted or required under this Agreement shall be addressed to Contractor at the following address:

Remote Services, Inc.
4108 Buckingham Place
Colleyville, Texas 76034

All notices or communications required to be given in writing by one party or the other shall be considered as having been given to the addressee on the date such notice or communication is posted by the sending party.

XVI. Miscellaneous

A. Paragraph Headings:

The paragraph headings contained herein are for convenience only and are not intended to define or limit the scope of any provision in this Agreement.

B. Agreement Interpretation:

This is a negotiated Agreement, should any part be in dispute, the parties agree that the terms of the Agreement shall not be construed more favorably for either party.

C. Venue/Governing Law:

The parties agree that the laws of the State of Texas shall govern this Agreement, and that it is performable in Collin County Texas. Exclusive venue shall lie in Collin County, Texas.

D. Successors and Assigns:

City and Contractor, and their partners, successors, subContractors, executors, legal representatives, and administrators are hereby bound to the terms and conditions of this Agreement.

E. Severability:

In the event a term, condition, or provision of this Agreement is determined to be void, unenforceable, or unlawful by a court of competent jurisdiction, then that term, condition, or provision, shall be deleted and the remainder of the Agreement shall remain in full force and effect.

F. Effective Date:

This Agreement shall be effective from and after execution by both parties hereto.

SIGNED on the date indicated below.

REMOTE SERVICES, INC., a Texas corporation

DATE: _____

BY: _____
Shane Foster, President

CITY OF PLANO, TEXAS

DATE: _____

BY: _____
Bruce D. Glasscock
CITY MANAGER

APPROVED AS TO FORM:

Diane C. Wetherbee, City Attorney

ACKNOWLEDGMENTS

STATE OF TEXAS §
 §
COUNTY OF _____ §

 This instrument was acknowledged before me on the _____ day of _____, 20____, by Shane Foster, President, Remote Services, Inc.

Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

 This instrument was acknowledged before me on the _____ day of _____, _____, by **Bruce D. Glasscock**, City Manager, of the **CITY OF PLANO, TEXAS**, a Home-Rule Municipal Corporation, on behalf of said municipal corporation.

Notary Public, State of Texas

EXHIBIT "A"
SCOPE OF SERVICES

**Technical Consultant for JDEdwards EnterpriseOne
ERP System**

I. Scope of Services:

A. Areas of Responsibility

The selected consultant will be responsible for working with COP team in every phase of the technical support of the EnterpriseOne system, including the following:

1. Provide recommendations for technical direction of system
2. Provide recommendations for hardware associated with system
3. Provide recommendations on methodology and timing of upgrades
4. Perform monthly routine system maintenance as required by COP
5. Apply ESU's and SAR's as required by COP
6. Troubleshoot system as required by COP
7. Must be present at COP offices at least two days a month for meetings and hands on projects
8. Must be able to support all phases of system remotely
9. Must maintain 10 different environments
10. Must perform test data refresh on regular basis
11. Must perform hardware and software updates on servers, including Citrix or other software used for connectivity
12. Must perform on-site release updates when appropriate
13. Must make COP top priority client during any emergency situation – that is to say, in the event of an emergency at the City of Plano, we would expect consultant to put other clients' projects on hold and give us 100% of their attention during the time of emergency
14. Must be able to do scheduled work off hours
15. Must be able to offer onsite support when CNC engineer is offsite for several days at a time
16. Must be available for phone support 24 hours a day, 7 days a week
17. Must submit monthly written status report to include current state of system and list of tasks and hours worked
18. Lead CNC effort on future hardware and software upgrades
19. Do whatever is required to have production system up and running during business hours 100% of the time
20. COP reserves the right to approve any consultant assigned to our account, with the understanding that once one is approved, a change may only be made with our consent

EXHIBIT "B"

INSURANCE REQUIREMENTS

1.0 General Provisions

1.1 The Contractor shall obtain and maintain the minimum insurance coverage set forth in this section. By requiring such minimum insurance, City shall not be deemed or construed to have assessed the risk that may or may not be applicable to the Contractor. The Contractor shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. The Contractor is not relieved of any liability or other obligation assumed or pursuant to the Contract by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types. The insurance requirements listed below do not replace any warranty or surety (performance, payment, or maintenance) bonds if required by preceding or subsequent sections of this contract.

1.2 Contractor shall cause each subcontractor employed by Contractor to purchase and maintain insurance of the type specified herein or cover such subcontractors under its insurance coverage.

1.3 The Contractor agrees that the insurance requirements specified in this section do not reduce the liability Contractor has assumed in any indemnification/hold harmless section of this contract.

1.4 City reserves the right to approve the security of the insurance coverage provided pursuant to this section by insurers including terms, conditions and the Certificate of Insurance. Failure of the Contractor to fully comply with requirements of this section during the term of the contract will be considered a material breach of contract and will be cause for immediate termination of the contract at the option of City.

1.5 Insurance coverage required by this section shall:

1.5.1 Be on a primary basis, non-contributory with any other insurance coverage and/or self-insurance carried by City

1.5.2 Be with an insurer possessing an A-VII. A. M. Best Rating

1.6 Subcontractor Insurance. If the contractor utilizes the services of another company or subcontractor, affiliate or non-affiliate, in order to fulfill the requirements covered under this Agreement, then those other companies or subcontractors must comply with the insurance provisions within this Agreement.

2.0 Minimum Insurance Coverage & Limits

2.1 Commercial General Liability. Contractor shall maintain commercial general liability and, if necessary commercial umbrella insurance as specified below.

2.1.1 Commercial general liability insurance shall be written on an ISO occurrence form CG 00 01 (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, product-complete operations, personal and advertising injury and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

2.1.2 City, the City Council and its members, the City's agents, officers, directors and employees shall be included as an additional insured under the commercial general liability using **ISO additional insured endorsement CG 20 10 and CG 20 37** or their equivalent, including coverage for City with respect to liability arising out of the completed operations of Contractor.

2.1.3 Limits of Insurance

2.1.3.1 \$1,000,000 Per Occurrence

2.1.3.2 \$1,000,000 Personal/Advertising Injury

2.1.3.3 \$2,000,000 General Aggregate

2.1.3.4 \$2,000,000 Products/Completed Operations Aggregate

2.2 Commercial Automobile Liability. Contractor shall maintain business automobile liability insurance and, if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 each accident.

2.2.1 Such automobile liability insurance shall cover liability arising out of any auto (including owned, hired, and non-owned automobiles).

2.2.2 Commercial automobile coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to the provided ISO form CA 00 01.

2.2.3 Contractor waives all rights against City and its agents, officers, directors and employees for recovery by the commercial automobile liability or commercial umbrella liability insurance obtained by Contractor pursuant to this section or under any applicable automobile physical damage coverage.

2.3 Workers' Compensation & Employer Liability. Contractor shall maintain workers' compensation insurance in the amounts required by appropriate state statute. The employers liability limit and, if necessary, commercial umbrella coverage shall not be less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.

2.3.1 Contractor waives all rights against City, the City Council and its members, the City's agents, officers, directors and employees for recovery of damages under contractor's workers' compensation and employers liability or commercial umbrella liability insurance. Contractor must cause a **waiver of subrogation** to be effected under its workers' compensation coverage using endorsement WC 00 03 13.

2.4 Professional Liability. Contractor shall maintain professional liability insurance covering errors, including omissions, due to negligence in the performance or failure to perform professional financial consulting services.

2.2.1 Limits of Insurance

2.2.1.1 \$1,000,000 Per Occurrence

2.2.1.2 \$2,000,000 Aggregate

2.2.2 If coverage required by this section is written on a claims-made basis, the Contractor warrants that any applicable retroactive date under the policy precedes the effective date of this Agreement; and that continuous coverage will be maintained or an extended reporting period will be exercised for a period of one (1) year beginning from the time that work under the Agreement is completed.

3.0 Evidence of Insurance

3.1 Prior to commencement of work, and thereafter upon renewal or replacement of coverage required by this section, Contractor shall furnish City a certificate(s) of insurance, including for subcontractors cited in Section 1.6, executed by a duly authorized representative of each insurer, showing compliance with this section. **Contractor shall furnish copies of all endorsement to insurance policies as required by each section herein to the City.**

3.2 Failure of City to demand such certificate(s) or other evidence of full compliance with these insurance requirements or failure of City to identify a deficiency from evidence that is provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

3.3 City shall have the right, but not the obligation, of prohibiting Contractor or any subcontractor from entering the project site until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by the City.

3.4 Failure to maintain required insurance may result in termination of this contract at sole option of the City.

3.5 The Contractor shall furnish a Certificate of Insurance (COI) evidencing insurance coverage required by this section ten (10) business days preceding commencement of contracted service(s). The COI shall:

3.5.1 List each insurers' NAIC Number or FEIN

3.5.2 List **contract number, project name**/number, name of event, location (building name, building address, etc.), date(s) of event or service being performed

3.5.3 State insurance is on a primary basis and non-contributory with any insurance/or self-insurance carried by City

3.5.4 Specifically list reference to all endorsements required herein

3.5.5 List the specific number of days cancellation provided pursuant to policy language for notice of cancellation on certificate

3.5.6 List City of Plano, Risk Management Division, 7501 A Independence Parkway, Plano, Texas, 75025 in the Certificate Holder Section

EXHIBIT "C"

AFFIDAVIT OF NO PROHIBITED INTEREST

(Contract Required - Form must be notarized.)

I, the undersigned declare that I am authorized to make this statement on behalf of _____ and I have made a reasonable inquiry and, to the best of my knowledge, no person or officer of _____ is employed by the City of Plano or is an elected or appointed official of the City of Plano within the restrictions of the Plano City Charter.

I am aware that Section 11.02 of the City Charter states:

“No officer or employee of the city shall have a financial interest, direct or indirect, in any contract with the city, nor shall be financially interested, directly or indirectly, in the sale to the city of any land, or rights or interest in any land, materials, supplies or service. The above provision shall not apply where the interest is represented by ownership of stock in a corporation involved, provided such stock ownership amounts to less than one (1) per cent of the corporation stock. Any violation of this section shall constitute malfeasance in office, and any officer or employee of the city found guilty thereof shall thereby forfeit his office or position. Any violation of this section with the knowledge, express or implied, of the persons or corporation contracting with the city shall render the contract voidable by the city manager or the city council.”

I further understand and acknowledge that a violation of Section 11.02 of the City Charter at anytime during the term of this contract will render the contract voidable by the City.

Name of Contractor

By: _____
Signature

Print Name

Title

Date

STATE OF _____ §

COUNTY OF _____ §

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 20_____.

Notary Public, State of _____