PORTLAND DEVELOPMENT COMMISSION
Portland, Oregon

RESOLUTION NO. 6946

AUTHORIZING A CONTRACT WITH LAWSON SOFTWARE, INC. FOR UP TO $900,000 FOR THE PURCHASE OF UP TO FIVE YEARS OF SUPPORT AND MAINTENANCE

WHEREAS, on November 17, 1999, the Board of Commissioners (the "Board") approved the implementation and use of the Lawson Software, Inc. ("Lawson") Financial Software (the "Software") to replace the Portland Development Commission's ("PDC's") financial software management system (Resolution No. 5369);

WHEREAS, Lawson remains PDC's chosen system to support all financial and human resources transaction processing for the Agency;

WHEREAS, PDC has entered into multiple contracts with Lawson in order to provide continued support and maintenance services, most recently, maintenance and support Contract No. 205040;

WHEREAS, Contract No. 205040 will expire on May 31, 2012;

WHEREAS, to continue the support and maintenance of the Software, PDC needs to enter into a new agreement with Lawson;

WHEREAS, the proposed agreement with Lawson has an initial one-year term that will automatically renew for additional one-year periods until the fifth anniversary of the agreement, unless one party provides a timely notice of non-renewal to the other party;

WHEREAS, subject to certain conditions, the proposed agreement also limits Lawson's annual increase in fees for maintenance and support of the Software; and

WHEREAS, the expenditure for the initial year of the proposed agreement is included in the budget for the current fiscal year and the expenditure for the second year of the proposed agreement is included in the FY 2012-13 Proposed Budget.

NOW, THEREFORE, BE IT RESOLVED that the Executive Director is hereby authorized to execute a contract with Lawson Software, Inc. substantially in the form attached hereto as Exhibit A (the "Lawson Software Support Agreement"), for the purchase of support and maintenance services for the Software through FY 2016-17 and for a total contract amount not to exceed $900,000 over five years;

BE IT FURTHER RESOLVED, that the Executive Director may approve changes to the Lawson Software Support Agreement prior to and subsequent to execution, so long as such changes do not

materially increase PDC's risks or obligations, as determined by the Executive Director in consultation with the General Counsel; and

BE IT FURTHER RESOLVED that this resolution shall become effective immediately upon its adoption.

Adopted by Portland Development Commission on May 23, 2012

_____

Gina Wiedrick, Recording Secretary

LAWSON SOFTWARE
SUPPORT AGREEMENT

LIMITED TERM AGREEMENT

This Support Agreement ("Agreement") entered into between Lawson Software, Inc., a Delaware corporation with its principal offices located at 380 St. Peter Street, St. Paul, Minnesota, USA 55102-1302 ("Lawson") and Client, whose name, principal business address, and jurisdiction of incorporation are set forth below ("Client") (collectively the "Parties"), determines the rights and obligations of Lawson and Client with respect to the subject matter of this Agreement.

Client Name:	Portland Development Commission
Address:	222 NW 5th Avenue
City:	Portland
State/Zip or Province/Postal Code:	OR 97209
Jurisdiction of Incorporation:	Oregon

1.0   Scope of Agreement.

Lawson agrees to provide Client "Xtreme Premium" or the equivalent level of Support, as set forth in the Support Operations Handbook and this Agreement, during the Term (as defined below) and for the Products listed in Exhibit A to this Agreement. The Support under this Agreement shall not be provided for any enhancements to or modifications of the Products made by Client or third parties. In providing services under this Agreement, Lawson shall comply with ORS 279B.220, 279B.230 or 279B.235, as applicable.

2.0   Payment.

Client shall pay Lawson the Support Fees and any applicable Sales Tax on Support Fees, as set forth in Section 4.6 below. In addition to any Sales Tax on Support Fees, Client shall pay or reimburse Lawson for any other Taxes. All Support Fees are exclusive of Taxes. If applicable laws require the withholding of Taxes under this Agreement, Client shall notify Lawson, make the applicable withholding, and remit the required Tax to the proper governmental authority.

3.0   Definitions.

3.1   "Agreement" means this Agreement, Exhibits and any addenda signed by the Parties.
3.2   "Documentation" means all documentation relating to the Software, whether in machine-readable or printed form, supplied by Lawson directly or indirectly to the Client, including any updates, revisions, new versions, and supplements to the documentation.
3.3   "Effective Date" means June 1, 2012.
3.4   "Support Period" means the one-year period beginning on the Effective Date, or on any anniversary of the Effective Date, so long as this Agreement is in effect.
3.5   "Products" means the products designated on Exhibit A to this Agreement and owned by either Lawson or its Third Parties, which includes the Software, Documentation, and media.
3.6   "Software" means the software portion of the Product in object code or source code format, any updates, revisions, new versions, supplements, and all permitted copies of the foregoing supplied by Lawson to Client, whether in machine readable or printed form.
3.7   "Support" means the assistance provided by Lawson, directly or indirectly, to Client as set forth in the Support Operations Handbook for the level of Support purchased by Client, as specified in Section 1.0.
3.8   "Support Fee" means the fee payable for the level of Support purchased.
3.9   "Taxes" means any sales, use, excise, value-added, withholding taxes or other taxes based upon this Agreement, including taxes, interest and penalties that are levied or assessed by a governmental authority, resulting from this Agreement, excluding taxes based on Lawson's net income.
3.10   "Term" means the one-year period commencing on the Effective Date; provided, however, that the Term shall be automatically extended for successive one-year periods, until the fifth anniversary of the Effective Date, unless Lawson or Client provides a written notice of non-renewal to the other Party no later than six months prior to the end of the then-current one-year period, in which case the Term shall end, and this Agreement shall automatically terminate, at the end of the then-current one-year period. Unless this Agreement is amended, the Term shall, in any event, end no later than the fifth anniversary of the Effective Date.
3.11   "Third Party" means a business entity that has authorized Lawson to distribute that entity's Software and Documentation to Client by sublicense between Lawson and Client.
3.12   The singular and plural shall each include the other, and this Agreement shall be read accordingly when required by the facts.
3.13   "Support Operations Handbook" means Lawson's then current document describing the levels of Support available for purchase by Client under a Product Order Form, and the documents referenced therein, including but not limited to the Lawson Product Lifecycle Maintenance Policy.

4.0   Support.

4.1   During the Support Period, Lawson will (a) directly or indirectly provide Client Support for the Products pursuant to the Support Operations Handbook, and (b) will not materially degrade its Support practices.
4.2   Client is responsible for licensing and paying for additional third party products that may be required for use of upgrades, enhancements, or new releases of the Lawson-Supported Products.

4.3   Unless otherwise described in an applicable Order Form, Lawson does not maintain or support service deliverables or Software modified outside of Support provided by Lawson.

4.4   Before each renewal date of the Support Period, Lawson will provide Client an invoice for the Support fees for the Products for that renewal period.

4.5   Lawson may consolidate the annual renewal dates for Support Periods under one or more Order Forms.

4.6   Within 30 days of the Effective Date, Client shall pay the initial annual Support Fees for the Products as set forth in Exhibit A. Within 30 days of each anniversary of the Effective Date during the Term, Client shall pay Lawson's then current annual Support Fees for the Support for the Products. For purposes of this Agreement and except as set forth herein, Lawson shall not increase the Support Fee for the Products by more than five percent (5%) per year during the Term, provided that the following conditions are met by Client: (i) Client renews Support for all Products and Users (as identified in Exhibit A) that are eligible for Lawson Support at the same or higher level of Support as the previous year's Support, (ii) Client remains current on all outstanding Lawson invoices, (iii) Lawson receives full payment of the annual Support fee prior to each anniversary of the Effective Date during the Term. Should Client fail to comply with these conditions, any remaining Support will be provided to Client at the then current rates. Notwithstanding anything herein to the contrary, the annual five percent (5%) maximum increase does not apply to Third Party-owned Products, the license of additional users or Products after the Effective Date, changes in the level and type of Support purchased, or subscription licenses. Support is extended for one-year periods and provided only as specified by Lawson's then currently available Support offerings. Support for a Product shall automatically terminate at the end of the then-current one-year period if payment of the annual Support Fee for that Product for the next one-year period is not timely made. Lawson may cease providing Support or change the terms of Support at any time upon completion of a Support Period, provided that any increase in the Support Fee for a Product (excluding Third Party-owned Products) is limited to (5%) per year during the Term. Client shall reimburse Lawson for all reasonable out-of-pocket and travel expenses incurred by Lawson at Client's request.

4.7   If Client does not pay annual Support Fees for the Products under Section 4.6 above, Support for such Products shall terminate. Reinstatement of annual Support shall be at Lawson's discretion and shall require the following:

(i)   If fewer than twelve (12) months have expired since Support has been terminated, Client shall be required to pay a reinstatement fee equal to two (2) percent of the then current annual Support Fee for the Products for each month Client has not been covered under Support, plus the Support Fee for the then-current one-year period. The Support Fee shall be based on the then current Support Fee rate.

(ii)   If twelve (12) months or more have expired since annual Support has been terminated, then Client shall be required to pay a reinstatement fee for the Products for which annual Support has been terminated equal to the then current list price for the Products.
The Parties agree that the above reinstatement fees are liquidated damages and fair and equitable compensation for the value of reinstated Support, and are not penalties for termination of Support.

4.8   Lawson warrants that at the time of Support, the Support shall be provided by trained personnel and in a professional manner using commercially reasonable efforts.

5.0   Termination.

5.1   Lawson may terminate Support and this Agreement if Lawson is in compliance with this Agreement and either (a) Client fails to pay Lawson any amounts when due Lawson or, (b) Client is in material default of any other provision of this Agreement and such default has not been cured within ninety 90 days after Lawson gives Client written notice describing the default. Upon termination in accordance with this Section 5.1, Client shall pay Lawson all amounts due under this Agreement for services rendered and Lawson may cease performance of all of Lawson's obligations under this Agreement without liability to Client.

5.2   Client may terminate this Agreement upon written notice to Lawson (a) if Client is in compliance with this Agreement and Lawson is in material default of any provision of this Agreement and such default has not been cured within ninety 90 days after Client gives Lawson written notice describing the default, or (b) if Client's Board of Commissioners fails to appropriate sufficient funds to cover the cost of this Agreement. Upon such termination, Client shall pay Lawson's outstanding invoices for services rendered that do not pertain to any Lawson default, but Client shall have no further payment obligations to Lawson under this Agreement.

5.3   Those terms, which by their nature extend beyond the Term will remain in effect after the termination of this Agreement, and apply to both Parties' respective successors and assigns.

6.0   Limitations of Liability.

6.1   AFTER THE PARTIES HAVE SIGNED THIS AGREEMENT, CLIENT'S EXCLUSIVE REMEDIES FOR SUPPORT RELATED MATTERS SHALL BE AS DESCRIBED IN THIS AGREEMENT, SUBJECT TO THE LIMITATIONS OF SECTION 6.0.

6.2   LAWSON SHALL NOT BE LIABLE FOR ANY EXPENSE OR DAMAGE ARISING OUT OF ANY ERASURE, DAMAGE, OR DESTRUCTION OF FILES, DATA, OR PROGRAMS. CLIENT SHALL BE RESPONSIBLE FOR MAKING BACKUP COPIES OF FILES DATA, AND PROGRAMS.

6.3   IN NO EVENT SHALL LAWSON OR ITS THIRD PARTIES BE LIABLE FOR SPECIAL, INDIRECT, THIRD PARTY, OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS. NEITHER PARTY SHALL SEEK, OR OTHERWISE APPLY FOR, ANY PUNITIVE OR EXEMPLARY DAMAGES.

6.4   LAWSON'S AND ITS THIRD PARTIES' MAXIMUM AGGREGATE LIABILITY FOR DAMAGES TO CLIENT OR OTHERS SHALL BE LIMITED TO ACTUAL DIRECT MONEY DAMAGES IN AN AMOUNT NOT TO EXCEED THE MOST RECENT ANNUAL SUPPORT FEE PAID BY CLIENT FOR THE PRODUCTS SUBJECT TO THE DAMAGE CLAIM.

6.5   CLIENT ACKNOWLEDGES THAT THE LIMITATIONS ON LIABILITY IN THIS SECTION 6 ARE REASONABLE. THE REMEDIES PROVIDED IN THIS AGREEMENT ARE EXCLUSIVE. NEITHER PARTY SHALL SEEK, OR OTHERWISE APPLY FOR, ANY EQUITABLE REMEDIES.

7.0   Assignment.

Client may not assign this Agreement or any of its respective rights or obligations under this Agreement unless approved by Lawson, in writing, prior to such assignment, such approval to not be unreasonably withheld.

8.0   Waiver.

No term or provision of this Agreement shall be deemed waived and no breach shall be deemed excused, unless such waiver is in writing and signed by the Party claimed to have waived.

9.0   Excusable Delay.

Neither Lawson nor Client shall be deemed to be in default of any provision of this Agreement or for any failure in performance, resulting from acts or events beyond the reasonable control of Lawson or Client, as the case may be. For purposes of this Agreement, such acts shall include, but not be limited to, acts of God, civil or military authority, civil disturbance, war, strikes, fires, other catastrophes, or other such major events beyond Lawson's or Client's reasonable control. This Section 9.0 shall not delay or excuse Client's payment obligations.

10.0   [Reserved]

11.0   [Reserved]

12.0   Independent Contractor.

Lawson is providing Support under this Agreement as an independent contractor, and its personnel shall not be considered employees or agents of Client.

13.0   Severance and Interpretation.

If any provision of this Agreement is found to be unenforceable, such provision shall be deemed to be deleted or narrowly construed to such extent as is necessary to make it enforceable and this Agreement shall otherwise remain in full force and effect. If an ambiguity or question of intent arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring either Party by virtue of authorship of any of the provisions of this Agreement.

14.0   Time Limitation.

Except for actions for non-payment to Lawson or for breach of Lawson's or its Third Parties Intellectual Property Rights, no action arising out of or relating to this Agreement may be brought later than two (2) years after the cause of action became known to the injured Party.

15.0   Notices.

All notices required or permitted under this Agreement and all requests for approvals, consents, and waivers must be delivered by a method providing for proof of delivery. A confirmed facsimile transmission shall be deemed to provide proof of delivery. Any notice or request shall be deemed to have been given on the date of delivery. Notices and requests must be delivered to the Parties at the addresses on the first page of this Agreement until a different address has been designated by notice to the other Party. Other communications may be delivered by fax, e-mail or other means.

16.0   Non-Solicitation of Employees.

Neither Party shall directly solicit the services or employment of any employee or agent of the other Party for a period beginning at the Effective Date and ending twelve (12) months after the last date of Support for the Products as set forth in the Exhibits (as of the Effective Date). The soliciting Party, who violates this Section 16.0, shall pay to the other Party an amount equal to one (1) year's salary for any solicited employee of the other Party, as liquidated damages and not as a penalty. The amount of annual salary shall be the annual salary in effect at the date the employee was solicited.

17.0   Publicity.

Either Party may (in any press release, advertising, or other publicly disseminated materials) refer to the other Party, to the existence and terms of this Agreement and to background information leading to this Agreement, including, for example: net value of the Agreement. Before disseminating this information publicly, the disclosing Party shall review the factual content of the disclosures with the other Party. Notwithstanding the foregoing, Client shall not publicly disclose special pricing, discounts, payment terms, or addenda contained in, or attached to, this Agreement without the prior written consent of Lawson, except as required by law.

18.0   Entire Agreement.

This Agreement and the Exhibits listed below and referred to herein, together with any addenda signed by the Parties (collectively, the "Agreement"), constitute the entire agreement between Lawson and Client with respect to the subject matter of this Agreement, and may only be modified by a written amendment or addendum signed by both Lawson and Client. No employee, agent, or other representative of either Lawson or Client has authority to bind the other with regard to any statement, representation, warranty, or other expression unless it is specifically included within the express terms of this Agreement or a written addendum signed by both Lawson and Client. All purchase orders, prior agreements, representations, statements, proposals, negotiations, understandings, and undertakings with respect to the subject matter of this Agreement are superseded by this Agreement.

[SIGNATURE PAGE FOLLOWS]

SIGNATURE PAGE TO THE
LAWSON SOFTWARE SUPPORT AGREEMENT

For LAWSON SOFTWARE, INC.

For PORTLAND DEVELOPMENT COMMISSION

_____
(Authorized Signature)

_____
(Authorized Signature)

_____
(Printed Name)

_____
(Printed Name)

_____
(Title)

_____
(Title)

_____
(Date)

_____
(Date)

EXHIBIT A: Attached

LAWSON SOFTWARE SUPPORT AGREEMENT
(DATED JUNE 1, 2012)
PRODUCTS UNDER THE SUPPORT AGREEMENT – Exhibit A

SKU	PRODUCT DESCRIPTION	DM	SITE	USERS	BEGIN DATE	END DATE	COST
DMS	DISTRIBUTION MGMT SYSTEM GROUP	E	1	10	6/1/2012	5/31/2013	11,181.55
FPS	FINANCIALS PROCESS SUITE	E	1	10	6/1/2012	5/31/2013	46,442.16
HPS	HUMAN RESOURCE PROCESS SUITE	E	1	10	6/1/2012	5/31/2013	40,067.46
LBINF	LAWSON BUSINESS INTELLIGENCE	E	1	20	6/1/2012	5/31/2013	6,360.00
LBP	LAWSON BUDGETING & PLANNING	E	1	10	6/1/2012	5/31/2013	6,360.00
LSF	LAWSON SYSTEM FOUNDATION	E	1	4	6/1/2012	5/31/2013	10,600.00
ML	MULTI-BOOK LEDGER	E	1	5	6/1/2012	5/31/2013	2,998.53
MNC[1]	NET EXPRESS	E	1	1	6/1/2012	5/31/2013	870.36
MNC[2]	NET EXPRESS	E	1	1	6/1/2012	5/31/2013	870.36
MNX[1]	NET EXPRESS APPLICATION SERVER	E	1	40	6/1/2012	5/31/2013	917.40
MNX[1]	NET EXPRESS APPLICATION SERVER	E	1	10	6/1/2012	5/31/2013	287.14
MNX[2]	NET EXPRESS APPLICATION SERVER	E	1	10	6/1/2012	5/31/2013	305.80
MOA	MICROSOFT OFFICE ADD INS	E	1	999	6/1/2012	5/31/2013	5,918.51
PFI	PROCESSFLOW INTEGRATION	E	1	8	6/1/2012	5/31/2013	14,310.00
RQ	REQUISITIONS	E	1	10	6/1/2012	5/31/2013	2,862.00
SHR	EMPLOYEE & MANAGER SERVICE CNT	E	1	100	6/1/2012	5/31/2013	2,475.42
						TOTAL	$152,826.69

SIGNATURE PAGE TO
EXHIBIT A OF THE LAWSON SOFTWARE SUPPORT AGREEMENT

For LAWSON SOFTWARE, INC.   **For PORTLAND DEVELOPMENT COMMISSION**

(Authorized Signature)	(Authorized Signature)
(Printed Name)	(Printed Name)
(Title)	(Title)
(Date)	(Date)

RESOLUTION NO. 6946

RESOLUTION TITLE:
AUTHORIZING A CONTRACT WITH LAWSON SOFTWARE, INC. FOR UP TO $900,000 FOR THE PURCHASE OF UP TO FIVE YEARS OF SUPPORT AND MAINTENANCE

Adopted by the Portland Development Commission on May 23, 2012

PRESENT FOR VOTE	COMMISSIONERS	VOTE		
		Yea	Nay	Abstain
☑	Chair Scott Andrews	☑	☐	☐
☑	Commissioner Aneshka Dickson	☑	☐	☐
☑	Commissioner John Mohlis	☑	☐	☐
☑	Commissioner Steven Straus	☑	☐	☐
☐	Commissioner Charles Wilhoite	☐	☐	☐

☐ **Consent Agenda**   ☑ **Regular Agenda**

CERTIFICATION

The undersigned hereby certifies that:

The attached resolution is a true and correct copy of the resolution as finally adopted at a Board Meeting of the Portland Development Commission and as duly recorded in the official minutes of the meeting.

	Date:
(signature)	July 3, 2012
Gina Wiedrick, Recording Secretary	