

**OPUS²¹ MANAGEMENT SOLUTIONS
MASTER AGREEMENT
WITH
THE CITY OF RAMSEY**

**OPUS²¹ Agreement Number: 4031
Date: February 15th, 2008**

THIS **OPUS²¹ Master Agreement** (this “Agreement”), is made and entered into this 15th day of February, 2008, by and between **OPUS²¹ MANAGEMENT SOLUTIONS, LLC** A Minnesota Limited Liability Company, 680 Commerce Dr., Suite 160, Woodbury, MN 55125, (“OPUS²¹”) and the **CITY OF RAMSEY**, a Minnesota Municipal corporation 7550 Sunwood Drive, NW, Ramsey, Minnesota (“City”).

OPUS²¹ and City agree that all products and services to be provided by OPUS²¹ to City shall be furnished only under the terms and conditions of this Agreement and its attached Schedules No. 1 and No. 2 (the “Schedules”).

OPUS²¹ is a technology product and service firm specializing in providing certain technology software products and services that OPUS²¹ has developed, owns or leases.

City desires to purchase products or services from OPUS²¹.

OPUS²¹ desires to supply City pursuant to the terms and conditions contained in this Agreement and the Schedules.

NOW THEREFORE, in consideration of the mutual promises contained herein, it is agreed to as follows:

1 Definition of Terms. As used herein:

- 1.1 **“Project”** – The products and services provided by OPUS²¹ for City.
- 1.2 **“Schedules”** – Attachments 1 and 2 to this Agreement, which are made a part of this Agreement for all purposes.
- 1.3 **“OPUS²¹ Custom Software”** – Software developed by OPUS²¹ specifically for City or OPUS²¹ Core Software customized by OPUS²¹ specifically for City.
- 1.4 **“OPUS²¹ Core Software”** – Software developed or customized by OPUS²¹ but not specifically for City.
- 1.5 **“OPUS²¹ Software”** – OPUS²¹ Custom Software and OPUS²¹ Core Software. OPUS²¹ Software does not include the Source Code.
- 1.6 **“Third-Party Software”** – Software in machine-readable form provided by OPUS²¹ to City that is not developed or customized by OPUS²¹. Third-Party Software does not include the Source Code.
- 1.7 **“Software”** – OPUS²¹ Software and Thirty-Party Software.
- 1.8 **“Source Code”** – A copy of the computer programming code in human-readable form.
- 1.9 **“Support Services Agreement”** – The Support Services Agreement that the parties may execute for all OPUS²¹ Software provided to City by OPUS²¹.

- 1.10 **“Service Bureau Processing”** – City’s use of the OPUS²¹ Software to provide commercial service bureau data processing services to Third-Party Customers.
- 1.11 **“Third-Party Customer”** – Third party utility service providers that provide utility services and obtain service bureau processing from City.
- 2 **Term of Agreement.** This Agreement shall be effective upon the date hereof and shall continue in force for a period of 60 months unless earlier terminated in accordance with the terms herein.
- 3 **Compensation.** The amount of compensation City shall pay OPUS²¹ for the products and services provided by OPUS²¹ hereunder shall be provided in the Schedules. All compensation shall be payable by City within 30 days of receipt of an invoice from OPUS²¹. City shall pay OPUS²¹ a late payment charge of 1.5% per month or the maximum amount permitted by applicable law, whichever is less, on all amounts remaining unpaid when due.
- 4 **Limitation of Liability.** EXCEPT FOR INDEMNITY CLAIMS PURSUANT TO SECTION 10.1, AND EXCEPT FOR CLAIMS ARISING FROM THE MUTUAL NON-DISCLOSURE AGREEMENT, OPUS²¹’S LIABILITY ON ANY CLAIM OF DAMAGES ARISING OUT OF THIS AGREEMENT SHALL BE LIMITED TO DIRECT DAMAGES AND SHALL NOT EXCEED THE AMOUNTS PAID BY CITY TO OPUS²¹ UNDER THIS AGREEMENT. IN NO EVENT SHALL OPUS²¹ BE LIABLE TO CITY FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, OR ECONOMIC DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE PERFORMANCE OR BREACH THEREOF EXCEPT FOR SUBSTANTIAL PROVEN NEGLIGENCE BY OPUS²¹. IN NO EVENT SHALL OPUS²¹ BE LIABLE TO THIRD-PARTY CUSTOMERS FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, OR ECONOMIC DAMAGES ARISING OUT OF OR RELATED TO THE USE OF OPUS²¹ SOFTWARE IN SERVICE BUREAU PROCESSING.
- 5 **Confidentiality of City's Information.**
- 5.1 OPUS²¹ acknowledges that City, subject to the State of Minnesota Data Privacy Law, regards as confidential and as a proprietary asset any information or materials that come to the attention of OPUS²¹ by reason of (a) the presence of OPUS²¹’s agents, employees, or representatives at City’s site, or (b) OPUS²¹ furnishing services to City in connection with this Agreement (such information, materials, and records collectively being referred to as “City’s Confidential or Proprietary Information”).
- 5.2 OPUS²¹ agrees to safeguard City’s Confidential or Proprietary Information by holding it in strict confidence, disclosing it only to those employees, agents or contractors who have a need to know in order to provide services as agreed upon. In the event that a subpoena or other legal process that in any way concerns City’s Confidential or Proprietary Information is served upon OPUS²¹, then OPUS²¹ agrees to notify City in a reasonable manner following receipt of such subpoena or other legal process, and OPUS²¹ will reasonably cooperate with City, as requested by City, to contest the subpoena or other legal process (provided that City agrees to pay any expense OPUS²¹ incurs in so doing).
- 5.3 OPUS²¹ agrees to take all reasonable steps to prevent the disclosure, publication or dissemination of City’s Confidential or Proprietary Information to any other person or entity, except where and to the extent specifically required by law.

- 5.4 Notwithstanding anything herein to the contrary, City's Confidential or Proprietary Information shall not include: (a) information that comes into the public domain except as a result of a breach of this confidentiality provision; (b) information received by OPUS²¹ from a third party not under any obligation of confidentiality with respect thereto; (c) information that is independently developed by OPUS²¹ personnel that have not had access to City's Confidential or Proprietary Information; (d) information required to be disclosed under operation of law; or (e) information approved in advance in writing for disclosure by City.
- 5.5 In addition to any rights or remedies that are provided by this Agreement, City shall have all other rights and remedies available in law and in equity for any violation of this Section 5 by OPUS²¹. Such rights and remedies shall be non-exclusive and cumulative.

6 Intellectual Property. All computer programs, including the OPUS²¹ Software, related documentation, written procedures, copies of transcripts, Source Codes, and similar items are proprietary to and shall be considered trade secrets and confidential information remaining the property of OPUS²¹. City agrees that, other than those disclosures and records required to be made or maintained pursuant to Minnesota Law, it will not disclose to any third party at any time (either during or after termination of this Agreement) any OPUS²¹ trade secrets or any other OPUS²¹ secrets or confidential information, learned by City in connection with this Agreement. All documentation shall be returned to OPUS²¹ upon termination of this Agreement. All original input data items shall remain the property of City and will be returned pursuant to City's instructions, except as may be required by the State of Minnesota Data Privacy Law. City shall retain or destroy all original input documentation and other documentation in accordance with its own procedures.

7 Modification.

- 7.1 Either party may modify this Agreement or any Schedules through mutual agreement of both parties.
- 7.2 In the Event of Default, as defined in Section 8 below, the non-defaulting party may terminate this Agreement or any Schedule.
- 7.3 In the event of modification for any reason, City will pay all amounts due and payable under this Agreement up to the effective date of modification, and City may retain and use any products or services delivered to City prior to the date of modification as governed by the terms and good standing of the Agreement.

8 Events of Default.

- 8.1 City's failure to make payments as provided herein.
- 8.2 A party's failure to perform any material covenant, agreement, obligation, term or condition contained herein; provided, however, the party's failure to perform as provided in this Section 8.2 shall not be an Event of Default if the defaulting party cures such default within thirty (30) days of receipt of written notice of default from the non-defaulting party or if the default cannot be cured within thirty (30) days, if the defaulting party commences cure within thirty (30) days of receipt of written notice and proceeds to cure such default within a reasonable period of time not to exceed 60 days from the date of default.

8.3 A party ceases to do business as a going concern, makes an assignment for the benefit of creditors, admits in writing its inability to pay debts as they become due, files a petition in bankruptcy (except in connection with a reorganization under which the business of such party is continued and performance of all of its obligations under this Agreement shall continue) or appoints a receiver, acquiesces in the appointment of a receiver or trustee, or liquidator for it or any substantial part of its assets or properties.

9 **Remedies on Default.** In addition to the right of modification provided in Section 7.3 above, the non-defaulting party shall have all of the rights and remedies available in law and in equity.

10 **Hold Harmless and Indemnification.**

10.1 **By OPUS²¹.** OPUS²¹ shall indemnify, defend and hold harmless City against any loss, damage or expense incurred by City as a result of claims, actions or proceedings brought by any third party arising out of OPUS²¹'s performance of this Agreement including City's reasonable attorney's fees and any money damages or costs awarded in respect of any such claim(s) and any suit raising any such claim(s); provided, however, that (a) City shall have given OPUS²¹ prompt written notice of any such claim, demand, suit or action; (b) City shall cooperate with said defense by complying with OPUS²¹'s reasonable instructions and requests to City in connection with said defense; and (c) OPUS²¹ shall have control of the defense of such claim, suit, demand, or action and the settlement or compromise thereof.

10.2 **By City.** City shall indemnify, defend and hold harmless OPUS²¹ against any loss, damages or expense incurred by OPUS²¹ as a result of claims, actions or proceedings brought by any third party arising out of City's performance of this Agreement including OPUS²¹'s reasonable attorney's fees and any money damages or costs awarded in respect of any such claim(s) and any suit raising any such claim(s); provided, however, that (a) OPUS²¹ shall have given City prompt written notice of any such claim, demand, suit or action; (b) OPUS²¹ shall cooperate with said defense by complying with City's reasonable instructions and requests to OPUS²¹ in connection with said defense; and (c) City shall have control of the defense of such claim, suit, demand, or action and the settlement or compromise thereof.

11 **Notices.** All notices and other communications under this Agreement must be in writing and shall be deemed to have been given if delivered personally, sent by facsimile (with confirmation), mailed by certified mail, or delivered by an overnight delivery service (with confirmation) to the parties at the following addresses or facsimile numbers (or at such other address or facsimile number as a party may designate by like notice to the other parties):

To OPUS²¹:

OPUS²¹ Management Solutions, LLC
Attention: Lynn Shuba, President
680 Commerce Drive, Suite 160
Woodbury, MN 55125
Facsimile No.: (651) 905-0440

To City:

City of Ramsey
Attention: Finance Director
7550 Sunwood Drive NW
Ramsey, MN 55303
Facsimile No.: (763) 427-5543

Any notice or other communication shall be deemed to be given (a) on the date of personal delivery, (b) at the expiration of the third (3rd) day after the date of receipt in the United States Mail, or (c) on the date of confirmed delivery by facsimile or overnight delivery service.

12 Governing Law/Dispute Resolution. This agreement shall be governed by, construed, and enforced under and in accordance with the Laws of the State of Minnesota. In the event of any litigation arising under or construing this Agreement, Plaintiff agrees to bring any action in the State of Minnesota. Prior to either party commencing any legal action under this Agreement, the parties agree to try in good faith, to settle any dispute amicably between them. If any dispute arises between the parties either relating to this Agreement or in any way arising out of this Agreement then the complaining party shall provide a notice of such dispute, in writing, to the other party. Such notice shall include both a specific description of the disputed issues and suggested action(s) to remedy such dispute. The Parties shall thereafter attempt, in good faith, to settle such dispute. If no resolution of the dispute is reached within forty-five (45) days of the notice of dispute, then either party may pursue any legal remedy it may have available including instituting suit in a court of competent jurisdiction.

13 Binding Nature and Assignment. This Agreement shall bind the parties and their successors and permitted assigns. Neither party may assign this Agreement without the prior written consent of the other party, except that the term "Assignment" shall not include any transfer by merger, acquisition, stock transfer or other consolidation with another entity. Notwithstanding the foregoing, City shall effect no assignment or transfer by merger, acquisition, stock transfer, sale of substantially all of the assets or consolidation to or with any entity engaged substantially in the business of providing software and/or related services that are similar to the software and services provided by OPUS²¹.

14 No Third Party Beneficiaries. This Agreement gives no rights or benefits to anyone other than OPUS²¹ and City. OPUS²¹ reserves the right to enforce the terms and conditions of this Agreement against all Third-Party Customers.

15 Force Majeure. Neither party shall be in default by reason of any failure in the performance of this Agreement (except failure to pay) if such failure arises out of causes beyond its reasonable control. Such causes may include, but are not limited to, acts of God, acts of the public enemy, acts of government in either its sovereign or contractual capacity, acts of the party whose performance is not sought to be excused, fires, flood, weather, epidemics, quarantine restrictions, strikes, freight embargoes, failure of transmission or power supply, or other causes beyond its sole control. The party so affected will resume performance as soon as practicable after the force majeure event terminates.


- 16 **Entire Agreement.** This Agreement and the Schedules contain the entire understanding of the parties with respect to its subject matter, and supersedes and extinguishes all prior oral and written communications between the parties relative to its subject matter. No amendment to, or change, waiver or discharge of any provision of this Agreement shall be valid unless in writing and signed by any authorized representative of the party against which such amendment, change, waiver or discharge is sought to be enforced.
- 17 **Signature Authority.** Each party represents and warrants to the other that the signatory of that party is authorized to enter into this Agreement for and on behalf of that party.
- 18 **Relationship of the Parties.** The relationship of the parties established by this Agreement is solely that of independent contractors, and nothing contained in this Agreement shall be construed to (a) give any party the power to direct and control the day-to-day activities of the other; or (b) constitute such parties as partners, joint venturers, co-owners or otherwise as participants in a joint or common undertaking; or (c) make either party an agent of the other for any purpose whatsoever. Neither party nor its agents or employees is the representative of the other for any purpose, and neither has power or authority to act as agent, employee to represent, to act for, bind, or otherwise create or assume any obligation on behalf of the other.
- 19 **Approvals and Similar Actions.** Where agreement, approval, acceptance, consent or similar action by either party is required by any provision of this Agreement, such action shall not be unreasonably delayed or withheld, unless specifically permitted by this Agreement.
- 20 **Publicity.** Either party hereto may prepare press releases concerning the existence of this Agreement and may reference the other party and this Agreement in its advertising, sales promotions, trade shows, or other marketing material, subject to review, comment, revision and prior written approval of the other party which approval shall not be unreasonably delayed or withheld.
- 21 **Severability.** If any provision of this Agreement is held to be unenforceable, then both parties shall be relieved of all obligations arising under such provision, but only to the extent that such provision is unenforceable, and this Agreement shall be deemed amended by modifying such provision to the extent necessary to make it enforceable while preserving its intent or, if that is not possible, by substituting another provision that is enforceable and achieves the same objective and economic result. IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT EACH PROVISION OF THIS AGREEMENT WHICH PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, INDEMNIFICATION OR EXCLUSION OF DAMAGES OR OTHER REMEDIES IS INTENDED TO BE ENFORCED AS SUCH. FURTHER, IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT IN THE EVENT ANY REMEDY UNDER THIS AGREEMENT IS DETERMINED TO HAVE FAILED OF ITS ESSENTIAL PURPOSE, ALL LIMITATIONS OF LIABILITY AND EXCLUSIONS OF DAMAGES OR OTHER REMEDIES SHALL REMAIN IN EFFECT.
- 22 **Waiver.** No delay or omission by either party to exercise any right or power it has under this Agreement shall impair or be construed as a waiver of such right or power. A waiver by

either party of any covenant or breach shall not be construed to be a waiver of any succeeding breach or of any other covenant. All waivers must be in writing and signed by the party waiving its rights.

- 23 **Attorneys' Fees.** If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which it may be entitled.
- 24 **Compliance with Laws.** Each party shall comply with all governmental, including federal, state, and local laws, statutes, rules and regulations applicable to this Agreement.
- 25 **Conflicts between Agreements.** In the event that any terms of this Master Agreement conflict with any Schedule(s), License Agreement, or Support Services Agreement, the specific terms of those particular schedules or agreements will govern.


Accepted by:

OPUS²¹ Management Solutions, LLC
a Minnesota Limited Liability Company

By: 
Lynn Shuba
Its: President

February 1st, 2008
Date

City of Ramsey,
a Minnesota Municipal
Corporation

By: 
Its: Mayor

Attest By: 
Its: City Administrator

February 7, 2008
Date

SCHEDULE NO. 1

BASE SERVICES AND COST

Parties: City of Ramsey (“City”)
7550 Sunwood Drive NW
Ramsey, MN 55303

OPUS²¹ Management Solutions (“OPUS²¹”)
680 Commerce Dr., Suite 160
Woodbury, MN 55125

This Schedule is part of the **Master Agreement** between OPUS²¹ and City dated February 1, 2008 and is OPUS²¹ Agreement No. 4031.

NOW, THEREFORE, the parties agree as follows:

1. Term of Agreement.

The term of the agreement will be 60 months from the date hereof.

2. Cost of Services. CIS Data Hosting, Bill Print, Lockbox and Support Services

Quarterly Billing Agreement

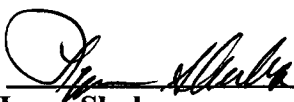
City Information Systems (CIS) Data Hosting / Account / Qtr	\$0.46
Personnel & Support / Account /Qtr	\$0.24
Simplex Bill Print w/ Inner and Outer Envelopes	\$0.12
Remittance Lockbox / Account Processed	\$0.19
Call Center from 8:00 AM – 9:00 PM M-F / Account / Qtr	\$0.14

Postage is a direct or pass-through cost.

Special notices and mailings at \$0.30 per item plus postage and printing.

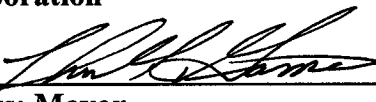
Meter reading option through RMR Services, LLC, a Minnesota Limited Liability Company, 9772 Isanti St NE, Blaine, MN 55449 with shared equipment with City of Big Lake.

OPUS²¹ Management Solutions, LLC
a Minnesota Limited Liability Company

By: 
Lynn Shuba
Its: President

February 1st, 2008
Date

City of Ramsey,
a Minnesota Municipal
Corporation

By: 
Its: Mayor

Attest By: 
Its: City Administrator

February 7, 2008
Date

SCHEDULE NO. 2

CONVERSION OF DATA

Parties: City of Ramsey (“City”)
7550 Sunwood Drive NW
Ramsey, MN 55303

OPUS²¹ Management Solutions (“OPUS²¹”)
680 Commerce Dr., Suite 160
Woodbury, MN 55125

This Schedule is part of the **Master Agreement** between OPUS²¹ and City dated the 1st day of February, and is OPUS²¹ Agreement No. 4031.

NOW, THEREFORE, the parties agree as follows:

1 Software.

1.1 OPUS²¹ will provide City with City Information System/Utility Billing Software:

2 Services. OPUS²¹ will provide City with the following services on an as needed basis:

- 2.1 Planning and Specifications
- 2.2 Fulfillment
- 2.3 Configuration
- 2.4 Data Migration
- 2.5 Training
- 2.6 Testing
- 2.7 Production and Post-Live Monitoring

3 Specifications. OPUS²¹ shall analyze City’s needs to determine the required functionality and processes of the Software and/or Services. After preparing such needs analysis, OPUS²¹ shall prepare specifications for the Software and/or Services (“Specifications”).

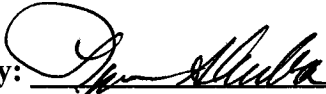
4 City’s Obligation. City shall:

- 4.1 Designate a primary and a secondary project manager, including telephone numbers and e-mail addresses, within ten (10) days following the execution of this Schedule.
- 4.2 Perform all of its obligations hereunder in a time frame that permits OPUS²¹ to meet the Delivery Schedule.
- 4.3 Provide accurate information and the necessary resources required for OPUS²¹ to meet the Delivery Schedule.
- 4.4 Participate in all required reviews, testing, training, and perform all City testing as deemed necessary by OPUS²¹ to ensure the compliance and adherence to all required functionality and processes as defined and documented throughout the Project.

5 Compensation.


5.1 The Services to be provided by OPUS²¹ described in this Schedule No. 2 shall not exceed \$20,000.

**OPUS²¹ Management Solutions, LLC
a Minnesota Limited Liability Company**

By: 
Lynn Shuba
Its: President

February 1st, 2008
Date

**City of Ramsey,
a Minnesota Municipal
Corporation**

By: 
Its: Mayor

Attest By: 
Its: City Administrator

February 7, 2008
Date