

STAFF REPORT



ITEM NO. **9**
CITY OF OCEANSIDE

DATE: April 19, 2006

TO: Honorable Mayor and City Council Members

FROM: Personnel Department

SUBJECT: **APPROVAL OF A SOFTWARE LICENSE AGREEMENT WITH VALLEY OAK SYSTEMS OF SAN RAMON, CALIFORNIA, IN THE AMOUNT OF \$175,500 FOR THE PURCHASE OF THE WORKERS' COMPENSATION AND GENERAL LIABILITY CLAIMS MANAGEMENT SYSTEM, AND ADOPTION OF A BUDGET RESOLUTION IN THE AMOUNT \$225,500 TO FUND THE PURCHASE AND RELATED ACCESSORIES.**

SYNOPSIS

Staff recommends that the City Council approve a software license agreement with Valley Oak Systems of San Ramon, California, in the amount of \$175,500 for the purchase of a Workers' Compensation and General Liability Claims Management System, and authorize the City Manager to execute the agreement; and adopt a budget resolution transferring \$225,500 from the Workers' Compensation Account to the Workers' Compensation Capital Outlay Account to fund the purchase plus \$50,000 for related accessories.

BACKGROUND

The City's current Riskmaster claims management software was originally installed in 1995. Riskmaster does not offer the functionality needed to generate the required OSHA reporting and excess insurance carrier reporting. In addition, Riskmaster does not provide an interface with the State of California, which requires staff to utilize software created by a third-party vendor.

ANALYSIS

The new Workers' Compensation claims management software will allow the City to comply with both state and excess insurance carriers' requirements.

The Personnel Department sent out Requests for Proposals (RFPs) to seven potential vendors, including Riskmaster. Three vendors provided a proposal that addressed the requirements identified in the RFP. The vendors and their quoted costs were:

<u>Vendor</u>	<u>Upgrade Quote</u>
Occusoft Corporation	\$35,985
Recordable Inc	57,000
Valley Oak Systems	175,500

Staff reviewed each of the proposals. After meeting to discuss each user's concerns, we reached a consensus that, provided they could complete the project as specified in their proposal Valley Oak Systems would be the logical choice. In follow-up discussions, Valley Oak Systems was able to adequately address all of our concerns, and thus became our unanimous choice.

Approximate costs to purchase the Valley Oaks System are as follows:

Valley Oak Systems	\$175,500
Hardware (Server and Workstations)	50,000
Total Estimated Cost	<u>\$225,500</u>

FISCAL IMPACT

The cost for the software and hardware upgrade is approximately \$225,500. Sufficient funds are available in the Workers' Compensation account.

COMMISSION/COMMITTEE REPORT

Does not apply.

CITY ATTORNEY'S ANALYSIS

Does not apply.

RECOMMENDATION

Staff recommends that the City Council approve a software license agreement with Valley Oak Systems of San Ramon, California, in the amount of \$175,500 for the purchase of a Workers' Compensation and General Liability Claims Management System, and authorize the City Manager to execute the agreement; and adopt a budget resolution transferring \$225,500 from the Workers' Compensation Account to the Workers' Compensation Capital Outlay Account to fund the purchase plus \$50,000 for related accessories.

PREPARED BY:



Michael Lee Sherwood
Chief Information Officer

SUBMITTED BY:

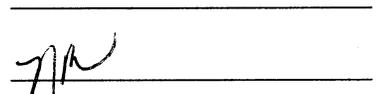


Steven R. Jepsen
City Manager

Reviewed By:

Michelle Skaggs-Lawrence, Assistant to the City Manager

Nita McKay, Financial Services Director



Attachment 1 – Valley Oaks Proposal

Attachment 2 – Software License and Service Agreement

1 RESOLUTION NO. _____

2 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OCEANSIDE
3 AMENDING THE BUDGET FOR THE 2005-2006 FISCAL YEAR

4 WHEREAS, Resolution No.04-R438-1 approving the operating
5 budget for fiscal year 2005-2006 was adopted on June 16, 2004;
6 and

7 WHEREAS, the City Manager has recommended and the City
8 Council desires to approve certain amendments to said budget;

9 NOW, THEREFORE, the City Council of the City of Oceanside
10 does resolve as follows: that the Financial Services Director is
11 authorized to amend the budget as requested and to record
12 interfund cash transfers as required in accordance with this
13 resolution and Resolution No. 04-R438-1 adopting the operating
14 budget for fiscal year 2004-2006 is hereby amended as follows:

15 Reviewed by Financial Services 

16 PURPOSE

17 To authorize a budget transfer of \$225,500 for the purchase of a
18 Workers' Compensation and General Liability Claims management
19 system and related accessories using funds from the Workers'
20 Compensation Account to the Workers Compensation Capital Outlay
21 Account.

22 IN ORDER TO ACCOMPLISH THIS PURPOSE, THE FOLLOWING ACCOUNTING
23 ENTRY IS NEEDED

24 ADDITION	ACCOUNT NUMBER & NAME	AMOUNT
25 (818)	204179.5703 Equipment & Maintenance	\$225,500
26 SOURCE	ACCOUNT NUMBER & NAME	AMOUNT
27 (818)	818.3351 Retained Earnings	\$225,500
28 FUND: 818	Workers Compensation Fund	

29 PASSED AND ADOPTED by the City Council of the City of Oceanside
30 this ___ day of _____, 2006__, by the following vote:

31 AYES:

32 NAYS:

33 ABSENT:

34 ABSTAIN:

35 ATTEST:

36 _____
37 MAYOR OF THE CITY OF OCEANSIDE

38 _____
39 CITY CLERK

Software License and Services Agreement between

City of Oceanside

and

Valley Oak Systems, Inc.

This Software License Agreement (“Agreement”) is dated for convenience the ____ day of April 2006 (the “Effective Date”), between City of Oceanside, hereinafter referred to as “Licensee,” a _____, located at 300 N Coast Highway, Oceanside, CA 92057, and Valley Oak Systems, Inc, hereinafter referred to as “Contractor” or “VOS,” a California corporation, located at Bishop Ranch 8, 5000 Executive Parkway, Suite 340, San Ramon, California 94583.

Recitals

WHEREAS, Licensee wishes to obtain a new claims management system; and,

WHEREAS, Licensee wishes to license certain software from Contractor; and,

WHEREAS, Contractor represents and warrants that it is qualified to provide such software and services required by Licensee as set forth under this Agreement.

NOW, THEREFORE, the parties agree as follows:

1. Term of the Agreement

The term of this Agreement shall be from the Effective Date stated above and shall continue until terminated in accordance with this Agreement. Licensee shall enjoy a license for the licensed software, as set forth in this License Grant:

a. Contractor hereby grants Licensee, a nonexclusive, royalty-free, right and license (the “License”) to access and use the Software Product and Software Documentation, as defined herein, solely for its own internal business operations. Subject to the terms and conditions of this Agreement, as part of the License, (i) “Software Product” shall mean Contractor’s Software Product downloaded from Contractor’s website at www.valleyoak.com (ii) Software Documentation shall mean Contractor’s user manual which shall be made available to Licensee from Contractor’s website at www.valleyoak.com, (iii) the Software Product may be accessed and used by the number of user licenses acquired, and (iv) the Software Product may be accessed and used for backup, failover, disaster recovery, development, staging, technology integration and testing.

b. Licensee will not permit any employee or other third party to copy, use, analyze, reverse engineer, decompile, disassemble, translate, convert, or apply any procedure or process to the Software Product in order to ascertain, derive, and/or appropriate for any reason or purpose, the source code or source listings for the Software Product or any trade secret information or process contained in the Software Product or remove any product identification, copyright or other notices.

2. License and Service Fees

a. Licensee agrees to pay Contractor the License and Service Fees delivered with the Software Product as per the Pricing Detail as specified in Appendix A. All payments are due thirty (30) days after receipt of invoice.

b. Maintenance and support services shall be as set forth in Appendix B, “Maintenance and Support Agreement.”

3. Effective Date of Agreement

This Agreement shall become effective as of the execution of this agreement by both parties, and will be effective unless either party is in material breach of this Agreement and fails to cure said breach within thirty (30) days of written notice.

4. Acceptance Testing Period

(a) Procedure. Licensee will provide Contractor with at least four (4) days notice before Licensee commences use of the Software Product in normal business operations ("First Production Use"). After the First Production Use Date, Licensee will be entitled to operate the Software Product and test the Software Product to determine if the Software Product (and the system and configuration comprised of the Software Product) operates in accordance with the Software Documentation and without Material Failure for a period of fourteen (14) days.

(b) Material Failure. If Licensee determines that a Material Failure has occurred, then Licensee must notify Contractor in writing, identifying the failure or deficiency or stating the desired changes, and Contractor shall promptly, and at no additional charge to Licensee, correct, modify, or improve any non-conforming Software Product, or re-perform any non-conforming Service, and resubmit it to Licensee within a mutually agreed upon timeframe after such notification for further acceptance testing. If Contractor corrects the Software Product and the cause of any Material Failure within a mutually agreed upon timeframe, Contractor may resubmit the Software Product for further acceptance testing by Licensee. Licensee will either accept or reject redelivered Software Product in accordance with the foregoing procedures.

(c) Final Acceptance or Rejection. If the Software Product operates without Material Failure, then Licensee shall accept the Software Product in accordance with this Agreement. Otherwise, Licensee may finally reject the nonconforming Software Product and/or the other Software Product that comprise the system or configuration that includes the nonconforming Software Product. In the event Licensee finally rejects the Software Product and the failure is not due to Licensee's conduct, Contractor will promptly refund all software license fees paid by Licensee. If Licensee does not notify Contractor of its acceptance within the acceptance testing period, the Software Product will be deemed accepted by Licensee.

5. Limited Warranty

Contractor warrants that it has title to the Software Product and the authority to grant Licensee use of the Software Product. Contractor also warrants that the Software Product will materially perform consistent with its Software Documentation for as long as Contractor continues to support the version of the Software Product in use at City of Oceanside and Licensee subscribes to Contractor's Software Maintenance and Support Services.

6. Payment; Invoice Format

Invoices furnished by Contractor under this Agreement shall be in a form acceptable to Licensee and agreed upon in advance of services rendered pursuant to this Agreement.

Payment shall be made by Licensee to Contractor at the address specified in the section entitled "Notices to the Parties."

7. Taxes

Licensee shall pay to Contractor the use tax (if any is applicable) relating to the taxable purchases of services under this Agreement at the appropriate rate. Contractor and Licensee shall cooperate to properly calculate any applicable taxes. Taxes payable under this Agreement will be added to the prices payable by Licensee to Contractor, as applicable, as a separately stated line item on each invoice, and submitted to Licensee at the time Contractor seeks payment, in accordance with this Agreement, of the applicable services. If Licensee asserts in writing that such fees are not subject to tax and provides reasonable support for its conclusions or provides Contractor with an exemption certificate, Contractor will refrain from collecting and remitting any taxes with respect to any fees charged pursuant to this Agreement.

8. Reserved

9. Qualified Personnel

Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Contractor. Contractor will comply with Licensee's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at Licensee's request must be supervised by Contractor.

10. Independent Contractor; Payment of Taxes and Other Expenses

a. Independent Contractor: Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by Licensee under this Agreement. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Nothing in this Agreement shall be construed as creating an employment or agency relationship between Licensee and Contractor or any agent or employee of Contractor.

Any terms in this Agreement referring to direction from Licensee shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. Licensee does not retain the right to control the means or the method by which Contractor performs work under this Agreement.

b. Payment of Taxes and Other Expenses: Should Licensee, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). Licensee shall then forward those amounts to the relevant taxing authority.

Should a relevant taxing authority determine a liability for past services performed by Contractor for Licensee, upon notification of such fact by Licensee, Contractor shall promptly remit such amount due or arrange with Licensee to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability).

A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of Licensee. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Contractor is an employee for any other purpose, then Contractor agrees to a reduction in Licensee's financial liability so that Licensee's total expenses under this Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that Contractor was not an employee.

11. Insurance

a. Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

(1) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident; and

(2) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

(3) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

(4) Programmers' and Systems Errors and Omissions Insurance with limits not less than \$1,000,000 per occurrence.

b. Commercial General Liability and Business Automobile Liability Insurance policies must provide the following:

(1) Name as Additional Insured Licensee, its Officers, Agents, and Employees.

(2) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

c. All policies shall provide thirty (30) days' advance written notice, except for ten days for non-payment of premium, to Licensee of cancellation mailed to the following address:

City of Oceanside
300 N Coast Highway
Oceanside, CA 92057

d. Before commencing any operations under this Agreement, Contractor must furnish to Licensee certificates of insurance, and additional insured policy endorsements, in form and with insurers satisfactory to Licensee, evidencing all coverages set forth above, and shall furnish complete copies of policies promptly upon Licensee's request.

12. Indemnification

a. **General Indemnification.** Without limiting the other indemnity provisions of this Agreement, either party shall defend the other party, its Affiliates and each of their respective officers, directors, employees and agents (the "Indemnified Parties") from and against any and all third party claims, suits or other proceedings, whether threatened or filed resulting from or based on a claim (a) that the negligence of either party's personnel caused bodily injury or damage to property, or (b) resulting from any breach by either party of this Agreement. Either party shall indemnify and hold harmless the Indemnified Parties from and against any and all liabilities, losses, damages, judgments, awards, fines, penalties, costs and expenses (including reasonable attorneys' fees and defense costs) incurred by or levied against such parties as a result of such claims.

b. **Intellectual Property Indemnification.** Contractor shall indemnify and hold Licensee harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by Licensee, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement.

If notified promptly in writing of any judicial action brought against Licensee based on an allegation that Licensee's use of the Software Product infringes a patent, copyright, or any right of a third party or constitutes misuse or misappropriation of a trade secret or any other right in intellectual property (Infringement), Contractor will hold Licensee harmless and defend such action at its own expense. Contractor will pay the costs and damages awarded in any such action or the cost of settling such action, provided that Contractor shall have sole control of the defense of any such action and all negotiations or its settlement or compromise. If notified promptly in writing of any informal claim (other than a judicial action) brought against Licensee based on an allegation that Licensee's use of the Software Product constitutes Infringement, Contractor will pay the costs associated with resolving such claim and will pay the settlement amount (if any), provided that Contractor shall have sole control of the resolution of any such claim and all negotiations for its settlement.

In the event a final injunction is obtained against Licensee's use of the Software Product by reason of Infringement, or in Contractor's opinion, Licensee's use of the Software Product is likely to become the subject of Infringement, Contractor may at its option and expense: (a) procure for Licensee the right to continue to use the Software Product as contemplated hereunder, (b) replace the Software Product with a non-infringing, functionally equivalent substitute Software Product, or (c) suitably modify the Software Product to make its use hereunder non-infringing while retaining functional equivalency to the unmodified version of the Software Product. If none of these options is reasonably available to Contractor, then the applicable Agreement or relevant part of such Agreement may be terminated at the option of either party hereto and Contractor shall refund to Licensee all amounts paid under this Agreement for the license fees of such infringing Software Product. Any unauthorized modification or attempted modification of the Software Product by Licensee or any failure by Licensee to

implement any improvements or updates to the Software Product, as supplied by Contractor, shall void this indemnity unless Licensee has obtained prior written authorization from Contractor permitting such modification, attempted modification or failure to implement. Contractor shall have no liability for any claim of Infringement based on Licensee's use or combination of the Software Product with products or data of the type for which the Software Product was neither designed nor intended to be used.

13. Limitation of Liability; Exclusive Remedies

a. **EXCEPT FOR LICENSEE'S PAYMENT AND/OR INJUNCTIVE RELIEF OBLIGATIONS, INCLUDING INDEMNITY HEREUNDER, LICENSEE SHALL HAVE NO LIABILITY TO CONTRACTOR OR ITS SUBCONTRACTORS FOR ANY BREACH OR TERMINATION OF THIS AGREEMENT.**

b. **EXCEPT FOR WILLFUL AND INTENTIONAL ACTS, AND EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT WITH RESPECT TO INDEMNITY, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES (EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), INCLUDING, BUT NOT LIMITED TO, LOST PROFITS OR SAVINGS, LOSS OF USE OF SERVICES, COST OF CAPITAL, COST OF SUBSTITUTE SERVICES, DOWNTIME COSTS, OR DAMAGES AND EXPENSES ARISING OUT OF THIRD PARTY CLAIMS.**

14. Disputes

a. Except as provided in the Termination provisions herein, Contractor or its Subcontractors shall not stop work on the Project, due to a dispute.

15. Default; Remedies

a. The following shall constitute an event of default ("Event of Default") under this Agreement:

Contractor fails or refuses to perform or observe any material term, covenant or condition contained in this Agreement, and such default continues for a period of thirty (30) days after written notice thereof from Licensee to Contractor.

b. On and after any Event of Default, Licensee shall have the right to exercise its legal and equitable remedies, including, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement.

16. Termination

a. **TERMINATION BY EITHER PARTY FOR MATERIAL BREACH.** Either party may terminate this Agreement upon written notice if the other party materially breaches this Agreement and fails to cure such breach within thirty (30) days following receipt of written notice specifying the breach in detail.

b. **EFFECT OF TERMINATION.** Termination of this Agreement shall not limit either party from pursuing other remedies available to it, including injunctive relief, nor shall such termination relieve Licensee of its obligation to pay all fees that have accrued or are otherwise owed by Licensee. The parties' rights and obligations under Sections 7, 8, 10, 12, 13, 14, 15, 16, 17, 19, 20 and 21 shall survive termination of this Agreement.

17. Handling of Programs Upon Termination

a. If a software license granted under this Agreement terminates, Licensee shall (i) cease using the applicable Software Product, Software Documentation, and related Confidential Information of Contractor, and (ii) certify to Contractor within thirty (30) days after termination that Licensee has destroyed, or has returned to Contractor, the Software Product, Software Documentation, related Confidential Information of Contractor, and all copies thereof, whether or not modified or merged into other materials.

b. Subject to the immediately preceding subsection (a), upon termination of this Agreement prior to expiration of the term specified in Section 2, this Agreement shall terminate and be of no further force or effect. Contractor shall transfer title to Licensee and deliver in the manner and at the time and to the extent, if any, directed by Licensee, any converted data, layouts, reports generated using Licensee data and other deliverables produced as

part of this Agreement. The iVOS application shall remain the property of Contractor. This subsection shall survive termination of this Agreement.

18. Reserved

19. Proprietary or Confidential Information

The parties understand and agree that, in the performance of the work or services under this Agreement or in contemplation thereof, the parties may have access to private or confidential information, which may be owned or controlled by the other party and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to either party. The parties agree that all information disclosed by either party to the other party shall be held in confidence and used only in performance of the Agreement. The parties shall exercise the same standard of care to protect such information as reasonably prudent, and as the other party would use to protect its own proprietary data.

20. Notices to the Parties

Unless otherwise indicated elsewhere in this Agreement, all written communications sent by the parties may be by U.S. mail, e-mail or by fax, and shall be addressed as follows:

To Licensee: City of Oceanside
300 N Coast Highway
Oceanside, CA 92057

To Contractor: President, Valley Oak Systems
Bishop Ranch 8,
5000 Executive Parkway, Suite 340
San Ramon, CA 94583

Any notice of default must be sent by registered mail or Federal Express, signature required.

21. Ownership of Results

a. Products. As between the parties, and subject to the terms and conditions of this Agreement and the applicable Scope of Work, VOS and its suppliers shall retain ownership of all intellectual property rights in all Software provided to Licensee ("VOS Proprietary Technology"). Licensee acquires no rights to VOS Proprietary Technology except for the licensed interests granted under this Agreement or any Scope of Work.

b. Licensee. Licensee is the sole and exclusive owner of all data and information provided to VOS by or on behalf of Licensee for processing, and any and all updates or modifications thereto or derivatives thereof made by VOS ("Licensee Data"), and all intellectual property rights in the foregoing, whether or not provided to any other party under this Agreement. Licensee Data will be Licensee's Confidential Information under this Agreement. VOS shall not use Licensee Data for any purpose other than that of rendering the Services under this Agreement, nor sell, assign, lease, dispose of or otherwise exploit Licensee Data. VOS shall not possess or assert any lien or other right against or to Licensee Data.

c. Trademarks. Nothing in this Agreement shall grant any party any ownership interest, license or other right to any other party's trade names, trademarks or service marks.

22. Subcontracting

Contractor is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is first approved by Licensee in writing. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void.

23. Assignment

The services to be performed by Contractor are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Contractor unless first approved by Licensee, which approval shall not be unreasonably withheld, by written instrument executed and approved in the same manner as this Agreement.

24. Non-Waiver of Rights

The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

25. Modification of Agreement

This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement.

26. Agreement Made in California; Venue

The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in California.

27. Construction

All paragraph captions are for reference only and shall not be considered in construing this Agreement.

28. Order of Precedence

In the event of a conflict between the specific language set forth in this Agreement and any Attachment thereto, the specific language of this Agreement shall prevail. Any exception to this order of precedence will be addressed through specific language elsewhere herein.

29. Entire Agreement

This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This contract may be modified only in writing as set forth in Section 25 above.

30. Severability

Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above, by and on behalf of said entity.

CITY OF OCEANSIDE

VALLEY OAK SYSTEMS, INC.

Steven R. Jepsen, City Manager

Brian Mack
Brian Mack, Vice President

APPROVED AS TO FORM:

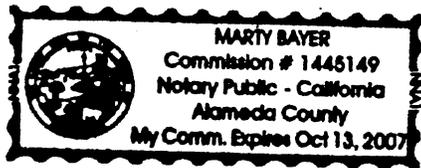
Barbara Birsinger
Barbara Birsinger, Vice President

John P. Muller
City Attorney

Date: 4-11-06

Date: 4/12/06

"The foregoing document was acknowledged before me this 11th day of April, 2006 by Brian Mack and Barbara Birsinger in my presence."



Marty Bayer
Marty Bayer
My Commission Expires Oct. 13, 2007

Appendix A

Pricing Detail and Payment Terms

Software License Fees

Base System Enterprise Single Site License (One Time Fee) \$50,000

iVOS Claims Administration System – Enterprise

Modules included in base system:

- Workers' Compensation
- General Liability
- Policy Maintenance
- Reporter
- Business Rules
- Reporter Module including:
 - Report Design Tool
 - Report Distribution Module
- iVOS Scheduler

Included Optional Modules (each is a one-time fee) \$15,000

- Laser Check Printing \$7,500
- Employee Interface \$7,500
 - Customization of Employee Interface (if necessary for the JD Edwards personnel system) is billed on a time and expense basis.
- PERI/PRDP Workers' Compensation Interface No Charge

User License Fees (One Time Fee):

User license fee based on 4 concurrent users \$14,600

- (3) Full Access Users \$3,900/user
- (1) General Liability Only Users \$2,900/user
- Unlimited Reporter-Only Users No Charge

VOS per user pricing is on a concurrent user basis. For example, Licensee may have any number of users with access to the system but only up to the total number of user licenses may be on the system at any one time, regardless of being remote or local.

Project Management

\$45,000

Resources for project management and implementation support vary based on the project requirements. The estimated range of cost for Licensee is:

- **½ Full Time Equivalent (FTE) Personnel** including Project Manager and Systems/Business Analyst

Pricing is based on a rate of \$187.50/hr. The pricing quoted is an estimate only and assumes an implementation timeframe of 3 - 4 months from the first kickoff meeting to initiation of production use of the system. Actual implementation cost will be invoiced monthly on a time and expense basis as incurred.

*Project Management for a project of this scope is usually estimated at \$60,000. However, Licensee has agreed to take on a larger portion of the project management responsibilities in order to control these costs. Therefore, a \$15,000 reduction in this estimate has been provided.

- Meetings will be held often to review the budget to keep it as close to this estimate as possible.
- VOS will not bill over the budgeted amount of implementation without the approval of Licensee.

Data Conversion

\$24,000

Resources for data conversion vary based on the project requirements. The estimated range of cost for Licensee is:

- **1 Full Time Equivalent (FTE) Personnel** including Data Conversion Specialist and Systems/Business Analyst

Pricing is based on a rate of \$150/hr. The pricing quoted is an estimate only and assumes a data conversion timeframe of 1 month. Actual data conversion cost will be invoiced monthly on a time and expense basis as incurred.

Training

\$9,000

The cost for training has been calculated based on the assumption of VOS providing training for up to 5 users. Actual Fees are based on \$1,500/day/trainer.

- General User Training - 5 attendees/class - 2 days
- Reporter Training - 5 attendees/class - 1 day
- Report Designer Training - 5 attendees/class - 1 day
- System Administrator - 2 - 5 attendees/class - 2 days

Annual Maintenance

\$17,910

Customization/Consultation Rates (if required)

Hourly rates: \$150 - \$250/hr

Valley Oak will not schedule any travel without the prior written approval of Licensee. All pricing is exclusive of travel related expenses, which are billed to Licensee on a monthly basis as incurred.

Payment Terms

Licensee agrees to pay Contractor the License Fees of \$79,600 according to the following schedule:

Payment Schedule for Software License Fees

50%Due Upon Contract Execution	\$39,800
25%Due Upon Installation of Software	\$19,900
25%Due upon Production Use	\$19,900

“Production Use” means the capability to use the system in a live environment (i.e. open new claims, make payments, set reserves, generate checks).

Licensee agrees to pay Contractor for services delivered with the Software Product according to the following schedule. All payments are due thirty (30) days after receipt of invoice.

Payment Schedule for Services

Training

Invoiced monthly for services provided

Implementation Project Management

Invoiced monthly for services provided

Customization

Invoiced monthly for services provided

Data Conversion

Invoiced monthly for services provided

Appendix B

SOFTWARE MAINTENANCE AND SUPPORT AGREEMENT

City of Oceanside is the Licensee of software provided by Contractor and listed in the Software License Agreement. This Software Maintenance and Support Agreement (“Agreement”) states that Valley Oak Systems, Inc. will provide technical support to the undersigned Licensee under the terms and conditions of this Agreement.

1. Maintenance and Support Service

(a) Contractor shall provide the technical support services necessary to remedy any operational difficulties attributable to the Software Product(s), and the Software Documentation set forth in the Software License Agreement.

(b) Contractor’s Service Level Agreement, which defines the support and services provided by Contractor, is available on Contractor’s website at www.valleyoak.com and is incorporated herein as fully set forth in this Agreement. Any modification to the Service Level Agreement shall require the written consent of Licensee, which shall not be unreasonably withheld, and shall be mutually agreed upon by Contractor and Licensee.

2. Access to Data and Computer

Licensee shall, at its own expense, maintain a VPN that is compliant with Cisco VPN clients or install and maintain remote control access software, and dedicated access for Contractor’s use in providing the maintenance services. Contractor shall at all times have reasonable access to provide the maintenance services. Contractor will perform the maintenance services in a manner that minimizes interruptions in the availability or functioning of the Software Product. If Contractor needs access to Client’s servers in order to perform maintenance or support, Contractor shall promptly notify Client, and Contractor’s response time obligations under this Agreement shall commence when Client makes reasonably available to Contractor such remote access.

3. Terms of Agreement

a. This Agreement shall be operative upon Production Use, as defined in the Software License Agreement, of the software, for a period of one year (365 days) subject to renewal or after which time it may be terminated by either party on sixty (60) days prior written notice to the other party. It is hereby agreed that Licensee may renew this Agreement, if for identical services, at a price increase guaranteed not to exceed fifteen percent (15%) of the previous price established in the previous year. The renewal of the Agreement shall take effect by Licensee paying the invoice for the new annual fee.

b. Should Licensee cease purchasing maintenance and support for the Software Product pursuant to this Maintenance and Support Agreement or otherwise (“lapse”), further available support, updates and upgrades may no longer be assured.

c. Should Licensee desire to return to Maintenance and Support following a lapse, the parties shall enter into a new, mutually acceptable agreement subject to the Service Level Agreement in effect at that time. The rates charged for maintenance and support in the new agreement shall be no higher than Contractor’s then current published standard rates for such maintenance and support together with any price increases which would have been implemented had the lapse not occurred.

4. Fees and charges

The fee for the maintenance and support services provided for herein shall initially be as per the Payment Terms referenced in the Software License Agreement. Initially, Licensee shall be invoiced for the annual maintenance fee upon Contractor’s receipt of Licensee’s written notice of its Production Use. Thereafter, the fee for maintenance and support services shall be payable in advance of each one-year period. A refund equal to the prorated maintenance fee (i.e., maintenance fee/12 times the remaining months) shall be given if this Agreement is terminated pursuant to the terms and conditions of the Software License Agreement.

5. Costs Not Included In This Agreement

If it is necessary for Contractor to provide services to Licensee outside the scope of services herein, Licensee shall provide written consent in advance for Contractor to perform such services. Licensee agrees to pay Contractor at the current standard rates for time and material, and travel expenses. An example of this type of cost is that any travel expenses incurred pursuant to this Agreement are reimbursable to Contractor within thirty (30) days after submittal.

6. Travel Expenses

Upon prior written approval of Licensee for Contractor to incur travel-related expenses, Licensee agrees to pay Contractor for all reasonable travel and other incidental expenses at actual costs incurred in connection with Contractor' performance of its duties under this Agreement after Licensee's receipt of proof the expenses were paid.