

COUNCIL MEETING  
September 19, 2006

Honorable Mayor and Members  
of the City Council  
City Hall  
Torrance, California

**Members of the City Council:**

**SUBJECT:** Communications and Information Technology and Finance - Authorize agreements for time entry software with Kronos, Inc.

Expenditure: \$155,909

### **RECOMMENDATION**

The Information Technology Director and Finance Director recommend that City Council authorize a two-year lease purchase license agreement and two-year professional services agreement with Kronos, Inc. for time entry software in the amount of \$155,909.

### **Funding**

Funding is available in the capital improvement fund (FEAP 19). Funding for software maintenance costs after the initial year are available in the Communications and Information Technology department's operating budget.

### **BACKGROUND**

Most City departments currently fill out paper timesheets and have a timekeeper enter the time into the payroll system. The City is purchasing software to provide departments with the ability to have direct online time entry. Direct online time entry will reduce administrative costs for processing the City's payroll. A number of departments already have online time entry or scheduling software. The Fire department was the first to go live with a payroll interface to their Telestaff scheduling system. CIT is working with four other departments (Community Services, Fleet - General Services, Police, and Transit) on payroll interfaces to their scheduling or work management systems.

### **ANALYSIS**

This project will reduce the amount of resources needed to manage and process payroll time entry by automating current manual processes such as timesheets, approvals, and leave request tracking. The City's project team evaluated two options: upgrade the existing payroll time entry module, or purchase a new time entry system. The option to upgrade the existing module was not viable as the vendor is focused on payroll processing and does not have plans to enhance their time entry module. Custom development is available but the cost is high without the benefits of future updates. Existing Now Solutions' clients who need complex time entry automation are using separate systems.

The City's project team moved on to evaluating two systems that other cities were using. Kronos was not the lowest license cost vendor but it was the vendor that provided the required

functionality within its base system. The lower cost vendor did not provide batch scheduling, initial timesheet data population, automated ability to filter unapproved time entry, integration with our exchange email system, a report writer for reports, and streamlined approval capabilities. Based on the City's project team's assessment, the additional costs and customizations needed for a successful implementation would be costly and require long-term customization support.

After evaluating both systems, the project team made a site visit to Huntington Beach to discuss their use of Kronos. The Kronos system met their needs and was easy to use and support. The Kronos time entry software met all of our major requirements and was selected by the City's project team. The implementation of Kronos will reduce customization within our current Human Resources and Payroll system, provide online timesheet entry, reduce manual corrections, provide online timesheet approvals, and provide improved reporting.

It is recommended that the City Council authorize a two-year lease purchase license agreement and a two-year professional services agreement with Kronos, Inc. for time entry software in the amount of \$155,909.

Respectfully submitted,

  
 RICHARD SHIGAKI  
 Information Technology Director

CONCUR:



ERIC TSAO  
 Finance Director

CONCUR:



LeRoy J. Jackson  
 City Manager

Attachments:

- A) Kronos Inc. Master Lease Agreement –Terms and Conditions
- B) Addendum to Kronos Inc. Master Lease Agreement - KnowledgePass Education Subscription
- C) Kronos Lease Schedule to Master Lease Agreement (Limited Distribution)
- D) Kronos Professional Services Engagement Estimate (Limited Distribution)

**Kronos Incorporated**  
**297 Billerica Road**  
**Chelmsford, MA 01824**  
**Phone: (978)250-9800**

**KRONOS INCORPORATED MASTER LEASE AGREEMENT - Rev KR-071505**  
**Master Lease Agreement #**

**TERMS AND CONDITIONS**

CUSTOMER: **City of Torrance** CONTACT PERSON: \_\_\_\_\_  
 PRINCIPAL PLACE \_\_\_\_\_ TELEPHONE NO.: \_\_\_\_\_  
 OF BUSINESS: \_\_\_\_\_

Kronos Incorporated ("Kronos") and Customer agree that the following Master Lease Agreement ("Agreement") terms and conditions will apply to any Products (as defined in Section 1.3) or services leased by Kronos to Customer, referenced on any Lease Schedule ("Schedule") executed by the parties.

**1. Lease Term**

**1.1 Master Lease Agreement Term**

This Agreement is effective from the date on which it is executed by Kronos and shall continue in full force and effect until all the obligations hereunder and in any Schedule hereto are fulfilled, unless sooner terminated as provided herein. Kronos may, upon thirty (30) days' prior written notice, modify the terms and conditions of this Agreement. Provided however, such modifications shall only be applicable to any subsequent Schedule as mutually agreed to and signed by the parties following such thirty (30) day period.

**1.2 Lease Schedule Commencement Date; Term**

The term of any Schedule shall commence sixty (60) days after the date of shipment of the Products to Customer ("Lease Schedule Commencement Date") and will continue from the first day of the following month for the number of complete calendar months specified in such Schedule. No Schedule shall be cancelable or terminable by Customer before the end of its stated term, except as provided herein.

**1.3 Products; Delivery**

The Products consist of the Equipment and Software listed on the Schedule annexed hereto and incorporated by reference herein and on any additional Schedules for other Products, each of which will be deemed a part hereof and incorporate the terms hereof. Delivery terms are as stated on the applicable Schedule ("Delivery").

**1.4 Shipment and Receipt Confirmation**

At Kronos' request, Customer shall furnish Kronos with a confirmation statement in a form acceptable to Kronos, for the Products supplied under each Schedule hereto, acknowledging (a) receipt of the Products in good condition, and (b) the lease commencement date.

**1.5 Acceptance**

For Customer's initial lease of each Equipment and Software product Kronos shall provide an acceptance test period (the "Test Period") that commences upon installation, provided that at the time of installation Customer is current in all payments then due and owing under this Agreement. Installation shall be defined as: a.) the Equipment, if any, is mounted; b.) the Software is installed on the data base server(s) and/or personal computer(s); and c.) implementation team training is complete. During the Test Period, Customer shall determine whether the Equipment and Software meet the Kronos published electronic documentation ("Specifications").

The Test Period shall be for 30 days. If Customer has not given Kronos a written deficiency statement specifying how the Equipment or Software fails to meet the Specifications ("Deficiency Statement") within the Test Period, the Equipment and Software shall be deemed accepted. If Customer provides a Deficiency Statement within the Test Period, Kronos shall have 30 days to correct the deficiency, and Customer shall have an additional 30 days to evaluate the Equipment and Software.

If the Equipment or Software does not meet the Specifications at the end of the second 30 day period, either Customer or Kronos may terminate this Agreement. Upon any such termination, Customer shall return all Equipment and Software to Kronos, and Kronos shall refund any lease payments paid by Customer to Kronos under this Agreement, except for Professional Services costs incurred by Kronos, if any. If the lease payments paid to Kronos by Customer are less than the amount owed to Kronos for Professional Services, Customer shall pay Kronos such balance. Neither party shall then have any further liability to the other for the products that were the subject of the Acceptance Test.

**2. Products**

**2.1 Installation, Use, Alterations and Location**

Customer agrees that the Products shall be installed, used and maintained in compliance with Kronos' Specifications and with all laws, rules and regulations of the jurisdiction where the Products are located. Customer shall not make any alterations or add attachments to the Products nor shall Customer remove the Products from the place of original installation without Kronos' prior written consent. Kronos shall have the right to enter Customer's premises to inspect the Products during normal business hours. Kronos reserves the right, at its sole discretion and at no additional cost to Customer, to replace any Products with newer technology Products, as long as the newer Products provide at least the same level of functionality as those being replaced.

**Kronos Incorporated**  
**297 Billerica Road**  
**Chelmsford, MA 01824**  
**Phone: (978)250-9800**

## 2.2 Title

Except when otherwise noted on a Schedule, all Equipment shall remain the property of Kronos unless and until the appropriate Purchase Option is exercised and paid for in full. All Equipment is, and at all times shall remain, separate items of personal property, notwithstanding their attachment to other equipment or real property. Customer shall not sell or otherwise encumber the Products.

## 2.3 Risk of Loss

Upon Delivery, Customer shall bear all risk of loss, damage or destruction of the Products, whether or not covered by insurance. In the event of loss or damage, Customer shall promptly notify Kronos, and shall at Kronos' option, (i) place the Product in good condition and repair, or (ii) replace the Product. No loss, theft or damage after shipment of the Products to Customer shall relieve Customer from its obligations under this Agreement.

## 2.4 Insurance

Customer shall provide at its expense, (i) insurance against the loss, theft or damage of the Products for the full replacement value of the Products, and (ii) insurance against general liability and property damage. Upon Kronos' request, Customer shall provide Kronos with a certificate of insurance indicating that such coverage is in effect, naming Kronos or its assignee as loss payee and/or additional insured, as may be requested. Notwithstanding the above, the above insurance requirement shall be met provided that Customer is self-insured, and remains self-insured during the term of this Agreement.

## 2.5 Sublease

Customer may not sublease any of the products leased hereunder or assign this Agreement without Kronos' prior written consent.

## 3. Total Periodic Lease Charges; Taxes; Payments; Purchase Option

### 3.1 Total Periodic Lease Charges

Customer understands and agrees that the lease fees due hereunder are due and payable to Kronos for each period of the lease term specified in each Schedule, in advance, on the first day of each period ("Total Periodic Lease Charges"). Such fees shall be absolute and unconditional and shall not be subject to any abatement, reduction, set off, counterclaim, interruption or recoupment for any reason whatsoever. Customer shall pay the Total Periodic Lease Charges, and any applicable sales and use tax reflected on an invoice, to Kronos at the address specified in such invoice or to such other place as Kronos may direct. If Customer fails to pay any amount when due under this Agreement, Customer shall pay as an administrative and late charge, a fee equal to five percent (5%) of that amount. In addition, Customer shall pay interest at the rate of one and one half percent (1½%) per month (but not to exceed the maximum allowed by law) on such delinquent amount until the date of payment. Customer's obligations under this subsection shall survive the expiration or termination of this Agreement.

### 3.2 Taxes

Except for sales and use tax reports and returns which shall be filed by Kronos, Customer shall promptly file when due any necessary reports and returns required by law to be filed and to pay when due, directly to the appropriate taxing authority, any taxes required by law to be paid by Customer based on this Agreement. Kronos shall invoice Customer for any applicable sales and use tax amounts, and Customer agrees to remit such amounts to Kronos within 30 days of receipt.

If Kronos has retained title to the Equipment pursuant to Section 2.2, then Kronos will file applicable personal property tax returns and will pay any applicable personal property taxes to the appropriate taxing jurisdiction. Customer agrees to reimburse Kronos for any such personal property taxes.

Customer's obligations under this section shall survive the expiration of this Agreement.

### 3.3 Purchase Option

If Customer elects to exercise the Purchase Option provided in any Schedule, then at the termination of the applicable Schedule, and provided Customer is not in default under this Agreement, Customer may purchase the leased Equipment and a license to use the leased Software for the Purchase Option amount set forth on the corresponding Schedule. Title to the Equipment and a license to use the Software which are subject to the Purchase Option shall pass upon payment in full of the Purchase Option price and all other amounts due.

### 3.4 Advance Rent

If any Schedule provides for Advance Lease Fees, such Advance Lease Fees shall be applied to the months specified in such Schedule.

### 3.5 Security Deposit

If any Schedule provides for a Security Deposit, then Customer hereby agrees to deposit with Kronos the Security Deposit to more fully secure its lease payments and all other obligations to Kronos hereunder. Such Security Deposit shall bear no interest, and may be commingled with other funds of Kronos. Upon termination of this Agreement, and satisfaction of all of Customer's obligations, any remaining Security Deposit shall be returned to Customer.

## 4. Software License

### 4.1 License

From the date of shipment through the end of the term specified on the Schedule, Kronos grants to Customer a non-exclusive, perpetual, (except as provided herein and after full payment of all lease obligations including the purchase option by Customer), nontransferable license to use the Software listed on such Schedule, subject to the terms herein. Kronos owns or has the right to license the Software. The Software and Software documentation are confidential and may not be disclosed to a third party without Kronos' written consent. The Software contains proprietary trade secret technology. Unauthorized use and copying of such Software is prohibited by law, including United States and foreign copyright law. The Total Periodic Lease Charges paid by Customer which

**Kronos Incorporated**  
**297 Billerica Road**  
**Chelmsford, MA 01824**  
**Phone: (978)250-9800**

are attributable to the license for the Software constitute a license fee that entitles Customer to use the Software as set forth herein. The License is subject to all of the terms of this Lease, including those set forth below:

#### 4.2 Fee Based Limitations

Customer recognizes and agrees that the license to use the Software is limited, based upon the amount of the Total Periodic Lease Charges paid by Customer which are attributable to the license for the Software. Limitations, which are set forth on the Lease Schedule, may include the number of employees, simultaneous or active users, Software product modules, Software features, computer model and serial number and/or the number of terminals to which the Software is permitted to be connected. Customer agrees to: 1) use the Software only for the number of employees, simultaneous or active users, computer model and serial number and/or terminals permitted by the applicable Total Periodic Lease Charges attributable to the license for the Software; and 2) use only the product modules and/or features permitted by the applicable Total Periodic Lease Charges attributable to the license for the Software; and 3) use the Software only in support of Customer's own business. Customer agrees not to increase the number of employees, simultaneous or active users, terminals, product modules, features, or to upgrade the model, as applicable, unless and until Customer pays the applicable fee for such increase/upgrade. Customer may not relicense or sublicense the Software to, or otherwise permit use of the Software (including timesharing or networking use) by any third party. Customer may not provide service bureau or other data processing services that make use of the Software without the express prior written consent of Kronos.

#### 4.3 Object Code Only

Customer may use the computer programs included in the Software (the "Programs") in object code form only, and shall not reverse compile, disassemble or otherwise convert the Programs into uncompiled or unassembled code.

#### 4.4 Permitted Copies

Customer may copy the Programs only as reasonably necessary to load and execute the Programs and for backup purposes only. All copies of the Programs or any part thereof, whether in printed or machine readable form and whether on storage media or otherwise, are subject to all the terms of this license, and all copies of the Programs or any part of the Programs shall include the copyright and proprietary rights notices contained in the Programs as delivered to the Customer.

#### 4.5 Updates

In the event that Kronos supplies Service Packs, Point Releases and Major Releases (including legislative updates if available) the Software, (collectively referred to as "Updates"), such Updates shall be part of the Software and the provisions of this license shall apply to such Updates and to the Software as modified thereby.

#### 4.6 iSeries Software

If Customer is licensing Kronos iSeries Central Software, the following additional terms shall apply: Upon Customer's request and provided Customer is not in default hereunder or under any Schedule, Kronos shall license to Customer, for Customer's internal use only, the source code for the Kronos iSeries Central application programs licensed to Customer under the applicable Schedule. All of the terms and conditions specified in this Agreement for object code shall also apply to the source code. Customer acknowledges and agrees that the Software, all source code, object code and algorithms relating thereto, all user interface screens generated by the Software and source code, and all copyright, trade secret and other proprietary rights therein, are and shall remain the sole and exclusive property of Kronos. Customer agrees that it shall not disclose or otherwise make the Software available to third parties unless such disclosure is necessary for Customer's permitted use of the Software. Furthermore, Customer must obtain Kronos' written consent to any such disclosure and any such third party must agree in writing to be bound by the terms contained herein.

#### 4.7 Microsoft SQL Server Software

If Customer is sublicensing Microsoft SQL Server Software, the following additional terms shall apply: The Microsoft SQL Server Software being sublicensed hereunder ("SQL") as part of the Kronos Software is "Runtime-Restricted Use" software; as such, SQL may only be used to run the Software. SQL may not be used either (i) to develop and/or (ii) in conjunction with new applications, databases or tables other than those contained in the Software. The foregoing, however, does not prohibit Customer from using a tool to run queries or reports from existing tables and/or from using a development environment or workbench, which is part of the Software to configure or extend such Software. Notwithstanding any provision of this Agreement, Customer may only transfer SQL as part of the Software. Customer also agrees to use the Microsoft SQL Server software only on the servers, processors or other electronic devices which the Software is permitted to be connected.

#### 4.8 Training Materials

If Customer is licensing Training Materials and/or purchasing the Kronos Train-the-Trainer (KTT) Program (the "Certification Program"), the following additional terms shall apply: "Training Materials" shall mean the instructor guide(s), student guide(s), job aids, recorded executable files and/or tutorials developed by Kronos for one or more Kronos products. Kronos grants to Customer a non-exclusive, nontransferable license to use the Training Materials. Customer recognizes and agrees that: i.) the Training Materials constitute confidential and proprietary information of Kronos; ii) the Training Materials are copyrighted by Kronos; iii.) the license to use the Training Materials is limited based upon the amount of the license fee paid by Customer; iv.) Customer may not copy or reproduce the Training Materials in excess of the number of copies permitted by the applicable license fee; v.) Customer may not transmit, distribute or disclose the Training Materials to any third party, unless agreed to in writing by Kronos; vi.) Customer's license to use the Training Materials is granted solely for the purpose of permitting Customer to train Customer's employees and no other use of the Training Materials is permitted; and vii) Customer may not edit, modify, revise, amend, change, alter, customize or vary the Training Materials in any manner without the written consent of Kronos. Certification under the Certification Program is valid for two (2) years after successful completion of the Certification Program, applies only to the point release of the Software for which the Certification Program is taken, and covers only the Customer employee who completes the Certification Program.

### 5. Services

#### 5.1 Software Support Options

Customer may select from the following Software support options: Silver, Gold (or Gold Plus), and Platinum (or Platinum Plus) support ("Service Type"), each providing different service coverage periods and/or service offerings, as specified herein ("Service Offerings"), and in the Kronos Support Service Policies (see Section 5.13 below). Customer must procure the same Service Type for

**Kronos Incorporated**  
**297 Billerica Road**  
**Chelmsford, MA 01824**  
**Phone: (978)250-9800**

all of the Software specified on the Lease Schedule, (however, if Customer is procuring support services for Visionware Software, Customer may only procure Gold Service Type for the Visionware Software). All Updates shall be provided via remote access.

5.2 Software Support Service Offerings Provided for all Service Types (Silver, Gold, Gold Plus, Platinum or Platinum Plus)

Customer shall be entitled to receive:

- a. Updates for the Software (not including any Software for which Kronos charges a separate license fee) provided that Customer's operating system and equipment meet minimum system configuration requirements, as reasonably determined by Kronos. If Customer requests Kronos to install such Service Packs, Point Releases and/or Major Releases (including legislative updates, if available) or to provide retraining, Customer agrees to pay Kronos for such installation or retraining at Kronos' then-current time and materials rate.
- b. Telephone and/or electronic access to the Kronos Global Support Center for the logging of requests for service during the Service Coverage Period.
- c. Web-based support including access to Software documentation, live online help, FAQ's, access to Kronos knowledge base, Customer forums, e-case management and e-mail support. Such offerings are subject to modification by Kronos. Current offerings can be found at [www.kronos.com/customer](http://www.kronos.com/customer).
- d. Remote diagnostic technical assistance to resolve Software functional problems and user problems during the Service Coverage Period.

5.3 Software Support Services Offerings Additional to Those Specified Above Provided by Service Type

- a. Gold and Platinum: Technical advisories, learning quick tips, brown bag seminars, technical insider tips, SHRM e-learning, HR Payroll Answerforce and service case studies. Such offerings are subject to modification by Kronos without notice. Current offerings can be found at [www.kronos.com/customer](http://www.kronos.com/customer).
- b. Gold Plus: Customers procuring Gold support service may procure, for an additional fee, the Gold Plus services of a dedicated, but not exclusive, Kronos technical account manager ("Technical Account Manager") to provide on-going account management support to Customer. Customer shall designate up to one primary and one secondary backup technical contact ("Technical Contacts") to be the sole contacts with the Technical Account Manager. Customer is required to place primary Technical Contacts through Kronos certification support training for the Software covered under this Agreement at Customer's expense.
- c. Platinum: A one day per year onsite visit to be performed at the Customer location where the Software is installed. During this onsite visit, a Kronos application consultant shall work with Customer to identify ways to help Customer increase functionality or maximize utilization of the Software in Customer's specific environment, provided Customer's annual Software support fee is at least \$5,000 per year. Customer must be utilizing the then-current version of the Software. Travel time and expenses are not included and shall be charged to Customer at Kronos' then current rate. Platinum Customers also receive two hour or less response time for all calls placed to Kronos Global Support, regardless of the Priority level.
- d. Platinum Plus: Customers purchasing Platinum support services may purchase, for an additional fee, the Platinum Plus services of a dedicated, but not exclusive, Kronos Technical Account Manager. Customer shall designate up to two primary and three secondary backup Technical Contacts to be the sole contacts with the Technical Account Manager. Upon request, Customer may designate additional and/or backup Technical Contacts. Customer is required to place all primary Technical Contacts through Kronos certification support training for the software covered under this Agreement at Customer's expense.

5.4 Equipment Depot Exchange Support Options

If Customer selects depot exchange support services, the provisions of this Section 5.4 shall apply. Upon the failure of an installed Product, Customer shall notify Kronos' Global Support organization at 1-800-394-4357 of such failure. Global Support will provide remote fault isolation and attempt to resolve the problem. Those failures determined by Global Support to be Product related shall be dispatched to the Depot Repair Center by Global Support. Hours of operation for the Depot Repair Center are Monday through Friday 8:00 A.M. to 5:00 P.M. EST, excluding Kronos holidays. Kronos will provide a replacement for the failed Product on an "advanced exchange" basis, utilizing a carrier of Kronos' choice. Replacement Product will be shipped the same day, for next business day delivery to Customer, if such request is received prior to 3:30 P.M. EST. REPLACEMENT PRODUCTS(S) MAY BE NEW OR RECONDITIONED. Customer shall specify the address to which the Product is to be shipped, and any special shipping or insurance instructions. All shipments will include a Return Shipping Label designating Kronos Depot, 300 Billerica Road, Chelmsford, Massachusetts 01824, as the recipient. Customer agrees that it shall return failed Products promptly as the failures occur and that it shall not hold failed Equipment and send failed Product to Kronos in "batches" which shall result in a longer turnaround time and surcharge to Customer.

Customer, upon receipt of the replacement Product from Kronos, shall package the defective Product in the materials provided by Kronos, with the return label supplied. Failed Product not received by Kronos within ten (10) calendar days shall be billed to the Customer at the prevailing Kronos List Price. All returned Product becomes the property of Kronos. Failed Product returned between calendar days eleven (11) through thirty (30) will be subject to an additional \$150 processing fee. Kronos will not accept Product after thirty (30) days, and Customer shall not be issued any credit for any attempted return. All Products shall be delivered to Customer FOB shipping point. Title to and risk of loss for the Products shall pass to Customer upon delivery to the carrier by Kronos. All shipments to Kronos shall be made "freight prepaid" using the Return Shipping Label and shipping instructions as specified by Kronos. Kronos will select the carrier to be utilized under the program.

5.5 Equipment Depot Repair Support Option

If Customer selects depot repair support services, the provisions of this Section 5.5 shall apply. It is Customer's obligation to purchase and retain, at Customer's location and at Customer's sole risk and expense, a sufficient number of spare products ("Spare Products") to allow Customer to replace failed Products at all Customer locations. Upon failure of an installed Product, Customer shall install a Spare Product to replace the failed Product. In addition, during the hours of 8:00 a.m. to 5:00 p.m. EST, Monday through Friday,

**Kronos Incorporated**  
**297 Billerica Road**  
**Chelmsford, MA 01824**  
**Phone: (978)250-9800**

exclusive of Kronos holidays, Customer shall call Kronos Global Support Organization at 1-800-394-4357 to notify them of such failure. Global Support will provide remote fault isolation and attempt to resolve the problem. Those failures determined by Global Support to be Product related shall be dispatched to the Depot Repair Center by Global Support. Customer shall be provided with a Return Authorization number for the failed Product. Customer shall also specify the address to which the repaired Product should be shipped, and any special shipping or insurance instructions. Customer shall then return, at its expense and its risk of loss or damage, the failed Product, with the required Return Authorization Number to the Kronos Depot, 300 Billerica Road, Chelmsford, Massachusetts 01824. Customer shall make every reasonable effort to return the failed Product using the same packing materials in which the original Product was sent. Customer agrees that it shall return failed Products promptly as the failures occur and that it shall not hold failed Equipment and send failed Product to Kronos in "batches" which shall result in a longer turnaround time and surcharge to Customer.

Upon receipt of the failed Product, Kronos shall repair the failed Product and return it, within ten (10) business days after receipt, to Customer. Unless specified otherwise by Customer at the time of Customers' call for a Return Authorization Number, Kronos shall ship the repaired Product by regular surface transportation to the Customer's address specified on the Order Form.

All Products shall be delivered to Customer F.O.B. shipping point, Title to and risk of loss for the Products shall pass to Customer upon delivery to the carrier by Kronos. All shipments by Kronos shall be made "freight prepaid", with shipping and handling charges billed to Customer by Kronos. In the absence or prior shipping instructions, Kronos will select the carrier on behalf of Customer, but shall not assume any liability for shipment.

#### 5.6 Customer's Responsibilities

For both depot exchange or depot repair options, Customer agrees to:

- (a) Maintain the Equipment in an environment conforming to Kronos' established specifications for such Equipment;
- (b) Deinstall all failed Equipment and install all replacement Equipment in accordance with Kronos' published installation guidelines; and
- (c) Replacement Equipment may be new or reconditioned. Ensure that the Equipment is returned to Kronos properly packaged.

#### 5.7 Delivery of Repaired Equipment

All Equipment repaired by Kronos under this Section 5 shall be delivered to Customer in accordance with the delivery terms applicable to each repair option as described above.

#### 5.8 Addition of Software or Equipment

Additional Software or Equipment leased by Customer shall be added to this Agreement at the same support option as the Software or Equipment originally specified on the lease schedule. Customer agrees to pay the charges for such addition and any such addition shall be automatically renewed as provided in these terms.

#### 5.9 Responsibilities of Customer

Customer agrees (a) to provide Kronos personnel with full, free and safe access to Software for purposes of support, including use of data communication facilities, if required; (b) to maintain and operate the Software in an environment and according to procedures which conform to Kronos' specifications; and (c) not to allow support of the Software by anyone other than Kronos without prior written authorization from Kronos.

#### 5.10 Repair Warranty

Kronos warrants that all repairs performed under Section 5 of this Agreement shall be performed in a professional and competent manner.

**ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF FITNESS FOR ANY PARTICULAR PURPOSE AND MERCHANTABILITY, ARE EXCLUDED BY AGREEMENT OF THE PARTIES.**

#### 5.11 Limitation of Remedies

Customer's exclusive remedy, and the sole liability of Kronos for any breach of the Warranty specified in Section 5.10 above shall be repeat performance of any support service required under this Agreement. Kronos agrees to be liable for tangible property damage or personal injury caused solely by the negligence or willful misconduct of its support service employees.

#### 5.12 Support Term and Renewal

Support service shall commence on the Software Delivery date and shall continue for the term of support coverage set forth on the Lease Schedule. At the completion of the term of support coverage set forth on the Lease Schedule, support services shall automatically renew for additional one year terms under the terms and conditions specified in this Section 5, unless either party notifies the other in writing within thirty (30) days of the support renewal invoice date. Such renewal shall be based on the support services fee set forth on the Lease Schedule and shall be for an amount equal to the pro-rated annual value for such support services, plus a 5% increase for each year of the support coverage period.

#### 5.13 Kronos Support Service Policies

Kronos' then current Support Services Policies shall apply to all Support Services purchased and may be accessed at: <http://www.kronos.com/Support/SupportServicesPolicies.htm> ("Support Policies"). In the event of a conflict between the Support Policies and this Agreement, the terms of this Agreement shall prevail.

**Kronos Incorporated**  
**297 Billerica Road**  
**Chelmsford, MA 01824**  
**Phone: (978)250-9800**

#### 5.14 Professional Services And Educational Services

##### a). Estimated Professional Services Resources and Hours

Customer recognizes and agrees that the Kronos Professional Services resources ("PS Resources") and the hours defined within any Professional Services Estimate ("PSE") or similar statement of work document that may be provided by Kronos have been estimated based upon: (i) the preliminary information provided by Customer; and, (ii) Customer fulfilling its obligations as defined in the PSE or similar statement of work. Additional PS Resources and/or hours may be required to complete the implementation as a result of newly discovered information, Customer's delay in fulfilling its obligations, or a change in the scope of the project. Kronos will review with Customer the PS Resources and the number of hours Kronos anticipates will be required for the completion of the work after assessment of Customer's requirements. Kronos will monitor the PS Resources and hours used as the work progresses, and will advise Customer through a change order if more are required. The applicable rate for each PS Resource is set forth in the PSE and/or the Order Form and shall remain in effect for 12 months from the effective date of the PSE or similar statement of work document. Pricing for professional services associated with the implementation of add-on Software licensed subsequent to an initial PSE will be priced at the then-current Kronos professional service rates.

Customer may finance the estimated hours by including the estimated cost of the services to be provided on a Schedule. If more hours are required to complete the implementation than were estimated, Kronos will invoice Customer for incremental professional services provided at the PS Resource Rates identified in the PSE and Customer Agrees to pay such charges within 30 days after receipt of invoice by Kronos.

##### b). Educational Services; Training Points

Customer agrees to purchase the quantity of Kronos "training points" indicated on the Schedule at the rate quoted (the "Training Points"). Purchased Training Points may be redeemed for an equivalent value of instructor-led training session offered by Kronos. Available instructor-led sessions are listed at <http://customer.kronos.com> and each session has the Training Points value indicated. Training Points may be redeemed at any time within 12 months of the date of the applicable Lease Schedule, at which time they shall expire. Training Points may not be exchanged for other Kronos products and/or services.

##### c). Travel Expenses

Customer agrees to reimburse Kronos for all reasonable and necessary travel incurred by Kronos in the performance of any professional and/or educational services, provided that such expenses comply with the then current Kronos' Travel and Expense Policies. Customer further agrees to pay any travel expenses such as airfare, lodging, meals and local transportation incurred by Kronos to deliver purchased professional services and/or educational services in accordance with Kronos' Travel and Expense Policies. Customer will be billed by Kronos for such travel expenses and payment thereof shall be due net 30.

##### d). Warranty

Kronos warrants that all professional and educational services performed under this Agreement shall be performed in a professional and competent manner. In the event that Kronos breaches this warranty, and Customer so notifies Kronos within 90 days of completion of the Services, the Customer's sole remedy and Kronos' exclusive liability shall be to reperform the deficient services.

##### e). Kronos Professional/Educational Services Policies

Kronos' then current Professional/Educational Service Policies shall apply to all Professional and/or Educational Services purchased and may be accessed at: <http://www.kronos.com/Support/ProfessionalServicesEngagementPolicies.htm>. ("Professional Services Policies"). In the event of a conflict between the Professional Services Policies and this Agreement, the terms of this Agreement shall prevail.

#### 6. Equipment and Software Media Warranty

Kronos warrants that all Kronos Equipment and Software media shall be free from defects in material and workmanship for a period of ninety (90) days from Delivery. In the event of a breach of this warranty, Customer's exclusive remedy shall be Kronos' repair or replacement of the deficient Equipment and/or Software media, at Kronos' option, provided that Customer's use, installation and maintenance thereof have conformed to the Specifications. This warranty is extended to Customer only and shall not apply to any Equipment, (or parts thereof) or Software media in the event of: (1) damage, defects or malfunctions resulting from misuse, accident, neglect, tampering, (including modification or replacement of any Kronos components on any boards supplied with the Equipment), unusual physical or electrical stress or causes other than normal and intended use; (2) failure of Customer to provide and maintain a suitable installation environment, as specified in the Specifications; or (3) malfunctions resulting from the use of badges or supplies not approved by Kronos.

EXCEPT AS HEREIN EXPRESSLY STATED, THE PRODUCTS ARE PROVIDED "AS IS," AND THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE, MADE OR AUTHORIZED TO BE MADE WITH RESPECT TO ANY PRODUCTS OR SERVICES FURNISHED HEREUNDER. KRONOS DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

If Customer is licensing Workforce Payroll Software, Customer acknowledges and agrees that the following additional warranty exclusions shall apply: (i) Customer is solely responsible for the content and accuracy of all reports and documents prepared in whole or in part by using the Software, (ii) using the Software does not release Customer of any professional obligation concerning the preparation and review of such reports and documents, (iii) Customer does not rely upon Kronos, Best Software, Inc, or the Software for any advice or guidance regarding compliance with federal and state laws or the appropriate tax treatment of items reflected on such reports or documents, and (iv) Customer will review any calculations made by using the Software and satisfy itself that those calculations are correct.

**Kronos Incorporated**  
**297 Billerica Road**  
**Chelmsford, MA 01824**  
**Phone: (978)250-9800**

## 7. Default by Customer; Remedies Upon Default

### 7.1 Default by Customer

Customer shall be deemed in default if Customer (a) defaults for ten (10) days in the payment of any amount due hereunder or under any support agreement with Kronos for Products leased hereunder, (b) defaults for ten (10) days after notice in the performance of any other of its obligations under this Agreement or under any support agreement with Kronos for Products leased hereunder, (c) files or has filed against it any proceeding in bankruptcy or similar laws for the relief of debtors, (d) becomes insolvent or unable to pay its debts when they mature, (e) has any substantial part of Customer's property become subject to any levy, seizure, assignment, application or sale for or by any creditor or governmental agency, (f) admits in writing its inability to pay its debts as they mature, (g) permits the Products to become subject to any lien or other encumbrance, (h) except as provided in Section 2.5, attempts to assign its rights and obligations under this Agreement, which assignment shall be void, or (i) Customer sells or disposes of all or substantially all of its assets.

### 7.2 Remedies Upon Default

If Customer is in default, Kronos may, at its option and upon written notice to Customer, (a) terminate this Agreement, whereupon any interests of Customer in the Products shall cease, but Customer shall remain liable as hereinafter provided, (b) declare all amounts due and to become due, immediately due and payable, (c) terminate or suspend support service, and (d) whether or not this Agreement is terminated, take immediate possession of any or all of the Products wherever situated. In order to protect the interests and reasonably expected profits and bargains of Kronos, in the event of any such termination, Kronos has the option to (i) retain all Total Periodic Lease Charges and other sums heretofore paid by Customer, including Advance Lease Fees and Security Deposits, if any, (ii) re-lease all or any part of the Products upon such terms as Kronos shall elect, or sell all or any part of the Products at public or private sale and either for cash or on credit, (iii) recover from Customer any additional Total Periodic Lease Charges which would have accrued and become due for the balance of the term of this Agreement, and (iv) recover from Customer any and all damages which Kronos shall sustain by reason of breach by the Customer of any of the terms of this Agreement. In addition, Kronos shall be entitled to recover a reasonable sum for attorney's fees and such expenses as shall be expended or incurred in the seizure, rental or sale of the Products, including a late payment charge of one and one half percent (1 1/2%) per month but not in excess of the lawful maximum on the unpaid balance. These remedies are cumulative and in addition to all other rights and remedies available to Kronos under this Agreement, by operation of law or otherwise. In the event of termination, at Kronos' option, (i) Customer shall deliver the Products, including all copies of the Software to such location as Kronos shall designate, freight prepaid, or (ii) the local Kronos service office or its designee shall disconnect, crate and return the Products, including all copies of the Software to Kronos, at Customer's expense. Products will be returned to Kronos in the same condition as when received, reasonable wear and tear excepted.

## 8. Limitation of Liability

CUSTOMER'S EXCLUSIVE REMEDIES AND KRONOS' SOLE LIABILITY FOR ANY KRONOS BREACH OF THIS AGREEMENT ARE EXPRESSLY STATED HEREIN. EXCEPT AS PROVIDED IN THIS AGREEMENT, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE, ARE EXCLUDED.

EXCEPT FOR KRONOS' INTELLECTUAL PROPERTY INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 10.9 BELOW, IN NO EVENT WILL KRONOS' OR ITS PARENTS', SUBSIDIARIES', AFFILIATES' OR THIRD PARTY LICENSOR'S LIABILITY TO CUSTOMER, HOWSOEVER CAUSED, EXCEED ONE (1) YEAR OF THE TOTAL PERIODIC LEASE CHARGES FOR THE LEASE OF THE PRODUCTS FROM WHICH THE LIABILITY RESULTED, AND IN NO EVENT WILL KRONOS OR ITS PARENTS, SUBSIDIARIES, AFFILIATES OR THIRD PARTY LICENSORS BE LIABLE FOR LOST PROFITS, LOST DATA OR ANY OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THIS AGREEMENT WHETHER SUCH CLAIM IS BASED ON WARRANTY, CONTRACT, TORT OR THE EXISTENCE, FURNISHING, FUNCTIONING OR CUSTOMER'S USE OF, OR INABILITY TO SO USE, ANY EQUIPMENT, SOFTWARE OR SERVICES PROVIDED FOR IN THIS AGREEMENT.

## 9. Notices

All notices shall be given by fax, overnight courier or by regular U.S. mail or certified or registered mail, postage prepaid and, if mailed, shall be deemed given three (3) business days after mailing, or if by other permitted means, upon receipt. For Customer, such notice shall be sent to the Chief Financial Officer, at the address on the face of this Agreement, unless otherwise specified in writing by Customer to Kronos. For Kronos, such notice shall be sent to its corporate headquarters, (attention, Leasing Department), as specified on the applicable Schedule. The parties agree to accept delivery of any notice.

## 10. General

### 10.1 Entire Agreement

This Agreement, including the Schedule and any additional Schedules entered into after the date hereof, contains the entire agreement of the parties with respect to its subject matter and supersedes all existing agreements and all other oral, written or other communications between them concerning its subject matter. This Agreement shall not be modified in any way except by a writing signed by both parties.

### 10.2 Illegality or Invalidity

If any provision of this Agreement (or any portion thereof) shall be held to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remainder of this Agreement shall not be in any way affected or impaired thereby.

### 10.3 Assignment

**Kronos Incorporated**  
**297 Billerica Road**  
**Chelmsford, MA 01824**  
**Phone: (978)250-9800**

Kronos or any of its assignees may, at any time, assign its title to the Equipment, its license of the Software, and its rights under this Agreement to the Products and/or to the Total Periodic Lease Charges and other sums at any time due and to become due, by Customer, under any of the provisions of this Agreement or may grant a security interest in any or all of the Products. Customer and Kronos agree that no assignee of Kronos that is a financial institution shall be obligated to perform any duty, covenant or condition required to be performed by Kronos under any of the terms hereof, and the rights of any such assignee of Kronos in and to the sums payable by the Customer under any provisions of this Agreement shall not be subject to any abatement whatsoever, and shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever by reason of any damage to or loss or destruction of the Products, or any part thereof, or by reason of any other indebtedness or liability of Kronos to the Customer. Any such assignment or security interest by Kronos shall not diminish the obligations of Kronos otherwise created by this Agreement

#### 10.4 Governing Law

This Agreement shall be governed by the laws of the State of California.

#### 10.5 [Intentionally omitted].

#### 10.6 No Waiver

No failure to exercise, or no delay in exercising, on the part of either party, any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise of any right, power or privilege hereunder preclude further exercise of the same right or the exercise of any other right hereunder.

#### 10.7 Supplemental Documents

Customer agrees that any time, and from time to time, upon request of Kronos, after the execution and delivery of this Agreement, it shall execute and deliver such further documents and do such further acts and things as Kronos may reasonably request in order to fully effect the purposes of this Agreement.

Kronos may execute and file Uniform Commercial Code financing, amendment, continuation or termination statements for and on behalf of Customer for the purpose of indicating Kronos' interest in the Collateral, as defined in Section 10.10 below.

#### 10.8 Force Majeure

Neither party shall be liable for failures or delays in performance due to causes beyond its reasonable control, including war, strikes, lockouts, fire, flood, storm or other acts of God. Both parties agree to use their best efforts to minimize the effects of such failures or delays.

#### 10.9 Indemnities

If Kronos assigns this Lease to a financial institution, in accordance with the provisions of Section 10.3, Customer will indemnify and hold Kronos or its assignee harmless from any costs, expenses, damages, fines, settlements, claims or liability arising out of or relating to this Agreement or the Products, but excluding those adjudged to have arisen solely from the negligence or willful misconduct of Kronos or its assignee. Customer's obligations under this Section shall commence upon the execution of this Agreement and shall survive the termination of this Agreement.

Kronos agrees to defend and indemnify Customer and to hold it harmless from and against any and all claims, costs, fees and expenses (including reasonable legal fees) relating to actual or alleged infringement of U.S. recognized copyrights, patents and other intellectual property rights asserted against Customer by virtue of Customer's use of the Software as delivered and maintained by Kronos, provided that Kronos is given prompt written notice of any such claim and has sole control over the investigation, preparation, defense and settlement of such claim, and further provided that Customer reasonably cooperates with Kronos in connection with the foregoing and provides Kronos with all information in Customer's possession related to such claim and further assistance as reasonably requested by Kronos. Kronos will have no obligation to indemnify Customer to the extent any such claim is based on the use of the Software with software or equipment not supplied by Kronos.

Should any or all of the Software as delivered and maintained by Kronos become, or in Kronos' reasonable opinion be likely to become, the subject of any such claim, Kronos may at its option procure for Customer the right to continue to use the affected Software as contemplated hereunder, or may replace or modify the affected Software to make its use non-infringing, or should such options not be available at reasonable expense, then Kronos may terminate the applicable Lease Schedule with respect to the affected Software upon thirty (30) days prior written notice to Customer. In such event of termination, Customer shall be entitled to a pro-rata refund of all Lease payments made to Kronos for the affected Software, which refund shall be calculated using a five year straight-line depreciation of the Software commencing with the date of the applicable Lease Schedule.

#### 10.10 Security Interest

Customer hereby grants to Kronos, its successors and its assigns a security interest in the Equipment, the license to use the Software and Advance Lease Fees ("Collateral"). Such Security Interest shall include replacement Equipment, upgrades and Updates.

#### 10.11 Financial Statements

Upon request, Customer agrees to provide to Kronos copies of its annual and, if available, interim financial statements.

#### 10.12 Confidential Information

Confidential Information means any information of one party that is clearly marked as "confidential" and that is disclosed to the other party pursuant to this Agreement. Additionally, the terms, conditions and pricing contained in this Agreement and the Lease Schedule(s), the Software (and Software documentation), and the Specifications shall be deemed to be Kronos' Confidential Information.

Each party shall protect the Confidential Information of the other party with at least the same degree of care and confidentiality, but not less than a reasonable standard of care, which such party utilizes for its own information of similar character that it does not wish disclosed to the public. Neither party shall disclose to third parties (except the parent company or the wholly owned subsidiaries of

**Kronos Incorporated**  
297 Billerica Road  
Chelmsford, MA 01824  
Phone: (978)250-9800

the disclosing party who have a need to know) the other party's Confidential Information, or use it for any purpose not explicitly set forth herein, without the prior written consent of the other party. The obligation of confidentiality shall survive for three (3) years after the disclosure of such Confidential Information.

This Agreement imposes no obligation upon either party with respect to the other party's Confidential Information which the receiving party can establish by legally sufficient evidence: (a) was rightfully possessed by the receiving party without an obligation to maintain its confidentiality prior to receipt from the disclosing party, (b) is generally known to the public without violation of this Agreement; (c) is obtained by the receiving party in good faith from a third party having the right to disclose it without an obligation with respect to confidentiality; (d) is independently developed by the receiving party without use of the disclosing party's confidential information, which can be shown by tangible evidence; or (e) was required to be disclosed by applicable law; provided that the receiving party notifies the disclosing party of such requirement prior to disclosure, and provided further that the receiving party makes diligent efforts to limit disclosure. Customer agrees that Kronos may use Customer's name as part of Kronos' published customer lists.

10.13 Restricted Rights

Use, duplication, or disclosure by the Government is subject to restrictions as set forth in subparagraph (c) (1) (ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 for Department of Defense contracts and as set forth in FAR 52.227-14 for civilian agency contracts. Manufacturer is Kronos Incorporated, 297 Billerica Road, Chelmsford, MA 01824. Kronos reserves all rights under the copyright laws of the United States.

10.14 Export

Customer understands that any export if the Equipment of Software may require an export license and Customer assumes full responsibility for obtaining such license. Customer must obtain Kronos' prior written consent before exporting the Software.

10.15 Headings

The headings and captions in this Agreement are for convenience of reference only and do not define or limit in any way the scope or intent of the provisions of this Agreement.

**CUSTOMER HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS. NEITHER PARTY SHALL BE BOUND BY ANY STATEMENT OR REPRESENTATION NOT CONTAINED IN THIS AGREEMENT.**

Customer and Kronos have accepted this Agreement on the dates below:

CITY OF TORRANCE  
A Municipal Corporation

KRONOS INCORPORATED:  
(To be signed by Kronos corporate headquarters only)

\_\_\_\_\_  
Frank Scotto, Mayor  
(signature)

\_\_\_\_\_  
By:  
(signature)

ATTEST

\_\_\_\_\_  
Sue Herbers, City Clerk

\_\_\_\_\_  
Name:  
(please print)

APPROVED AS TO FORM:  
JOHN L. FELLOWS III  
City Attorney

\_\_\_\_\_  
Title:

\_\_\_\_\_  
Date:

By: \_\_\_\_\_

\_\_\_\_\_  
Date:



**KnowledgePass™ Education Subscription**  
**Addendum to**  
**Kronos Incorporated Master Lease Agreement**

This is an Addendum to the Kronos Incorporated Master Lease Agreement ("Agreement") between Kronos Incorporated ("Kronos") and The **City of Torrance**, a Municipal Corporation ("Customer") dated \_\_\_\_\_, 2006.

The parties hereby agree that the following terms, applicable to Customer's purchase of the Kronos KnowledgePass Education Subscription only, shall supplement the terms of the Agreement for those services:

1. Scope: The KnowledgePass Education Subscription is only available to Customer's who are licensing Kronos' Workforce Central Software products. The KnowledgePass Education Subscription provides access via the internet to certain educational offerings provided by Kronos (the "KnowledgePass Content"), including:

- (a) Kronos Virtual Classroom (KVC) OnDemand™ sessions streamed to Customer's desktop;
- (b) Tutorials;
- (c) Learning Snippets;
- (d) Job Aids in \*pdf form; and
- (e) Lunch and Learn information webinars.

The content of these offerings are subject to change by Kronos without notice.

Customer may access the KnowledgePass Education Subscription through the Kronos customer web site>>Education>>KnowledgePass.

2. Term of Subscription: The KnowledgePass Education Subscription shall run co-terminously with Customer's Software Support, and shall renew for additional one (1) year terms provided Customer renews its KnowledgePass Education Subscription as provided below.

3. Payment: Customer shall pay the annual subscription charge for the initial term of the KnowledgePass Education Subscription in accordance with the payment terms on the Order Form. Kronos will send Customer a renewal invoice for renewal of the KnowledgePass Education Subscription at least forty five (45) days prior to expiration of the then current term. KnowledgePass Education Subscription shall renew for an additional one (1) year term if Customer pays such invoice before the end of the initial term or any renewal term.

4. Limitations: Customer recognizes and agrees that the KnowledgePass Content is copyrighted by Kronos. Customer is permitted to make copies of the KnowledgePass Content provided in \*pdf form solely for Customer's internal use and may not disclose such KnowledgePass Content to any third party other than Customer's employees. Customer may not edit, modify, revise, amend, change, alter, customize or vary the KnowledgePass Content without the written consent of Kronos.

All terms and conditions of the Agreement remain in full force and effect and shall apply, unchanged, to the purchase of the KnowledgePass Subscription.

Dated: \_\_\_\_\_

CITY OF TORRANCE  
A Municipal Corporation

KRONOS INCORPORATED

\_\_\_\_\_  
Frank Scotto, Mayor  
(signature)

\_\_\_\_\_  
By: \_\_\_\_\_

ATTEST

Title: \_\_\_\_\_

\_\_\_\_\_  
Sue Herbers, City Clerk

APPROVED AS TO FORM:  
JOHN L. FELLOWS III  
City Attorney

By: \_\_\_\_\_

