

OPUS²¹ MANAGEMENT SOLUTIONS
RENEWAL OF MASTER AGREEMENT FOR CITY OF ST. FRANCIS

OPUS²¹ Agreement Number: Renewal 5217
Date Effective: May 1, 2024

THIS renewal of **OPUS²¹ Master Agreement** (this “Agreement”), is made and entered effective May 1, 2024, by and between OPUS²¹ MANAGEMENT SOLUTIONS, LLC., 680 Commerce Dr., Suite 160, Woodbury, MN 55125 (“OPUS²¹”) and City of St. Francis, a Minnesota Municipal Corporation, 23340 Cree Street NW, St. Francis, MN 55070 (“Customer”).

Recitals

- A. OPUS²¹ and St. Francis agree that all products and services to be provided by OPUS²¹ to St. Francis shall be furnished only under the terms and conditions of this Agreement and its attached Schedule No. 1 (the “Schedule”); and
- B. OPUS²¹ is a technology product and service firm specializing in providing certain technology software products and services that OPUS²¹ has developed, owns or leases; and
- C. St. Francis desires to purchase products or services from OPUS²¹ pursuant to the terms and conditions contained in this Agreement and the attached Schedules; and St. Francis believes that the provision of OPUS²¹ services and products to St. Francis residents is cost-effective and in the best interests of St. Francis and its customers; and

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

1 **Definition of Terms.** As used herein:

- 1.1 **“Event of Default”** – Failure to perform the obligations required of a party to this Agreement pursuant to the terms of this Agreement.
- 1.2 **“Project”** – The products and services provided by OPUS²¹ for St. Francis.
- 1.3 **“Parties”** – Collectively, St. Francis and OPUS²¹.
- 1.4 **“Schedule”** – Attachment 1 to this Agreement, which are made a part of this Agreement for all purposes.
- 1.5 **“OPUS²¹ Custom Software”** – Software developed by OPUS²¹ specifically for St. Francis or OPUS²¹ Core Software customized by OPUS²¹ specifically for St. Francis.
- 1.6 **“OPUS²¹ Core Software”** – Software developed or customized by OPUS²¹ but not specifically for St. Francis.
- 1.7 **“OPUS²¹ Software”** – OPUS²¹ Custom Software and OPUS²¹ Core Software. OPUS²¹ Software does not include the Source Code.
- 1.8 **“Third-Party Software”** – Software in machine-readable form provided by OPUS²¹ to St. Francis that is not developed or customized by OPUS²¹. Third-Party Software does not include the Source Code.
- 1.9 **“Software”** – OPUS²¹ Software and Third-Party Software.
- 1.10 **“Source Code”** – A copy of the computer programming code in human-readable or other

form.

- 2 **Term of Agreement.** This Agreement shall be effective upon execution by both parties and shall continue in force through completion of services described in the “Schedule” unless earlier terminated in accordance with the terms herein.
- 3 **Compensation.** The amount of compensation St. Francis shall pay OPUS²¹ for the products and services provided by OPUS²¹ hereunder as set forth in the Schedules. All compensation shall be payable by St. Francis Net 30 days.
- 4 **Confidentiality of ST. FRANCIS's Information.**
 - 4.1 OPUS²¹ acknowledges that St. Francis is subject to the Minnesota Government Data Practices Act (Minn. Stat. Ch. 13), and that the data and information provided to OPUS²¹ under this Agreement or through the provision of services for St. Francis pursuant to this Agreement shall be administered in accordance with Minnesota Statutes, Chapter 13, and all data shall be maintained in accordance with all applicable laws, rules, and regulations. Such data and information shall include data and information defined by OPUS²¹ as confidential and as a proprietary asset any information or materials that come to the attention of OPUS²¹ by reason of (a) the presence of OPUS²¹'s agents, employees, or representatives at St. Francis's site, or (b) OPUS²¹ furnishing services to St. Francis in connection with this Agreement (such information, materials, and records collectively being referred to as “St. Francis's Confidential or Proprietary Information”).
 - 4.2 Notwithstanding anything herein to the contrary, St. Francis’s Confidential or Proprietary Information shall not include: (a) information that comes into the public domain except as a result of a breach of this confidentiality provision; (b) information received by OPUS²¹ from a third party not under any obligation of confidentiality with respect thereto; (c) information that is independently developed by OPUS²¹ personnel who have not had access to St. Francis’s Confidential or Proprietary Information; (d) information required to be disclosed under operation of law; or (e) information approved in advance in writing for disclosure by St. Francis.
 - 4.3 OPUS²¹ agrees to cooperate with St. Francis in the event St. Francis is required to respond to a request for data pursuant to Minnesota Statutes, Chapter 13.
- 5 **Intellectual Property.** All computer programs, including the OPUS²¹ Software, related documentation, written procedures, and copies of transcripts, Source Codes, and similar items are proprietary to and shall be considered trade secrets and confidential information remaining the property of OPUS²¹. St. Francis agrees that, other than those disclosures and records required to be made or maintained pursuant to Minnesota Law, it will not disclose to any third party at any time (either during or after termination of this Agreement) any OPUS²¹ “trade secret information” as that term is defined in Minnesota Statutes, Section 13.37. St. Francis shall maintain all documentation related to or arising from this Agreement as required by its records retention policy, with such trade secret information maintaining its classification during the term of retention. All original input data items shall remain the property of St. Francis and will be returned pursuant to St. Francis's instructions, except as may be required by the Minnesota Government Data Practices Act as determined by a Court of competent jurisdiction. St. Francis shall retain or destroy all original input documentation and other

documentation in accordance with its own procedures.

6 **Modification.**

- 6.1 Either party may modify this Agreement or any Schedules through mutual agreement of both parties.
- 6.2 In the Event of Default the non-defaulting party may terminate this Agreement or any Schedule.
- 6.3 In the event of modification for any reason, St. Francis will pay all amounts due and payable under this Agreement up to the effective date of modification, and St. Francis may retain and use any products or services delivered to St. Francis prior to the date of modification as governed by the terms and good standing of the Agreement.

7 **Hold Harmless and Indemnification.**

- 7.1 **By OPUS²¹.** OPUS²¹ shall indemnify, defend and hold harmless St. Francis against any loss, damage or expense incurred by St. Francis as a result of claims, actions or proceedings brought by any third party arising out of OPUS²¹'s performance or failure to perform under the terms and conditions of this Agreement including St. Francis's reasonable attorney's fees and any money damages or costs awarded in respect of any such claim(s) and any suit raising any such claim(s); provided, however, that (a) St. Francis shall have given OPUS²¹ prompt written notice of any such claim, demand, suit or action; (b) St. Francis shall cooperate with said defense by complying with OPUS²¹'s reasonable instructions and requests to St. Francis in connection with said defense; and (c) OPUS²¹ shall have control of the defense of such claim, suit, demand, or action and the settlement or compromise thereof.
- 7.2 **By ST. FRANCIS.** St. Francis shall indemnify, defend and hold harmless OPUS²¹ against any loss, damages or expense incurred by OPUS²¹ as a result of claims, actions or proceedings brought by any third party arising out of St. Francis's performance or failure to perform under the terms and conditions of this Agreement including OPUS²¹'s reasonable attorney's fees and any money damages or costs awarded in respect of any such claim(s) and any suit raising any such claim(s); provided, however, that (a) OPUS²¹ shall have given St. Francis prompt written notice of any such claim, demand, suit or action; (b) OPUS²¹ shall cooperate with said defense by complying with St. Francis's reasonable instructions and requests to OPUS²¹ in connection with said defense; and (c) St. Francis shall have control of the defense of such claim, suit, demand, or action and the settlement or compromise thereof.
- 7.3 The indemnity obligations contained in this section 7 shall survive termination of this Agreement. Nothing in this Section shall be construed as a waiver of any liability limits or immunities contained in Minnesota Statutes, Chapter 466.

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

To OPUS²¹:

OPUS²¹ Management Solutions, LLC
Attention: Lynn Shuba, President
680 Commerce Drive, Suite 160
Woodbury, MN 55125

To ST. FRANCIS:

City of St. Francis
Attention: Darcy Mulvihill, Finance Director
23340 Cree Street NW
St. Francis, MN 55070

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

- 9 **Governing Law/Dispute Resolution.** This Agreement shall be governed by, construed, and enforced under and in accordance with the Laws of the State of Minnesota. In the event of any litigation arising under or construing this Agreement, Plaintiff agrees to bring any action in the State of Minnesota. Prior to either party commencing any legal action under this Agreement, the parties agree to try in good faith to settle any dispute amicably between them. If any dispute arises between the parties either relating to this Agreement or in any way arising out of this Agreement then the complaining party shall provide a notice of such dispute, in writing, to the other party. Such notice shall include both a specific description of the disputed issues and suggested action(s) to remedy such dispute. The Parties shall thereafter attempt, in good faith, to settle such dispute. If no resolution of the dispute is reached within forty-five (45) days of the notice of dispute, then either party may pursue any legal remedy it may have available including instituting suit in a court of competent jurisdiction.
- 10 **Binding Nature and Assignment.** This Agreement shall bind the Parties and their successors and permitted assigns. Neither party may assign this Agreement without the prior written consent of the other party, except that the term "Assignment" shall not include any transfer by merger, acquisition, stock transfer or other consolidation with another entity. Notwithstanding the foregoing, St. Francis shall affect no assignment or transfer by merger, acquisition, stock transfer, sale of substantially all of the assets or consolidation to or with any entity engaged substantially in the business of providing software and/or related services that are similar to the software and services provided by OPUS²¹.
- 11 **No Third-Party Beneficiaries.** This Agreement gives no rights or benefits to anyone other than OPUS²¹ and St. Francis. OPUS²¹ reserves the right to enforce the terms and conditions of this Agreement against all Third-Party.
- 12 **Force Majeure.** Neither party shall be in default by reason of any failure in the performance of this Agreement (except failure to pay) if such failure arises out of causes beyond its reasonable control. Such causes may include, but are not limited to, acts of God, acts of the public enemy,

acts of government in either its sovereign or contractual capacity, acts of the party whose performance is not sought to be excused, fires, flood, weather, epidemics, quarantine restrictions, strikes, freight embargoes, failure of transmission or power supply, or other causes beyond its sole control. The party so affected will resume performance as soon as practicable after the force majeure event terminates.

- 13 **Records.** OPUS²¹ shall maintain such records as are deemed necessary by St. Francis to ensure that the products and services are provided as represented by OPUS²¹. All records, information, materials and other work products, including, but not limited to the completed reports, plans, and specifications prepared and developed in connection with the provision of products and services pursuant to this Agreement shall become the property of ST. FRANCIS upon delivery to St. Francis representatives, except as otherwise set forth in paragraphs 4 and 5.
- 14 **Discrimination.** OPUS²¹ agrees not to discriminate in providing its products and services under this Agreement on the basis of race, color, sex, creed, national origin, disability, age, sexual orientation, status with regard to public assistance, or religion.
- 15 **Entire Agreement.** This Agreement, the Recitals, and the Schedules contain the entire understanding of the Parties with respect to its subject matter, and supersedes and extinguishes all prior oral and written communications between the Parties relative to its subject matter. No amendment to, or change, waiver or discharge of any provision of this Agreement shall be valid unless in writing and signed by any authorized representative of the party against which such amendment, change, waiver or discharge is sought to be enforced.
- 16 **Signature Authority.** Each party represents and warrants to the other that the signatory of that party is authorized to enter into this Agreement for and on behalf of that party.
- 17 **Relationship of the Parties.** The relationship of the Parties established by this Agreement is solely that of independent contractors, and nothing contained in this Agreement shall be construed to (a) give any party the power to direct and control the day-to-day activities of the other; or (b) constitute such Parties as partners, joint ventures, co-owners or otherwise as participants in a joint or common undertaking; or (c) make either party an agent of the other for any purpose whatsoever. Neither party nor its agents or employees is the representative of the other for any purpose, and neither has power or authority to act as agent, employee to represent, to act for, bind, or otherwise create or assume any obligation on behalf of the other.
- 18 **Approvals and Similar Actions.** Where agreement, approval, acceptance, consent or similar action by either party is required by any provision of this Agreement, such action shall not be unreasonably delayed or withheld, unless specifically permitted by this Agreement.
- 19 **Publicity.** Either party hereto may prepare press releases concerning the existence of this Agreement and may reference the other party and this Agreement in its advertising, sales promotions, trade shows, or other marketing material, subject to review, comment, revision and prior written approval of the other party which approval shall not be unreasonably delayed or withheld.
- 20 **Severability.** If any provision of this Agreement is held to be unenforceable, then both Parties

shall be relieved of all obligations arising under such provision, but only to the extent that such provision is unenforceable, and this Agreement shall be deemed amended by modifying such provision to the extent necessary to make it enforceable while preserving its intent or, if that is not possible, by substituting another provision that is enforceable and achieves the same objective and economic result. IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT EACH PROVISION OF THIS AGREEMENT WHICH PROVIDES FOR A LIMITATION OF LIABILITY, INDEMNIFICATION OR EXCLUSION OF DAMAGES OR OTHER REMEDIES IS INTENDED TO BE ENFORCED AS SUCH. FURTHER, IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT IN THE EVENT ANY REMEDY UNDER THIS AGREEMENT IS DETERMINED TO HAVE FAILED OF ITS ESSENTIAL PURPOSE, ALL LIMITATIONS OF LIABILITY AND EXCLUSIONS OF DAMAGES OR OTHER REMEDIES SHALL REMAIN IN EFFECT.

- 21 **Waiver.** No delay or omission by either party to exercise any right or power it has under this Agreement shall impair or be construed as a waiver of such right or power. A waiver by either party of any covenant or breach shall not be construed to be a waiver of any succeeding breach or of any other covenant. All waivers must be in writing and signed by the party waiving its rights.
- 22 **Attorneys' Fees.** If any legal action or other proceeding is brought against the other party to this Agreement for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which a court of competent jurisdiction determines such party is entitled to.
- 23 **Compliance with Laws.** Each party shall comply with all governmental, including federal, state, and local laws, statutes, rules and regulations applicable to this Agreement.
- 24 **Conflicts between Agreements.** In the event that any terms of this Agreement conflict with any Schedule(s), License Agreement, or Support Services Agreement, outside this Agreement the specific terms of those particular schedules or agreements will govern.
- 25 **Termination of Agreement.** Upon termination of this Agreement, OPUS²¹ will assist St. Francis, on a time and material basis, in transferring the data to another system in a professional and timely manner.
- 26 **Certificate of Liability Insurance:** Upon enactment of this Agreement, OPUS²¹ will maintain St. Francis as an additional insured to the OPUS²¹ insurance policy. OPUS²¹ will provide St. Francis with documentation of compliance with this paragraph upon the request of St. Francis.
- 27 **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.
- 28 **Ownership of Data and Customer Records:** It is hereby acknowledged by OPUS²¹ the data and customer records belongs to the Customer. If an event would occur at the end of this agreement where the Customer choses to use a different service, OPUS²¹ will act in a professional

and timely manner in the transition of the data. Professional Group Service fees per Schedule 1 may apply.

Accepted by:

OPUS²¹ Management Solutions, LLC

City of St. Francis

By: _____

**Lynn Shuba
Its: President**

By: _____

Its: _____

Attest By: _____

Its: _____

Date

Date

SCHEDULE NO. 1
Base Services and Cost

This Schedule is part of the **Master Agreement** No. 5217 between OPUS²¹ and the City of St. Francis effective May 1, 2024.

NOW, THEREFORE, the Parties agree as follows:

1. Term of Agreement.

The term of this agreement will be 60 months.

2. Cost of Services.

CIS Data Hosting	0.41
Bill Production	0.28
Bill Print	0.30
e-Bill	0.07
Customer Service	0.27
Lockbox	0.26
On Line	0.16
ACH	0.05

USPS Postage and related fees are regarded as a pass-through cost service.

On its anniversary date, an adjustment not to exceed the Federal Register Cost of Living Index.

Projects and special request will be based on time and material.