

ORDINANCE NO. 2017 - _____

AN ORDINANCE APPROVING AMENDMENT NO. 1 TO AGREEMENT BETWEEN ABB ENTERPRISE SOFTWARE, INC. AND THE CITY OF DENTON REGARDING CHANGES IN BOTH THE LENGTH OF, AND COMPENSATION DUE TO ABB UNDER, THE AGREEMENT; AUTHORIZATION FOR EXPENDITURE OF FUNDS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Denton, a Texas home-rule municipal corporation, and Ventyx, Inc., a Delaware corporation, are parties to an Master Customer Agreement, dated June 2, 2014, in which Ventyx provides the energy trading and risk management (“ETRM”) software and support services to the City’s Energy Management Organization (“EMO”) of Denton Municipal Electric;

WHEREAS, the agreement between the City and Ventyx was entered into prior to the passage and implementation of the Renewable Denton Plan (“RDP”);

WHEREAS, because of demands created by implementation of the RDP, the ETRM software and support services provided by Ventyx (now ABB Enterprise Software, Inc., a Delaware corporation) under the existing agreement are no longer adequate for the enlarged and enhanced needs of the EMO;

WHEREAS, the City and ABB have mutually agreed to amend the agreement and reduce both the length of, and compensation due to ABB under, the agreement; and

WHEREAS, the City Council of the City of Denton deems it is in the public interest and serves a municipal and public purpose to enter into Amendment No. 1 to Agreement with ABB Enterprise Software, Inc., a Delaware corporation, to reduce both the length and compensation due to ABB under the agreement; NOW, THEREFORE;

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The recitals and findings contained in the preamble of this ordinance are incorporated into the body of this ordinance.

SECTION 2. City Council finds that Amendment No. 1 to Agreement between ABB Enterprise Software, Inc. a Delaware corporation, and the City, which amends the Master Customer Agreement dated June 2, 2014 by reducing both the length and compensation due to ABB under the agreement, serves a valid municipal and public purpose and is in the public interest.

SECTION 3. The City Manager, or his designee, is authorized to execute the Amendment No. 1 to Agreement between ABB Enterprise Software, Inc. a Delaware corporation, and the City, in the form attached as Exhibit “A”. The City Manager is authorized to carry out the City’s rights and duties under the Amendment No. 1 to Agreement including authorization for the expenditure of funds provided for in the same.

SECTION 4. This ordinance shall become effective immediately upon its passage and approval.

PASSED AND APPROVED this the _____ day or _____, 2017.

CHRIS WATTS, MAYOR

ATTEST:
JENNIFER WALTERS, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
AARON LEAL, INTERIM CITY ATTORNEY

BY:  _____

**EXHIBIT A
TO
ORDINANCE**

Amendment No. 1 to Agreement

1. This amendment (the "Amendment") is made between ABB Enterprise Software, Inc., a Delaware corporation, and successor in interest to Ventyx, Inc., a Delaware corporation ("ABB"), and the City of Denton, a Texas home-rule municipal corporation ("Denton"), parties to the Master Customer Agreement dated June 2, 2014 (the "Agreement"). The Agreement consists of the following documents: Master Customer Agreement, Order Form, Statement of Work for TRM and nMarket ERCOT Implementation, and Statement of Work for City of Denton Managed Services.

2. The Agreement is amended as follows:

A. Master Customer Agreement.

i. Term (11.1). The text of paragraph 11.1 in the Master Customer Agreement is deleted in its entirety and replaced with the following: The Agreement shall become effective as of the Effective Date and shall continue in effect until December 1, 2017.

ii. Termination (11.2). Section 11.2 of the Master Customer Agreement is deleted in its entirety.

iii. Effect of Termination (11.3). Section 11.3 of the Master Customer Agreement is deleted in its entirety.

B. Order Form. The Annual Payment Amount (as set forth on the unnamed chart located on the bottom of page 1 of the Order Form) is changed as follows:

i. For the License Period beginning on "Order Form Effective Date + 3 Years" to "4 Years from Order Form Effective Date" the Annual Payment is \$65,550.00.

ii. For the License Period beginning on "Order Form Effective Date + 4 Years" to "5 Years from Order Form Effective Date" the Annual Payment is \$0.00.

C. Statement of Work for TRM and nMarket ERCOT Implementation.

i. Fee Summary (4.1).

a. The Fee due for the "User and System Test Results" is changed to \$25,594.20.

b. The Fee due for the "Transition to Production" is changed to \$19,195.65.

D. Statement of Work for City of Denton Managed Services.

i. Effect of Termination (4(a)). Section 4 (a) of the Statement of Work for City of Denton Managed Services is deleted in its entirety.

ii. Service Fees (paragraph 11 of Schedule 1 to the Statement of Work for City of Denton Managed Services).

a. The Service Fee due for Year 4 is \$74,742.00.

b. The Service Fee due for Year 5 is \$0.00.

3. ABB and Denton agree that there will no further monies due to ABB from Denton under either the Agreement or the Amendment after the payment of the monies due ABB from Denton (i) set forth in paragraph 2 above, AND (ii) the Fee of \$19,200.94 for "Project Completed" under paragraph 4.1 of the Agreement's Statement of Work for TRM and nMarket ERCOT Implementation.

4. The effective date of the Amendment is the date the same is signed by Denton.

4. Except as set forth in this Amendment, the Agreement is unaffected and shall continue in full force and effect in accordance with its terms. If there is conflict between the Amendment and the Agreement, the terms of the Amendment will prevail.

5. ABB Enterprise Software, Inc. a Delaware corporation, represents and warrants that the person who executes the Amendment on its behalf has been duly authorized to execute the Amendment and that such authority has been validly obtained in accordance with its articles of incorporation and bylaws (or other organizational documents), and the laws of the state of its organization.

6. City of Denton represents and warrants that the person who executes the Amendment on its behalf has been duly authorized by enactment of an ordinance by the City Council of the City of Denton, a Texas home-rule municipal corporation.

----- Signatures follow -----

ABB ENTERPRISE SOFTWARE, INC., a Delaware corporation

Signature

Printed Name

Title

Signed on the ____ day of _____, 2017.

CITY OF DENTON, a Texas home-rule municipal corporation

Todd Hileman, City Manager

Signed on the ____ day of _____, 2017 under the authority of Ordinance
No. 2017-_____.

ATTEST:

JENNIFER WALTERS,
CITY SECRETARY

APPROVED AS TO LEGAL FORM:

AARON LEAL,
INTERIM CITY ATTORNEY