# SOFTWARE AS A SERVICE AGREEMENT

## BETWEEN

## THE CITY AND COUNTY OF SAN FRANCISCO AND
## YARDI SYSTEMS, INC.

This agreement (the "Agreement") is made this **26th day of February, 2013**, in the City and County of San Francisco, State of California, by and between: **Yardi Systems, Inc.,** a California corporation headquartered at 430 South Fairview Avenue, Goleta, CA 93117 (hereinafter referred to as "Yardi" or "Contractor") and the City and County of San Francisco, a municipal corporation (hereinafter referred to as "Client" or "City") acting by and through its Director of the Office of Contract Administration (hereinafter referred to as "Purchasing").

### Recitals

WHEREAS, Contractor has developed certain real property and asset management application software for use in conjunction with an associated database;

WHEREAS, the San Francisco Public Utilities Commission ("SFPUC") wishes to license certain Yardi real property and asset management software programs and data hosting services for use in conjunction with an associated database via access to a designated Site from Contractor;

Now, THEREFORE, the parties agree as follows:

### AGREEMENT

**1. Definitions.**

a. **"Anniversary Date"** means the date that is 365 days after the Initiation Date, and each anniversary thereafter of the date that is 365 days after the Initiation Date, during this Agreement's Term.

b. **"Client Central"** means Yardi's website currently found at https://support.yardi.com/, at which, in part, Yardi clients' Designated Users can access Licensed Programs Documentation and related training materials.

c. **"Client Data" or "City Data**" means the data that Designated Users transmit and/or enter into the database associated with the Licensed Programs in connection with their Use of the Licensed Programs pursuant to this Agreement.

d. **"Citrix Designated User"** means a Designated User utilizing Citrix products to access the Site, Licensed Programs, and/or Client Data for administrative purposes.

e. **"Deliverable"** means any item, report, service or product to be delivered to Client as part of Programming Services [defined in section 14 (Programming Services)], services defined in Exhibit D (Scope of Work) or other services provided pursuant to this Agreement.

f. **"Designated User"** means a Client employee designated by Client to access the Site and Use the Licensed Programs for Client's Municipal Business Purposes.

g. **"Disabling Code"** means computer instructions or programs, subroutines, code instructions, data or functions, (including but not limited to viruses, worms, date bombs or time bombs), including but not limited to other programs, data storage, computer libraries and programs that self-replicate without manual intervention, instructions programmed to activate at a predetermined time or upon a specified event, and/or programs purporting to do a meaningful function but designed for a different function, that (A) time-out or deactivate functions or terminate the operation of the Licensed Programs (other than at the direction of the Designated User); (B) act as a "back door" or other means whereby Yardi or any other party may remotely control Client's network without Client's express authorization; (C) surreptitiously delete or corrupt data in such a manner as to interfere with the normal operation of the Licensed Programs; and/or (D) act as a computer virus.

h. **"Effective Date"** means the date the City Controller has certified to the availability of funds and Contractor has been notified in writing.

i. **"Fees"** means the fees identified in Schedule A (Fee Schedule) and any other fees that may become due under this Agreement (for clarity, as a result of a written modification to this Agreement executed pursuant to Section 19(l) "Modification", of this Agreement).

j. **"File Storage"** means Client Data file storage on file servers separate from the database server used to serve Client Data.

k. **"Force Majeure Event"** means any event beyond the reasonable control of the party affected by such event, including without limitation fire, storm, weather, earthquake, explosion, strike, war, riot, civil disturbance, act of God, or judicial order, which event causes a party to delay or fail to perform under this Agreement, provided the non-performing party is without fault in causing reasonable precautions and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans or other means (including, with respect to Contractor, by meeting its obligation for performing disaster recovery services.

l. **"Initiation Date"** means the date that is 2 weeks after the date of the last party's signature on this Agreement.

m. **"License File"** means Yardi's proprietary file which enforces the scope (e.g., expiration date, Designated User count, Property count, Licensed Programs mix, etc.) of Client's license. Client acknowledges that the Licensed Programs require a License File for operation. Yardi represents and warrants that other than for the purpose of enforcing the scope of Client's license as described above, this License File shall not be used as a Disabling Code.

n. **"Licensed Programs"** means the software programs identified in Schedule A (Fee Schedule).

o. **"Licensed Programs Documentation"** means the user manuals and documentation for the Licensed Programs.

p. **"Municipal Business Purposes"** means use of the Licensed Programs to manage SFPUC's real property portfolio for SFPUC's accounting, property management and related SFPUC municipal business purposes.

q. **"Password"** means the unique user name and password assigned by Client each Designated User as more fully described in section 6 (Users and Passwords).

r. **"POCs"** means the person(s) Client identifies to Yardi as points of contact for application support services and other account management purposes.

s. **"SFPUC"** means the San Francisco Public Utilities Commission, a public agency of the City and County of San Francisco.

t. **"Site"** means Yardi's site on the internet at which Yardi hosts the Licensed Programs and Client Data.

u. **"Software Error"** means a reproducible failure of the Licensed Programs to materially perform as specified in the Licensed Programs Documentation.

v. **"Undisputed Fees"** means all Fees due from Client under this Agreement which Client does not reasonably and in good faith dispute - and provide notice of such dispute in accord with section 18(f) (Notices) - within 45 days of invoice.

w. **"Use"** means authorized access to the Site and use of the Licensed Programs and Licensed Programs Documentation by Designated Users solely for Client's Municipal Business Purposes.

2. **License Grant; Restrictions; Access to Site.**
a. **Licenses.** Yardi grants to Client a non-exclusive, non-transferable (except as expressly provided in this Agreement), limited license for Designated Users to: (i) access the Site, and execute and Use the Licensed Programs and Licensed Programs Documentation (which Yardi shall provide in electronic format) solely for Client's Municipal Business Purposes; and (ii) access the content on Yardi's Client Central website solely for Municipal Business Purposes and subject to the terms of use then presented on Client Central. In the event that there is a conflict between the terms of use presented to Designated Users on Client Central and the terms of this Agreement between Client and Yardi (including, but not limited to, Warranties Disclaimers and Indemnity provisions), the terms of this Agreement shall control.

b. **Restrictions.** Client may only exercise the license granted in section 2(a) (Licenses) through its Designated Users. For the avoidance of any doubt, Client's Designated Users under this Agreement may only be employees of Client. Client has no rights or license to the Licensed Programs other than the limited license rights in this Agreement to Use the Licensed Programs for Client's Municipal Business Purposes, and any such additional rights shall be set forth in a separate written agreement between the parties. Client may not rent, lease, sell, transfer (by sublicense, assignment or otherwise except as expressly provided by this Agreement), time share, modify, reproduce, copy, make derivative works from, distribute, publish, or publicly display the Licensed Programs. Client may not reverse engineer, decompile or otherwise attempt to discover the source code for the Licensed Programs. Client may not permit any person or entity (including, for the avoidance of any doubt, any Designated User) to breach the restrictions in this section 2(b) (Restrictions).

c. **Licensed Programs Click-Wrap Disclaimer.** No "click to accept" agreement that may be required for the Designated User access to the Licensed Programs or Yardi's Site and no 'terms of use' or 'privacy policy' referenced therein or conditioned for use of the Licensed Programs or Yardi's Site shall apply. Only the provisions of this Agreement shall apply to Client's Designated Users for access thereto and use thereof. The Parties acknowledge that each Designated User may be required to click "Accept" as a condition of access to the Site, but the provisions of such "click to accept" agreement and other terms (including Terms of Use and Privacy Policy) referenced therein shall be null and void for each such Designated User to the Licensed Programs and Site and use thereof.

d. **Access to the Site.** Yardi will use commercially reasonable efforts to make the Site and the Licensed Programs accessible to Designated Users 24-hours per day, 7 days per week, excluding down time for maintenance and repair, in accord with the Service Level Agreement attached as Schedule B (Service Level Agreement). Yardi has stand-

ing maintenance/repair/backup hours from 11:00 pm each Saturday to 3:00 am (Pacific Time) each Sunday, and nightly Sunday to Friday from 12:00 am – 2:00 am (Pacific Time). Yardi will provide as much advance notice to Client as reasonably possible under the circumstances for scheduled maintenance/repair down time outside of the aforementioned standing hours, and Yardi will use commercially reasonable efforts to provide as much notice to Client as reasonably possible under the circumstances for emergency maintenance/repair downtime.

### 3. Term and Termination.
a. **Term.** This Agreement will commence on the Effective Date and shall remain in full force for three (3) years unless earlier terminated, with three (3) one year options to renew at Client's sole and absolute discretion. Yardi will invoice Client for Client's annual Fee approximately 60 days (and again at approximately 30 days if payment has not been received) prior to each Anniversary Date. Yardi additionally represents that Yardi's Voyager application software will provide multiple and periodic reminders that Client's annual Fee payment is due in advance of each Anniversary Date.

b. **Termination for Convenience by City.** City shall have the option, in its sole discretion, to terminate this Agreement, at any time for convenience and without cause. City shall exercise this option by giving Yardi no less than 30 days prior written notice of termination. The notice shall specify the date on which termination shall become effective. Upon a termination for convenience, Client shall promptly pay any Undisputed Fees owed to Yardi as of the effective date of Client's termination. If Client terminates this Agreement pursuant to this section 3(b) (Termination for Convenience by City), Client shall not be entitled to a refund of any Fees.

c. **Termination for Cause.** Either party may terminate this Agreement upon written notice to the other party if the other party materially breaches this Agreement and fails to cure such breach within 30 days of written notice of a material breach, or if the breaching party cannot reasonably cure the material breach within 30 days, the breaching party fails to initiate cure within 30 days and fails to continuously and diligently work to cure the breach until the breach is cured. Termination pursuant to this section 3(c) (Termination for Cause) shall be effective upon delivery of written notice after expiration of the applicable cure period. If Client terminates for cause, Yardi shall within 30 days of termination, refund Client the then-current annual Fees paid by Client.

d. **Effect of Termination.**

(i) **License Termination.** Upon the effective date of this Agreement's termination or expiration, (A) the license for the Licensed Programs and Licensed Programs Documentation will terminate, (B) Client will cease Use of the Licensed Programs and Licensed Programs Documentation, (C) Client's access to the Site and Licensed Programs will be disabled, and (D) Client shall pay any Undisputed Fees to Yardi.

(ii) **Return of City Data.** Upon the effective date of the termination of this Agreement, Yardi shall return an elec-

tronic copy of Client's MS-SQL or Oracle (whichever Client is utilizing to store Client Data as of the termination effective date) database to City. Once a copy of City Data has been successfully returned to City, Yardi shall within thirty (30) days purge all City Data from its hosted server and within forty-five (45) days of written request, provide City with certification that such purge occurred. This Data shall be available to Client free of cost.

(iii) **Transition Services.** Except for a termination for cause by Yardi pursuant to section 3(c) (Termination for Cause), or a termination by Client pursuant to section 5(e) (Testing), and subject to Client's written request, upon any other termination or expiration of this Agreement, in the event City decides to transition the hosted services to a City owned hosting system, Contractor shall reasonably cooperate in such transition, including but not limited to, providing City with services and support, provided that City pays all costs of and associated with such services, as mutually agreed to by a written modification to this Agreement, and providing City with any export services necessary for the transition. In furtherance of the foregoing, Yardi agrees to temporary continuation of the licenses and existing services under this Agreement during the transition period. The transition plan shall not exceed 90 days, and shall be subject to the terms of this Agreement and agreement on reasonable compensation to Yardi evaluated by reference to the then-current prevailing rates under this Agreement at the time of the transition. In the event this subsection's conditions are met, this Agreement shall be extended through the expiration of the agreed transition period.

e. **Survival.** The parties' obligations under, and the provisions of, sections 4 (License Fees), 8(b) (Limited Liability for Unauthorized Client Data Access), 9 (Confidentiality), 10 (Warranties), 11 (Damage Limitations), 13 (Indemnification), 15 (Assignment), 18 (General Provisions) and 19 (Insurance) shall survive this Agreement's termination or expiration.

### 4. License Fees.
a. **Fees.** Client agrees to pay Yardi the Fees in accordance with the payment terms set forth in Schedule A (Fee Schedule). Compensation shall be due and payable within 45 days of the date of invoice. In no event shall the amount of this Agreement exceed one-hundred and twenty-eight thousand five hundred and fifty dollars and no cents ($128,550.00). The breakdown of costs associated with this Agreement is provided for in Schedule A (Fee Schedule). No charges shall be incurred under this Agreement nor shall any payments become due to Yardi until services required under this Agreement are received from Yardi and approved by the San Francisco Public Utilities Commission as being in accordance with this Agreement. In no event shall City be liable for interest or late charges for any late payments.

b. **Invoice Format.** Invoices furnished by Yardi under this Agreement must be in a form reasonably acceptable to the Controller, and must include a unique identifying number. All amounts paid by City to Yardi shall be subject to audit by City. Payment shall be made by City to Yardi at the address specified in Section 18(f) entitled "Notices".

c. **Failure to Pay.** Client's failure to timely pay any Undisputed Fee when due is a material breach subject to the terms of section 3(c) (Termination for Cause).

d. **Taxes.** The Fees are exclusive of any tariff, duty, or tax, however designated, levied, or based including, without limitation, any taxes based on (i) this Agreement, (ii) the Licensed Programs or Deliverables, (iii) Client's Use of the Licensed Programs, (iv) the Licensed Programs Documentation, or (v) any materials or supplies furnished by Yardi per this Agreement. Client is responsible for all applicable sales and use taxes (exclusive of taxes based on Yardi's net income) applicable to this Agreement. Notwithstanding the generalities of the foregoing, in the event taxes apply, payment of such taxes to the corresponding taxing authority, including possessory interest taxes, and California sales and use taxes, levied upon this Agreement, the transaction, or the services delivered pursuant hereto, shall be Yardi's obligation.

e. **Partial Fee Disputes.** If Client reasonably and in good faith disputes any Fees, and provides notice in accord with section 18(f) (Notices) of such dispute, Client agrees that any undisputed portion of such Fees are Undisputed Fees and Client agrees to timely pay any such Undisputed Fees.

5. **Implementation and Training.**
a. **Third Party Software and Hardware Requirements.** Client is solely responsible for purchasing, installing and maintaining, at Client's expense, any third party software and hardware necessary for Designated Users to access the Site and Use the Licensed Programs. Yardi shall not be liable for any such third party software or hardware, and Client acknowledges and agrees that any assistance provided by Yardi in connection with such third party software and hardware shall not alter Client's responsibility or Yardi's liability disclaimer under this section 5(a) (Third Party Software & Hardware Requirements).

b. **Location.** Implementation and training may (at Client's election) take place at a location specified by Client or via telecommunications. Yardi will bill Client for initial implementation/training services as indicated in Schedule A (Fee Schedule). Client may request additional on-site implementation/training services (i.e., in addition to the on-site implementation/training services set forth in Schedule A (Fee Schedule)) at any time and Yardi will make commercially reasonable efforts to timely accommodate Client's request. Additional on-site implementation/training services are subject to the parties' mutual agreement on: (i) the schedule for performance of the additional services, and (ii) Yardi's Fees for the additional services.

c. **On-Sites.** Client acknowledges that in-person implementation/training service visits at a Client location require a minimum visit of 8 hours per visit. Following the completion of the services set forth in Schedule D (Scope of Work), any future professional services and payments shall be negotiated by the parties by entering into a written amendment to this Agreement. Client acknowledges that training services will be provided for no more than 12 Client trainees for each one (1) Yardi trainer. Client agrees that

Client must pay for any implementation/training services cancelled fewer than 6 business days prior to their scheduled date.

d. **Data Conversion.** Yardi will bill Client for electronic data conversion services, if initially ordered, at the rate stated in Schedule A (Fee Schedule). Client acknowledges that data preparation and post conversion data clean-up is inherent in any data conversion, and such additional efforts associated with a Client Data conversion – if performed by Yardi - will be debited against Client's application support service allotment. Absent an agreement to the contrary, Client shall otherwise be solely responsible for data conversion, data preparation, data entry and data verification, and any post-conversion clean-up. Additional Yardi data conversion services (i.e., in addition to any initial data conversion services set forth in Schedule A (Fee Schedule)) are subject to the parties' mutual agreement on: (i) the schedule for performance of the additional services, and (ii) Yardi's Fees for the additional services.

e. **Testing.** Client shall have 90 days commencing upon the Effective Date (the "**Testing Period**") to test the Licensed Programs. At any time during the Testing Period, Client may elect to cease Use of the Licensed Programs and cancel this Agreement, in which event Yardi will refund to Client all amounts paid by Client to Yardi pursuant to this Agreement less reasonable amounts (determined by reference to the Fees/rates indicated in Schedule A (Fee Schedule)) for initial set-up, implementation, training and support of the Licensed Programs provided prior to Client's notice of cancellation pursuant to this section 5(e) (Testing).

f. **Methodology.** Client and Yardi will work cooperatively on implementation and training in accordance with the Scope of Work (Schedule D).

g. **Schedule.** Client and Yardi will work cooperatively to schedule all necessary meetings and trainings in accordance with the Scope of Work (Schedule D).

6. **Users and Passwords.**
a. **Designated Users.** Client agrees that its exercise of the license granted by this Agreement shall only be through its Designated Users. Client agrees that it may assign Passwords to a fixed, maximum number of Designated Users, and that maximum number is the total aggregate number of Designated Users licensed to access the Site and Use the Licensed Programs. The agreed upon maximum Designated User number is set forth in Schedule A (Fee Schedule).

b. **Designated User Changes.** Yardi agrees that Client may replace Designated Users as Client sees fit and at no additional cost provided: (i) there is no net increase in Client's maximum number of Designated Users, and (ii) each Designated User has a unique Password. A Citrix Designated User change is subject to a one-time fee as specified in Schedule A (Fee Schedule).

c. **Additional Designated Users.** Subject to: (i) at least 5 business days prior written notice from Client, (ii) Client's execution of a written amendment executed in the same manner as this Agreement, and (iii) subject to payment of

additional Fees, Yardi will increase Client's licensed maximum number of Designated Users.

    d. **Password Assignment.** Client's application support POC will be a Designated User, will designate the other Designated Users, and will provide each other Designated Users with a Password. Each Password shall be personal and unique to the applicable Designated User, and may not be used by anyone other than such Designated User. Each Password may only be used from 1 computer at any given time. Client shall be responsible for maintaining Designated User Password security.

    e. **Client Obligations with Respect to Designated Users.** Client shall inform each Designated User of this Agreement's license terms and restrictions and shall enforce and be liable for the breach of any such restrictions by its Designated Users. Client agrees to notify Yardi if Client becomes aware of any failure of a Designated User to adhere to the license terms and restrictions in this Agreement. Client acknowledges that each time a Designated User accesses the Site to Use the Licensed Programs the Designated User will be presented with a splash screen welcoming the Designated User and requesting that the Designated User enter his/her unique Password.

**7. Application Support & Upgrades.**
    a. **Application Support Service.** Yardi will provide application support and upgrades for the Licensed Programs as set forth in this section 7 (Application Support & Upgrades).

    b. **Client Contacts.** Client agrees to appoint an application support POC, who shall be an employee of Client. Client may change the application support POC upon advance written notice to Yardi. Yardi shall have no obligation to contact, or communicate with, anyone regarding application support and maintenance issues except Client's application support POC. Client acknowledges that it is Client's responsibility to keep Client's application support POC current, and to notify Yardi of any changes.

    c. **Yardi Contacts.** During initial implementation, Yardi shall appoint an account manager to Client's account. After initial implementation, Yardi will either assign Client to an account manager or an application support team. Yardi may change the identity of individual account managers from time to time upon notice to client. Client's application support records relating to Client will be available to Yardi's entire application support team at all times.

    d. **Application Support Services.** Yardi shall provide application support for the Licensed Programs through its account managers and technical staff to Client's application support POC. Application support does not include on-site installation, implementation, training, or testing of the Licensed Programs, nor does it include data conversion. Those services, if initially ordered, are specified in Schedule A (Fee Schedule). Yardi's application support service team will use commercially reasonable efforts to address and solve Client's issues.

    e. **Total Hours Included.** Client's annual application support allotment is specified in Schedule A (Fee Schedule). Notwithstanding the multi-year Term set forth in section 3(a) (Term), Client's annual Fees and included annual application support allotment apply for annual periods ending on each Anniversary Date, and shall not include unused application support time from prior annual periods. If Client needs additional application support hours at any time, Client may purchase additional hours at Yardi's then-current prevailing application support rate at the time Client needs the hours.

    f. **Application Support Hours.** Yardi's application support hours are from 6:00 am to 5:00 pm (Pacific Time) Monday through Friday (excluding holidays).

    g. **Priority.**
    (i) Yardi shall have the right to prioritize application support requests according to the application support issue's impact on Client. Yardi will prioritize application support requests in the following order:

Priority 1: Business halted (total inability to perform normal operation)
- Client's POC will submit support requests by telephone to Yardi's application support number.
- Response as rapid as reasonably feasible – generally within 2 business hours.

Priority 2: Business impacted (severe restriction of Client's Use of the Licensed Programs – a potentially critical problem)
- Client's POC will submit support requests by telephone to Yardi's application support number.
- Prompt response subject only to delays for priority 1 issues, generally within 4 business hours.

Priority 3: Non-critical service requests (any issue that is not a Priority 1 or Priority 2 issue)
- Client's POC will submit support request by telecommunications to Yardi application support.
- Response subject to delays for priority 1 and 2 issues, generally within 1 business day.

    (ii) Yardi will work on Priority 1 and 2 issues with continuous focus, and with Client's cooperation, through resolution.

    h. **Software Upgrades.** Yardi will periodically make available (at no additional cost to Client) updates, upgrades and current versions of the Licensed Programs which will include corrections, enhancements, and/or improvements. Client reserves the right to refuse updates and upgrades of the Licensed Programs; provided, however, that Yardi reserves the right to cease application support services for versions of the Licensed Programs more than 2 years older than the latest version of the Licensed Programs generally released to Yardi's clients.

    i. **Standard Term.** Application support services are subject to this Agreement's terms and timely payment of all Undisputed Fees. Subject to the section 3(c) (Termination for Cause) notice and cure provisions, Yardi may suspend application support services if Client fails to timely make any Undisputed Fee payment.

j. **Obsolescence.** Yardi reserves the right to cease providing application support service for Licensed Programs on the later of: (i) 3 years from the date on which Yardi ceases to license the Licensed Programs, or (ii) 5 years from the Effective Date, whichever is later. Yardi agrees to notify Client if and when Yardi will cease application support services in accord with this section 7(j) (Obsolescence).

## 8. Client Data.

a. **Client Data Storage.** Subject to Force Majeure Events, Yardi agrees to store all Client Data on Yardi's primary server and back-up servers. During this Agreement's Term, Client grants to Yardi a non-exclusive, non-transferable limited license to reproduce Client Data on Yardi's primary server and back-up servers solely for Client to use Client Data in connection with Client's Use of the Licensed Programs under this Agreement. Notwithstanding the foregoing, if any Client Data is lost for any reason, Yardi agrees to use commercially reasonable efforts to recover lost Client Data and will assist Client in identifying lost Client Data at Yardi's expense.

b. **Limited Liability for Unauthorized Client Data Access.** Yardi agrees to use (i) firewalls and other technology generally used in the trade to prevent unauthorized 3$^{rd}$ party access to its computer systems storing Client Data, and (ii) available encryption technology generally used in the trade to prevent unauthorized 3$^{rd}$ party access to Client Data transmissions. Yardi shall provide security for its networks and internet connections consistent with generally accepted industry practices. For purposes of this section 8(b) (Limited Liability for Unauthorized Client Data Access), the parties define Yardi's industry as real property management and accounting software as a service licensing, hosting, and related services. City will promptly install all patches, fixes, upgrades, updates and new versions of any security software it employs. Yardi will maintain industry standard safeguards to restrict access to City's Data and Confidential Information to those employees, agents or service providers of Yardi who need the information to carry out the purposes for which it was disclosed to Yardi. For information disclosed in electronic form, Yardi agrees that industry standard safeguards include electronic barriers (e.g., "firewalls" or similar barriers and password protected access by Yardi personnel to City Data). In the event that Yardi does not (A) use firewalls and other technology generally used in the trade, or (B) use encryption technology generally used in the trade, and the failure results in the unauthorized third party access to Client Data, Yardi shall be liable for such breach. Notwithstanding the generality of the foregoing, Client expressly acknowledges and agrees that nothing in this section 8(b) (Limited Liability for Unauthorized Client Data Access) shall constitute a representation or warranty by Yardi that its use of generally accepted firewalls, encryption and other technologies will prevent unauthorized third party access to Client Data or Client Data transmission.

c. **Loss or Unauthorized Access to Client Data.** Yardi will promptly notify Client of any actual or potential exposure or misappropriation of Client's Data (any "Leak") that comes to Yardi's attention. Yardi will reasonably cooperate with Client and with law enforcement authorities in investigating any such Leak, at Yardi's expense. Yardi will likewise reasonably cooperate with Client and with law enforcement agencies in any effort to notify injured or potentially injured parties, and such cooperation will be at each Party's expense. The remedies and obligations set forth in this Subsection 8(c) are in addition to any other Client may have.

d. **Client Data Backup; Client Data Retrieval.** Subject to Force Majeure Events, Yardi will: (i) execute (A) nightly database backups to a backup server, (B) incremental database transaction log file backups every 30 minutes to a backup server, (C) weekly backups of all Client Data and the default path to a backup server, and (D) nightly incremental backups of the default path to a backup server; (ii) replicate Client's Client Database and default path to an off-site location (i.e., other than the primary data center); and (iii) save the last 14 nightly database backups on a secure transfer server (i.e., at any given time, the last 14 nightly database backups will be on the secure transfer server) from which Client may retrieve the database backups at any time.

## 9. Confidentiality.

a. **Confidential Information Definition.** "Confidential Information" means all technical and non-technical information including: (i) Client Data, (ii) copyright, trade secret, and other proprietary information, (iii) inventions, know-how, processes, or algorithms, (iv) software programs, software source documents, object code, source code, database dictionaries, network diagrams, UML diagrams, Licensed Programs, Licensed Programs Documentation, (v) development, design details and specifications, and (vi) SSAE16 reports and any information related to SSAE16 reports as required by the industry standard.

b. **Nondisclosure and Nonuse Obligations.** Each party (the "**Receiving Party**") agrees that it will not disseminate, distribute, expose, or in any way disclose any Confidential Information of the other party (the "**Disclosing Party**"), to any third party. The Receiving Party may use the Disclosing Party's Confidential Information to the extent necessary to perform its obligations under this Agreement. The Receiving Party's employees and Contractors may use Confidential Information only for the specific business purpose for which it was made available and not for any other purpose. The Receiving Party's employees and Contractors may not use Confidential Information in any way that may compete with Disclosing Party. The Receiving Party may not disclose Confidential Information to its employees and Contractors for the purpose of enabling any such employees or Contractors to service, maintain, or modify the Licensed Programs. The Receiving Party agrees that it will treat all Confidential Information with the same degree of care as the Receiving Party accords its own Confidential Information, but in no event less than reasonable care. The Receiving Party agrees that it shall disclose Confidential Information only to those of its employees and Contractors who need to know such information, and the Receiving Party certifies that such employees and Contractors have previously agreed, either as a condition to employment or in order to obtain the Confidential Information, to be bound by terms and conditions applicable to the Receiving Party under this Agreement. The Receiving Party shall immediately give notice to the Disclosing Party of any unauthorized use or disclosure of the Dis-

closing Party's Confidential Information. The Receiving Party agrees to assist the Disclosing Party in remedying any such unauthorized Use or disclosure of Disclosing Party's Confidential Information.

c. **Exclusions from Nondisclosure and Nonuse Obligations.** The Receiving Party's obligations per section 9(b) (Nondisclosure and Nonuse Obligations) shall not apply to Confidential Information that the Receiving Party can document: (i) was (through no fault of the Receiving Party) in the public domain at or subsequent to the time the Disclosing Party disclosed the information to the Receiving Party, (ii) was rightfully in the Receiving Party's possession free of any confidentiality obligation at or subsequent to the time the Disclosing Party disclosed it to the Receiving Party, or (iii) was developed by the Receiving Party's employees or agents independent of, and without reference to, any information communicated to the Receiving Party by the Disclosing Party. A Confidential Information disclosure by the Receiving Party either (A) in response to an enforceable order by a court or other governmental body, (B) as otherwise required by law, or (C) necessary to establish the rights of either party under this Agreement, shall not be a breach of this Agreement by the Receiving Party or a waiver of confidentiality for other purposes; provided, however, the Receiving Party shall provide prompt prior written notice of any such information request to the Disclosing Party to enable the Disclosing Party to seek a protective order or otherwise prevent such disclosure.

d. **Ownership and Return of Confidential Information and Other Materials.** The Disclosing Party's Confidential Information is and shall remain the Disclosing Party's property, and this Agreement does not grant or imply any license or other rights to the Disclosing Party's Confidential Information except as expressly set forth in this Agreement. Within 5 business days after the Disclosing Party's request, the Receiving Party will promptly either (at the Disclosing Party's election) destroy or deliver to the Disclosing Party all Confidential Information and materials furnished to the Receiving Party, and the Receiving Party agrees to provide a written officer's certification of the Receiving Party's compliance with the foregoing obligation.

e. **Third Party Information Disclosure.** The Disclosing Party shall not communicate any information to the Receiving Party in violation of the proprietary rights of any third party.

f. **Protection of Private Information.** Contractor has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. Contractor agrees that any failure of Contractor to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Contract. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Contract, bring a false claim action against the Contractor pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Contactor.

**10. Warranties.**
a. **Limited Warranty.** Yardi warrants that the Licensed Programs will perform materially as specified in the Licensed Programs Documentation. Yardi does not warrant that the Licensed Programs will meet Client's requirements and expectations.

b. **Title.** Yardi represents and warrants to Client that it is the lawful owner or licensee of all programs, materials and property used by it in the performance contemplated hereunder and has the right to license to Client access to or Use of the Licensed Programs and each component thereof.

c. **Disabling Code.** Yardi represents and warrants that, except for the License File, as initially delivered or made available, the Licensed Programs, including future enhancements and modifications thereto, shall be free of any Disabling Code.

d. **Remedy for Limited Warranty Breach.** If Yardi breaches the warranty set forth in section 10(a) (Limited Warranty), Yardi agrees to use commercially reasonable efforts to modify the Licensed Programs so that they conform to that warranty. If such modification is not commercially reasonable, then Yardi will notify Client and Client may terminate this Agreement. In the event Client terminates this Agreement per this section 10(d) (Remedy for Limited Warranty Breach), Yardi will refund to Client, on a pro-rata basis, the annual Fees paid by Client to Yardi within the year prior to the effective date of Client's termination. THE FOREGOING REMEDY IS CLIENT'S SOLE REMEDY IN THE EVENT OF A BREACH OF THE WARRANTY SET FORTH IN SECTION 10(a) (Limited Warranty).

e. **Warranty Disclaimer. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, AND TO THE FULLEST EXTENT ALLOWED UNDER APPLICABLE LAW, YARDI DISCLAIMS ALL EXPRESS, AND IMPLIED WARRANTIES WITH REGARD TO THE LICENSED PROGRAMS INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

f. **Internet Performance Disclaimer.** Yardi does not and cannot control the flow of data via the internet. Such flow depends in large part on the performance of internet services provided or controlled by third parties. At times, actions or inactions of such third parties can impair or disrupt the internet. Yardi will use commercially reasonable efforts to remedy and avoid such events, but cannot guarantee that such events will not occur. Accordingly, Yardi disclaims any liability resulting from or relating to such events.

**11. Damage Limitations.**
a. **Damage Waiver. REGARDLESS OF ANY OTHER PROVISION IN THIS AGREEMENT, AND TO THE FULLEST EXTENT ALLOWED BY APPLICABLE LAW, YARDI DISCLAIMS ALL OBLIGATIONS AND LIABILITIES FOR SPECIAL, INDIRECT, INCIDENTAL, AND CONSEQUENTIAL DAMAGES, (EVEN IF YARDI HAS BEEN ADVISED OF THE POSSIBILITY OF THESE DAMAGES), ARISING FROM OR IN CONNECTION WITH THIS AGREEMENT.**

b. **Liability Limit.** IN ADDITION TO THE LIMITA-TIONS OTHERWISE SET FORTH IN THIS AGREEMENT, AND TO THE FULLEST EXTENT ALLOWED BY APPLICABLE LAW, CLIENT AGREES THAT IN THE EVENT OF ANY CLAIM OR CAUSE OF ACTION BY CLIENT ARISING OUT OF OR CONNECTED WITH THIS AGREEMENT, YARDI'S MAXIMUM LIABILITY, REGARDLESS OF THE AMOUNT OF LOSS CLIENT MAY HAVE SUFFERED, SHALL NOT EXCEED ONE MILLION DOLLARS AND NO CENTS ($1,000,000.00). YARDI'S LIABILITY LIMIT SET FORTH HEREIN SHALL NOT APPLY TO (1) DAMAGES CAUSED BY YARDI'S GROSS NEGLIGENCE, RECKLESS CONDUCT OR WILLFUL ACTS OR OMISSIONS, (2) YARDI'S OBLIGATION TO INDEMNIFY AND DEFEND CITY FOR ACTIONS ARISING UNDER SECTION 13 (INDEMNIFICATION), (3) WRONGFUL DEATH CAUSED BY YARDI, (4) SUBMITTING FALSE CLAIMS; MONETARY PENALTIES (APPENDIX A, SECTION 4); (5) NONDISCRIMINATION; PENALTIES (APPENDIX A, SECTION 18); AND (6) ANY PUNITIVE DAMAGES.

## 12. Ownership.
a. **Yardi's Ownership.** Client agrees that, as between Yardi and Client, Yardi is and shall remain the sole and exclusive owner of all right, title and interest in and to the Licensed Programs, Deliverables, Site, and Licensed Programs Documentation, and to all intellectual property rights in the foregoing. The only rights Client obtains in the Licensed Programs and Licensed Programs Documentation are the licenses granted to Client in this Agreement.

b. **Client's Ownership.** Yardi agrees that, as between Yardi and Client, Client is and shall remain the sole and exclusive owner of all right, title and interest in and to Client Data, subject to the limited license granted to Yardi for Client Data use in section 8(a) (Client Data Storage).

## 13. Indemnification.
a. **General Indemnification.** Contractor shall indemnify and save harmless City and its officers, agents and employees from, and shall defend them against any and all loss, cost, damage, injury, liability and third-party claims thereof for injury to or death of a person, including employees of Contractor or loss of or damage to tangible personal property, arising directly or indirectly from Contractor's performance of this Agreement, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement and except where such loss, damage, injury, liability or claim is the result of active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City. In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to

Contractor by City and continues at all times thereafter.

b. **Infringement Indemnification.** Yardi agrees to fully defend, indemnify and hold Client, and any of its officers, members, managers, contractors, agents and employees, harmless from and against any third party claims, actions or demands alleging that (i) Client's Use of the Licensed Programs, Licensed Programs Documentation, and Deliverables in accordance with this Agreement's terms infringes on a third party's proprietary information, trademark, copyright, patent rights or intellectual property rights, or misappropriates a third party's trade secrets, or (ii) claims of injury to or death of a person, including employees of Yardi, or loss of or damage to tangible property, arising directly or indirectly from Yardi's performance of the anticipated services under this Agreement, including but not limited to, Yardi's use of facilities or equipment provided by Client or others. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and Client's costs of investigating any claims against Client. In addition to Yardi's obligation to indemnify Client, Yardi specifically acknowledges and agrees that it has an immediate and independent obligation to defend Client from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Yardi by Client and continues at all times thereafter.

c. **Indemnity Conditions.** Yardi's defense and indemnification obligation per section 13 (Indemnification) is conditioned upon the following: (i) Client providing Yardi with prompt written notice of any claim for which indemnification is sought, provided however that any unreasonable delay on the part of the City shall relieve Yardi from its obligation hereunder only to the extent of the prejudice caused by such delay; (ii) Yardi having sole control of the defense and settlement of such claim, provided, however, that Yardi will not consent to the entry of any judgment or enter into any settlement with respect to the claim without the prior written consent of Client, which consent will not be unreasonably withheld, unless the judgment or proposed settlement involves only the payment of money damages by Yardi and does not impose any obligation upon Client and Yardi obtains the full and complete release of Client; Client shall have the right to have any suit or proceeding monitored by counsel of Client's choice and at its expense; and (iii) Client's reasonable cooperation with Yardi in the defense and settlement of the claim at Yardi's expense. If Yardi does not assume the defense of claim as required above, (i) Client may defend against, and consent to the entry of any judgment or enter into any settlement with respect to the claim in any manner it reasonably may deem appropriate, and Client need not consult with, or obtain any consent from, Yardi, and (ii) Yardi will remain responsible for any losses Client may suffer resulting from, arising out of, relating to, in the nature of, or caused by the claim to the fullest extent provided in this Section 13.

d. **Injunction.** If the Licensed Programs become the subject of a patent, trademark, copyright, or trade secret misappropriation or infringement claim, and such claim results – or is reasonably likely to result – in an injunction

against Client's continued Use of the Licensed Programs, Yardi will (i) replace or modify the Licensed Programs to avoid the misappropriation/infringement claim, (ii) secure Client's right to continue Use of the Licensed Programs, or (iii) if neither (i) or (ii) is commercially practicable, either party may terminate this Agreement upon written notice to the other party in which event Yardi agrees to refund a pro-rata portion of Client's then-current annual Fees (to the extent previously paid) determined by dividing the number of days remaining in Client's then-current annual license period (as of the termination effective date) by 365 and multiplying by Client's then-current annual Fees to the extent previously paid.

## 14. Programming Services.

a. **Programming Services.** Yardi provides programming services including, without limitation, database customizations, user interface customizations, database reports, database scripts and other programming services (collectively, "Programming Services").

b. **Programming Services Terms.** The Fees for Programming Services, if initially ordered, are set forth in Schedule A (Fee Schedule). Client will otherwise initiate Programming Service requests by providing written notice of the desired services to Yardi, and Yardi will advise Client of Yardi's availability and schedule for performing the Programming Services. Programming Services are subject to Client's written acceptance of: (i) Yardi's schedule for meeting Client's Programming Service request, and (ii) Yardi's Fees for such Programming Services.

c. **Deliverables License.** Subject to Client's full payment of all Undisputed Fees related to Programming Services, Yardi grants to Client a non-exclusive, non-transferable worldwide limited license for Designated Users to Use the Deliverables in connection with its Municipal Business Purposes under the licenses granted under this Agreement.

## 15. Assignment.

a. **Assignment by Client Limitation.** Except for the exceptions specified in section 15(b) (the "**Permitted Exceptions**"), Client shall not (either directly or indirectly) assign, sell, convey, pledge, or otherwise transfer this Agreement without first obtaining Yardi's express written consent, which Yardi shall not unreasonably withhold. Except for the Permitted Exceptions, any attempted assignment made without Yardi's prior express written consent is void and a material breach of this Agreement.

b. **Permitted Exceptions to Section 15(a).** Subject to the conditions precedent set forth in this section 15(b) (Permitted Exceptions), Client may assign this Agreement without Yardi's prior consent and upon notice: (i) to a wholly owned subsidiary, or (ii) in connection with any merger, acquisition, or reorganization involving Client. Any assignment is subject to the following conditions: (A) Client, or Client's successor, continuing in the same type of business that Client was conducting at the time of this Agreement's execution, and (B) Client or Client's successor providing to Yardi a written ratification and assumption of this Agreement (in a form reasonably satisfactory to Yardi) concurrent with the

assignment.

c. **Yardi Assignment.** Yardi agrees not to transfer its obligations under this Agreement without Client's prior written consent except in the event of (i) a merger involving Yardi, (ii) a sale or transfer of a controlling interest in Yardi, or (iii) an asset sale involving all or a substantial portion of Yardi's assets. Yardi shall notify Client promptly of any such events and City shall have the option to either terminate the Agreement, or immediately execute a written Assignment and Novation Agreement. Any other attempted assignment made without Client's prior express written consent is void and a material breach of this Agreement.

## 16. Outsourcing.

a. **Server Location.** Yardi reserves the right to locate the servers and other equipment needed to provide the services contemplated by this Agreement either at its facilities or at the facilities of independent service providers located within the United States. Yardi may change the location of the servers and other equipment needed to provide the services under this Agreement at any time during this Agreement's Term, provided that prior to transferring or relocating the servers containing Client's Data to a different independent service provider, Yardi shall provide Client with written notice and any such change of location shall not affect Yardi's obligations under this Agreement and shall not interrupt Client's access to the Site, Client Data and the Licensed Programs. Client shall have the right to terminate the Agreement and be refunded a pro-rata portion of Client's then-current annual Fees (to the extent previously paid) if termination occurs prior to the expiration of the Agreement.

**17. Dispute Resolution.** In the event of dispute arising out or related to this Agreement, Parties shall do their utmost best to resolve any such disputes in good faith through direct negotiation. Notwithstanding, if the Parties are unable to come to a mutual agreement after good faith effort through direct negotiations within thirty (30) days immediately following notice from one party to the other of its desire to have a dispute resolved, then the parties shall submit such dispute or difference to a member of their respective senior management. If the dispute or difference is not resolved by senior management within thirty (30) days immediately following the commencement of their discussions, then each party may then invoke all legal rights and remedies available to it at law or in equity.

**18. General Provisions.**

a. **Independent Contractor; Payment of Taxes and Other Expenses.**

1. 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 City under this Agreement. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and pay-

ments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from City 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. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement.

2. **Payment of Taxes and Other Expenses.** Should City, 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). City 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 City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City 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 City. 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 City's financial liability so that City'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.

b. **Governing Law.** This Agreement shall be governed and determined by the laws of the United States and the State of California as such laws are applied to agreements made and performed entirely within the State of California.

c. **Venue.**
Any action or proceeding related to or arising out of this Agreement shall be resolved only in a court of competent jurisdiction in the City of San Francisco, State of California.

d. **Injunctive Relief.**
(i) The parties acknowledge and agree that, if Client breaches any of its obligations under sections 2(a) (Licenses), 2(b) (Restrictions), 9 (Confidentiality) or 15 (Assignment), Yardi might incur irreparable harm and damage that might not be fully compensated with monetary damages. Accordingly, if Client breaches any provision of sections 2(a) (Licenses), 2(b) (Restrictions), 9 (Confidentiality), or 15 (As-

signment) Yardi may seek specific performance of Client's obligations under those sections and injunctive relief against any further violations of those sections.

(ii) The parties acknowledge and agree that, if Yardi breaches any of its obligations under section 9 (Confidentiality) Client might incur irreparable harm and damage that might not be fully compensated with monetary damages. Accordingly, if Yardi breaches any provision of section 9 (Confidentiality) Client may seek specific performance of Yardi's obligations under that section and injunctive relief against any further violations of that section.

e. **Binding Effect.** This Agreement is binding on and inures to the benefit of the parties and their permitted assigns, successors, and legal representatives.

f. **Notices.**
(i) The parties shall deliver any notice required by this Agreement by personal delivery, certified U.S. Mail return receipt requested, or established, reputable expedited delivery carrier providing proof of delivery service, and will be deemed given upon confirmed delivery to the party to whom it is intended at its record address. The record addresses of the parties are set forth below.

(ii) If to Client:
Attn: Tony Bardo
SAN FRANCISCO PUBLIC UTILITIES COMMISSION
Real Estate Services
525 Golden Gate Ave., 10$^{th}$ Floor
San Francisco, CA 94102

(iii) If to Yardi Systems, Inc.:
Attn: Chief Operating Officer
YARDI SYSTEMS, INC.
430 S. Fairview Ave.
Goleta, CA 93117

With a copy to:
Attn: Legal Department
YARDI SYSTEMS, INC.
430 S. Fairview Ave.
Goleta, CA 93117

(iv) Either party may change its record address by giving written notice of such change to the other party.

g. **Waiver.** 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.

h. **Severability.** If a court or other body of competent jurisdiction determines that any part of this Agreement is unenforceable, the remainder of this Agreement shall nevertheless remain enforceable.

i. **Headings.** This Agreement's section headings and

captions are inserted for convenience only and are not intended to form a material part of this Agreement.

j. **Entire Agreement.** This document along with Appendix A, (Additional Terms and Conditions); Appendix B (Hosting Services; Data Center); Schedule A, (Fee Schedule); Schedule B (Service Level Agreement); Schedule C (Disaster Recovery Plan); and Schedule D (Scope of Work), incorporated herein as though fully set forth herein, together constitute the final, complete, and exclusive statement of the agreement between the parties pertaining to this Agreement's subject matter and supersedes all prior and contemporaneous understandings or agreements of the parties. No party has been induced to enter into this Agreement by, nor is any party relying on, any representation or warranty except those inducements, representations and warranties expressly set forth in this Agreement. This Agreement may be modified only as provided in section 18(l) (Modification).

k. **Intentionally Omitted.**

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

m. **Force Majeure.**

1. **Liability.** Neither party shall be liable for any default or delay in the performance of its obligations under this Agreement: (i) if and to the extend such default or delay is caused by a Force Majeure Event, (ii) provided the non-performing Party is without fault in causing reasonable precautions and cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means (including, with respect to Contractor, by meeting its obligation for performing disaster recovery services as described below in Section 18(m)(4)).

(2). **Duration.** If a Force Majeure Event occurs, the non-performing party shall be excused from further performance or observance of the obligation(s) so affected for as long as such circumstances prevail and such Party continues to use its best efforts to recommence performance or observance whenever and to whatever extent possible without delay. Any Party so delayed in its performance shall immediately notify the Party to whom performance is due by telephone (to be confirmed in writing within two (2) days of the inception of such delay) and describe at a reasonable level of detail the circumstances causing such delay.

3. **Effect.** If any event under Section (18)(m)(1), above substantially prevents, hinders, or delays performance of the Licensed Programs and hosting services as critical for more than fifteen (15) consecutive days, then at City's option: (i) City may terminate any portion of this Agreement so affected and the charges payable hereunder shall be equitably adjusted to reflect those terminated services; or (ii) City may terminate this Agreement without liability to City or Yardi as of a date specified by City in a written notice of termination to Yardi. Yardi shall not have the right to any additional payments from City for costs or expenses incurred by Yardi as a result of any force majeure condition which lasts longer than three (3) days.

4. **Disaster Recovery.** In the event a disaster, as defined below, Yardi will be responsible for providing disaster recovery services in accordance with the provisions of the disaster recovery plan attached as Schedule C (Disaster Recovery Plan) hereto, or as otherwise set forth in this Agreement. In the event that a disaster occurs and Yardi fails to restore access to the Site and Client's Data within 24 hours of the initial disruption to services, Client may, in its discretion, deem such actions to be a material default by Yardi incapable of cure, and Client may immediately terminate this Agreement. In the event Client terminates this Agreement per this section 18(m)(4) (Disaster Recovery), Yardi will refund to Client, on a pro-rata basis, the annual Fees paid by Client to Yardi within the year prior to the effective date of Client's termination. THE FOREGOING REMEDY IS CLIENT'S SOLE REMEDY AND YARDI'S SOLE LIABILITY IN THE EVENT OF CLIENT'S TERMINATION OF THIS AGREEMENT IN ACCORDANCE WITH THIS SECTION 18(M)(4) (DISASTER RECOVERY). For purposes of this Agreement, a "disaster" shall mean an interruption in the hosting services or the inability of Yardi to provide Client with access to the Site and Client's Data for any reason that could be remedied by relocating the Licensed Programs' hosting services to a different physical location outside the proximity of its primary data center.

19. **Insurance.**
a. **Coverage.** Yardi shall, at its own expense, obtain and maintain throughout the duration of this Agreement the following insurance:
(i) commercial general liability insurance in an amount not less than $1,000,000 each occurrence, $2,000,000 general aggregate (and including: (A) personal and advertising injury coverage in an amount mot less than $1,000,000 each occurrence, and (B) products – completed operations coverage in an amount not less than $1,000,000 each occurrence);
(ii) automobile liability insurance (any auto) in an amount not less than $1,000,000 combined single limit (each accident);
(iii) workers compensation insurance in an amount not less than applicable statutory limits;
(iv) employers' liability insurance in an amount not less than $1,000,000 each accident, $1,000,000 disease each employee, and $1,000,000 disease policy limit;
(v) professional liability coverage on a claims made basis in an amount not less than $5,000,000 each claim, $5,000,000 aggregate; and
(vi) excess liability insurance in an amount not less than $5,000,000 each occurrence, $5,000,000 aggregate.

b. **Additional Insured Endorsement.** Yardi agrees to have Client named as an additional insured on Yardi's commercial general liability, excess liability, and automobile liability insurance policies. Such policies are primary insurance to any other insurance available to Client, as Additional Insured, with respect to any claims arising out of this Agreement. The insurance applies separately to each insured against whom a claim is made or suit is brought.

c. **Certificates.** Yardi agrees to provide Certificates of

Insurance and additional insured policy endorsements with insurers with ratings comparable to A- VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, evidencing the coverage specified in subsections (a)(i)-(vi), and providing the insurer's standard language regarding certificate holder notification of coverage cancellation. Failure to maintain insurance shall constitute a material breach of this Agreement.

d. Regarding Worker's Compensation, Contractor hereby agrees to waive subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation The Worker's Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

e. All policies shall provide thirty days' advance written notice to the City of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent to the City address in the "Notices" section, Section 18(f), of the Agreement.

f. Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement, and without lapse, for a period of five (5) years beyond the Agreement's Final Completion date, to the effect that, should occurrences during the Agreement term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

g. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

h. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

i. Approval of the insurance by City shall not relieve or decrease the liability of Contractor hereunder.

**20. Compliance With Law.** Each party agrees to comply with provisions and requirements of all federal, state, county, and local laws, ordinances, regulations and codes directly applicable to such party, including those of the City and County of San Francisco regarding Submitting False Claims and Monetary Penalties, Insurance Requirements, Sunshine Ordinance, Public Access to Meetings and Records, Minimum Compensation Ordinance for Covered Employees (MCO), and Health Care Accountability Ordinance for Covered Employees (HCAO).

**21. SSAE16 Audits.** During the term of this Agreement, and so long as SSAE16 remains a current and industry standard auditing standard, Yardi agrees to annually undertake an audit in accord with the American Institute of Certified Public Accountants' Statement on Standards for Attestation Engagements No. 16 or a successor standard ("SSAE16") with respect to Yardi's ASP service. Upon Client's request, and no more than annually, Yardi agrees to provide a copy of its then-current SSAE16 audit report for Client's review.

*<SIGNATURE PAGE FOLLOWS>*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.
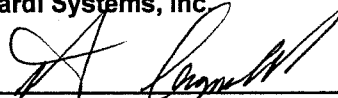
**CITY**

Recommended by:

_____

**Harlan L. Kelly, Jr.**
General Manager
San Francisco Public Utilities Commission
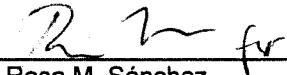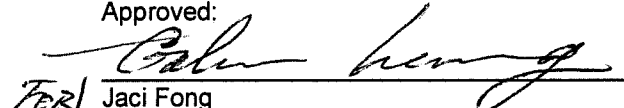
Approved as to Form:

Dennis J. Herrera
City Attorney

By: _____
      Rosa M. Sánchez
      Deputy City Attorney

Approved:

_____
Jaci Fong
Director of the Office of Contract Administration, and
Purchaser

**Schedules:**
A – Fee Schedule
B - Service Level Agreement
C - Disaster Recovery Plan
D – Scope of Work

**Appendices:**
A – Additional Terms and Conditions
B – Licensed Programs & Hosting Services Description

**CONTRACTOR**

**Yardi Systems, Inc.**

_____

**Daniel Campbell**
Vice President
430 South Fairview Avenue
Goleta, CA 93117

City vendor number: __87382__

## SCHEDULE A

### Fee Schedule

**Voyager Software License and Hosting Fee**

1)     Annual Hosting License Fee:     For 10 Designated Users ("**DUs**").

      **a) Hosted Modules Included:**

| | |
|---|---|
| Property Management and Accounting- 10 DUs @ $2,500/DU | $25,000.00 |
| *Including: GL/AP, Maintenance/Work Orders* | |
| Courtesy Concession- 10 DUs @ $250/DU | <2,500.00> |

      **Total Annual Fee for Year 1[1]**       **$22,500.00**

[1] Notwithstanding the multi-year Term set forth in section 3(a) (Term), Client agrees to pay Client's annual Fee annually in accord with this Schedule A (Fee Schedule). Client's Total Annual Fee includes application hosting, license Fees, up to 1 Citrix DU, updates/upgrades, and 23 application support hours/year. Yardi will debit all application support services (in ¼-hour increments with a ¼-hour minimum) against Client's above-noted application support allotment except when the services relate to a Software Error. Client's Total Annual Fee is subject to increase on each Anniversary Date; such increases shall not exceed the percentage increase in the U.S. Department of Labor, Bureau of Labor Statistics' Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W): U.S. Cities Average for the preceding year.

Year 1 setup application support hours       client declined[2]

[2] Yardi recommends 25 additional support hours for year one only. Client declines additional support at this time with the option to purchase on an as needed basis at a later date.

**Training, Implementation, and Other Services**

2)     Implementation/training- 160 hours @ $230/hour       $36,800.00[3]

    [3] Implementation/training rate includes all travel, airfare, and per diem costs. Implementation/training includes the products, services and reports described in Scope of Work (Schedule D). During implementation, Client tech support calls are deducted from Client's implementation and training hours in 15 minute increments. Once depleted, Client tech support calls are deducted from Client's allocated tech support units provided for in the Annual Hosting License Fee. At any time, Client may purchase additional implementation/training hours at Yardi's then-current prevailing implementation/training rate, plus reasonable expenses.

3)     Start-up Fees (For 10 DUs)       $3,000.00

4)     Start-up Fees include, but are not limited to, one-time costs to set up Citrix and DUs, create login credentials, prepare servers to accept Client, set-up licenses and Webshare, and to install applications, including plug-ins and service packs.
    Data Conversion (subject to Yardi data conversion guidelines)       $7,500.00[4]
    [4] Conversion services of $7,500 will be paid in two annual installments of $3,750. Conversion of up to 5 data sources via flat file import; core w/ open balances.

5)     Programming Services       $3,750.00
    For the third year, a charge of $3,750 will be assessed to create an automated journal entry export file that can be imported into client's existing GL system.

6) **Summary of Fees by Year**

| | Year 1<br>March 1, 2013 to February 28, 2014 | Year 2<br>March 1, 2014 to February 28, 2015 | Year 3<br>March 1, 2015 to February 29, 2016 | Total |
|---|---|---|---|---|
| Annual License & Hosting | $22,500.00 | $22,500.00<br>+ 1 Yr CPI | $22,500.00<br>+ 2 Yr CPI | $67,500.00<br>+ CPI |
| Training/Implementation | 36,800.00 | 0.00 | 0.00 | 36,800.00<br>[payable upon completion of training or acceptance of implementation] |
| Start-up | 3,000.00 | 0.00 | 0.00 | 3,000.00 |
| Data Conversion | 3,750.00 | 3,750.00 | 0.00 | 7,500.00 |
| Programming Services | not included | not included | 3,750.00 | 3,750.00 |
| Option for additional minor changes such as changing the Citrex Designated User or adding additional users, and the additional CPI cost per year (if applicable). | | | | 10,000.00 |
| Total Not to Exceed Amount | $66,050.00 | $26,250.00 | $26,250.00 | $128,550.00 |

7) Sales Tax:                                                        as applicable

8) Yardi may disclose that Client has contracted with Yardi.

9) Yardi's Citrix Designated User change Fee is $100/change. Client acknowledges that additional DUs and Licensed Programs (i.e., in addition to those initially set forth in this Schedule A (Fee Schedule)) require additional Fees at the rate calculated in accordance with Section 1 of Schedule A.

10) Yardi's ASP service includes 10 GB of File Storage for Client. Client may purchase additional File Storage at Yardi's then-current prevailing rate for additional File Storage at the time of Client's request. There is no space limit for database (i.e. core data and transactions) storage.

11) Yardi's ASP service includes 1 live and 1 test database. Client may purchase additional databases at Yardi's then-current prevailing rate for additional databases at the time of Client's request.

12) PAYMENT TERMS FOR THE FIRST YEAR:
$22,500.00 payable upon Client having access and use of hosted Licensed Programs;
$10,887.50 payable upon completion and acceptance by Client of installation;
$10,887.50 payable upon completion and acceptance by Client of conversion;
$15,242.50 payable upon completion of user acceptance testing;
$6,532.50 payable upon completion of training.

Schedule A
Yardi Systems, Inc. SaaS Agreement              A - 2                         February 26, 2013

**SCHEDULE B**

**Service Level Agreement**

During the term of this Agreement, and subject to its terms, Yardi's will meet the following service levels.

**SECTION I – Performance Goals**

**1. Site Availability**

Overall Site availability is a cumulative measure of the availability of the following components:

Network Availability [WAN (ISP Access) and LAN layers]

Operating Systems (servers, including dedicated development servers, storage devices, switches, local balancers, routers and fire-walls)

Application Availability (Enterprise and Voyager applications)

**Scheduled Hours of Operational Down Time (relative to Network Availability, Operating Systems & Application Availability)**

Yardi conducts scheduled maintenance from 11:00 pm (Saturdays) to 3:00 am (Sundays) (local time to the data center). Additionally, Yardi conducts daily database backups between the hours of 12:00 am and 2:00 am (local time to the data center). Backups are stored locally and at Yardi's alternate data center. The last 14 nightly Client Data backups are available for Client's retrieval from Yardi's secure transfer site. Subject to Force Majeure Events, any down time experienced outside the above-noted time standing maintenance/backup hours without Client's prior notification will be counted against Site availability.

**Service Level** – Yardi's goal is to deliver at least 99.5% Site availability.

**Measurement** – Site availability is measured by taking the potential scheduled uptime for the month (24 hrs x # of days in month, less the scheduled downtime) minus any experienced, unscheduled downtime, divided by the potential scheduled uptime for the month. An example of this calculation for a month with 31 days, 4 Saturdays and 3.37 hours (3 hours, 22 minutes, 12 seconds) of experienced, unscheduled downtime would be:

$$[(31 \times 24) - (31 \times 2) - (4 \times 2) - 3.37]/[(31 \times 24) - (31 \times 2) - (4 \times 2)] = 99.5\%$$

**Measurement Period** -- Monthly basis.

**2. End to End Application Response**

**Service Level** --Yardi's goal relative to end-to-end application response is a consistent response time of less than 6 seconds. However, this is **not** a contractual, service level obligation because of the network and other factors outside Yardi's control.

**3. Application Response**

**Service Level** -- Yardi's goal is that the elapsed time for a packet sent from Yardi's application layer servers to the Yardi network entry/egress routers will be less than 3 seconds.

**4. Procedural Responses**

**A. Service Level** -- Yardi's goal is to answer 99% of all cases within the time frames defined for each level in Table A-1, below. Initial responses to severity 1, 2 and 3 level for issues properly submitted to Yardi's technical staff regarding ASP service issues will occur within the following times applicable to the service level. This is the time lapse between when a call is received and assignment of trouble ticket is made to the appropriate support team.

**Table A-1** Problem Report/Support Response Service Level

| Severity Level | Service Level | Business Hours[1] | Off-Hours |
|---|---|---|---|
| Level 1 | Business Critical | 15 minutes | 1 hour |
| Level 2 | Business Critical w/exception | 1 hour | 2 hour |
| Level 3 | Non Business Critical | 4 hours | Next Business Day |

[1] For purposes of this Schedule, "Business Hours" means 8:00 am – 5:00 pm (local time to the data center), Monday – Friday excluding holidays.

**Measurement**—Total # of cases meeting the Table A-1 response times divided by the total number of Level 1 cases = %.

**B. Escalation Service Level** -- Yardi's goal is to properly identify and escalate 99% of Severity Level 1, 2 and 3 issues in accord with Yardi's escalation procedures (See Table A-2).
**Definition of Severity Levels**

**Severity Level 1** -- Production system is completely unavailable or is inoperable, or is affected such that critical business processes are completely unavailable or inoperable.

**Severity Level 2** -- Production system is available, but non-critical business processes and multiple users are substantially impacted, or are affected such that critical business processes are unavailable or inoperable.

**Severity Level 3** -- Production system is available, but a single user or non-critical business processes are adversely impacted, or the test or development systems functions, but multiple users are impacted.

**Table A-2** Escalation Service Level Options

| Severity | Notification Within | Client Notification | Yardi Notification |
|---|---|---|---|
| Level 1 | 30 minutes | Client to define | VP – IT of Applications |
| | 2 hours | Client to define | COO / CEO |
| Level 2 | 4 hours | Client to define | VP – IT or Applications |
| | 8 hours | Client to define | COO / CEO |
| Level 3 | 1 business day | Client to define | VP – IT or Applications |

**Measurement** – The sum of the actual response times for all cases is divided by the sum of the allowed response time for all cases. A manual process will be used to collect the information to be used to measure the escalation service level.

**Measurement Period** – Monthly basis

**5. Summary of ASP Service Level Agreement Performance Goals**

Table A-3 Summary of SLA Performance Goals

| *Service* | *SLA* | *Metric* | *Yardi Goals* |
|---|---|---|---|
| **Site Availability** | Network Availability | Network Uptime | 99.5% |
| | • LAN | | |
| | • WAN (ISP access) | | |
| | Operating Systems | System Uptime | 99.5% |
| | • Servers | | |
| | • Storage Devices | | |
| | • Switches | | |
| | • Load Balancers | | |
| | • Routers | | |
| | • Firewalls | | |
| | Application Availability | Application Uptime | 99.5% |
| | • Enterprise | | |
| | • Voyager | | |
| **Application Performance** | End to End response | End User to/from Applicatic | < 6 sec. |

| | | Yardi | (this is a goal only) |
|---|---|---|---|
| | Application response | Internal, Onsite response tir Yardi NOC | < 3 sec. |

## SECTION II - Testing

1. **Functionality Testing** -- Yardi will perform functionality testing on all releases of the Licensed Programs and, upon Client's request, forward the test results to Client in the form of release notes.
2. **Exception Testing** -- Client may test all releases before moving to production.
3. **Security Testing** -- Upon Client's request, and no more than annually, Yardi will provide Client with a report showing the intrusion detection testing results. Client agrees that the intrusion detection results are Confidential Information under this Agreement.

## SECTION III - General Notes

1. Achievement of the application availability component of Site availability is dependent upon proper configuration of all network systems and the availability of the underlying relevant application and infrastructure components receiving or delivering information to and from the managed services at levels equal to or greater than the application availability level.

Upon Client's request, the parties may review and appropriately adjust the service levels on an annual basis to reflect response times and service levels consistent with industry practice for similar functionality and services. Any such adjusted service levels shall be incorporated into this Agreement upon the parties' mutual agreement as evidenced by a signed, written addendum expressly identifying the new, adjusted service levels, and shall supersede and replace any previous version of such service levels.

Rev. 102009

# SCHEDULE C

## DISASTER RECOVERY PLAN
### Business Continuity Plan for ASP Clients (North America)

**ATTACHED SEPARATELY PAGINATED (4 pages)**

Schedule C
Yardi Systems, Inc. SaaS Agreement          C - 1                              February 26, 2013

## SCHEDULE D

### Scope of Work

I.    **Introduction:**

        The Real Estate Services Division (RES) of the San Francisco Public Utilities Commission (SFPUC) desires to improve existing processes and implement changes to improve the division, manage and control its existing leases and permits more efficiently, manage a high volume of existing permits not yet tracked in any system, and generate critical real estate and financial reports. It requires a lease and permit administration software system that not only helps manage its current operations but will help manage its future growth. In light of these goals, RES will be utilizing the Yardi's Voyager licensed real property and asset management application hosted by Yardi Systems, Inc.

II.    **Contractor's project approach includes:**

Project Management
- Project plan development
- Integration of all work streams and modules
- Facilitation of meetings
- Documentation of meetings
- Resource assignments and coordination
- Progress tracking

III.    **System Implementation**

1)     **Kickoff.** After contract signing, the Yardi project manager will schedule a kickoff call or on-site meeting, as appropriate. This high-level Q&A shall aim at identifying the project stakeholders and key milestones so that Yardi will deliver project plans and timelines to the project team.

2)     **Assess**
a)     **Evaluation Session.** The project's first face-to-face and on-site meeting in which Yardi will explore the business needs of the Client. At least 48 hours prior to the meeting, Yardi will provide Client with a proposed agenda, and will spend some time observing current Client business operations. This will give Yardi a sense of Client's existing processes and the steps required during the implementation to meet Client's business needs.

b)     **Workflow Session.** Using Microsoft Visio, Yardi will walk through the various workflows currently in place with Client's project team to determine how Yardi Voyager™ can best enhance Client's operational processes. **Deliverables include documented workflows and the final project plan.**

3)     **Plan**
a)     **Weekly Calls.** Client's Yardi project manager will conduct weekly calls designed to keep the project on time and on budget. The first call shall be used for ratification of the project plan. In subsequent meetings, Yardi will track project progress against the project plan, review issue resolution against the issues log, and discuss any new issues as they arise.

b)     **Change Management.** Cultural change management often proves to be a challenging part of the implementation process. Yardi's project managers are industry professionals themselves and know the business. They are trained to overcome change management challenges and facilitate a smooth transition through a careful and detailed evaluation of Client's business processes and thorough, efficient testing and training.

c)     **Project Plan.** Based on Client's business procedures and functional needs, Client's Yardi project manager will create a project plan to guide Client's implementation. The plan provides project milestones coupled with projected timelines and due dates so that Client's project is completed on schedule. Yardi will furnish a copy of an actual project plan to Client once it is developed.
d)     **Issue Log.** Used in conjunction with the project plan, this log shall track the progress of enhancements and functional requests through the life of the project. It is prioritized and filtered according to Client's business needs and gives the project team complete visibility into issue resolution. Yardi shall furnish Client a copy of an actual log as soon as it is developed.

4)     **Deploy**
a)     **Installation and Testing.** Once the project has been planned thoroughly, Yardi will begin installing the Yardi solution in a test environment. Yardi professionals shall ensure that the software is installed with the personalization required by Client's business plan. Once installation is complete, Client's project team and functional leaders will have the opportunity to learn the new system.

b)     **Setup.** Once the software is installed, Client's Yardi project manager will begin walking Client through the setup process. During this process, Client will have the opportunity to select the right combination of settings and permissions to fine-tune the software to Client's specific business needs.

c)     **Conversion.** Data conversion will progress concurrently with system setup. Yardi's project manager

shall work with Client to create the best method for bringing Client's important financial and historical data into the Yardi environment.

d)      **User Acceptance Testing.**  After setup is complete and data has been converted to the new system, Client's Yardi project manager will assist Client in creating testing scenarios based on Client's data and business processes. Client's own users will have the opportunity to put the system through its paces using these test scripts. User acceptance testing (UAT) will be Client's opportunity to provide feedback about the system to Yardi developers. Once testing is completed, Client will either point out any system deficiencies to be corrected, or accept the system as meeting the functional requirements set forth in the documentation and Appendix E.

e)      **Training**

   i.    *On-Site End User Training.* With traditional end user training, we send a trainer to a site of your choosing to train end users on all facets of the system. This kind of training is highly personalized, but class sizes are more limited
   ii.   *Web-Based End User Training.* This form of end user training is less personalized, but can accommodate larger class sizes.
   iii.  *Train-the Trainer:* Our trainer(s) pass knowledge on to your trainer(s), who in turn train your end users on the system.

**IV.    Implementation schedule:**

The implementation schedule shall be determined by Yardi and Client following the "Kickoff" meeting described above.

**APPENDIX A**
**ADDITIONAL TERMS AND CONDITIONS**

1. **Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation.** This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration of this Agreement.

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

2. **Contractor's Default.** Failure or refusal of Contractor to perform or do any act herein required shall constitute a default. In the event of any default, in addition to any other remedy available to City, this Contract may be terminated by City upon ten days written notice. Such termination does not waive any other legal remedies available to City.

3. **Guaranteed Maximum Costs.** The City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. Except as may be provided by City ordinances governing emergency conditions, the City and its employees and officers are not authorized to request Contractor to perform services or to provide materials, equipment and supplies that would result in Contractor performing services or providing materials, equipment and supplies that are beyond the scope of the services, materials, equipment and supplies agreed upon in the contract unless the agreement is amended in writing and approved as required by law to authorize additional services, materials, equipment or supplies. The City is not required to reimburse Contractor for services, materials, equipment or supplies that are provided by Contractor which are beyond the scope of the services, materials, equipment and supplies agreed upon in the contract and which were not approved by a written amendment to the agreement having been lawfully executed by the City. The City and its employees and officers are not authorized to offer or promise to Contractor additional funding for the contract which would exceed the maximum amount of funding provided for in the contract for Contractor's performance under the contract. Additional funding for the contract in excess of the maximum provided in the contract shall require lawful approval and certification by the Controller of the City and County of San Francisco. The City is not required to honor any offered or promised additional funding for a contract which exceeds the maximum provided in the contract which requires lawful approval and certification of the Controller when the lawful approval and certification by the Controller has not been obtained. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

4. **Submitting False Claims; Monetary Penalties.** Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. The text of Section 21.35, along with the entire San Francisco Administrative Code is available on the web at http://www.municode.com/Library/clientCodePage.aspx?clientID=4201. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

5. **Payment Does Not Imply Acceptance of Work.** The granting of any payment by City, or the receipt thereof by Contractor, shall in no way lessen the liability of Contractor to replace unsatisfactory work, the Licensed Software, although the unsatisfactory character of such work, or Licensed Software may not have been apparent or detected at the time such payment was made. Software, components, or workmanship that do not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced by Contractor without delay.

6. **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 City's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor.

7. **Responsibility for Equipment.** City shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or by any of its employees, even though such equipment be furnished, rented or loaned to Contractor by City. The acceptance or use of such equipment by Contractor or any of its employees means that Contractor accepts full responsibility for and agrees to exonerate, indemnify, defend and save harmless City from and against any and all claims for any damage or injury of any type arising from the use, misuse or failure of such equipment, whether such damage be to Contractor, its employees, City employees or third parties, or to property belonging to any of the above.

8. **Liability of City.** CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 4(a) (LICENSE FEES) OF THE MAIN DOCUMENT OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, IN-

DIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

9.     **Bankruptcy.** In the event that either party shall cease conducting business in the normal course, become insolvent, make a general assignment for the benefit of creditors, suffer or permit the appointment of a receiver for its business or assets or shall avail itself of, or become subject to, any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or the protection of rights of creditors, then at the option of the other party this Agreement shall terminate and be of no further force and effect.

10.     **Subcontracting.** Contractor is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is first approved by City 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.

11.     **Compliance with Americans with Disabilities Act.** Contractor shall provide the Services in a manner that complies with the Americans with Disabilities Act (ADA), including but not limited to Title II's program access requirements, and all other applicable federal, state and local disability rights legislation.

12.     **Sunshine Ordinance.** In accordance with San Francisco Administrative Code Section 67.24(e), contracts, contractors' bids, responses to requests for proposals and all other records of communications between City and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

13.     **Limitations on Contributions.** Through execution of this Agreement, Contractor acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Contractor acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of $50,000 or more. Contractor further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Additionally, Contractor acknowledges that Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Contractor further agrees to provide to City the names of each person, entity or committee described above.

14.     **Prohibition on Political Activity with City Funds.** In accordance with San Francisco Administrative Code Chapter 12.G, Contractor may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this Agreement. Contractor agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Contractor violates the provisions of this section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit Contractor from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider Contractor's use of profit as a violation of this section.

15.     **Audit and Inspection of Records.** Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its work under this Agreement. Contractor will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon City by this Section.

16.     **Conflict of Interest.** Through its execution of this Agreement, Contractor acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2 of the City's Campaign and Governmental Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Agreement.

17.     **Administrative Remedy for Agreement Interpretation.** Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to Purchasing who shall decide the true meaning and intent of the Agreement.

18.     **Nondiscrimination; Penalties**

    a.     **Contractor Shall Not Discriminate.** In the performance of this Agreement, Contractor agrees not to discriminate against any employee, City and County employee working with such contractor or subcontractor, applicant for employment with such contractor or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's

race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

   b. **Subcontracts.** Contractor shall incorporate by reference in all subcontracts the provisions of §§12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code (copies of which are available from Purchasing) and shall require all subcontractors to comply with such provisions. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

   c. **Nondiscrimination in Benefits.** Contractor does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in §12B.2(b) of the San Francisco Administrative Code.

   d. **Condition to Contract.** As a condition to this Agreement, Contractor shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

   e. **Incorporation of Administrative Code Provisions by Reference.** The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Contractor understands that pursuant to §§12B.2(h) and 12C.3(g) of the San Francisco Administrative Code, a penalty of $50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Contractor and/or deducted from any payments due Contractor.

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

**20.** **Provisions Controlling.** Contractor agrees that in the event of conflicting language between this Appendix A, "Additional Terms and Conditions," and Contractor's printed form, the provisions of this Appendix A, "Additional Terms and Conditions," shall take precedence.

**21.** **Cooperative Drafting.** This Agreement has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

**22.** **SAS 70 Audit.** During the Term of the Agreement, Contractor will use commercially reasonable efforts to provide, on the terms on which they are made available, the SAS 70 Type II Audit report ("Audit Reports") it receives from its hosting service provider described in Section 16(a) (Server Location) of the Agreement. .

**23.** **Survival.** This section and the following sections of this Agreement shall survive termination of expiration of this Agreement:

| | | | |
|---|---|---|---|
| 4. | Submitting False Claims; Monetary Penalties | 8. | Liability of City |
| 5. | Payment Does Not Imply Acceptance of Work | 15. | Audit and Inspection of Records |
| 7. | Responsibility for Equipment | 17. | Administrative Remedy for Agreement Interpretation |

**Appendix B**

**Hosting Services; Data Center**

The location of the data center that will be used to host the Licensed Programs and City Data is as follows:

Primary data center:     Phoenix
                         120 E. Van Buren Street
                         Suite 202
                         Phoenix, AZ  85004


Back-up data center:     Atlanta
                         375 Riverside Parkway
                         Suite 150
                         Lithia Springs, GA  30122


In the event that the location of the data center used to host the Licensed Programs and City Data is changed, Contractor shall provide City with prior written notice of said change and disclose the address of the new facility. Any such new primary facility shall be located within the United States.

In the event Contractor changes the foregoing hosting provider, Contractor shall provide City with prior written notice of said change and disclose the name and location of the replacement hosting provider. The replacement hosting provider shall be a reputable hosting provider comparable to Contractor's current hosting provider, and said replacement hosting provider shall be located within the United States.

Appendix B                                                                    Yardi Systems, Inc.
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# Business Continuity Plan for ASP Clients (North America)

## OVERVIEW

The goal of Yardi Systems' business continuity plan is to minimize downtime in the event of complete loss of service at one of our co-located hosting sites. The outlined plan will allow all clients who were connected to the downed site to be redirected to our business continuity data center. The data center is a 347,000 sq. ft. facility in the heart of downtown Phoenix. Power is provided to the building from Arizona Public Service (APS). The property has dual power entry vaults from the downtown network grid, with multiple substations and a history of zero power outages. The facility has OC12 fiber capacity provided by Verizon and AT&T. There are over 250 active PBX Option 61C lines and 100+ total T1s, all powered by Nokia, WatchGuard, and Cisco firewalls alongside Cisco, Nortel, and 3Com routers.
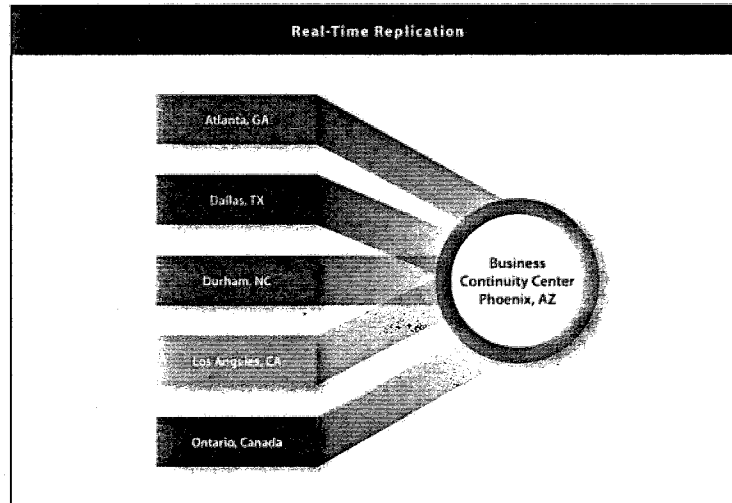


## PLAN

Yardi replicates all ASP user accounts from the various co-location sites to a set of standby servers securely located at our data center in Phoenix, Arizona. These standby

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servers are designated as "recovery servers" and are used only for that purpose, as in the case of a catastrophic failure affecting an entire data center.

In the event of an outage lasting over 30 minutes but under 24 hours, notification will be sent to the single point-of-contact (SPOC) of each client involved. This notice will include:

- Reason for downed site
- Estimated timeframe in which the data will be operational

In the event of a disaster lasting over 24 hours with no foreseeable resolution, Yardi will initiate disaster recovery mode. Our ASP department will have each client's database restored in 5 business days and will notify each client as their site becomes available. These recovery periods can be adjusted to meet specific client needs, for an additional service fee.

## DETAILS

Every production SQL and Oracle database server is replicated in real time to a standby server in the Phoenix data center. Using the Internet with a secure Virtual Private Network (VPN) connection, all database transactions and client user-default paths are transferred in real time to the servers. Since different clients are on different versions of the Yardi application, the default for our business continuity data center is the latest version of each major release. This means that if you are running Voyager version 6.0.08.278, you will be placed on a server with the latest version of 6.0.08.22307.

Our business continuity site is designed to bring the Yardi application back online. We will not host third-party applications at the business continuity site as long as we are in disaster recovery mode.

When the client is first brought back online, Yardi will make available a limited number of Citrix users. After all clients are back online and as Yardi starts emerging from the disaster recovery mode, we will begin increasing the number of Web servers to allow the business continuity site to come up to full capacity as a production site.

## TESTING

Yardi business continuity staff periodically practices the above procedures to confirm that all procedures and goals can be met. Yardi also recommends that clients work with Yardi to test the site as it pertains to their organization.

## LOGICAL LAYOUT

The diagram below represents a logical layout of the replication that occurs from a production database at a data center to the business continuity site.
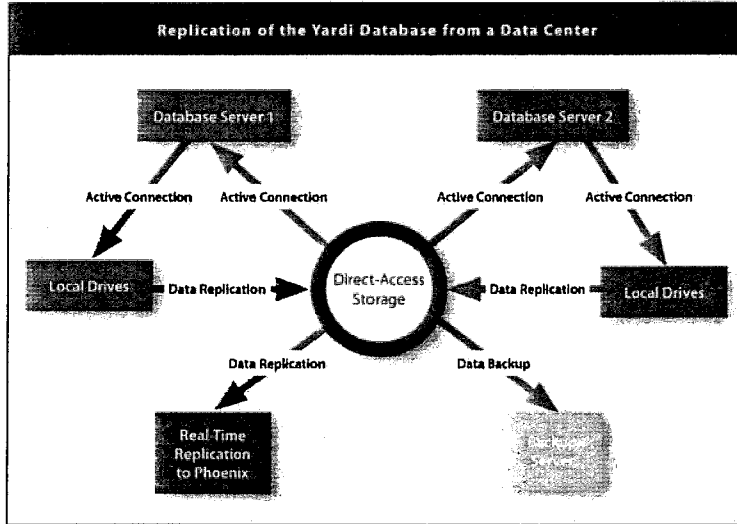


The diagram below represents the logical layout and replication of Yardi's business continuity site.
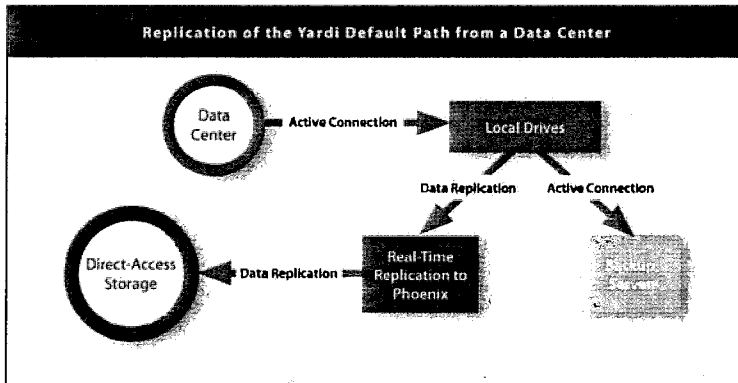
# DISASTER RECOVERY SCENARIOS

Depending on the cause of the outage at the primary data center, Yardi will decide if and when it is appropriate to move clients back to the original data center or if the clients should remain at the current site. The following sample scenarios result in some kind of loss of service that may result in the indicated disaster recovery action:

- Severe power outage

  If the power outage looks to be resolved in a reasonable amount of time (24 to 48 hours), client data will remain in the data center until power is restored.

- Accidental outage of ISP at data center

  If the data center is offline but the foreseeable return online is 1 to 2 weeks, client data will be rolled over to Phoenix until the issue has been resolved, at which time client data will most likely be rolled back to the original data center.

- Catastrophic fire that renders the data center irreparably damaged

  Client data will be brought up in Phoenix, which will become the new live data center.

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