

**City and County of San Francisco
Office of Contract Administration
Purchasing Division**

Fifth Amendment

THIS AMENDMENT (this "Amendment") is made as of June 16, 2011 in San Francisco, California, by and between **Cogsdale Holdings Ltd.** ("Contractor"), and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Director of the Office of Contract Administration.

RECITALS

WHEREAS, City and Contractor have entered into the Agreement (as defined below); and

WHEREAS, City and Contractor desire to modify the Agreement on the terms and conditions set forth herein to extend the performance period, increase the contract amount, and update standard contractual clauses;

NOW, THEREFORE, Contractor and the City agree as follows:

1. Definitions. The following definitions shall apply to this Amendment:

1a. Agreement. The term "Agreement" shall mean the Agreement dated July 1, 2006 between Contractor and City, as amended by the:

First Amendment,	dated February 1, 2007,
Second Amendment,	dated July 1, 2007, and
Third Amendment,	dated April 7, 2008.
Fourth Amendment	dated June 12, 2009.

1b. Other Terms. Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.

2. Modifications to the Agreement. The Agreement is hereby modified as follows:

2a. Section 2. Section 2, Term of the Agreement, currently reads as follows:

Subject to Section 2, the term of this Maintenance Agreement shall be from July 1, 2006 to June 30, 2011.

Such section is hereby amended in its entirety to read as follows:

Subject to Section 2, the term of this Maintenance Agreement shall be from July 1, 2006, to June 30, 2012.

2b. Section 4. Section 4, City's Payment Obligation, of the Agreement currently reads as follows:

4.1. The City will make a good faith attempt to pay all invoices within 30 days of billing. However, in no event shall City be liable for interest or late charges for any late payments made after such 30-day period. For each piece of Software listed in Appendix B-3, City shall pay the price listed in Appendix B-3 for Support Services for that piece of Software. However, in no event shall the amount of this Agreement exceed Six Hundred Forty Thousand Nine Hundred Forty dollars and no cents (\$640,940.00). This amount is a fixed fee for all Support Services.

As outlined in Appendix B-3, the fixed fee for the time period July 1, 2009 through June 30, 2010 shall be One hundred twenty-two thousand Two hundred and ninety-eight dollars (\$122,298) and shall be invoiced quarterly for the following time periods: 1) July 1 – September 30, 2009, 2) October 1 – December 31, 2009, 3) January 1 – March 31, 2010, and 4) April 1 – June 30, 2010. Each invoice will be submitted 30 days prior to the beginning of the quarter and will be due on the last day of the preceding quarter.

As outlined in Appendix B-3, the fixed fee for the time period July 1, 2010 through June 30, 2011 shall be One hundred twenty-two thousand Two hundred and ninety-eight dollars (\$122,298) and shall be invoiced quarterly for the following time periods: 1) July 1 – September 30, 2010, 2) October 1 – December 31, 2010, 3) January 1 – March 31, 2011, and 4) April 1 – June 30, 2011. Each invoice will be submitted 30 days prior to the beginning of the quarter and will be due on the last day of the preceding quarter.

Payment Requests should be sent to:
Controller's Office - CSA Operations
1 Dr. Carlton B. Goodlett Place, City Hall, Rm 388
San Francisco, CA 94102

4.2. Contractor and the City understand and intend that the obligations of the City to pay maintenance charges hereunder shall constitute a current expense of the City and shall not in any way be construed to be a debt of the City in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by the City, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or monies of the City.

4.3. The City shall pay maintenance charges, exclusively from legally available funds, to Contractor or, in the event of an authorized assignment by Contractor to its assignee, according to the terms of this Maintenance Agreement, upon presentation of invoices furnished by Contractor in a form acceptable to the Controller. Payments will be made by warrant drawn on the Treasurer of the City.

Such section is hereby amended in its entirety to read as follows:

4.1. The City will make a good faith attempt to pay all invoices within 30 days of billing. However, in no event shall City be liable for interest or late charges for any late payments made after such 30-day period. For each piece of Software listed in Appendix B-4, City shall pay the price listed in Appendix B-4 for Support Services for that piece of Software. However, in no event shall the amount of this Agreement exceed Seven Hundred Sixty Three Thousand, Two

Hundred and Thirty Eight Dollars and no cents (\$763,238). This amount is a fixed fee for all Support Services.

As outlined in Appendix B-4, the fixed fee for the time period July 1, 2009 through June 30, 2010 shall be One hundred twenty-two thousand Two hundred and ninety-eight dollars (\$122,298) and shall be invoiced quarterly for the following time periods: 1) July 1 – September 30, 2009, 2) October 1 – December 31, 2009, 3) January 1 – March 31, 2010, and 4) April 1 – June 30, 2010. Each invoice will be submitted 30 days prior to the beginning of the quarter and will be due on the last day of the preceding quarter.

As outlined in Appendix B-4, the fixed fee for the time period July 1, 2010 through June 30, 2011 shall be One hundred twenty-two thousand Two hundred and ninety-eight dollars (\$122,298) and shall be invoiced quarterly for the following time periods: 1) July 1 – September 30, 2010, 2) October 1 – December 31, 2010, 3) January 1 – March 31, 2011, and 4) April 1 – June 30, 2011. Each invoice will be submitted 30 days prior to the beginning of the quarter and will be due on the last day of the preceding quarter.

As outlined in Appendix B-4, the fixed fee for the time period July 1, 2011 through June 30, 2012 shall be One hundred twenty-two thousand Two hundred and ninety-eight dollars (\$122,298) and shall be invoiced quarterly for the following time periods: 1) July 1 – September 30, 2011, 2) October 1 – December 31, 2011, 3) January 1 – March 31, 2012, and 4) April 1 – June 30, 2012. Each invoice will be submitted 30 days prior to the beginning of the quarter and will be due on the last day of the preceding quarter.

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4.3. The City shall pay maintenance charges, exclusively from legally available funds, to Contractor or, in the event of an authorized assignment by Contractor to its assignee, according to the terms of this Maintenance Agreement, upon presentation of invoices furnished by Contractor in a form acceptable to the Controller. Payments will be made by warrant drawn on the Treasurer of the City.

2c. Submitting False Claims; Monetary Penalties. Section 7 is hereby replaced in its entirety to read as follows:

7. 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.

2d. Notices to the Parties. Section 24 is hereby replaced in its entirety to read as follows:

24. Notice to the Parties.

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

To City: Mary Fitzpatrick, Financial Systems Mgr.
Controller's Office
1 Dr. Carlton B. Goodlett Pl., Rm. 482
San Francisco, CA 94102
mary.fitzpatrick@sfgov.org

To Contractor: Cogsdale Holdings, Ltd.
Attn: Kelly Dawson, COO
14 MacAleer Drive, Suite 5
Charlottetown, PE, Canada C1E 2A1
kdawson@cogsdale.com

With a copy to: Cogsdale Holdings, Ltd
Attn: Duncan Shaw, General Manager
14 MacAleer Drive, Suite 5
Charlottetown, PE, Canada C1E 2A1
dshaw@cogsdale.com

Either party may change the address to which notice is to be sent by giving written notice thereof to the other party.

If e-mail notification is used, the sender must specify a Receipt notice.

Any notice of default must be sent by registered mail.

2e Requiring Minimum Compensation for Covered Employees. Section 44 is hereby replaced in its entirety to read as follows:

44. Requiring Minimum Compensation for Covered Employees

a. Contractor agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Sections 12P.5 and 12P.5.1 of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at www.sfgov.org/olse/mco. A partial listing of some of Contractor's obligations under the MCO is set forth in this Section. Contractor is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

b. The MCO requires Contractor to pay Contractor's employees a minimum hourly gross compensation wage rate and to provide minimum compensated and uncompensated time off. The minimum wage rate may change from year to year and Contractor is obligated to keep informed of the then-current requirements. Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. It is Contractor's obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Contractor.

c. Contractor shall not take adverse action or otherwise discriminate against an employee or other person for the exercise or attempted exercise of rights under the MCO. Such actions, if taken within 90 days of the exercise or attempted exercise of such rights, will be rebuttably presumed to be retaliation prohibited by the MCO.

d. Contractor shall maintain employee and payroll records as required by the MCO. If Contractor fails to do so, it shall be presumed that the Contractor paid no more than the minimum wage required under State law.

e. The City is authorized to inspect Contractor's job sites and conduct interviews with employees and conduct audits of Contractor

f. Contractor's commitment to provide the Minimum Compensation is a material element of the City's consideration for this Agreement. The City in its sole discretion shall determine whether such a breach has occurred. The City and the public will suffer actual damage that will be impractical or extremely difficult to determine if the Contractor fails to comply with these requirements. Contractor agrees that the sums set forth in Section 12P.6.1 of the MCO as liquidated damages are not a penalty, but are reasonable estimates of the loss that the City and the public will incur for Contractor's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

g. Contractor understands and agrees that if it fails to comply with the requirements of the MCO, the City shall have the right to pursue any rights or remedies available under Chapter 12P (including liquidated damages), under the terms of the contract, and under applicable law. If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City shall have the right to pursue any rights or remedies available under applicable law, including those set forth in Section 12P.6(c) of Chapter 12P. Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

h. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

i. If Contractor is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than \$25,000, but Contractor later enters into an agreement or agreements that cause contractor to exceed that amount in a fiscal year, Contractor shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Contractor and this department to exceed \$25,000 in the fiscal year.

2f Requiring Health Benefits for Covered Employees. Section 45 is hereby replaced in its entirety to read as follows:

45. Requiring Health Benefits for Covered Employees.

a. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

b. Notwithstanding the above, if the Contractor is a small business as defined in Section 12Q.3(e) of the HCAO, it shall have no obligation to comply with part (a) above.

c. Contractor's failure to comply with the HCAO shall constitute a material breach of this agreement. City shall notify Contractor if such a breach has occurred. If, within 30 days after receiving City's written notice of a breach of this Agreement for violating the HCAO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in 12Q.5.1 and 12Q.5(f)(1-6). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

d. Any Subcontract entered into by Contractor shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations

substantially the same as those set forth in this Section. Contractor shall notify City's Office of Contract Administration when it enters into such a Subcontract and shall certify to the Office of Contract Administration that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Contractor shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against Contractor based on the Subcontractor's failure to comply, provided that City has first provided Contractor with notice and an opportunity to obtain a cure of the violation.

e. Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Contractor's noncompliance or anticipated noncompliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

f. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

g. Contractor shall maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on the City Contract.

h. Contractor shall keep itself informed of the current requirements of the HCAO.

i. Contractor shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

j. Contractor shall provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least ten business days to respond.

k. Contractor shall allow City to inspect Contractor's job sites and have access to Contractor's employees in order to monitor and determine compliance with HCAO.

l. City may conduct random audits of Contractor to ascertain its compliance with HCAO. Contractor agrees to cooperate with City when it conducts such audits.

m. If Contractor is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but Contractor later enters into an agreement or agreements that cause Contractor's aggregate amount of all agreements with City to reach \$75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Contractor and the City to be equal to or greater than \$75,000 in the fiscal year.

2g. Appendix B-4. Appendix B-4 ("Calculation of Charges") as attached is hereby added to the Agreement and hereby replaces "Appendix B-3."

3. Effective Date. Each of the modifications set forth in Section 2 shall be effective on and after the date of this Amendment.

4. Legal Effect. Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

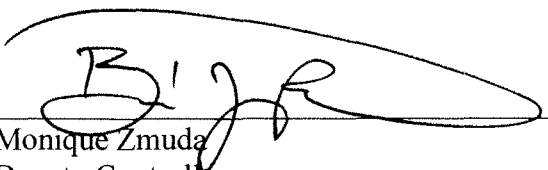
IN WITNESS WHEREOF, Contractor and City have executed this Amendment as of the date first referenced above.

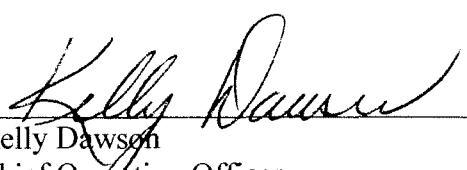
CITY

CONTRACTOR

Recommended by:

Cogsdale Holdings Ltd.

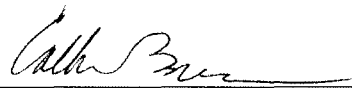

Monique Zmuda
Deputy Controller
Controller


Kelly Dawson
Chief Operating Officer
14 MacAleer Drive, Suite 5
Charlottetown, PE, Canada C1E 2A1

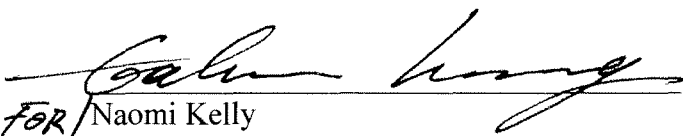
City vendor number: 78223

Approved as to Form:

Dennis J. Herrera
City Attorney

By: 
Catharine Barnes
Deputy City Attorney

Approved:


FOR Naomi Kelly
Director of the Office of Contract
Administration, and Purchaser

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CITY OF CHARLOTTETOWN

Appendix B-4

Maintenance Fees, 7/1/06 to 6/30/07

Module	6-Month Fee
FAMIS (including RIMS)	\$22,973
ADPICS	19,144
FAACS	4,961
Labor Distribution	4,595
SYSTEMWIDE	3,829
Stargaze GUI	4,500
Performance Executive	12,500
Total	\$72,502

Maintenance Fees, 7/1/07 to 6/30/08

Module	Annual Fee	Quarterly Fee
Accounting (FAMIS, RIMS, & Labor Distribution)	\$ 55,136	\$ 13,784.00
Asset Management	9,922	2,480.50
Purchasing	38,288	9,572.00
System Wide	7,658	1,914.50
Client GUI	11,601	2,900.25
	\$ 122,605	\$ 30,651.25

Quarterly Fee Payment Schedule

Payment #1	July 1, 2007
Payment #2	October 1, 2007
Payment #3	January 1, 2008
Payment #4	April 1, 2008

Appendix B-4

Maintenance Fees, 7/1/06 to 6/30/07

Module	6-Month Fee
FAMIS (including RIMS)	\$22,973
ADPICS	19,144
FAACS	4,961
Labor Distribution	4,595
SYSTEMWIDE	3,829
Stargaze GUI	4,500
Performance Executive	12,500
Total	\$72,502

Maintenance Fees, 7/1/07 to 6/30/08

Module	Annual Fee	Quarterly Fee
Accounting (FAMIS, RIMS, & Labor Distribution)	\$ 55,136	\$ 13,784.00
Asset Management	9,922	2,480.50
Purchasing	38,288	9,572.00
System Wide	7,658	1,914.50
Client GUI	11,601	2,900.25
	\$ 122,605	\$ 30,651.25

Quarterly Fee Payment Schedule

Payment #1	July 1, 2007
Payment #2	October 1, 2007
Payment #3	January 1, 2008
Payment #4	April 1, 2008

Maintenance Fees, 7/1/08 to 6/30/09

Module	Annual Fee	Quarterly Fee
Accounting (FAMIS, RIMS, & Labor Distribution)	\$ 57,893	\$ 14,473.25
Asset Management	10,418	2,604.50
Purchasing	40,202	10,050.50
System Wide	8,041	2,010.25
Client GUI	12,181	3,045.25
	\$ 128,735	\$ 32,183.75

Quarterly Fee Payment Schedule

Payment #1	July 1, 2008
Payment #2	October 1, 2008
Payment #3	January 1, 2009
Payment #4	April 1, 2009

Appendix B-4

Maintenance Fees, 7/1/09 to 6/30/10

Module	Annual Fee	Quarterly Fee
Accounting (FAMIS, RIMS, & Labor Distribution)	\$ 54,997	\$ 13,749.25
Asset Management	9,898	2,474.50
Purchasing	38,192	9,548.00
System Wide	7,639	1,909.75
Client GUI	11,572	2,893.00
	\$ 122,298	\$ 30,574.50

Quarterly Fee Payment Schedule

Payment #1	July 1, 2009
Payment #2	October 1, 2009
Payment #3	January 1, 2010
Payment #4	April 1, 2010

Maintenance Fees, 7/1/10 to 6/30/11

Module	Annual Fee	Quarterly Fee
Accounting (FAMIS, RIMS, & Labor Distribution)	\$ 54,997	\$ 13,749.25
Asset Management	9,898	2,474.50
Purchasing	38,192	9,548.00
System Wide	7,639	1,909.75
Client GUI	11,572	2,893.00
	\$ 122,298	\$ 30,574.50

Quarterly Fee Payment Schedule

Payment #1	July 1, 2010
Payment #2	October 1, 2010
Payment #3	January 1, 2011
Payment #4	April 1, 2011

Appendix B-4

Maintenance Fees, 7/1/11 to 6/30/12

Module	Annual Fee	Quarterly Fee
Accounting (FAMIS, RIMS, & Labor Distribution)	\$ 54,997	\$ 13,749.25
Asset Management	9,898	2,474.50
Purchasing	38,192	9,548.00
System Wide	7,639	1,909.75
Client GUI	11,572	2,893.00
	\$ 122,298	\$ 30,574.50

Quarterly Fee Payment Schedule

Payment #1	July 1, 2011
Payment #2	October 1, 2011
Payment #3	January 1, 2012
Payment #4	April 1, 2012