

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

Fourth Amendment

THIS AMENDMENT (this "Amendment") is made as of June 12, 2009, 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 agreement term to December 31, 2010, and increase the contract amount by \$244,596 (\$122,298 per year) for a new total of \$640,940.

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

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

a. 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.

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

2a. Section 3. Section 3 Term of the Maintenance Agreement 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, 2009.

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, 2011.

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

4. City's Payment Obligation

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-2, City shall pay the price listed in Appendix B-2 for Support Services for that piece of Software. However, in no event shall the amount of

this Agreement exceed Three Hundred Ninety-Six Thousand Three Hundred Forty-Four and no cents (\$396,344.00). This amount is a fixed fee for all Support Services.

As outlined in Appendix B-2, the fixed fee for the time period July 1, 2007 through June 30, 2008 shall be One hundred twenty-two thousand Six hundred and five dollars (\$122,605) and shall be invoiced quarterly for the following time periods: 1) July 1 – September 30, 2007, 2) October 1 – December 31, 2007, 3) January 1 – March 31, 2008, and 4) April 1 – June 30, 2008. 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-2, the fixed fee for the time period July 1, 2008 through June 30, 2009 shall be One hundred twenty-eight thousand Seven hundred and thirty-five dollars and no cents (\$128,735.00) and shall be invoiced quarterly for the following time periods: 1) July 1 – September 30, 2008, 2) October 1 – December 31, 2008, 3) January 1 – March 31, 2009, and 4) April 1 – June 30, 2009. 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.

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.City's Payment Obligation

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.

2c. First Source Hiring Program. Section [insert paragraph number] is hereby replaced in its entirety to read as follows:

45. First Source Hiring Program

a. Incorporation of Administrative Code Provisions by Reference. The provisions of Chapter 83 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 Chapter, including but not limited to the remedies provided therein. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 83.

b. First Source Hiring Agreement. As an essential term of, and consideration for, any contract or property contract with the City, not exempted by the FSHA, the Contractor shall enter into a first source hiring agreement ("agreement") with the City, on or before the effective date of the contract or property contract. Contractors shall also enter into an agreement with the City for any other work that it performs in the City. Such agreement shall:

(1) Set appropriate hiring and retention goals for entry level positions. The employer shall agree to achieve these hiring and retention goals, or, if unable to achieve these goals, to establish good faith efforts as to its attempts to do so, as set forth in the agreement. The agreement shall take into consideration the employer's participation in existing job training, referral and/or brokerage programs. Within the discretion of the FSHA, subject to appropriate modifications, participation in such programs maybe certified as meeting the requirements of this Chapter. Failure either to achieve the specified goal, or to establish good faith efforts will constitute noncompliance and will subject the employer to the provisions of Section 83.10 of this Chapter.

(2) Set first source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the first opportunity to provide qualified economically disadvantaged individuals for consideration for employment for entry level positions. Employers shall consider all applications of qualified economically disadvantaged individuals referred by the System for employment; provided however, if the employer utilizes nondiscriminatory screening criteria, the employer shall have the sole discretion to interview and/or hire individuals referred or certified by the San Francisco Workforce Development System as being qualified economically disadvantaged individuals. The duration of the first source interviewing

requirement shall be determined by the FSHA and shall be set forth in each agreement, but shall not exceed 10 days. During that period, the employer may publicize the entry level positions in accordance with the agreement. A need for urgent or temporary hires must be evaluated, and appropriate provisions for such a situation must be made in the agreement.

(3) Set appropriate requirements for providing notification of available entry level positions to the San Francisco Workforce Development System so that the System may train and refer an adequate pool of qualified economically disadvantaged individuals to participating employers. Notification should include such information as employment needs by occupational title, skills, and/or experience required, the hours required, wage scale and duration of employment, identification of entry level and training positions, identification of English language proficiency requirements, or absence thereof, and the projected schedule and procedures for hiring for each occupation. Employers should provide both long-term job need projections and notice before initiating the interviewing and hiring process. These notification requirements will take into consideration any need to protect the employer's proprietary information.

(4) Set appropriate record keeping and monitoring requirements. The First Source Hiring Administration shall develop easy-to-use forms and record keeping requirements for documenting compliance with the agreement. To the greatest extent possible, these requirements shall utilize the employer's existing record keeping systems, be nonduplicative, and facilitate a coordinated flow of information and referrals.

(5) Establish guidelines for employer good faith efforts to comply with the first source hiring requirements of this Chapter. The FSHA will work with City departments to develop employer good faith effort requirements appropriate to the types of contracts and property contracts handled by each department. Employers shall appoint a liaison for dealing with the development and implementation of the employer's agreement. In the event that the FSHA finds that the employer under a City contract or property contract has taken actions primarily for the purpose of circumventing the requirements of this Chapter, that employer shall be subject to the sanctions set forth in Section 83.10 of this Chapter.

(6) Set the term of the requirements.

(7) Set appropriate enforcement and sanctioning standards consistent with this Chapter.

(8) Set forth the City's obligations to develop training programs, job applicant referrals, technical assistance, and information systems that assist the employer in complying with this Chapter.

(9) Require the developer to include notice of the requirements of this Chapter in leases, subleases, and other occupancy contracts.

c. Hiring Decisions. Contractor shall make the final determination of whether an Economically Disadvantaged Individual referred by the System is "qualified" for the position.

d. Exceptions. Upon application by Employer, the First Source Hiring Administration may grant an exception to any or all of the requirements of Chapter 83 in any situation where it concludes that compliance with this Chapter would cause economic hardship.

e. Liquidated Damages. Contractor agrees:

- (1) To be liable to the City for liquidated damages as provided in this section;
- (2) To be subject to the procedures governing enforcement of breaches of contracts based on violations of contract provisions required by this Chapter as set forth in this section;
- (3) That the contractor's commitment to comply with this Chapter is a material element of the City's consideration for this contract; that the failure of the contractor to comply with the contract provisions required by this Chapter will cause harm to the City and the public which is significant and substantial but extremely difficult to quantify; that the harm to the City includes not only the financial cost of funding public assistance programs but also the insidious but impossible to quantify harm that this community and its families suffer as a result of unemployment; and that the assessment of liquidated damages of up to \$5,000 for every notice of a new hire for an entry level position improperly withheld by the contractor from the first source hiring process, as determined by the FSHA during its first investigation of a contractor, does not exceed a fair estimate of the financial and other damages that the City suffers as a result of the contractor's failure to comply with its first source referral contractual obligations.
- (4) That the continued failure by a contractor to comply with its first source referral contractual obligations will cause further significant and substantial harm to the City and the public, and that a second assessment of liquidated damages of up to \$10,000 for each entry level position improperly withheld from the FSHA, from the time of the conclusion of the first investigation forward, does not exceed the financial and other damages that the City suffers as a result of the contractor's continued failure to comply with its first source referral contractual obligations;
- (5) That in addition to the cost of investigating alleged violations under this Section, the computation of liquidated damages for purposes of this section is based on the following data:

A. The average length of stay on public assistance in San Francisco's County Adult Assistance Program is approximately 41 months at an average monthly grant of \$348 per month, totaling approximately \$14,379; and

B. In 2004, the retention rate of adults placed in employment programs funded under the Workforce Investment Act for at least the first six months of employment was 84.4%. Since qualified individuals under the First Source program face far fewer barriers to employment than their counterparts in programs funded by the Workforce Investment Act, it is reasonable to conclude that the average length of employment for an individual whom the First Source Program refers to an employer and who is hired in an entry level position is at least one year;

therefore, liquidated damages that total \$5,000 for first violations and \$10,000 for subsequent violations as determined by FSHA constitute a fair, reasonable, and conservative attempt to quantify the harm caused to the City by the failure of a contractor to comply with its first source referral contractual obligations.

(6) That the failure of contractors to comply with this Chapter, except property contractors, may be subject to the debarment and monetary penalties set forth in Sections 6.80 et seq. of the San Francisco Administrative Code, as well as any other remedies available under the contract or at law; and

Violation of the requirements of Chapter 83 is subject to an assessment of liquidated damages in the amount of \$5,000 for every new hire for an Entry Level Position improperly

withheld from the first source hiring process. The assessment of liquidated damages and the evaluation of any defenses or mitigating factors shall be made by the FSHA.

f. Subcontracts. Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of Chapter 83 and shall contain contractual obligations substantially the same as those set forth in this Section.

2d. Insurance. Section 16 is hereby replaced in its entirety to read as follows:

16. Insurance

a. Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

(1) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and

(2) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

(3) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

(4) Professional liability insurance, applicable to Contractor's profession, with limits not less than \$1,000,000 each claim with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement.

b. Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:

(1) Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

(2) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

c. Regarding Workers' 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 Workers' 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.

d. 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:

Controller's Office - CSA Operations
1 Dr. Carlton B. Goodlett Place
City Hall, Rm 388
San Francisco, CA 94102

e. 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 three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

f. 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.

g. 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.

h. Before commencing any operations under this Agreement, Contractor shall furnish to City 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, in form evidencing all coverages set forth above. Failure to maintain insurance shall constitute a material breach of this Agreement.

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

2e. Appendix B-3. Appendix B-3, attached hereto, is hereby incorporated and hereby replaces Appendix B-2 in its entirety.

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
Office of the Controller

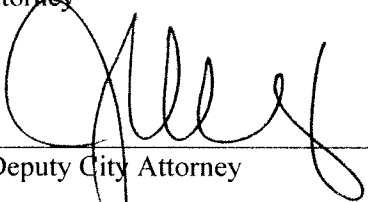


Duncan Shaw
Co-President
14 MacAleer Drive, Suite 5
Charlottetown, PE, Canada C1E 2A1

City vendor number: 78223


Approved as to Form:

Dennis J. Herrera
City Attorney

By: 

Deputy City Attorney

Approved:

for 

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

Appendix B-3

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

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Accounting (FAMIS, RIMS, & Labor Distribution)	\$ 54,997	\$ 13,749.25
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