

File No. 160315

Committee Item No. 6

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget & Finance Sub-Committee

Date May 11, 2016

Board of Supervisors Meeting

Date _____

Cmte Board

<input type="checkbox"/>	<input type="checkbox"/>	Motion
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Resolution
<input type="checkbox"/>	<input type="checkbox"/>	Ordinance
<input type="checkbox"/>	<input type="checkbox"/>	Legislative Digest
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Budget and Legislative Analyst Report
<input type="checkbox"/>	<input type="checkbox"/>	Youth Commission Report
<input type="checkbox"/>	<input type="checkbox"/>	Introduction Form
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Department/Agency Cover Letter and/or Report
<input type="checkbox"/>	<input type="checkbox"/>	MOU
<input type="checkbox"/>	<input type="checkbox"/>	Grant Information Form
<input type="checkbox"/>	<input type="checkbox"/>	Grant Budget
<input type="checkbox"/>	<input type="checkbox"/>	Subcontract Budget
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Contract/Agreement
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Form 126 – Ethics Commission
<input type="checkbox"/>	<input type="checkbox"/>	Award Letter
<input type="checkbox"/>	<input type="checkbox"/>	Application
<input type="checkbox"/>	<input type="checkbox"/>	Public Correspondence

OTHER

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[illegible]

Completed by: Linda Wong

Date May 6, 2016

Completed by: Linda Wong

Date _____

1 [Agreement Amendment - Cogsdale Corporation - Software Maintenance, FAMIS Project -
2 Maximum Expenditure of \$1,759,067.62]

3 **Resolution authorizing the Controller to enter into the Ninth Amendment of a Software**
4 **Maintenance Agreement with Cogsdale Corporation, for perpetual software**
5 **maintenance services for the Controller's Financial Accounting and Management**
6 **Information System ("FAMIS") Project, extending the contract term of July 1, 2006,**
7 **through June 30, 2016, up to three years through June 30, 2019, and increasing the**
8 **maximum expenditure for the Ninth Amendment up to \$452,661.65, and a total contract**
9 **amount up to \$1,759,067.62.**

10
11 WHEREAS, On July 1, 2006, the City and County of San Francisco ("City"), acting
12 through its Controller entered into an agreement with Cogsdale Corporation ("Cogsdale"), for
13 perpetual software maintenance services for the FAMIS Project ("Agreement"); and

14 WHEREAS, The initial software maintenance term was for six months, renewable bi-
15 annually at the City's option, and the initial maximum expenditure was for \$72,502.00; and

16 WHEREAS, The Controller and Cogsdale amended the Agreement by the First
17 Amendment, dated Feb 1, 2007; Second Amendment, dated July 1, 2007; Third Amendment,
18 dated April 7, 2008; Fourth Amendment, dated June 12, 2009; Fifth Amendment, dated June
19 16, 2011; Sixth Amendment, dated June 25, 2012; Seventh Amendment, dated June 16,
20 2014; and Eighth Amendment, dated May 15, 2015, extending the software maintenance
21 services term to June 30, 2016, and increasing the maximum expenditure to \$1,306,405.97;
22 and

23 WHEREAS, By the Ninth Amendment the Controller and Cogsdale have agreed to
24 extend the software maintenance services term up to June 30, 2019, and increase the
25

1 maximum expenditure up to \$452,661.65 to \$1,759,067.62, for continued software
2 maintenance services; and

3 WHEREAS, The Controller has determined that it is in the best interests of the City to
4 extend the term of the Agreement beyond ten years and increase the maximum expenditure
5 to \$1,759,067.62, so that the City may continue to receive software maintenance services for
6 the FAMIS Project; and

7 WHEREAS, Charter, Section 9.118(b), "Contract and Lease Limitations," requires
8 Board of Supervisors' approval of any contract having a term in excess of ten years or
9 requiring anticipated expenditures by the City of \$10,000,000; and

10 WHEREAS, The Ninth Amendment is on file with the Clerk of the Board of Supervisors
11 in File No 160315, which is hereby declared to be a part of this resolution as if set forth fully
12 herein; and, therefore, be it

13 RESOLVED, That the Board of Supervisors approves the Ninth Amendment to the
14 Agreement with Cogsdale; and, be it

15 FURTHER RESOLVED, That upon execution of the Ninth Amendment, the Controller
16 shall transmit to the Clerk of the Board of Supervisors a copy of the Ninth Amendment, for
17 inclusion in File No. 160315.

Item 6 File 16-0315	Department: Controller's Office (Controller)
EXECUTIVE SUMMARY	
<p style="text-align: center;">Legislative Objectives</p> <ul style="list-style-type: none"> The proposed resolution would authorize the ninth amendment to the agreement between Cogsdale and the Controller's Office to continue to provide software maintenance services for FAMIS. The amendment extends the contract for up to an additional two years and six months, from July 1, 2016 through December 31, 2018, and one option for one six-month extension through June 30, 2019, for a total contract term of thirteen years, and increases the not-to-exceed amount from \$1,306,406 up to \$1,759,068, an increase of \$452,662. Because the contract term would exceed ten years, the proposed ninth amendment is subject to Board of Supervisors approval. <p style="text-align: center;">Key Points</p> <ul style="list-style-type: none"> The Financial Accounting and Management Information System (FAMIS) is a software program that forms the core component of the City of San Francisco's financial systems. In 2006, the City entered into a contract with Cogsdale to provide software maintenance services for FAMIS. The contract amount was for not-to-exceed \$72,502 and the term was from July 1, 2006 to December 31, 2006, with an option to renew the contract at the same price for an additional six months through June 30, 2007. The contract has been amended eight times to extend the term of the contract through June 20, 2016 and increase the contract not-to-exceed amount to \$1,306,406. The Controller's Office chose to extend the contract for an additional three years in order to reduce administrative overhead, compared to amending the contract annually, as had been previous practice. Ms. Kimotsuki further states that though FAMIS is required until the transition to the new financial system is completed, the Controller's Office may cancel the contract with Cogsdale at any time prior to the contract expiration date in 2019. <p style="text-align: center;">Fiscal Impact</p> <ul style="list-style-type: none"> The contract is estimated to cost \$452,662 for the three year extension term. <p style="text-align: center;">Recommendation</p> <ul style="list-style-type: none"> Approve the proposed resolution. 	

MANDATE STATEMENT

City Charter Section 9.118(b) states that any contract entered into by a City department that has a term of more than ten years, or expenditures of \$10 million or more, or an amendment to such contract of more than \$500,000, is subject to Board of Supervisors approval.

City Administrative Code Section 21.30 authorizes City departments to enter into perpetual, nonexclusive software licensing agreements of less than \$10 million without Board of Supervisors approval. According to Administrative Code Section 21.30(d), where a vendor has proprietary rights to software or where maintenance of equipment by a particular vendor is required to preserve a warranty, any software support and equipment maintenance agreements entered into with that vendor can be awarded on a sole source basis subject to approval by the Purchaser.

BACKGROUND

The Financial Accounting and Management Information System (FAMIS) is a software program that forms the core component of the City of San Francisco's financial systems. FAMIS maintains all of the City's budgetary and accounting information and enables the daily functions of accounting and purchasing. FAMIS was initially implemented in 1995 when the City licensed FAMIS from its owner, KPMG, LLC. Since that time, ownership was transferred to Cogsdale Corporation (Cogsdale).

In 2006, the City entered into a contract with Cogsdale to provide software maintenance services for FAMIS. The contract amount was for not-to-exceed \$72,502 and the term was from July 1, 2006 to December 31, 2006, with an option to renew the contract at the same price for an additional six months through June 30, 2007. The contract has been amended eight times to extend the term of the contract through June 20, 2016 and increase the contract not-to-exceed amount to \$1,306,406. These amendments did not require approval by the Board of Supervisors because the term was not more than ten years and did not have expenditures of more than \$10,000,000. Table 1 below summarizes the amendments to the contract with Cogsdale.

Table 1: Summary of Contract Amendments to Cogsdale Contract

Contract Amendment	Term	Not-To-Exceed Amount	Increase
Original Agreement (6 months)	7/1/2006 – 12/31/2006	\$72,502	n/a
1 st Amendment (6 months)	1/1/2007 – 6/30/2007	\$145,004	\$72,502
2 nd Amendment	7/1/2007 – 6/30/2008	\$267,609	\$122,605
3 rd Amendment	7/1/2008 – 6/30/2009	\$396,344	\$128,735
4 th Amendment	7/1/2009 – 6/30/2011	\$640,940	\$244,596
5 th Amendment	7/1/2011 – 6/30/2012	\$763,238	\$122,298
6 th Amendment	7/1/2012 – 6/30/2014	\$1,026,179	\$262,941
7 th Amendment	7/1/2014 – 6/30/2015	\$1,164,222	\$138,043
8 th Amendment	7/1/2015 – 6/30/2016	\$1,306,406	\$142,184

The City plans to replace FAMIS with a new financial system by July 2017. However, according to Ms. Joyce Kimotsuki, Contracts Manager in the Controller's Office, the City will need to maintain FAMIS for up to three years during the transition to the new financial system.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would authorize the ninth amendment to the agreement between Cogsdale and the Controller's Office to continue to provide software maintenance services for FAMIS. The amendment extends the contract for up to an additional two years and six months, from July 1, 2016 through December 31, 2018, and one option for one six-month extension through June 30, 2019, for a total contract term of thirteen years, and increases the not-to-exceed amount from \$1,306,406 to \$1,759,068, an increase of \$452,662. Because the contract term would exceed ten years, the proposed ninth amendment is subject to Board of Supervisors approval.

Ms. Kimotsuki states the Controller's Office chose to extend the contract for up to an additional three years in order to reduce administrative overhead, compared to amending the contract annually, as had been previous practice. Ms. Kimotsuki further states that although FAMIS is required until the transition to the new financial system is completed; the Controller's Office may cancel the contract with Cogsdale at any time prior to the contract expiration date in 2019.

FISCAL IMPACT

According to data provided by the Controller's Office, \$1,306,406 has been spent to date on the contract with Cogsdale. The requested increase to the contract not-to-exceed amount of \$452,662 is shown in Table 2 below, and would allow for an annual increase to the contract of approximately three percent.

Table 1: Requested Increase to Cogsdale Contract

FAMIS Module	Fiscal Year 2016-17	Fiscal Year 2017-18	7/1/2018 – 12/31/2018	Option Term	Total
				1/1/2019 – 6/30/2019	
Accounting	\$65,903	\$67,880	\$34,958	\$34,958	\$203,699
Asset Management	11,716	12,067	6,215	6,215	36,213
Purchasing	46,864	48,270	24,859	24,859	144,852
System-wide Querying Tool	8,787	9,051	4,661	4,661	27,160
Client Graphic User Interface	13,180	13,576	6,991	6,991	40,738
Total	\$146,450	\$150,844	\$77,684	\$77,684	\$452,662

RECOMMENDATION

Approve the proposed resolution.

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

Ninth Amendment

THIS AMENDMENT (this "Amendment") is made as of **June 1, 2016**, in San Francisco, California, by and between **Cogsdale Corporation** ("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 and increase the contract amount;

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,
Third Amendment,	dated April 7, 2008,
Assignment and Assumption Agreement,	dated December 1, 2008
Fourth Amendment,	dated June 12, 2009,
Fifth Amendment,	dated June 16, 2011,
Sixth Amendment,	dated June 25, 2012,
Assignment and Assumption Agreement,	dated August 1, 2013,
Seventh Amendment,	dated June 16, 2014, and
Eighth Amendment,	dated May 15, 2015.

1b. Contract Monitoring Division. Effective July 28, 2012, with the exception of Sections 14B.9(D) and 14B.17(F), all of the duties and functions of the Human Rights Commission under Chapter 14B of the Administrative Code (LBE Ordinance) were transferred to the City Administrator, Contract Monitoring Division ("CMD"). Wherever "Human Rights Commission" or "HRC" appears in the Agreement in reference to Chapter 14B of the Administrative Code or its implementing Rules and Regulations, it shall be construed to mean "Contract Monitoring Division" or "CMD" respectively.

1c. 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 3. Section 3, Term of Maintenance Agreement, currently reads as follows:

3. Term of the Agreement Maintenance Agreement. Subject to Section 2, the term of this Maintenance Agreement shall be from July 1, 2006, to June 30, 2016.

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

3. Term of the Agreement Maintenance Agreement. Subject to Section 2, the term of this Maintenance Agreement shall be from July 1, 2006, to December 31, 2018, with the option to extend for an additional six months at the City's sole and absolute discretion.

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-7, City shall pay the price listed in Appendix B-7 for Support Services for that piece of Software. However, in no event shall the amount of this Agreement exceed **one million, three hundred and six thousand, four hundred and five dollars and ninety-seven cents (\$1,306,405.97)**. This amount is a fixed fee for all Support Services.

As outlined in Appendix B-7, 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-7, 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-7, 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.

As outlined in Appendix B-7, the fixed fee for the time period July 1, 2012 through June 30, 2013 shall be One hundred thirty-one thousand Four hundred and seventy dollars and 36 cents (\$131,470.36) and shall be invoiced quarterly for the following time periods: 1) July 1 – September 30, 2012, 2) October 1 – December 31, 2012, 3) January 1 – March 31, 2013, and 4) April 1 – June 30, 2013. 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-7, the fixed fee for the time period July 1, 2013 through June 30, 2014 shall be One hundred thirty-one thousand Four hundred and seventy dollars and 36 cents (\$131,470.36) and shall be invoiced quarterly for the following time periods: 1) July 1 – September 30, 2013, 2) October 1 – December 31, 2013, 3) January 1 – March 31, 2014, and 4) April 1 – June 30, 2014. 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-7, the fixed fee for the time period July 1, 2014 through June 30, 2015 shall be One hundred thirty-eight thousand and forty-three dollars and no cents (\$138,043.00) and shall be invoiced quarterly for the following time periods: 1) July 1 – September 30, 2014, 2) October 1 – December 31, 2014, 3) January 1 – March 31, 2015, and 4) April 1 – June 30, 2015. 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-7, the fixed fee for the time period July 1, 2015 through June 30, 2016 shall be one hundred forty-two thousand, one hundred and eighty-four dollars and twenty-five cents (\$142,184.25) and shall be invoiced quarterly for the following time periods: 1) July 1 – September 30, 2015, 2) October 1 – December 31, 2015, 3) January 1 – March 31, 2016, and 4) April 1 – June 30, 2016. 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:
City & County of San Francisco
Controller's Office – Central Finance
Attention: Jerry Wong
1 Dr. Carlton B. Goodlett Place, Room 482
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. 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-8, City shall pay the price listed in Appendix B-8 for Support Services for that piece of Software. However, in no event shall the amount of this Agreement exceed **one million, seven hundred fifty nine-thousand, and sixty-seven dollars and sixty-two cents (\$1,759,067.62)**. This amount is a fixed fee for all Support Services.

i. As outlined in Appendix B-8, 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.

ii. As outlined in Appendix B-8, 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.

iii. As outlined in Appendix B-8, 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.

iv. As outlined in Appendix B-8, the fixed fee for the time period July 1, 2012 through June 30, 2013 shall be One hundred thirty-one thousand Four hundred and seventy dollars and 36 cents (\$131,470.36) and shall be invoiced quarterly for the following time periods: 1) July 1 – September 30, 2012, 2) October 1 – December 31, 2012, 3) January 1 – March 31, 2013, and 4) April 1 – June 30, 2013. 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.

v. As outlined in Appendix B-8, the fixed fee for the time period July 1, 2013 through June 30, 2014 shall be One hundred thirty-one thousand Four hundred and seventy dollars and 36 cents (\$131,470.36) and shall be invoiced quarterly for the following time periods: 1) July 1 – September 30, 2013, 2) October 1 – December 31, 2013, 3) January 1 – March 31, 2014, and 4) April 1 – June 30, 2014. 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.

vi. As outlined in Appendix B-8, the fixed fee for the time period July 1, 2014 through June 30, 2015 shall be One hundred thirty-eight thousand and forty-three dollars and no cents (\$138,043.00) and shall be invoiced quarterly for the following time periods: 1) July 1 – September 30, 2014, 2) October 1 – December 31, 2014, 3) January 1 – March 31, 2015, and 4) April 1 – June 30, 2015. 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.

vii. As outlined in Appendix B-8, the fixed fee for the time period July 1, 2015 through June 30, 2016 shall be one hundred forty-two thousand, one hundred and eighty-four dollars and twenty-five cents (\$142,184.25) and shall be invoiced quarterly for the following time periods: 1) July 1 – September 30, 2015, 2) October 1 – December 31, 2015, 3) January 1 – March 31, 2016, and 4) April 1 – June 30, 2016. 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.

viii. As outlined in Appendix B-8, the fixed fee for the time period July 1, 2016 through December 31, 2018 shall be three hundred and seventy-four thousand nine hundred and seventy-seven dollars and thirty-six cents (\$374,977.36) and shall be invoiced quarterly for the following time periods for July 1, 2016 to June 30, 2017: 1) July 1 – September 30, 2016, 2) October 1 – December 31, 2016, 3) January 1 – March 31, 2017, and 4) April 1 – June 30, 2017; for the following time periods for July 1, 2017 to June 30, 2018: 1) July 1 – September 30, 2017, 2) October 1 – December 31, 2017, 3) January 1 – March 31, 2018, and 4) April 1 – June 30, 2018; and for the following time periods for July 1, 2018 to December 31, 2018: 1) July 1 – September 30, 2018, 2) October 1 – December 31, 2018. 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.

ix. As outlined in Appendix B-8, the fixed fee for the option period of six months from January 1, 2019 to June 30, 2019 shall be seventy-seven thousand six hundred and eighty four dollars and thirty cents (\$77,684.30): 1) January 1 – March 31, 2019, and 2) April 1 – June 30, 2019. 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:
City & County of San Francisco
Controller's Office – Central Finance
Attention: Jerry Wong
1 Dr. Carlton B. Goodlett Place, Room 482
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. Section 24. Section 24, "Notice to the Parties," of the Agreement is hereby replaced in its entirety as follows:

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

To City: Joyce Kimotsuki
Controller's Office
1 Dr. Carlton B. Goodlett Place, Room 306
San Francisco, CA 94102
Joyce.Kimotsuki@sfgov.org

To Contractor: Cogsdale Corporation
Attn. Terry Ridyard, Executive Vice President
2 Lower Malpeque Rd, Lower Level
Charlottetown, PE, Canada C1E 1R4
TRidyard2@harriscomputer.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.

2d. Appendix B-8. Appendix B-8 ("Calculation of Charges") as attached is hereby added to the Agreement and hereby replaces "Appendix B-7."

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

Recommended by:

Todd Rydstrom
Deputy Controller
Controller

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

Appendices:

B-8: Calculation of Charges

CONTRACTOR

Cogsdale Corporation

Terry Ristyard
Executive Vice President

City vendor number: **89618**

Appendix B-8 Calculation of Charges

In accordance with Section 4 of this Agreement, the Contractor's total compensation under this Agreement is detailed below. In no event shall the total costs under this Agreement exceed the amount provided in Section 4 of this Agreement.

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

Appendix B-8
Calculation of Charges

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

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-8
Calculation of Charges

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

Maintenance Fees, 7/1/12 to 6/30/13

Module	Annual Fee	Quarterly Fee
Accounting (FAMIS, RIMS, & Labor Distribution)	\$ 59,122.76	\$ 14,780.69
Asset Management	10,640.44	2,660.11
Purchasing	41,054.24	10,263.56
System Wide	8,212.92	2,053.23
Client GUI	12,440.00	3,110.00
	\$ 131,470.36	\$ 32,867.59

Quarterly Fee Payment Schedule	
Payment #1	July 1, 2012
Payment #2	October 1, 2012
Payment #3	January 1, 2013
Payment #4	April 1, 2013

Appendix B-8
Calculation of Charges

Maintenance Fees, 7/1/13 to 6/30/14

Module	Annual Fee	Quarterly Fee
Accounting (FAMIS, RIMS, & Labor Distribution)	\$ 59,122.76	\$ 14,780.69
Asset Management	10,640.44	2,660.11
Purchasing	41,054.24	10,263.56
System Wide	8,212.92	2,053.23
Client GUI	12,440.00	3,110.00
	\$ 131,470.36	\$ 32,867.59

Quarterly Fee Payment Schedule

Payment #1	July 1, 2013
Payment #2	October 1, 2013
Payment #3	January 1, 2014
Payment #4	April 1, 2014

Maintenance Fees, 7/1/14 to 6/30/15

Module	Annual Fee	Quarterly Fee
Accounting (FAMIS, RIMS, & Labor Distribution)	\$ 62,078.02	\$ 15,519.50
Asset Management	11,172.46	2,793.12
Purchasing	43,106.95	10,776.74
System Wide	8,623.57	2,155.89
Client GUI	13,062.00	3,265.50
	\$ 138,043.00	\$ 34,510.75

Quarterly Fee Payment Schedule

Payment #1	July 1, 2014
Payment #2	October 1, 2014
Payment #3	January 1, 2015
Payment #4	April 1, 2015

Maintenance Fees, 7/1/15 to 6/30/16

Module	Annual Fee	Quarterly Fee
Accounting (FAMIS, RIMS, & Labor Distribution)	\$ 63,983.16	\$15,995.79
Asset Management	11,374.65	2,843.66
Purchasing	45,498.91	11,374.73
System Wide	8,531.00	2,132.75
Client GUI	12,796.53	3,199.13
	\$142,184.25	\$35,546.06

Appendix B-8
Calculation of Charges

Quarterly Fee Payment Schedule	
Payment #1	July 1, 2015
Payment #2	October 1, 2015
Payment #3	January 1, 2016
Payment #4	April 1, 2016

Maintenance Fees, 7/1/16 to 6/30/17

Module	Annual Fee	Quarterly Fee
Accounting (FAMIS, RIMS, & Labor Distribution)	\$ 65,902.66	\$16,475.66
Asset Management	11,715.89	2,928.97
Purchasing	46,863.88	11,715.97
System Wide	8,786.93	2,196.73
Client GUI	13,180.43	3,295.11
	\$146,449.77	\$36,612.44

Quarterly Fee Payment Schedule	
Payment #1	July 1, 2016
Payment #2	October 1, 2016
Payment #3	January 1, 2017
Payment #4	April 1, 2017

Maintenance Fees, 7/1/17 to 6/30/18

Module	Annual Fee	Quarterly Fee
Accounting (FAMIS, RIMS, & Labor Distribution)	\$ 67,879.74	\$16,475.66
Asset Management	12,067.37	2,928.97
Purchasing	48,269.80	11,715.97
System Wide	9,050.54	2,196.73
Client GUI	13,575.84	3,295.11
	\$150,843.29	\$37,710.82

Quarterly Fee Payment Schedule	
Payment #1	July 1, 2017
Payment #2	October 1, 2017
Payment #3	January 1, 2018
Payment #4	April 1, 2018

Appendix B-8
Calculation of Charges

Maintenance Fees, 7/1/18 to 12/31/18

Module	Six Month Fee	Quarterly Fee
Accounting (FAMIS, RIMS, & Labor Distribution)	\$ 34,958.06	\$17,479.03
Asset Management	6,214.70	3,107.35
Purchasing	24,858.94	12,429.48
System Wide	4661.04	2,330.52
Client GUI	6,991.56	3,495.78
	\$77,684.30	\$38,842.15

Quarterly Fee Payment Schedule	
Payment #1	July 1, 2018
Payment #2	October 1, 2018

OPTIONAL SIX MONTHS:
Maintenance Fees, 01/01/19 to 6/30/19

Module	Optional Six Month Fee	Quarterly Fee
Accounting (FAMIS, RIMS, & Labor Distribution)	\$ 34,958.06	\$17,479.03
Asset Management	6,214.70	3,107.35
Purchasing	24,858.94	12,429.48
System Wide	4,661.04	2,330.52
Client GUI	6,991.56	3,495.78
	\$77,684.30	\$38,842.15

Quarterly Fee Payment Schedule	
Payment #1	January 1, 2019
Payment #2	April 1, 2019

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

Eighth Amendment

THIS AMENDMENT (this "Amendment") is made as of **May 15, 2015**, in San Francisco, California, by and between **Cogsdale Corporation** ("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 and increase the contract amount;

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,
Third Amendment,	dated April 7, 2008,
Assignment and Assumption Agreement,	dated December 1, 2008
Fourth Amendment,	dated June 12, 2009,
Fifth Amendment,	dated June 16, 2011,
Sixth Amendment,	dated June 25, 2012,
Assignment and Assumption Agreement,	dated August 1, 2013, and
Seventh Amendment,	dated June 16, 2014.

1b. Contract Monitoring Division. Contract Monitoring Division. Effective July 28, 2012, with the exception of Sections 14B.9(D) and 14B.17(F), all of the duties and functions of the Human Rights Commission under Chapter 14B of the Administrative Code (LBE Ordinance) were transferred to the City Administrator, Contract Monitoring Division ("CMD"). Wherever "Human Rights Commission" or "HRC" appears in the Agreement in reference to Chapter 14B of the Administrative Code or its implementing Rules and Regulations, it shall be construed to mean "Contract Monitoring Division" or "CMD" respectively.

1c. 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 3. Section 3, Term of the Maintenance Agreement, currently reads as follows:

3. Term of the Agreement Maintenance Agreement

Subject to Section 2, the term of this Maintenance Agreement shall be from July 1, 2006 to June 30, 2015.

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

3. Term of the Agreement Maintenance Agreement. Subject to Section 2, the term of this Maintenance Agreement shall be from July 1, 2006, to June 30, 2016.

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-6, City shall pay the price listed in Appendix B-6 for Support Services for that piece of Software. However, in no event shall the amount of this Agreement exceed One Million, One Hundred Sixty-Four Thousand, Two Hundred and Twenty-One Dollars and Seventy-Two cents (\$1,164,221.72). This amount is a fixed fee for all Support Services.

As outlined in Appendix B-6, 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-6, 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-6, 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.

As outlined in Appendix B-6, the fixed fee for the time period July 1, 2012 through June 30, 2013 shall be One hundred thirty-one thousand Four hundred and seventy dollars and 36 cents (\$131,470.36) and shall be invoiced quarterly for the following time periods: 1) July 1 – September 30, 2012, 2) October 1 – December 31, 2012, 3) January 1 – March 31, 2013, and 4) April 1 – June 30, 2013. 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-6, the fixed fee for the time period July 1, 2013 through June 30, 2014 shall be One hundred thirty-one thousand Four hundred and seventy dollars and 36 cents (\$131,470.36) and shall be invoiced quarterly for the following time periods: 1) July 1 – September 30, 2013, 2) October 1 – December 31, 2013, 3) January 1 – March 31, 2014, and 4) April 1 – June 30, 2014. 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-6, the fixed fee for the time period July 1, 2014 through June 30, 2015 shall be One hundred thirty-eight thousand and forty-three dollars and no cents (\$138,043.00) and shall be invoiced quarterly for the following time periods: 1) July 1 – September 30, 2014, 2) October 1 – December 31, 2014, 3) January 1 – March 31, 2015, and 4) April 1 – June 30, 2015. 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:

San Francisco City Hall
Controller's Office – Accounting Operations & Systems Division
1 Dr. Carlton B. Goodlett Place, Room 482
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. 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-7, City shall pay the price listed in Appendix B-7 for Support Services for that piece of Software. However, in no event shall the amount of this Agreement exceed **one million, three hundred and six thousand, four hundred and five dollars and ninety-seven cents (\$1,306,405.97)**. This amount is a fixed fee for all Support Services.

As outlined in Appendix B-7, 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-7, 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-7, 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.

As outlined in Appendix B-7, the fixed fee for the time period July 1, 2012 through June 30, 2013 shall be One hundred thirty-one thousand Four hundred and seventy dollars and 36 cents (\$131,470.36) and shall be invoiced quarterly for the following time periods: 1) July 1 – September 30, 2012, 2) October 1 – December 31, 2012, 3) January 1 – March 31, 2013, and 4) April 1 – June 30, 2013. 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-7, the fixed fee for the time period July 1, 2013 through June 30, 2014 shall be One hundred thirty-one thousand Four hundred and seventy dollars and 36 cents (\$131,470.36) and shall be invoiced quarterly for the following time periods: 1) July 1 – September 30, 2013, 2) October 1 – December 31, 2013, 3) January 1 – March 31, 2014, and 4) April 1 – June 30, 2014. 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-7, the fixed fee for the time period July 1, 2014 through June 30, 2015 shall be One hundred thirty-eight thousand and forty-three dollars and no cents (\$138,043.00) and shall be invoiced quarterly for the following time periods: 1) July 1 – September 30, 2014, 2) October 1 – December 31, 2014, 3) January 1 – March 31, 2015, and 4) April 1 – June 30, 2015. 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-7, the fixed fee for the time period July 1, 2015 through June 30, 2016 shall be one hundred forty-two thousand, one hundred and eighty-four dollars and twenty-five cents (\$142,184.25) and shall be invoiced quarterly for the following time periods: 1) July 1 – September 30, 2015, 2) October 1 – December 31, 2015, 3) January 1 – March 31, 2016, and 4) April 1 – June 30, 2016. 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:
City & County of San Francisco
Controller's Office – Central Finance
Attention: Jerry Wong
1 Dr. Carlton B. Goodlett Place, Room 482
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. Section 16. Insurance. Section 16, "Insurance," of the Agreement 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 and \$2,000,000 general aggregate 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) Technology Errors and Omissions Liability coverage, with limits of \$1,000,000 each occurrence and each loss, and \$2,000,000 general aggregate. The policy shall at a minimum cover professional misconduct or lack of the requisite skill required for the performance of services defined in the contract and shall also provide coverage for the following risks:

(a) Liability arising from theft, dissemination, and/or use of confidential information, including but not limited to, bank and credit card account information or personal information, such as name, address, social security numbers, protected health information or other personally identifying information, stored or transmitted in electronic form;

(b) Network security liability arising from the unauthorized access to, use of, or tampering with computers or computer systems, including hacker attacks; and

(c) Liability arising from the introduction of any form of malicious software including computer viruses into, or otherwise causing damage to the City's or third person's computer, computer system, network, or similar computer related property and the data, software, and programs thereon.

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. All policies shall be endorsed to provide thirty (30) days' advance written notice to the City of cancellation for any reason, intended non-renewal, or reduction in coverages. Notices shall be sent to the City address set forth in the Section entitled "Notices to the Parties."

d. 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.

e. 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.

f. Before commencing any Services, 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. Approval of the insurance by City shall not relieve or decrease Contractor's liability hereunder.

2d. Section 24. Section 24, "Notice to the Parties," of the Agreement is hereby replaced in its entirety as follows:

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

To City: Joyce Kimotsuki
Controller's Office
1 Dr. Carlton B. Goodlett Place, Room 306
San Francisco, CA 94102
Joyce.Kimotsuki@sfgov.org

To Contractor: Cogsdale Corporation
Attn. Kelly Dawson, Executive Vice President
14 MacAleer Drive, Suite 5
Charlottetown, PE, Canada C1E 2A1
kdawson@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. Appendix B-7. Appendix B-7 ("Calculation of Charges") as attached is hereby added to the Agreement and hereby replaces "Appendix B-6".

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

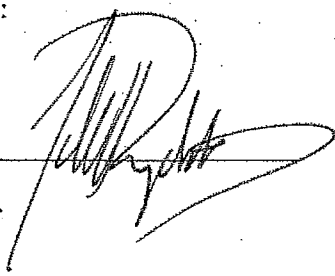
4. Legal Effect. Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

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

CITY

Recommended by:

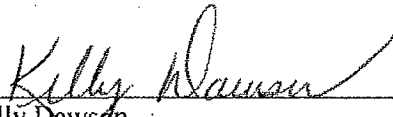
Todd Rydstrom
Deputy Controller
Controller



CONTRACTOR

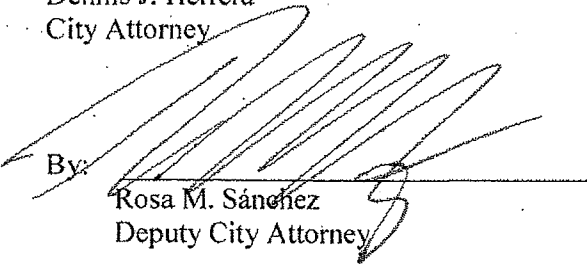
Cogsdale Corporation

Kelly Dawson
Executive Vice President
14 MacAleer Drive, Suite 5
Charlottetown, PE, Canada C1E 2A1



Approved as to Form:

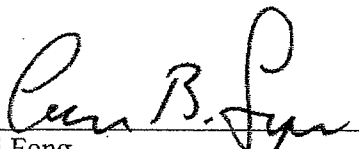
Dennis J. Herrera
City Attorney

By: 

Rosa M. Sánchez
Deputy City Attorney

City vendor number: **89618**

Approved:


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

Appendix B-7 Calculation of Charges

In accordance with Section 4 of this Agreement, the Contractor's total compensation under this Agreement is detailed below. In no event shall the total costs under this Agreement exceed the amount provided in Section 4 of this Agreement.

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

Appendix B-7
Calculation of Charges

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

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-7
Calculation of Charges

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

Maintenance Fees, 7/1/12 to 6/30/13

Module	Annual Fee	Quarterly Fee
Accounting (FAMIS, RIMS, & Labor Distribution)	\$ 59,122.76	\$ 14,780.69
Asset Management	10,640.44	2,660.11
Purchasing	41,054.24	10,263.56
System Wide	8,212.92	2,053.23
Client GUI	12,440.00	3,110.00
	\$ 131,470.36	\$ 32,867.59

Quarterly Fee Payment Schedule

Payment #1	July 1, 2012
Payment #2	October 1, 2012
Payment #3	January 1, 2013
Payment #4	April 1, 2013

Maintenance Fees, 7/1/13 to 6/30/14

Module	Annual Fee	Quarterly Fee
Accounting (FAMIS, RIMS, & Labor Distribution)	\$ 59,122.76	\$ 14,780.69
Asset Management	10,640.44	2,660.11
Purchasing	41,054.24	10,263.56
System Wide	8,212.92	2,053.23
Client GUI	12,440.00	3,110.00
	\$ 131,470.36	\$ 32,867.59

Appendix B-7
Calculation of Charges

Quarterly Fee Payment Schedule

Payment #1	July 1, 2013
Payment #2	October 1, 2013
Payment #3	January 1, 2014
Payment #4	April 1, 2014

Maintenance Fees, 7/1/14 to 6/30/15

Module	Annual Fee	Quarterly Fee
Accounting (FAMIS, RIMS, & Labor Distribution)	\$ 62,078.02	\$ 15,519.50
Asset Management	11,172.46	2,793.12
Purchasing	43,106.95	10,776.74
System Wide	8,623.57	2,155.89
Client GUI	13,062.00	3,265.50
	\$ 138,043.00	\$ 34,510.75

Quarterly Fee Payment Schedule

Payment #1	July 1, 2014
Payment #2	October 1, 2014
Payment #3	January 1, 2015
Payment #4	April 1, 2015

Maintenance Fees, 7/1/15 to 6/30/16

Module	Annual Fee	Quarterly Fee
Accounting (FAMIS, RIMS, & Labor Distribution)	\$ 63,983.16	\$15,995.79
Asset Management	11,374.65	2,843.66
Purchasing	45,498.91	11,374.73
System Wide	8,531.00	2,132.75
Client GUI	12,796.53	3,199.13
	\$142,184.25	\$35,546.06

Quarterly Fee Payment Schedule

Payment #1	July 1, 2015
Payment #2	October 1, 2015
Payment #3	January 1, 2016
Payment #4	April 1, 2016

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

Seventh Amendment

THIS AMENDMENT (this "Amendment") is made as of **June 16, 2014** in San Francisco, California, by and between **Cogsdale Corporation** ("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 and increase the contract amount;

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,
Third Amendment,	dated April 7, 2008,
Assignment and Assumption Agreement,	dated December 1, 2008,
Fourth Amendment,	dated June 12, 2009,
Fifth Amendment,	dated June 16, 2011,
Sixth Amendment,	dated June 25, 2012, and
Assignment and Assumption Agreement,	dated August 1, 2013.

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 3. Section 3, Term of the Maintenance Agreement, currently reads as follows:

2. Term of the Agreement Maintenance Agreement

Subject to Section 2, the term of this Maintenance Agreement shall be from July 1, 2006 to June 30, 2014.

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

2. Term of the Agreement Maintenance Agreement

Subject to Section 2, the term of this Maintenance Agreement shall be from July 1, 2006, to June 30, 2015.

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-5, City shall pay the price listed in Appendix B-5 for Support Services for that piece of Software. However, in no event shall the amount of this Agreement exceed One Million, Twenty-Six Thousand, One Hundred and Seventy-Eight Dollars and Seventy-Two cents (\$1,026,178.72). This amount is a fixed fee for all Support Services.

As outlined in Appendix B-5, 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-5, 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-5, 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.

As outlined in Appendix B-5, the fixed fee for the time period July 1, 2012 through June 30, 2013 shall be One hundred thirty-one thousand Four hundred and seventy dollars and 36 cents (\$131,470.36) and shall be invoiced quarterly for the following time periods:

1) July 1 – September 30, 2012, 2) October 1 – December 31, 2012, 3) January 1 – March 31, 2013, and 4) April 1 – June 30, 2013. 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-5, the fixed fee for the time period July 1, 2013 through June 30, 2014 shall be One hundred thirty-one thousand Four hundred and seventy dollars and 36 cents (\$131,470.36) and shall be invoiced quarterly for the following time periods: 1) July 1 – September 30, 2013, 2) October 1 – December 31, 2013, 3) January 1 – March 31, 2014, and 4) April 1 – June 30, 2014. 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 - Contracts

1 Dr. Carlton B. Goodlett Place, City Hall, Rm 306

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. 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-6, City shall pay the price listed in Appendix B-6 for Support Services for that piece of Software. However, in no event shall the amount of this Agreement exceed One Million, One Hundred Sixty-Four Thousand, Two Hundred and Twenty-One Dollars and Seventy-Two cents (\$1,164,221.72). This amount is a fixed fee for all Support Services.

As outlined in Appendix B-6, 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-6, 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-6, 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.

As outlined in Appendix B-6, the fixed fee for the time period July 1, 2012 through June 30, 2013 shall be One hundred thirty-one thousand Four hundred and seventy dollars and 36 cents (\$131,470.36) and shall be invoiced quarterly for the following time periods: 1) July 1 – September 30, 2012, 2) October 1 – December 31, 2012, 3) January 1 – March 31, 2013, and 4) April 1 – June 30, 2013. 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-6, the fixed fee for the time period July 1, 2013 through June 30, 2014 shall be One hundred thirty-one thousand Four hundred and seventy dollars and 36 cents (\$131,470.36) and shall be invoiced quarterly for the following time periods: 1) July 1 – September 30, 2013, 2) October 1 – December 31, 2013, 3) January 1 – March 31, 2014, and 4) April 1 – June 30, 2014. 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-6, the fixed fee for the time period July 1, 2014 through June 30, 2015 shall be One hundred thirty-eight thousand and forty-three dollars and no cents (\$138,043.00) and shall be invoiced quarterly for the following time periods: 1) July 1 – September 30, 2014, 2) October 1 – December 31, 2014, 3) January 1 – March 31, 2015, and 4) April 1 – June 30, 2015. 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:
San Francisco City Hall
Controller's Office – Accounting Operations & Systems Division
1 Dr. Carlton B. Goodlett Place, Room 482
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. **Section 16.** Section 16, "Insurance," of the Agreement is hereby replaced in its entirety 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 ten 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 to the Parties" section.

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.

2d. Section 24. Section 24, "Notice to the Parties," of the Agreement is hereby replaced in its entirety as follows:

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

To City: Jerry C. Wong
Controller's Office
1 Dr. Carlton B. Goodlett Place, Rm 482
San Francisco, CA 94102
jerry.c.wong@sfgov.org

To Contractor: Cogsdale Corporation
Attn: Kelly Dawson, Executive Vice President
14 MacAleer Drive, Suite 5
Charlottetown, PE, Canada C1E 2A1
kdawson@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. Section 42. Section 42, "Protection of Private Information," of the Agreement is hereby replaced in its entirety as follows:

42. 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 Contractor.

2f. Appendix B-6. Appendix B-6 ("Calculation of Charges") as attached is hereby added to the Agreement and hereby replaces "Appendix B-5".

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

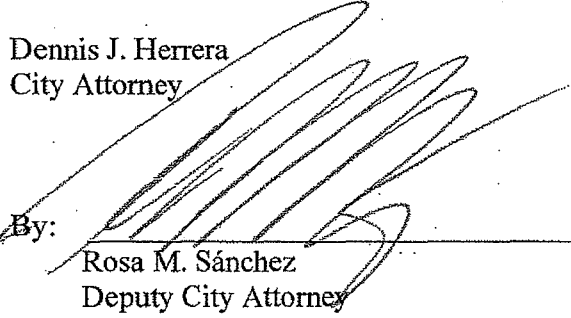
Recommended by:


Monique Zmuda
Deputy Controller
Controller

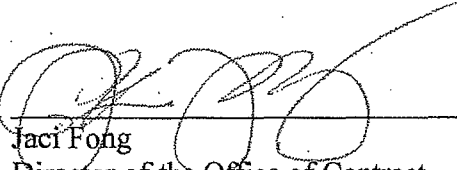
Approved as to Form:

Dennis J. Herrera
City Attorney

By:

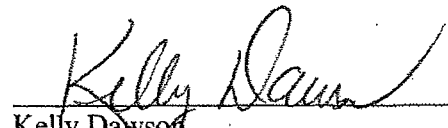

Rosa M. Sanchez
Deputy City Attorney

Approved:


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

CONTRACTOR

Cogsdale Corporation


Kelly Dawson
Executive Vice President
14 MacAleer Drive, Suite 5
Charlottetown, PE, Canada C1E 2A1

City vendor number: 89618

Appendix B-6

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-6

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-6

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

Maintenance Fees, 7/1/12 to 6/30/13

Module	Annual Fee	Quarterly Fee
Accounting (FAMIS, RIMS, & Labor Distribution)	\$ 59,122.76	\$ 14,780.69
Asset Management	10,640.44	2,660.11
Purchasing	41,054.24	10,263.56
System Wide	8,212.92	2,053.23
Client GUI	12,440.00	3,110.00
	\$ 131,470.36	\$ 32,867.59

Quarterly Fee Payment Schedule

Payment #1	July 1, 2012
Payment #2	October 1, 2012
Payment #3	January 1, 2013
Payment #4	April 1, 2013

Appendix B-6

Maintenance Fees, 7/1/13 to 6/30/14

Module	Annual Fee	Quarterly Fee
Accounting (FAMIS, RIMS, & Labor Distribution)	\$ 59,122.76	\$ 14,780.69
Asset Management	10,640.44	2,660.11
Purchasing	41,054.24	10,263.56
System Wide	8,212.92	2,053.23
Client GUI	12,440.00	3,110.00
	\$ 131,470.36	\$ 32,867.59

Quarterly Fee Payment Schedule	
Payment #1	July 1, 2013
Payment #2	October 1, 2013
Payment #3	January 1, 2014
Payment #4	April 1, 2014

Maintenance Fees, 7/1/14 to 6/30/15

Module	Annual Fee	Quarterly Fee
Accounting (FAMIS, RIMS, & Labor Distribution)	\$ 62,078.02	\$ 15,519.50
Asset Management	11,172.46	2,793.12
Purchasing	43,106.95	10,776.74
System Wide	8,623.57	2,155.89
Client GUI	13,062.00	3,265.50
	\$ 138,043.00	\$ 34,510.75

Quarterly Fee Payment Schedule	
Payment #1	July 1, 2014
Payment #2	October 1, 2014
Payment #3	January 1, 2015
Payment #4	April 1, 2015

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

Sixth Amendment

THIS AMENDMENT (this "Amendment") is made as of June 25, 2012 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 and increase the contract amount;

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,
Third Amendment,	dated April 7, 2008,
Fourth Amendment,	dated June 12, 2009, and
Fifth Amendment,	dated June 16, 2011.

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, 2012.

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, 2014.

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-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.

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-5, City shall pay the price listed in Appendix B-5 for Support Services for that piece of Software. However, in no event shall the amount of this Agreement exceed One Million, Twenty-Six Thousand, One Hundred and Seventy-Eight Dollars and Seventy-Two cents (\$1,026,178.72). This amount is a fixed fee for all Support Services.

As outlined in Appendix B-5, 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-5, 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-5, 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.

As outlined in Appendix B-5, the fixed fee for the time period July 1, 2012 through June 30, 2013 shall be One hundred thirty-one thousand Four hundred and seventy dollars and 36 cents (\$131,470.36) and shall be invoiced quarterly for the following time periods: 1) July 1 – September 30, 2012, 2) October 1 – December 31, 2012, 3) January 1 – March 31, 2013, and 4) April 1 – June 30, 2013. 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-5, the fixed fee for the time period July 1, 2013 through June 30, 2014 shall be One hundred thirty-one thousand Four hundred and seventy dollars and 36 cents (\$131,470.36) and shall be invoiced quarterly for the following time periods: 1) July 1 – September 30, 2013, 2) October 1 – December 31, 2013, 3) January 1 – March 31, 2014, and 4)

April 1 – June 30, 2014. 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 - Contracts

1 Dr. Carlton B. Goodlett Place, City Hall, Rm 306

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. Appendix B-5. Appendix B-5 ("Calculation of Charges") as attached is hereby added to the Agreement and hereby replaces "Appendix B-4."


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


Recommended by:



Monique Zmuda
Deputy Controller
Controller

CONTRACTOR

Cogsdale Holdings Ltd.



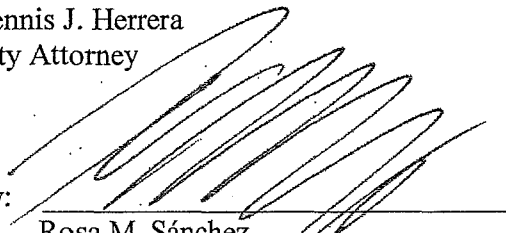
Kelly Dawson
Chief Operating Officer
14 MacAleer Drive, Suite 5
Charlottetown, PE, Canada C1E 2A1

City vendor number: 78223

Approved as to Form:

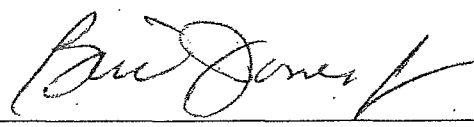
Dennis J. Herrera
City Attorney

By:



Rosa M. Sánchez
Deputy City Attorney

Approved:



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

Appendix B-5

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-5

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
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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-5

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-5

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

Maintenance Fees, 7/1/12 to 6/30/13

Module	Annual Fee	Quarterly Fee
Accounting (FAMIS, RIMS, & Labor Distribution)	\$ 59,122.76	\$ 14,780.69
Asset Management	10,640.44	2,660.11
Purchasing	41,054.24	10,263.56
System Wide	8,212.92	2,053.23
Client GUI	12,440.00	3,110.00
	\$ 131,470.36	\$ 32,867.59

Quarterly Fee Payment Schedule

Payment #1	July 1, 2012
Payment #2	October 1, 2012
Payment #3	January 1, 2013
Payment #4	April 1, 2013

Appendix B-5

Maintenance Fees, 7/1/13 to 6/30/14

Module	Annual Fee	Quarterly Fee
Accounting (FAMIS, RIMS, & Labor Distribution)	\$ 59,122.76	\$ 14,780.69
Asset Management	10,640.44	2,660.11
Purchasing	41,054.24	10,263.56
System Wide	8,212.92	2,053.23
Client GUI	12,440.00	3,110.00
	\$ 131,470.36	\$ 32,867.59

Quarterly Fee Payment Schedule	
Payment #1	July 1, 2013
Payment #2	October 1, 2013
Payment #3	January 1, 2014
Payment #4	April 1, 2014

**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.

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. 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."

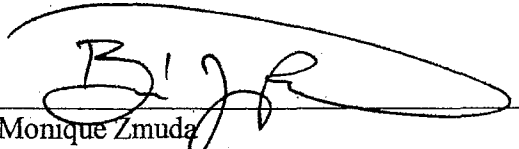
3. Effective Date. Each of the modifications set forth in Section 2 shall be effective on and after the date of this Amendment.

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.

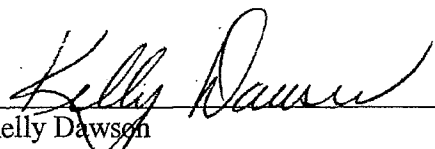
CITY

Recommended by:


Monique Zmuda
Deputy Controller
Controller

CONTRACTOR

Cogsdale Holdings Ltd.

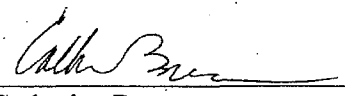

Kelly Dawson
Chief Operating Officer
14 MacAleer Drive, Suite 5
Charlottetown, PE, Canada C1E 2A1

City vendor number: 78223

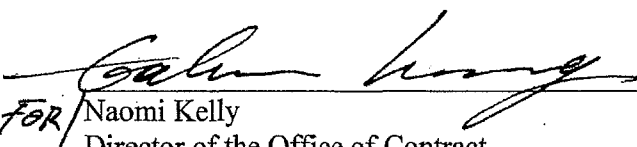
Approved as to Form:

Dennis J. Herrera
City Attorney

By:


Catharine Barnes
Deputy City Attorney

Approved:


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

RECEIVED
JUN 16 2011
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

**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.

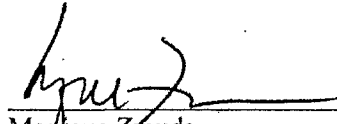
3. Effective Date. Each of the modifications set forth in Section 2 shall be effective on and after the date of this Amendment.

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

Recommended by:



Monique Zmuda
Deputy Controller
Office of the Controller

CONTRACTOR

COGSDALE HOLDINGS LTD.

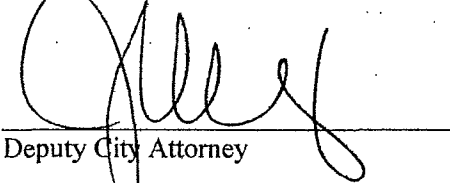
 CFO

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

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

CITY AND COUNTY OF SAN FRANCISCO
OFFICE OF CONTRACT ADMINISTRATION

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT (this "Assignment") is made as of December 1, 2008, in San Francisco, California, by and between Tier Technologies, Inc. ("Assignor") and Cogsdale Holdings, Ltd ("Assignee").

RECITALS

WHEREAS, Assignor is a party to the Agreements (as defined below); and

WHEREAS, Assignor desires to assign the Agreements, and Assignee desires to assume the Agreements, each on the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the promises and the mutual covenants contained in this Assignment, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Assignor and Assignee agree as follows:

1. **Definitions.** The following definitions shall apply to this Assignment:

(a) **Agreements.** The term "Agreements" shall mean the Agreements, as follows. The term "Agreements" shall include any amendments or modifications set forth below and made a part hereof:

The **License Agreement** dated June 27, 1994 between KPMG Peat Marwick and the City and County of San Francisco, a municipal corporation ("City"), as amended by a First Amendment dated July 1, 1998, as assigned by an assignment dated February 8, 2001 to KPMG Consulting, Inc. (now known as BearingPoint, Inc.), and as further assigned by an assignment dated November 16, 2004 to Tier Technologies, Inc.

The **Software License and Sublicense Agreement** dated July 1, 1998 and **Extended Maintenance and Support Services Agreement** dated July 28, 1998 between KPMG LLP and the City and County of San Francisco, a municipal corporation ("City"), as assigned by an assignment dated February 8, 2001 to KPMG Consulting, Inc. (now known as BearingPoint, Inc.), as further assigned by an assignment dated November 16, 2004 to Tier Technologies, Inc.

The **Software Maintenance Agreement** dated July 1, 2006 between Tier Technologies, Inc. and the City and County of San Francisco, a municipal corporation ("City"), as amended by the First Amendment dated February 1, 2007, as amended by the Second Amendment dated July 1, 2007, and as amended by the Third Amendment, dated April 7, 2008.

The **Professional Services Agreement** dated November 19, 2004 between Tier Technologies, Inc. and the City and County of San Francisco, a municipal corporation ("City"), as amended by the First Amendment dated November 1, 2006, as amended by the Second Amendment dated November 27, 2007, and as amended by the Third Amendment dated October 11, 2008.

(b) **Effective Date.** "Effective Date" shall mean December 1, 2008.

(c) **Other Terms.** Terms used and not defined in this Assignment shall have the meanings assigned to such terms in the Agreements.

2. **Assignment.** Assignor hereby assigns, transfers and conveys to Assignee all of Assignor's right, title and interest in and to the Agreements and all of Assignor's duties and obligations thereunder, to the extent arising on or after the Effective Date.

3. **Assumption.** Assignee hereby accepts the assignment transfer and conveyance set forth in Section 2 and agrees to perform all of Assignor's duties and obligations under the Agreements, to the extent arising on or after the Effective Date.

4. **Mutual Indemnities**

(a) **Assignor.** Assignor shall indemnify, defend and protect Assignee, and hold Assignee harmless from and against, any and all liabilities, losses, damages, claims, costs or expenses (including attorneys' fees) arising out of (a) any failure of Assignor to convey its interest pursuant to Section 2, free and clear of all third-party liens, claims or encumbrances or (b) any breach by Assignor of the Agreements or any other failure to perform or observe any of the duties or obligations of Assignor thereunder, to the extent such breach or failure arises prior to the Effective Date.

(b) **Assignee.** Assignee shall indemnify, defend and protect Assignor, and hold Assignor harmless from and against, any and all liabilities, losses, damages, claims, costs or expenses (including attorneys' fees) arising out of any breach by Assignee of the Agreements or any other failure to perform or observe any of the duties or obligations thereunder assumed by Assignee pursuant to this Assignment.

5. **Governing Law.** This Assignment shall be governed by the laws of the State of California, without regard to its conflict of laws principles.

6. **Headings.** All section headings and captions contained in this Assignment are for reference only and shall not be considered in construing this Assignment.

7. **Entire Agreement.** This Assignment sets forth the entire agreement between Assignor and Assignee relating to the Agreements and supersedes all other oral or written provisions.

8. **Further Assurances.** From and after the date of this Assignment, Assignor and Assignee agree to do such things, perform such acts, and make, execute, acknowledge and deliver such documents as may be reasonably necessary or proper and usual to complete the conveyance contemplated by this Assignment or as may be required by City.

9. **Severability.** Should the application of any provision of this Assignment to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Assignment shall not be affected or impaired thereby and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of Assignor, Assignee and City.

10. **Successors; Third-Party Beneficiaries.** Subject to the terms of the Agreements, this Assignment shall be binding upon, and inure to the benefit of, the parties hereto and their successors and assigns. Except as set forth in Section 12, nothing in this Assignment, whether express or implied, shall be construed to give any person or entity (other than City and the parties hereto and their respective successors and assigns) any legal or equitable right, remedy or claim under or in respect of this Assignment or any covenants, conditions or provisions contained herein.

11. **Notices.** All notices, consents, directions, approvals, instructions, requests and other communications regarding this Assignment or the Agreements shall be in writing, shall be addressed to the person and address set forth below and shall be (a) deposited in the U.S. mail, first class, certified with return receipt requested and with appropriate postage, (b) hand delivered or (c) sent via facsimile (if a facsimile number is provided below). All communications sent in accordance with this Section shall become effective on the date of receipt. From time to time Assignor, Assignee or City may designate a new address for purposes of this Section by notice to the other signatories to this Assignment.

If to Assignor:

Tier Technologies, Inc.
Attn: Keith Omsberg, General Counsel
10780 Parkridge Blvd, Suite 400
Reston, VA 20191
571-382-1029

If to Assignee:

Cogsdale Holdings, Ltd.
Duncan Shaw, Co-President
14 MacAleer Drive, Suite 5
Charlottetown, PE, Canada C1E 2A1
902-446-7036

If to City:

Mary Fitzpatrick, Financial Systems Manager
City and County of San Francisco
City Hall, Controller's Office
1 Dr. Carlton B. Goodlett Place, Room 482
San Francisco, CA 94102

12. **Consent of City; No Release of Assignor; Waivers.** Each of Assignor and Assignee acknowledges that the prior written consent of City to this Assignment is required under the terms of the Agreements. City shall be a third party beneficiary of this Assignment (other than Section 4) and shall have the right to enforce this Assignment. Neither this Assignment nor the consent of City set forth below shall release Assignor in whole or in part from any of its obligations or duties under the Agreements if Assignee fails to perform or observe any such obligation or duty. The City has made no representations or guarantees to Assignor regarding Assignee's financial condition and ability to perform under the Agreements. Nor does City have an obligation to do so now or in the future. Assignor has entered into this Assignment, in part, based upon its evaluation of Assignee's financial condition and ability to perform under the Agreements. Assignor acknowledges it does not have the right to require City to (a) proceed against any person or entity including Assignee, (b) proceed against or exhaust any security now or hereafter held in connection with the Agreements, or (c) pursue any other remedy in City's power. Assignor authorizes City, without notice or demand to (i) renew, modify or extend the time for performance of any obligation under the Agreements, provided, however, Assignor shall have no liability under the Agreements for any such renewal, modification or extension of time; (ii) take and hold security against Assignee for the payment of any obligation under the Agreements and exchange, enforce, waive and release such security from Assignee; and (iii) consent to an assignment by Assignee of all or any part of the Agreements, provided, that as of the effective date of any such assignment,

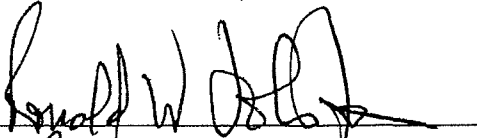
Assignor shall have no responsibility or liability for services provided to the City by new or future assignees.

IN WITNESS WHEREOF, Assignor and Assignee have each duly executed this Assignment as of the date first referenced above.

ASSIGNOR

Tier Technologies, Inc.


CITY VENDOR NUMBER: 61482

By 
Title Ronald W. Johnston, CFO

ASSIGNEE

Cogsdale Holdings, Ltd.

CITY VENDOR NUMBER: 78223

By 
Title Todd Gaudin CFO

Subject to Section 12 of this Assignment, City hereby consents to the assignment and assumption described in Sections 2 and 3 of this Assignment.

CITY

Recommended by:


Signature for Department

Mary Fitzpatrick

Printed Name

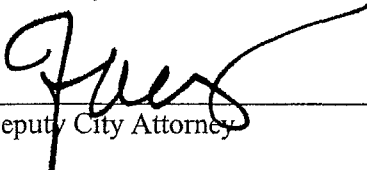
Financial Systems Manager, Controller's Office

Title and Department


Approved as to Form:

Dennis J. Herrera

City Attorney

By 
Deputy City Attorney

Approved:

for 
Naomi Kelly
Director of Office of Contract Administration/
Purchaser

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

Third Amendment

THIS AMENDMENT (this "Amendment") is made as of April 7, 2008, in San Francisco, California, by and between **Tier Technologies, Inc.** ("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 June 30, 2009, increase the contract amount by \$128,735 for a new total of \$396,344, replace Appendix B-1 with Appendix B-2 to reflect additional cost of the annual maintenance renewal.

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, and
Second amendment, dated July 1, 2007.

b. 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 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, 2008.

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, 2009.

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-1, City shall pay the price listed in Appendix B-1 for Support Services for that piece of Software. However, in no event shall the amount of this Agreement exceed Two hundred sixty-seven thousand Six hundred and nine dollars and no cents (\$267,609.00). This amount is a fixed fee for all Support Services.

As outlined in Appendix B-1, 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.

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-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.

2c. 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 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.

2d. Appendix B-2. Appendix B-2, attached hereto, is hereby incorporated and hereby replaces Exhibit B-1 in its entirety.

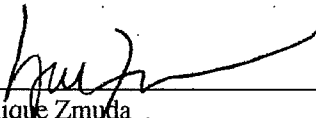
3. Effective Date. Each of the modifications set forth in Section 2 shall be effective on and after the date of this Amendment.

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


Recommended by:



Monique Zmuda
Deputy Controller
Office of the Controller

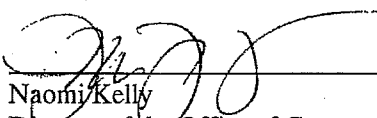
Approved as to Form:

Dennis J. Herrera
City Attorney

By: 

Deputy City Attorney

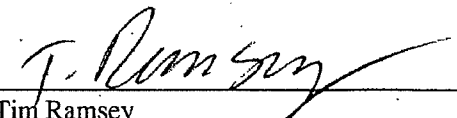
Approved:



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

CONTRACTOR

Tier Technologies, Inc.



Tim Ramsey
Vice President, FMS
Tier Technologies, Inc.
10780 Parkridge Blvd., Suite 400
Reston, VA 20191

City vendor number: 61482

Exhibit B-2

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

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

Second Amendment

THIS AMENDMENT (this "Amendment") is made as of July 1, 2007, in San Francisco, California, by and between **Tier Technologies, Inc.** ("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;

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 Software Maintenance Agreement dated July 1, 2006 between Contractor and City, as amended by the:

First amendment, dated February 1, 2007.

b. **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 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, 2007.

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, 2008.

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 Exhibit B, City shall pay the price listed in Exhibit B for Support Services for that piece of Software. However, in no event shall the amount of this Agreement exceed One hundred twenty-two thousand Six hundred and five

dollars (\$122,605). Outlined in Appendix A, this amount is a fixed fee for all Support Services and may be invoiced at any time on or after the Effective Date.

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-1, City shall pay the price listed in Appendix B-1 for Support Services for that piece of Software. However, in no event shall the amount of this Agreement exceed Two hundred sixty-seven thousand Six hundred and nine dollars and no cents (\$267,609.00). This amount is a fixed fee for all Support Services.

As outlined in Appendix B-1, 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.

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 49 is hereby replaced in its entirety to read as follows:

49. 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

(7) That in the event the City is the prevailing party in a civil action to recover liquidated damages for breach of a contract provision required by this Chapter, the contractor will be liable for the City's costs and reasonable attorneys fees.

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. Limitations on Contributions. Section 28 is hereby replaced in its entirety as follows:

28. 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 a board 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.

2e. Protection of Private Information. Section 42, Nondisclosure of Private Information, is hereby replaced in its entirety, as follows:

42. Protection of Private Information

Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12M of the San Francisco Administrative Code ("Protection of Private Information"), including the remedies provided. The provisions of Chapter 12M are incorporated herein by reference and made a part of this Agreement as though fully set forth. Capitalized terms used in this section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12M. Consistent with the requirements of Chapter 12M, Contractor agrees to all of the following:

a. Neither Contractor nor any of its Subcontractors shall disclose Private Information obtained from the City in the performance of this Agreement to any other Subcontractor, person, or other entity, unless one of the following is true:

- (1) The disclosure is authorized by this Agreement;
- (2) The Contractor received advance written approval from the Contracting Department to disclose the information; or
- (3) The disclosure is expressly required by a judicial order.

b. Any disclosure or use of Private Information authorized by this Agreement shall be in accordance with any conditions or restrictions stated in this Agreement. Any disclosure or use

of Private Information authorized by a Contracting Department shall be in accordance with any conditions or restrictions stated in the approval.

c. Private Information shall mean any information that: (1) could be used to identify an individual, including without limitation, name, address, social security number, medical information, financial information, date and location of birth, and names of relatives; or (2) the law forbids any person from disclosing.

d. Any failure of Contractor to comply with Chapter 12M shall be a material breach of this Agreement. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate this Agreement, debar Contractor, or bring a false claim action against Contractor.

2f. Food Service Waste Reduction Requirements. Section 44 is hereby added to the Agreement, as follows:

44. Food Service Waste Reduction Requirements

Effective June 1, 2007, Contractor agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth. This provision is a material term of this Agreement. By entering into this Agreement, Contractor agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of one hundred dollars (\$100) liquidated damages for the first breach, two hundred dollars (\$200) liquidated damages for the second breach in the same year, and five hundred dollars (\$500) liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to comply with this provision.

2g. Appendix B-1. Appendix B-1, attached hereto, is hereby incorporated and hereby replaces Exhibit B 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

Recommended by:



Monique Zmuda
Deputy Controller
Office of the Controller


Approved as to Form:

Dennis J. Herrera
City Attorney

By: 

Deputy City Attorney


Approved:



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

CONTRACTOR

Tier Technologies, Inc.



for Todd Vucovich
Senior Vice President, PSSI
Tier Technologies, Inc.
10780 Parkridge Blvd., Suite 400
Reston, VA 20191

City vendor number: 61482

Exhibit B-1

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

CITY AND COUNTY OF SAN FRANCISCO

OFFICE OF CONTRACT ADMINISTRATION PURCHASING DIVISION

FIRST AMENDMENT

THIS AMENDMENT (this "Amendment") is made as of February 1, 2007, in San Francisco, California, by and between Tier Technologies, Inc ("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 desire to modify the Agreement on the terms and conditions set forth herein;

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 Software Maintenance Agreement dated of July 1, 2006 between Contractor and City.

(b) **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:

(a) **Section 3.** Section 3, Term of the Maintenance Agreement, of the Agreement currently reads as follows:

3. Term of the Maintenance Agreement

Subject to Section 2, the term of this Maintenance Agreement shall be from July 1, 2006 to December 31, 2006. The City shall have the option, at its sole discretion, to renew the Agreement for an additional six months at the same price stated in Section 4.

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, 2007.

(b) **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 45 days of billing. However, in no event shall City be liable for interest or late charges for any late payments made after such 45-day period. For each piece of Software listed in Exhibit B, City shall pay the price listed in

Exhibit B for Support Services for that piece of Software. However, in no event shall the amount of this Agreement exceed Seventy Two Thousand Five Hundred and Two Dollars (\$72,502). This amount is a fixed fee for all Support Services and may be invoiced at any time on or after the Effective Date.

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 45 days of billing. However, in no event shall City be liable for interest or late charges for any late payments made after such 45-day period. For each piece of Software listed in Exhibit B, City shall pay the price listed in Exhibit B for Support Services for that piece of Software. However, in no event shall the amount of this Agreement exceed One Hundred Forty Five Thousand and Four Dollars (\$145,004). This amount is a fixed fee for all Support Services and may be invoiced at any time on or after the Effective Date.

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.

(c) **Requiring Minimum Compensation for Employees.** Section 44 is hereby added to the Agreement, as follows:

44. Requiring Minimum Compensation for Covered Employees

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 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 <http://www.sfgov.org/olse.htm>. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12P. Consistent with the requirements of the MCO, Contractor agrees to all of the following:

(a) For each hour worked by a Covered Employee during a Pay Period on work funded under the City contract during the term of this Agreement, Contractor shall provide to the Covered Employee no less than the Minimum Compensation, which includes a minimum hourly wage and compensated and uncompensated time off consistent with the requirements of the MCO. For the hourly gross compensation portion of the MCO, Contractor shall pay a minimum of \$10.77 an hour beginning January 1, 2005 and for the remainder of the term of this Agreement; provided, however, that Contractors that are Nonprofit Corporations or public entities shall pay a minimum of \$9 an hour for the term of this Agreement.

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

(c) Contractor understands and agrees that the failure to comply with the requirements of the MCO shall constitute a material breach by Contractor of the terms of this Agreement. The City, acting through the Contracting Department, shall determine whether such a breach has occurred.

(d) 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, acting through the Contracting Department, shall have the right to pursue the following rights or remedies and any rights or remedies available under applicable law:

(1) The right to charge Contractor an amount equal to the difference between the Minimum Compensation and any compensation actually provided to a Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law;

(2) The right to set off all or any portion of the amount described in Subsection (d)(1) of this Section against amounts due to Contractor under this Agreement;

(3) The right to terminate this Agreement in whole or in part;

(4) In the event of a breach by Contractor of the covenant referred to in Subsection (b) of this Section, the right to seek reinstatement of the employee or to obtain other appropriate equitable relief; and

(5) The right to bar Contractor from entering into future contracts with the City for three years.

Each of the rights provided in this Subsection (d) shall be exercisable individually or in combination with any other rights or remedies available to the City. Any amounts realized by the City pursuant to this subsection shall be paid to the Covered Employee who failed to receive the required Minimum Compensation.

(e) 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.

(f) Contractor shall keep itself informed of the current requirements of the MCO, including increases to the hourly gross compensation due Covered Employees under the MCO, and shall provide prompt written notice to all Covered Employees of any increases in compensation, as well as any written communications received by the Contractor from the City, which communications are marked to indicate that they are to be distributed to Covered Employees.

(g) Contractor shall provide reports to the City in accordance with any reporting standards promulgated by the City under the MCO, including reports on subcontractors.

(h) The Contractor shall provide the City with access to pertinent records after receiving a written request from the City to do so and being provided at least five business days to respond.

(i) The City may conduct random audits of Contractor. Random audits shall be (i) noticed in advance in writing; (ii) limited to ascertaining whether Covered Employees are paid at least the minimum compensation required by the MCO; (iii) accomplished through an examination of pertinent records at a mutually agreed upon time and location within ten days of the written notice; and (iv) limited to one audit of Contractor every two years for the duration of this Agreement. Nothing in this Agreement is intended to preclude the City from investigating any report of an alleged violation of the MCO.

(j) 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. A subcontract means an agreement between the Contractor and a third party that requires the third party to perform all or a portion of the services covered by this Agreement. Contractor shall notify the Department of Administrative Services when it enters into such a subcontract and shall certify to the Department of Administrative Services that it has notified the subcontractor of the obligations under the MCO and has imposed the requirements of the MCO on the subcontractor through the provisions of the subcontract. 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.

(k) Each Covered Employee is a third-party beneficiary with respect to the requirements of subsections (a) and (b) of this Section, and may pursue the following remedies in the event of a breach by Contractor of subsections (a) and (b), but only after the Covered Employee has provided the notice, participated in the administrative review hearing, and waited the 21-day period required by the MCO. Contractor understands and agrees that if the Covered Employee prevails in such action, the Covered Employee may be awarded: (1) an amount equal to the difference between the Minimum Compensation and any compensation actually provided to the Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law; (2) in the event of a breach by Contractor of subsections (a) or (b), the right to seek reinstatement or to obtain other appropriate equitable relief; and (3) in the event that the Covered Employee is the prevailing party in any legal action or proceeding against Contractor arising from this Agreement, the right to obtain all costs and expenses, including reasonable attorney's fees and disbursements, incurred by the Covered Employee. Contractor also understands that the MCO provides that if Contractor prevails in any such action, Contractor may be awarded costs and expenses, including reasonable attorney's fees and disbursements, from the Covered Employee if the court determines that the Covered Employee's action was frivolous, vexatious or otherwise an act of bad faith.

(l) 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 (\$50,000 for nonprofits), 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 (\$50,000 for nonprofits) in the fiscal year.

(m) **Effect of MCO on Agreement.** As of the date of this amendment, the Agreement is subject to MCO. Contractor is not required to provide MCO benefits retroactively to the start date of the Agreement.

(n) **Effect of MCO on other contracts between Contractor and City.** As of the date of this Amendment, all contracts now in force between Contractor and City are subject to MCO, unless an exemption (except for dollar amount) or waiver applied to the contract. For example, if a contract was signed before the effective date of the MCO, it does not become subject to MCO by virtue of this amendment. However, if a contract was signed after the effective date of MCO and was exempt because the cumulative dollar amount of all contracts between Contractor and the City department was below \$25,000 (or \$50,000 for a non-profit Contractor), then it becomes subject to MCO by virtue of this Amendment.

(d) **Requiring Health Benefits for Employees.** Section 45 is hereby added to the Agreement, as follows:

45. Requiring Health Benefits for Covered Employees

Contractor agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Chapter 12Q are incorporated herein by reference and made a part of this agreement as though fully set forth. The text of the HCAO is available on the web at <http://www.sfgov.org/olse.htm>. Capitalized terms used in this Section and not defined in this agreement shall have the meanings assigned to such terms in Chapter 12Q.

(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 Purchasing Division when it enters into such a Subcontract and shall certify to the Purchasing Division 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 employee 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.

(n) **Effect of HCAO on Agreement.** As of the date of this amendment, the Agreement is subject to HCAO. Contractor is not required to provide HCAO benefits retroactively to the start date of the Agreement.

(o) **Effect of HCAO on other contracts between Contractor and City.** As of the date of this Amendment, all contracts now in force between Contractor and City are subject to HCAO, unless an exemption (except for dollar amount) or waiver applied to the contract. If Contractor has entered into agreements with one or more City Departments, the aggregate amount of which equal \$25,000 or less payable from those Departments, this Agreement is exempt from the HCAO. For non-profit corporations, this threshold is \$50,000. If Contractor has multiple agreements with the City in a given fiscal year (which agreements would be considered "Contracts" under Chapter 12Q except that the individual dollar amounts are below the thresholds set forth in the preceding sentence) and the cumulative amount of such Agreements, including this Amendment, is \$75,000 or more, each such agreement then becomes subject to HCAO by virtue of this Amendment.

(e) **Preservative-treated Wood Containing Arsenic.** Section 46 is hereby added to the Agreement, as follows:

46. Preservative-treated Wood Containing Arsenic

Contractor may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Contractor may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude Contractor from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

(f) **Supervision of Minors.** - Section 47 is hereby added to the Agreement, as follows:

47. Supervision of Minors - Left Blank by Agreement of the Parties

(g) **Services Provided by Attorneys.** Section 48 is hereby added to the Agreement, as follows:

48. Services Provided by Attorneys

Any services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by the City Attorney. No invoices for services provided by law firms or attorneys, including, without limitation, as subcontractors of Contractor, will be paid unless the provider received advance written approval from the City Attorney.

(h) **First Source Hiring Program.** Section 49 is hereby added to the Agreement, as follows

49. 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.

(1) Contractor will comply with First Source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the exclusive opportunity to initially provide Qualified Economically Disadvantaged Individuals for consideration for employment for Entry Level Positions. The duration of the First Source interviewing requirement shall be ten (10) days, unless business necessity requires a shorter period of time;

(2) Contractor will comply with requirements for providing timely, appropriate 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;

(3) Contractor agrees to use good faith efforts to comply with the First Source hiring requirements. A Contractor may establish its good faith efforts by filling: 1) its first available Entry Level Position with a job applicant referred through the First Source Program; and, 2) fifty percent (50%) of its subsequent available Entry Level Positions with job applicants referred through the San Francisco Workforce Development System. Failure to meet this target, while not imputing bad faith, may result in a review of the Contractor's employment records.

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

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.

Any failure of Contractor to comply with this section of this Agreement shall constitute an Event of Default of this Agreement.

3. **Effective Date.** Each of the modifications set forth in Section 2 shall be effective on and after December 31, 2006.

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

Recommended by:

Reg Stevenson
Signature for Department

for Monique Zmuda *Reg Stevenson*
Printed Name

Deputy Controller
Title and Department

Approved as to Form:

Dennis J. Herrera
City Attorney

By *DR*
Deputy City Attorney

Approved:

Naomi Kelly
Naomi Kelly
Director of Office of Contract Administration/
Purchaser

CONTRACTOR

By signing this Agreement, I certify that I
comply with the requirements of the Minimum
Compensation Ordinance, which entitle Covered
Employees to certain minimum hourly wages
and compensated and uncompensated time off.

Tier Technologies, Inc.
City Vendor # 61482

By *Todd Vucovich*
(Signature)

Todd Vucovich
Name

Senior Vice President
Title

City and County of San Francisco
Office of Contract Administration
Purchasing Division
City Hall, Room 430
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4685

SOFTWARE MAINTENANCE AGREEMENT
FOR AGREEMENTS BETWEEN THE CITY AND COUNTY OF SAN FRANCISCO AND

Tier Technologies, Inc.

This Software Maintenance Agreement ("Agreement") is entered into by and between the City and County of San Francisco ("City") and Tier Technologies, Inc. ("Contractor"), effective as of the Effective Date. City and Contractor agree that the terms and conditions of this Agreement cover support and maintenance services to be provided by Contractor to City, for the computer programs and user manuals listed in Exhibit A to this Agreement.

1. Definitions

Where any word or phrase defined below, or a pronoun used in place thereof, is used in any part of this Agreement, it shall have the meaning herein set forth.

1.1. Effective Date: Date upon which the Controller has certified to the availability of funds and the Contractor has been notified in writing or the Software is received and installed at the customer site, whichever is later.

1.2. Errors, Defects and Malfunctions: Either a deviation between the function of the Software and the documentation furnished to City by Contractor for the Software, including but not limited to other written specifications and procedures regarding the Software as agreed upon between the parties in writing, or a failure of the Software that degrades the use of the Software.

1.3. Fix: Repair or replacement of source, object or executable code in the Software to remedy an Error, Defect or Malfunction.

1.4. Maintenance Agreement: This Agreement and Exhibits A and B thereto which together specify the terms and conditions for the correction of Errors, Defects and Malfunctions in the Software, for the provision of Upgrades to the Software, and for the provision of Support Services to end users of the Software.

1.5. Patch: Temporary repair or replacement of code in the Software to remedy an Error, Defect or Malfunction. Patches may be made permanent and released in Subsequent Releases of the Software.

1.6. Priority Category: A priority assigned to an Error, Defect or Malfunction, designating the urgency of correcting an Error, Defect or Malfunction. Assignment of a Priority Category to an Error, Defect or Malfunction is based on City's determination of the severity of the Error, Defect or Malfunction and Contractor's reasonable analysis of the priority of the Error, Defect or Malfunction.

1.7. Priority Protocol: Based on the Priority Category, rules specifying the turnaround time for correcting Errors, Malfunctions and Defects; escalation procedures, and personnel assignment.

1.8. Software: Licensed programs and associated documentation licensed to City by Tier Technologies, as listed in Exhibit A and any modification or Upgrades or modifications to the program(s) provided under this Maintenance Agreement.

1.9. Subsequent Release: A release of the Software for use in a particular operating environment that supersedes the Software. A Subsequent Release is offered and expressly designated by Contractor as a replacement to a specified Software product. A Subsequent Release will be supported by Contractor in accordance with the terms of this Agreement. Multiple Subsequent Releases may be supported by Contractor at any given time.

1.10. Support Services: The Software support service ordered by City and furnished by Contractor under the terms of this Agreement. Support Services include correcting an Error, Defect or Malfunction; and providing telephone and/or online support concerning the use of the Software, as specified under this Agreement.

1.11. Upgrade: Either an enhancement to the Software code to add new features or functions to the system or software programming revisions containing corrections to Errors, Defects and Malfunctions that have been reported by users or discovered by the Contractor.

1.12. Warranty Period: Left blank by agreement of the parties.

1.13. Workaround: A change in the procedures followed or end user operation of the software to avoid an Error, Defect or Malfunction without significantly impairing functionality or degrading the use of the Software.

1.14. Articles and Services: Any articles or services to be provided by Contractor to City in the performance of this Agreement, including, but not limited to Fixes, Patches, Subsequent Releases, Upgrades, and Workarounds.

1.15. License Agreements: The License Agreement between the City and KPMG Peat Marwick dated June 27, 1994, as amended by the First Amendment dated July 1, 1998, as amended by the Second Amendment dated September 15, 2000, and assigned and assumed by the Assignment and Assumption Agreement dated February 8, 2001 between KPMG LLP and KPMG Consulting, Inc. (now known as BearingPoint, Inc.), (the "1994 License Agreement"); and the Software License and Sublicense Agreement dated July 1, 1998 between KPMG LLP and the City, as assigned and assumed by the Assignment and Assumption Agreement dated February 8, 2001 between KPMG LLP and KPMG Consulting, Inc. (the "1998 License Agreement" and collectively with the 1994 License Agreement, the "License Agreements").

Whenever the words "as directed," "as required," "as permitted," or words of like effect are used, it shall be understood as the direction, requirement, or permission of the Controller's Office. The words "sufficient," "necessary," or "proper," and the like, mean sufficient, necessary or proper in the judgment of Mary Fitzpatrick, or of the current Financial Systems and Reporting Manager of the Controller's Office unless otherwise indicated by the context.

2. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation

2.1. This Maintenance 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 City's Controller, and any amount of the City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization.

2.2. This Maintenance Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year in the event funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Maintenance Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated.

2.3. THIS SECTION SHALL CONTROL AGAINST ANY AND ALL OTHER PROVISIONS OF THIS MAINTENANCE AGREEMENT.

3. Term of the Maintenance Agreement

Subject to Section 2, the term of this Maintenance Agreement shall be from July 1, 2006 to December 31, 2006. The City shall have the option, at its sole discretion, to renew the Agreement for an additional six months at the same price stated in Section 4.

4. City's Payment Obligation

4.1. The City will make a good faith attempt to pay all invoices within 45 days of billing. However, in no event shall City be liable for interest or late charges for any late payments made after such 45-day period. For each piece of Software listed in Exhibit B, City shall pay the price listed in Exhibit B for Support Services for that piece of Software. However, in no event shall the amount of this Agreement exceed Seventy Two Thousand Five Hundred and Two Dollars (\$72,502). This amount is a fixed fee for all Support Services for six months and may be invoiced at any time on or after the Effective Date.

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.

5. Guaranteed Maximum Costs

5.1. The City's obligation hereunder shall not at any time exceed the amount certified by the City Controller for the purpose and period stated in such certification.

5.2. 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 Maintenance Agreement is amended in writing and approved as required by law to authorize the 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 Maintenance Agreement having been lawfully executed by the City.

5.3. 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. 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.

5.4. 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.

6. Payment; Invoice Format

6.1. Invoices furnished by Contractor under this Maintenance Agreement must be in a form reasonably acceptable to the City Controller. All amounts paid by City to Contractor shall be subject to audit by City.

6.2. Payment shall be made by City to Contractor at the address specified in the section entitled "Notices to the Parties."

6.3. City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided under this Maintenance Agreement.

7. Submitting False Claims; Monetary Penalties

If Contractor commits any of the following acts, Contractor shall be liable to the City for three times the amount of damages that the City sustains because of Contractor's acts. If Contractor commits any of the following acts Contractor shall also be liable to the City for the costs, including attorneys' fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the City for a civil penalty of up to \$10,000 for each false claim: (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. (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.

8. Taxes

8.1. Payment of any taxes, including possessory interest taxes and California sales and use taxes, levied upon this Maintenance Agreement, the transaction, or the services delivered pursuant hereto, shall be the obligation of Contractor.

8.2. If this Maintenance Agreement entitles Contractor to the possession, occupancy or use of City real property for private gain, then the following provisions apply:

A. Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that this Maintenance Agreement may create a possessory interest subject to property taxation and Contractor, and any permitted successor or assign, may be subject to the payment of such taxes.

B. Contractor, on behalf of itself and any permitted successors and assigns, further recognizes and understands that any assignment permitted hereunder and any exercise of any option to renew or other extension of this Maintenance Agreement may constitute a change in ownership for purposes of property taxation and therefore may result in a revaluation of any possessory interest created hereunder. Contractor shall report any assignment or other transfer of any interest in this Maintenance Agreement or any renewal or extension thereof to the County Assessor within sixty days after such assignment, transfer, renewal or extension.

C. Contractor further agrees to provide such other information as may be requested by the City to enable the City to comply with any reporting requirements under applicable law with respect to possessory interests.

9. Scope of Service Coverage

9.1. Contractor shall provide Support Services and provide Upgrades during the term of this Maintenance Agreement for the Software. Support Services shall not be provided by Contractor with respect to: (i) use of the Software (a) not in accordance with applicable written specifications and procedures regarding the Software agreed upon between the parties in writing, or (b) inconsistent with the terms of the License Agreements; (ii) Software that has been altered, modified or revised by a party other than Contractor after the Term of this Agreement has commenced; (iii) the malfunction of any third party software or hardware or any part thereof; or (iv) City's failure to provide Contractor access to the Software and related hardware as required herein. Contractor hereby grants the City a license to any Articles and Services provided hereunder, under the license terms and restrictions of the License Agreements effective upon the City paying the amounts due under this Agreement.

9.2. During the term of this Maintenance Agreement, Contractor will furnish Error, Defect or Malfunction correction in accordance with the Priority Categories listed below, based on the City's determination of the severity of the Error, Defect or Malfunction and Contractor's reasonable analysis of the priority of the Error, Defect or Malfunction.

A. High: An Error, Defect or Malfunction, which renders the Software inoperative; or causes the Software to fail catastrophically.

B. Medium: An Error, Defect or Malfunction, which substantially degrades the performance of the Software, but does not prohibit the City's use of the Software.

C. Low: An Error, Defect or Malfunction, which causes only a minor impact on the use of the Software.

9.3. Contractor will furnish Error, Defect or Malfunction correction in accordance with the following protocols:

A. High Protocol: Within two hours during the hours specified in Section 10.2 of this Agreement, Contractor assigns a product technical specialist(s) to diagnose and correct the Error, Defect or Malfunction; thereafter, Contractor shall provide ongoing communication about the status of the correction; Contractor shall immediately provide a Fix, a Patch or a Workaround as soon as reasonably practical. Contractor shall also use commercially reasonable efforts to include a Fix or Patch for the Error, Defect or Malfunction in the next Subsequent Release. Contractor will escalate resolution of the problem to personnel with successively higher levels of technical expertise until the Error, Defect or Malfunction is corrected.

B. Medium Protocol: Within four hours during the hours specified in Section 10.2 of this Agreement, Contractor assigns a product technical specialist(s) to diagnose the Error, Defect or Malfunction and to commence correction of the Error, Defect or Malfunction; to immediately use commercially reasonable efforts to provide a Workaround; to escalate the problem to successively higher levels of technical expertise until the Error, Defect or Malfunction is corrected; and to exercise all commercially reasonable efforts to include a Fix or Patch for the Error, Defect or Malfunction in the next Subsequent Release.

C. Low Protocol: Contractor may include a Fix or Patch in the next Subsequent Release.

10. Hotline Support

10.1. Contractor shall provide remote access hotline support to the City via Contractor's support web site known as Remedy. The website will enable the City to: (i) troubleshoot Priority High and Priority Medium Errors, Defects and Malfunctions, and (ii) download Updates to the Software. The website shall be available 24-hours a day, seven-days a week, except for regularly scheduled maintenance. Contractor shall respond to requests for Support Services made by City through this website based upon the Priority Protocol.

10.2. Contractor shall also provide Support Services via telephone, fax and electronic mail. Such support shall be available from 10:30 a.m. through 8:30 p.m. (EST) Monday through Friday, except legal holidays. Contractor shall respond to requests for Support Services made by City by telephone, fax or electronic mail based on the Priority Protocol.

11. City Responsibilities Related to Support

11.1. City shall use reasonable efforts to make available to Contractor reasonable access to the equipment on which City experienced the Error, Defect or Malfunction, the Software, Articles and Services, and all relevant documentation and records. City shall also provide reasonable assistance to Contractor, including sample output and diagnostic information, in order to assist Contractor in providing Support Services.

11.2. City shall be responsible for the interface between the Software and other software products installed on City equipment.

11.3. Unless otherwise agreed in writing between City and Contractor, City is responsible for installing, managing and operating any Software and Articles and Services delivered under this Maintenance Agreement.

11.4. Unless Tier is otherwise notified in writing of the names of specific alternate individuals by City, the City shall designate the following staff as contacts for the Software listed in Exhibit A to this Agreement to coordinate the City's requests for Support Services: Mary Fitzpatrick, Alan Pavkovic, Jeff Pera, Eric Carter, and Annette Reardon

11.5. Upon Contractor's request, the City will make available to the Contractor a copy of the current source code of the Software listed in Exhibit A on computer readable media and in a format supported by the Contractor, provided that such Software is licensed to City by Contractor.

12. 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 the Contractor to replace unsatisfactory work, equipment, or materials although the unsatisfactory character of such work, equipment or materials may not have been apparent or detected at the time such payment was made. Materials, equipment, components, or workmanship that did not conform to the requirements of this Maintenance Agreement may be rejected by City and in such case must be replaced by Contractor without delay.

13. Qualified Personnel

Work under this Maintenance 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. Contractor shall assign adequate personnel resources to provide the level of service within the response times specified in this Maintenance Agreement.

14. 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.

15. Independent Contractor; Payment of Taxes and Other Expenses

15.1. 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 payments, 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.

15.2. 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.

16. Insurance

16.1. Without in any way limiting Contractor's liability pursuant to the "Indemnification" section (Section 17) of this Maintenance Agreement, Contractor must maintain in force, during the full term of the Maintenance Agreement, insurance in the following amounts and coverages:

A. Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident; and

B. 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

C. 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.

16.2. Commercial General Liability and Business Automobile Liability Insurance policies must provide the following:

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

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

16.3. All policies shall provide thirty days' advance written notice to City of cancellation mailed to the following address:

Esther Reyes
Controller's Office
1 Dr. Carlton B. Goodlett Place
City Hall, Rm. 395
San Francisco, CA 94102

16.4. Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Maintenance Agreement and, without lapse, for a period of three years beyond the expiration of this Maintenance Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Maintenance Agreement, such claims shall be covered by such claims-made policies.

16.5. 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.

16.6. Should any required insurance lapse during the term of this Maintenance 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 Maintenance Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Maintenance Agreement effective on the date of such lapse of insurance.

16.7. Before commencing any operations under this Maintenance Agreement, Contractor shall do the following: (a) furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VII 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, and (b) furnish complete copies of policies promptly upon City request.

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

17. Indemnification

Contractor shall indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Contractor or loss of or damage to property, resulting directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, Contractor's use of facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, 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 the 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.

Subject to the limitations below, if notified promptly in writing of any judicial action brought against City based on an allegation that City's use of any Articles and Services infringes a patent or copyright, or any rights of a third party, or constitutes misuse or misappropriation of a trade secret or any other right in intellectual property, such allegation hereinafter referred to as "Infringement," Contractor will hold City harmless and defend such action at its expense. Contractor will pay the costs and damages awarded in any such action or the cost of settling such action, provided that Contractor shall have sole control of the defense of any such action and all negotiations or its settlement or compromise. If notified promptly in writing of any informal claim (other than a judicial action) brought against City based on an allegation that City's use of the Articles and Services constitutes Infringement, Contractor will pay the costs associated with resolving such claim and will pay the settlement amount (if any), provided that Contractor shall have sole control of the resolution of any such claim and all negotiations for its settlement.

Contractor will have no liability for, and no obligation to defend the City against, any claim of Infringement to the extent such claim is based on (a) use of any Articles and Services outside the scope of the applicable License Agreement or other written terms and conditions agreed upon between the parties; (b) use of a superseded or altered release of any Articles and Services if the Infringement would have been avoided by the use of a current unaltered release of such Articles and Services, unless such superseded or altered release is provided or recommended by Contractor after a current unaltered release of such Articles and Services is made available to the Controller's Office by Contractor; (c) the combination, operation, or use of the Articles and Services with other software, hardware or other materials if such Infringement would have been avoided by the use of the Articles and Services without such software, hardware or other materials unless Contractor has recommended such combination, operation or use; (d) any modification of the Articles and Services not made by Contractor; or (e) the City's use of the Articles and Services after Contractor provides written notice to City that City shall cease use of the Articles and Services due to such claim.

In the event that a final injunction shall be obtained against City's use of the Articles and Services by reason of Infringement, or in Contractor's opinion City's use of the Articles and Services is likely to become the subject of Infringement, or Contractor provides written notice to the City as specified in clause (e) of the preceding paragraph, Contractor may at its option and expense (a) procure for City the right to continue to use the Articles and Services as contemplated hereunder, (b) replace the Articles and Services with non-infringing, functionally equivalent substitute Articles and Services, or (c) suitably modify the Articles and Services to make their use hereunder non-infringing while retaining functional equivalency to the unmodified version of the Articles and Services.

TO THE FULL EXTENT PERMITTED BY LAW, THE FOREGOING AND SECTION 41 HEREOF STATES THE ENTIRE LIABILITY OF CONTRACTOR TO THE CITY CONCERNING INFRINGEMENT.

Each party hereby warrants to the other that it is authorized to enter into this Agreement and its performance thereof will not conflict with any other agreement.

18. Liability of City

CITY'S PAYMENT OBLIGATIONS UNDER THIS MAINTENANCE AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN THIS MAINTENANCE AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS MAINTENANCE AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS MAINTENANCE AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS MAINTENANCE AGREEMENT.

19. Default

Failure or refusal of Contractor to perform or do any act herein required shall constitute a default, provided such failure or refusal continues for a period of forty-five (45) days after written notice thereof from City to Contractor. In the event of any default, in addition to any other remedy available to the City, this Maintenance Agreement may be terminated by the City upon written notice. Such termination does not waive any other legal remedies available to the City. In the event of such termination, Contractor shall refund the difference between the fixed fee for Support Services paid by City and such fee prorated through date of termination on the basis of a twelve (12) month year and a thirty (30) day month. In no event will City be liable for costs incurred by Contractor after receipt of notice of termination. Such non-recoverable costs include, but are not limited to, anticipated profits on this Maintenance Agreement, post-termination employee salaries, post-termination administrative expenses, or any other cost which is not authorized or reasonable under this Section. City's acceptance of such refund shall not constitute a waiver of any other remedies City may have against Contractor for financial injury or otherwise.

20. Support Service Term and Termination for Convenience

20.1. Commencement. Support Services for the Software shall begin on July 1, 2006.

20.2. Termination for Convenience. City shall have the option, in its sole discretion, to terminate this Maintenance Agreement, at any time during the term thereof, for City's convenience and without cause by giving Contractor ninety (90) days written notice of such termination. In the event of such termination, Contractor shall refund the difference between the fixed fee for Support Services paid by City and such fee prorated through the date of termination on the basis of a twelve (12) month year and a thirty (30) day month. In no event will City be liable for costs incurred by Contractor after receipt of notice of termination. Such non-recoverable costs include, but are not limited to, anticipated profits on this Maintenance Agreement, post-termination employee salaries, post-termination administrative expenses, or any other cost which is not authorized or reasonable under this section. City's acceptance of such refund shall not constitute a waiver of any other remedies City may have against Contractor for financial injury or otherwise.

21. Rights and Duties Upon Termination or Expiration

21.1. This Section and the following Sections of the Maintenance Agreement shall survive termination or expiration of this Maintenance Agreement: 7, 8, 12, 14-18, 23-25, 27, 28, 35, 37, 38, 41 and, 42.

21.2. Subject to the immediately preceding subsection 21.1, upon termination of this Maintenance Agreement prior to expiration of the term specified in Section 3, this Maintenance Agreement shall terminate and be of no further force or effect. Contractor shall transfer a license to City, consistent with the terms of this Agreement and deliver in the manner, at the times, and to the extent, if any, reasonably directed by City, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Maintenance Agreement, and any completed or partially completed work which, if the Maintenance Agreement had been completed, would have been required to be furnished to the City. This subsection shall survive termination of this Maintenance Agreement.

22. 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 Conduct 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.

23. Proprietary or Confidential Information of City

Contractor understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Contractor may have access to private or confidential information which may be owned or controlled by City ("Confidential Information") and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City. Contractor agrees that all information disclosed by City to Contractor shall be held in confidence and used only in performance of the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent software developer would use to protect its own proprietary data.

Contractor represents to City that the Fixes, Patches, Upgrades, Workarounds, and Subsequent Releases under this Agreement are Confidential Information, the disclosure of which to third parties would be damaging to the Contractor. Subject to Section 31 of this Agreement, Chapter 67 of the San Francisco Administrative Code, and the California Public Records Act (California Government Code §§6250 et seq.), the City agrees to hold the work or services it receives under this Agreement in confidence and to exercise the same standard of care to protect this information as a reasonably prudent municipal corporation.

The term "Confidential Information" shall not include, and the obligations of this Section shall not apply to, any information which: (a) at the time of disclosure to the recipient party, is in the public domain; (b) after disclosure, becomes part of the public domain by publication or otherwise, except by breach of this Agreement or by fault of the recipient party, and then only after such later date; (c) was lawfully in the recipient party's possession (as reflected by its written records) without an obligation of confidence at the time of disclosure by the disclosing party, and which was not acquired, directly or

indirectly, from the disclosing party; (d) the recipient party can demonstrate by written documents resulted from its own research and development, independent and without use of disclosure from the disclosing party; (e) was received by the recipient party from third parties not under an obligation not to disclose such information, or (f) the recipient party discloses pursuant to the final order of a court, administrative agency or governmental body provided the recipient party provides the disclosing party with at least 5 business days written notice of such pending order or the City discloses pursuant to relevant law.

24. Notices to Parties

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

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

To Contractor: Tier Technologies, Inc.
Attn: Vice President, Financial Management Systems
10780 Parkridge Blvd., Suite 400
Reston, VA 20191
akeshava@Tier.com

Invoice payments shall be sent to the following address:

Tier Technologies, Inc.
Dept 238701 - PO Box 67000
Detroit, MI 48267-2387

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.

25. 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 Maintenance 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 Maintenance Agreement, whether funded in whole or in part under this Maintenance Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than three years after final payment under this Maintenance 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 of this Maintenance Agreement shall have the same rights conferred upon City by this Section.

26. Subcontracting

Contractor is prohibited from subcontracting this Maintenance Agreement or any part of it unless such subcontracting is first approved by City in writing. Neither party shall, on the basis of this Maintenance 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.

27. Assignment

The services to be performed by Contractor are personal in character and neither this Maintenance Agreement nor any duties or obligations hereunder may be assigned or delegated by the Contractor unless first approved by City by written instrument executed and approved in the same manner as this Maintenance Agreement.

28. 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 or for the furnishing of any material, supplies or equipment to the City, whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to the officer at any time from the commencement of negotiations of the contract until the later of either (1) the termination of negotiations for such contract or (2) three months after the date the contract is approved by the City elective officer or the board on which that City elective officer serves.

29. Drug-Free Workplace

Contractor acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City premises. Contractor agrees that any violation of this prohibition by the Contractor, its employees, agents or assigns shall be deemed a material breach of contract.

30. Compliance with Americans with Disabilities Act

Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Contractor shall provide the services specified in this Maintenance Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Maintenance Agreement and further agrees that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Maintenance Agreement.

31. Sunshine Ordinance

In accordance with Section 67.24(e) of the San Francisco Administrative Code, contracts, Contractors' bids, responses to RFPs 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's 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. Contractor represents that the Fixes, Patches, Upgrades, Workarounds, and Subsequent Releases and their associated documentation are deemed to be a "Trade Secret" by Contractor as such term is used in California Government Code Section 6254.7(d). If a request is made to view such Trade Secrets, the City will use commercially reasonable efforts to immediately notify Contractor of such request.

32. 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.

33. Compliance with Laws

Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and regulation of the City and of all state, and federal laws in any manner affecting the performance of this Maintenance Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

34. Left Blank by the Agreement of the Parties

35. Entire Agreement; Modifications

35.1. The Maintenance Agreement, together with the Appendices and/or Exhibits hereto, constitutes the entire Maintenance Agreement between the parties and this Maintenance Agreement may not be modified, nor may any of its terms be waived, except by written instrument executed and approved in the same manner as this Maintenance Agreement.

35.2. All agreements between the parties as to the subject matter hereof are included herein and no promises or statements have been made by either party unless endorsed hereon in writing. No change or waiver of any provisions hereof shall be valid unless made in writing with the consent of both parties and executed in the same manner as this Maintenance Agreement.

35.3. Should the application of any provision of this Maintenance Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Maintenance Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

35.4. Subject to the specific provisions of this Maintenance Agreement, this Maintenance Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

36. Force Majeure

Contractor shall not be liable for failure to maintain Software when such failures are due to causes beyond its reasonable control, such as acts of God, acts of civil or military authority, fires, strikes, floods, epidemics, quarantine, war, riot, delays in transportation, care shortages, and inability due to causes beyond its reasonable control to obtain necessary labor, materials or manufacturing facilities, and in such event Contractor shall perform as soon as such cause is removed.

37. Non-Waiver of Rights

The waiver by either party of any breach by either party of any term, covenant or conditions hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant or condition hereof.

38. Governing Law

This formation, interpretation and performance of this Maintenance Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Maintenance Agreement shall be in San Francisco.

39. Construction

All section headings contained herein are for convenience and reference only and are not intended to define or limit the scope of any provision of this Maintenance Agreement.

40. Administrative Remedy for Agreement Interpretation

Should any question arise as to the meaning and intent of this Maintenance 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 this Maintenance Agreement.

41. Liability of Contractor

Contractor shall be responsible for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions. Nothing in this Maintenance Agreement shall constitute a waiver or limitation of any rights that City may have under applicable law.

In no event shall the aggregate liability of either party hereto, other than (1) Contractor's obligations under Section 17 hereof, including without limitation liability for death or bodily injury, and (2) Contractor's liability arising out of or in connection with Sections 7 and 32 hereof, exceed \$10 Million.

42. Nondisclosure of Private Information

As of March 5, 2005, Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12M of the San Francisco Administrative Code (the "Nondisclosure of Private Information Ordinance"), including the remedies provided. The provisions of the Nondisclosure of Private

Information Ordinance are incorporated herein by reference and made a part of this Agreement as though fully set forth. Capitalized terms used in this section and not defined in this Agreement shall have the meanings assigned to such terms in the Nondisclosure of Private Information Ordinance. Consistent with the requirements of the Nondisclosure of Private Information Ordinance, Contractor agrees to all of the following:

(a) Neither Contractor nor any of its Subcontractors shall disclose Private Information obtained from the City in the performance of this Agreement to any other Subcontractor, person, or other entity, unless one of the following is true:

(i) The disclosure is authorized by this Agreement;

(ii) The Contractor received advance written approval from the Contracting Department to disclose the information; or

(iii) The disclosure is required by law or judicial order.

(b) Any disclosure or use of Private Information authorized by this Agreement shall be in accordance with any conditions or restrictions stated in this Agreement. Any disclosure or use of Private Information authorized by a Contracting Department shall be in accordance with any conditions or restrictions stated in the approval.

(c) Private Information shall mean any information that: (1) could be used to identify an individual, including without limitation, name, address, social security number, medical information, financial information, date and location of birth, and names of relatives; or (2) the law forbids any person from disclosing.

(d) Any failure of Contractor to comply with the Nondisclosure of Private Information Ordinance shall be a material breach of this Agreement. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate this Agreement, debar Contractor, or bring a false claim action against Contractor.

43. Graffiti Removal

Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and County and its residents, and to prevent the further spread of graffiti.

Contractor shall remove all graffiti from any real property owned or leased by Contractor in the City and County of San Francisco within forty eight (48) hours of the earlier of Contractor's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require a Contractor to breach any lease or other agreement that it may have concerning its use of the real property. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure,

fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

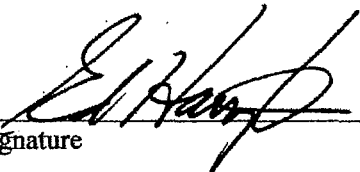
Any failure of Contractor to comply with this section of this Agreement shall constitute a material breach of this Agreement.

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

CITY

CONTRACTOR

Recommended by:


Signature

Tier Technologies, Inc.
Company Name

Ed Harrington
Name

10780 Parkridge Blvd., Suite 400
Address

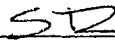
Controller
Title and Department

Reston, VA 20191
City, State, ZIP

Approved as to Form:

DENNIS J. HERRERA
City Attorney

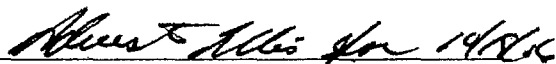
By 

By 
Deputy City Attorney

Todd Vucovich
Name

Approved:

Senior Vice-President, PSSI
Title


Naomi Kelly, Director of Office of Contract
Administration/ Purchaser

94-3145844F
Federal Employer Number

Exhibit A

Module	Version
FAMIS	5.x
ADPICS	5.x
BPREP	5.x
RIMS	5.x
FAACS	5.x
Labor Distribution	5.x
SYSTEMWIDE	5.x
Stargaze GUI	5.x
Performance Executive	5.x

And any associated documentation including but not limited to user manuals.

Exhibit B
Maintenance Fees

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



CITY AND COUNTY OF SAN FRANCISCO
OFFICE OF THE CONTROLLER

Ben Rosenfield
Controller

Todd Rydstrom
Deputy Controller

April 4, 2016

Angela Calvillo, Clerk of the Board
Board of Supervisors
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689

Dear Ms. Calvillo:

Attached please find an original and two copies of a proposed resolution for Board of Supervisors approval, which would authorize the Office of the Controller to enter into the Ninth Amendment to the Agreement with Cogsdale Corporation, bringing the contract total to \$1,759,067.62.

This contract amendment is essential for the Office of the Controller's Accounting Operations & Systems Division (AOSD) to maintain the FAMIS suite of software pursuant to City Charter, Section 9.118(b). City Charter, Section 9.118(b) requires board approval for all contracts or amendments in excess of ten year or requiring anticipated City expenditures of ten million dollars.

The FAMIS series software is the core component of the City's financial systems and enables the daily functions of accounting and purchasing to occur citywide.

Cogsdale Corporation is a proprietary provider of the FAMIS suite of software maintenance services. The City is therefore unable to utilize another vendor.

The following is a list of accompanying documents (three sets):

- Resolution
- Cogsdale Corporation, Contract Amendment 9
- Cogsdale Corporation, Original Contract and Amendments 1-8
- Form SFEC-126 for Cogsdale Corporation.

AOSD controls the financial activities of the City utilizing the FAMIS software. The City plans to replace FAMIS with a new financial/accounting/purchasing system by July 1, 2017, and this extension is necessary as a coordinating and planned conversion measure in order to meet government accounting reporting requirements.

Please contact me with any questions. You may also direct questions to the Contracts Manager, Controller's Office, Joyce Kimotsuki, (415) 554-6562 or joyce.kimotsuki@sfgov.org.

Best Regards,


Todd Rydstrom
Deputy Controller

RECEIVED
BOARD OF SUPERVISORS
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FORM SFEC-126
NOTIFICATION OF CONTRACT APPROVAL
(S.F. Campaign and Government Conduct Code § 1.126)

City Elective Officer Information (Please print clearly)	
Name of City elective officer(s): Members, Board of Supervisors	City elective office(s) held: Members, Board of Supervisors

Contractor Information (Please print clearly)	
Name of Contractor: Cogsdale Corporation	
Please list the names of (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor. Use additional pages as necessary.	
(1) Contractor's Board of Directors: See names in Comments Section	
(2) Contractor's Chief Executive Officer: Jeff Bender, Harris Computer Systems (Harris Computer Systems is the parent company of Cogsdale)	
(2) Contractor's Chief Financial Officer: Todd Richardson, Harris Computer Systems	
(2) Contractor's Chief Operating Officer: Terry Ridyard, Executive Vice President of Cogsdale Corporation	
(3) Any person who has ownership of 20% or more in the Contractor: N/A	
(4) Any subcontractor listed in the bid or contract: N/A	
(5) Any political committee sponsored or controlled by Contractor: N/A	
Contractor address: Cogsdale Corporation, 2 Lower Malpeque Rd, Lower Level, Charlottetown, PE, Canada C1E 1R4	
Date that contract was approved:	Amount of contract: \$1,759,067.62
Describe the nature of the contract that was approved: Cogsdale Holdings, Ltd., is a proprietary provider of the FAMIS suite of software maintenance services. The FAMIS series software is the core component of the City's financial systems and enables the daily functions of accounting, budgeting and purchasing to occur citywide. If the City cannot secure Cogsdale's maintenance services, the City will not be able to maintain FAMIS series software. Amendment to be approved is for \$452,661.65, bringing contract total to \$1,759,067.62.	
Comments: Mark Leonard, Ian McKinnon, Steve Scotchmer, Meredith (Sam) Hall Hayes, Robert Kittel, Paul McFeeters, Mark Miller, Jeff Bender.	

This contract was approved by (check applicable)

☐ The City elective officer(s) identified on this form

☒ A board on which the City elective officer(s) serves

San Francisco Board of Supervisors

Print Name of Board

☐ The board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Redevelopment Agency Commission, Relocation Appeals Board, Treasure Island Development Authority) on which an appointee of the City elective officer(s) identified on the form sits

Print Name of Board

Filer Information (Please print clearly)	
Name of filer: Angela Calvillo, Clerk of the Board	Contact telephone number: (415) 554-5184
Address: City Hall, Room 244, 1 Dr. Carlton B. Goodlett Pl., San Francisco, CA 94102	E-mail: Board.of.Supervisors@sfgov.org

Signature of the Elective Officer (if submitted by City elective officer)

Date Signed

Signature of Board Secretary or Clerk (if Submitted by Board Secretary or Clerk)

Date Signed

