

**AGREEMENT BETWEEN THE HOUSING AUTHORITY OF THE  
COUNTY OF SAN MATEO AND  
YARDI SYSTEMS, INC.**

THIS AGREEMENT, entered into this 15th day of February, 2011, by and between the HOUSING AUTHORITY OF THE COUNTY OF SAN MATEO, hereinafter called "HACSM," and Yardi Systems, Inc., hereinafter called "Contractor";

W I T N E S S E T H:

WHEREAS, pursuant to Government Code, Section 31000, HACSM may contract with independent contractors for the furnishing of such services to or for HACSM or any Department thereof;

WHEREAS, it is necessary and desirable that Contractor be retained for the purpose of providing its proprietary real property and asset management application software via access to a designated Site (defined in Section 1 (Definitions) of Exhibit A, attached hereto).

**NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO AS FOLLOWS:**

**1. Exhibits and Attachments**

The following exhibits and attachments are included hereto and incorporated by reference herein:

Exhibit A—Application Hosting and Software License and Services  
Exhibit B—Payments and rates  
504 Compliance  
Contractor's Declaration Form

**2. Services to be performed by Contractor**

In consideration of the payments set forth herein and in Exhibit "B," Contractor shall license its proprietary software to and perform services for HACSM in accordance with the terms, conditions and specifications set forth herein and in Exhibit "A."

**3. Payments**

In consideration of the license and services provided by Contractor in accordance with all terms, conditions and specifications set forth herein and in Exhibit "A," HACSM shall make payment to Contractor based on the rates and in the manner specified in Exhibit "B." HACSM reserves the right to withhold payment if HACSM determines that the quantity or quality of the work performed is unacceptable. In no event shall HACSM's total fiscal obligation under this Agreement exceed Six Hundred Twelve Thousand, One Hundred Sixteen Dollars (\$612,116.00), which amount assumes the exercise of the two automatic one-year renewal periods set forth in Section 4, below.

#### **4. Term and Termination**

Subject to compliance with all terms and conditions, the initial term of this Agreement shall be from February 15, 2011 through February 14, 2014, with two automatic one-year renewals extending the term through February 14, 2016 unless either party provides at least thirty (30) days notice prior to the end of the then-current term that it does not wish to renew.

**Termination without Cause.** This Agreement may be terminated by Contractor, or by the HACSM Executive Director or his/her authorized designee at any time without a requirement of good cause upon thirty (30) days' written notice to the other party.

**Termination for Cause.** Either party may terminate this Agreement upon written notice to the other party if the other party materially breaches this Agreement and fails to cure such breach within 7 days of written notice of a material breach, or if the breaching party cannot reasonably cure the material breach within 7 days, the breaching party fails to initiate cure within 7 days and fails to continuously and diligently work to cure the breach until the breach is cured. Termination pursuant to this section 3(c) (Termination for Cause) shall be effective upon delivery of written notice after expiration of the applicable cure period.

Subject to availability of funding, Contractor shall be entitled to receive payment for work/services provided prior to termination of the Agreement. Such payment shall be that portion of the full payment which is determined by comparing the work/services completed to the work/services required by the Agreement. Upon termination without cause, Client shall promptly pay any Undisputed Fees owed to Yardi as of the effective date of Client's termination. Except as otherwise expressly set forth in this Agreement, if HACSM terminates this Agreement other than for good cause, HACSM shall not be entitled to a refund of any fees.

#### **5. Availability of Funds**

HACSM may terminate this Agreement or a portion of the services referenced in the Attachments and Exhibits based upon unavailability of Federal, State, or HACSM funds, by providing written notice to Contractor as soon as is reasonably possible after HACSM learns of said unavailability of outside funding.

#### **6. Relationship of Parties**

Contractor agrees and understands that the work/services performed under this Agreement are performed as an independent Contractor and not as an employee of HACSM and that Contractor acquires none of the rights, privileges, powers, or advantages of HACSM employees.

#### **7. Hold Harmless**

Contractor shall indemnify and save harmless HACSM, its officers, agents, employees, and servants from all third party claims, suits, or actions of every name, kind, and description, brought for, or on account of: (A) injuries to or death of any person, including Contractor, caused by Contractor, (B) damage to any tangible property of any kind whatsoever and to whomsoever belonging caused by Contractor, (C) any sanctions, penalties, or claims of damages resulting from Contractor's failure to comply with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended, or (D) any other loss or cost caused by Contractor.



The duty of Contractor to indemnify and save harmless as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code, provided that Contractor's obligation under this Section 7 is contingent upon the following: (i) HACSM promptly provides Contractor written notice of such claim, suit or other action, (ii) Contractor is given sole control over the defense and settlement thereof, and (iii) HACSM reasonably cooperates in such defense (at Contractor's expense).

**8. Assignability and Subcontracting**

Contractor shall not assign this Agreement or any portion thereof to a third party or subcontract with a third party to provide services required by contractor under this Agreement without the prior written consent of HACSM. Any such assignment or subcontract without the HACSM's prior written consent shall give HACSM the right to automatically and immediately terminate this Agreement.

**9. Insurance**

The Contractor shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this paragraph has been obtained and such insurance has been approved by Risk Management, and Contractor shall use diligence to obtain such insurance and to obtain such approval. The Contractor shall furnish the HACSM with certificates of insurance evidencing the required coverage. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to the HACSM of any cancellation of the policy.

(1) **Worker's Compensation and Employer's Liability Insurance.** The Contractor shall have in effect during the entire life of this Agreement Workers' Compensation and Employer's Liability Insurance providing full statutory coverage. In signing this Agreement, the Contractor certifies, as required by Section 1861 of the California Labor Code, that it is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the Code, and Contractor will comply with such provisions before commencing the performance of the work of this Agreement.

(2) **Liability Insurance** The Contractor shall take out and maintain during the life of this Agreement the following insurance at or above the following liability limits:

(a) Commercial General Liability .....	\$1,000,000
(b) Motor Vehicle Liability Insurance .....	\$1,000,000
(c) Professional Liability .....	\$1,000,000

Contractor shall have HACSM named as additional insured on Contractor's commercial general liability and automobile liability insurance policies.

In the event of the breach of any provision of this section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, the HACSM, at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work pursuant to this Agreement.

#### **10. Compliance with laws; payment of Permits/Licenses**

All services to be performed by Contractor pursuant to this Agreement shall be performed in accordance with all applicable Federal, State, County, and municipal laws, including, but not limited to, Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended, and the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, as amended and attached hereto and incorporated by reference herein as Attachment "I," which prohibits discrimination on the basis of handicap in programs and activities receiving any Federal or County financial assistance. Such services shall also be performed in accordance with all applicable ordinances and regulations, including, but not limited to, appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance regulations. Further, Contractor certifies that the Contractor and all of its subcontractors will adhere to all directly applicable provisions of Chapter 4.106 of the San Mateo County Ordinance Code, which regulates the use of disposable food service ware.

In the event of a conflict between the terms of this agreement and State, Federal, County, or municipal law or regulations, the requirements of the applicable law will take precedence over the requirements set forth in this Agreement. Notwithstanding the generality of the foregoing and anything to the contrary in this Agreement, and for the avoidance of doubt, the parties agree that any provision in this Agreement or in such State, Federal, County, or municipal laws or regulations, asserted as transferring title to the Licensed Programs (as defined in Section 1 (Definitions) of Exhibit A, attached hereto) or other Yardi intellectual property is in direct conflict with the Agreement and otherwise void. For the avoidance of doubt, Yardi asserts no rights in Client Data (as defined in Section 1 (Definitions) of Exhibit A) entered into, or generated by, the Licensed Programs and the associated database.

Contractor will timely and accurately complete, sign, and submit all necessary documentation of compliance.

#### **11. Non-Discrimination and Other Requirements**

- A. *Section 504 applies only to Contractor who are providing services to members of the public.* Contractor shall comply with § 504 of the Rehabilitation Act of 1973, which provides that no otherwise qualified handicapped individual shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of this Agreement.
- B. *General non-discrimination.* No person shall, on the grounds of race, color, religion, ancestry, gender, age (over 40), national origin, medical condition (cancer), physical or mental disability, sexual orientation, pregnancy, childbirth or related medical condition, marital status, or political affiliation be denied any benefits or subject to discrimination under this Agreement.
- C. *Equal employment opportunity.* Contractor shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. Contractor's equal employment policies shall be made available to HACSM upon request.
- D. *Violation of Non-discrimination provisions.* Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Contractor to penalties, to be determined by the HACSM, including but not limited to



- i) termination of this Agreement;
- ii) disqualification of the Contractor from bidding on or being awarded a HACSM contract for a period of up to 3 years;
- iii) liquidated damages of \$2,500 per violation;
- iv) imposition of other appropriate contractual and civil remedies and sanctions, as determined by the HACSM.

To effectuate the provisions of this section, HACSM shall have the authority to examine Contractor's employment records with respect to compliance with this paragraph and/or to set off all or any portion of the amount described in this paragraph against amounts due to Contractor under the Contract or any other Contract between Contractor and HACSM.

- E. *Compliance with Equal Benefits Ordinance.* With respect to the provision of employee benefits, Contractor shall comply with the County Ordinance which prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse.
- F. The Contractor shall comply fully with the non-discrimination requirements required by 41 CFR 60-741.5(a), which is incorporated herein as if fully set forth.

**12. Compliance with Contractor Employee Jury Service Ordinance**

Contractor shall comply with the County Ordinance with respect to provision of jury duty pay to employees and have and adhere to a written policy that provides that its employees shall receive from the Contractor, on an annual basis, no less than five days of regular pay for actual jury service in San Mateo County. The policy may provide that employees deposit any fees received for such jury service with the Contractor or that the Contractor deduct from the employees' regular pay the fees received for jury service.

**13. Retention of Records, Right to Monitor and Audit**

CONTRACTOR shall maintain all required records for three (3) years after the HACSM makes final payment and all other pending matters are closed, and shall be subject to the examination and/or audit of the HACSM, a Federal grantor agency, and the State of California.

CONTRACTOR shall comply with all program and fiscal reporting requirements set forth by appropriate Federal, State and local agencies, and as required by the HACSM.

CONTRACTOR agrees to provide to HACSM, to any Federal or State department having monitoring or review authority, to HACSM's authorized representatives, and/or their appropriate audit agencies upon reasonable notice, access to and the right to examine all records and documents necessary to determine compliance with relevant Federal, State, and local statutes, rules and regulations, and this Agreement, and to evaluate the quality, appropriateness and timeliness of services performed.

**14. Merger Clause**

This Agreement, including the Exhibits attached hereto and incorporated herein by reference, constitutes the sole Agreement of the parties hereto and correctly states the rights, duties, and obligations of each party as of this document's date. In the event that any term, condition, provision, requirement or specification set forth in this body of the agreement conflicts with or is inconsistent with any term, condition, provision, requirement or specification in any exhibit and/or attachment to this agreement, the provisions of this body of the agreement shall prevail. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications shall be in writing and signed by the parties.

**15. Controlling Law and Venue**

The validity of this Agreement and of its terms or provisions, as well as the rights and duties of the parties hereunder, the interpretation, and performance of this Agreement shall be governed by the laws of the State of California. Any action or proceeding related to or arising out of this Agreement initiated by Contractor shall be venued either in the San Mateo County Superior Court or the United States District Court for the Northern District of California. Any action or proceeding related to or arising out of this Agreement initiated by HACSM shall be venued either in the Santa Barbara County Superior Court or the United States District Court for the Central District of California.

**16. Notices**

Any notice, request, demand, or other communication required or permitted hereunder shall be deemed to be properly given when deposited in the United States mail, postage prepaid, or when deposited for overnight delivery with an established overnight courier that provides a tracking number showing confirmation of receipt for transmittal, charges prepaid, addressed to:

**In the case of HACSM, to:**

Attn: William Lowell  
HOUSING AUTHORITY OF THE COUNTY OF SAN MATEO  
264 Harbor Blvd, Building A  
Belmont, CA 94002

**In the case of Contractor, to:**

Attn: Chief Operating Officer  
YARDI SYSTEMS, INC.  
430 S. Fairview Ave.  
Goleta, CA 93117

With a copy to:

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

Either party may change its record address by giving written notice of such change to the other party. Notice shall be given both by United States mail and an overnight courier as outlined above.

<Signature Page Follows>

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have affixed their hands.

HOUSING AUTHORITY OF THE  
COUNTY OF SAN MATEO

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_

YARDI SYSTEMS, INC..

By:  \_\_\_\_\_

Print Name: **Brad Setser** \_\_\_\_\_

Title: **Vice President** \_\_\_\_\_

Date: **6/30/11** \_\_\_\_\_

