



**HOUSING AUTHORITY  
of the County of Los Angeles**

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**Hilda L. Solis**  
**Mark Ridley-Thomas**  
**Sheila Kuehl**  
**Don Knabe**  
**Michael D. Antonovich**  
*Commissioners*

**Sean Rogan**  
*Executive Director*

July 21, 2015

The Honorable Board of Commissioners  
Housing Authority of the  
County of Los Angeles  
383 Kenneth Hahn Hall of Administration  
500 West Temple Street  
Los Angeles, California 90012

Dear Commissioners:

**APPROVAL TO PURCHASE SOFTWARE LICENSE AND MAINTENANCE SERVICES WITH  
YARDI SYSTEMS, INC.  
(ALL DISTRICTS) (3 VOTE)**

**CIO RECOMMENDATION: APPROVE (X) APPROVE WITH MODIFICATION ( )  
DISAPPROVE ( )**

**SUBJECT**

This letter is requesting approval of a Contract with Yardi Systems, Inc. (Yardi), for software license and maintenance services for the Housing Authority. Yardi is the software used to manage the Housing Authority's housing developments and Section 8 voucher program.


**IT IS RECOMMENDED THAT THE BOARD:**

1. Authorize the Executive Director, or his designee, to execute, amend, and if necessary, terminate a Contract and all related documents with Yardi for software license and maintenance services, in the amount of \$141,501 included in the Housing Authority approved Fiscal Year (FY) 2015-2016 Budget for this purpose and to be requested in the Housing Authority's future years annual budget process for this purpose.
2. Authorize the Executive Director, or his designee, to extend the Contract by up to two additional years, at a cost of \$144,331 for year two, and \$147,217 for year three.
3. Authorize the Executive Director, or his designee, to use up to \$43,305, a 10% contingency, using the same source of funds for unforeseen costs as needed; the total maximum Contract sum for all

**ADOPTED**

BOARD OF SUPERVISORS  
COUNTY OF LOS ANGELES

1-H July 21, 2015

  
PATRICK OGAWA  
ACTING EXECUTIVE OFFICER

three years plus the 10% contingency is \$476,354.

4. Find that the proposed Contract with Yardi is not subject to the California Environmental Quality Act (CEQA) because it is not defined as a project under CEQA and does not have the potential for causing a significant effect on the environment.

#### **PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION**

The purpose of this action is to purchase software license and maintenance services from Yardi for the Housing Authority's Public Housing and Section 8 systems. Yardi software was originally licensed in June 2007 to replace the Housing Authority's previous Housing Management and Section 8 software, replacing two systems into one, user-friendly system. The Yardi system has reduced the level of IT support needed while providing agency staff with greater opportunities for improvement, timelier service for clients, and has integrated with systems used by U.S. Department of Housing and Urban Development (HUD). Yardi software was instrumental in assisting the Housing Authority to resolve its troubled status and become a high performer for the past five years.

#### **FISCAL IMPACT/FINANCING**

There is no impact to the County General Fund. The Housing Authority will be using Program Funds to pay for these services. Funding is included in the Housing Authority's approved Fiscal Year (FY) 2015-2016 Budget, and will be included in future fiscal years' budgets as needed. A 10% contingency is requested for unforeseen additional services as needed. The total Contract sum for all three years and the ten percent contingency is \$476,354.

#### **FACTS AND PROVISIONS/LEGAL REQUIREMENTS**

The Housing Authority's current Contract with Yardi expires on July 31, 2015. The new three-year Contract will allow time for the Housing Authority to solicit publicly for a new contract that best fulfills the requirements of the Request for Proposal. Yardi software is not sold by any reselling channel; Yardi sells, maintains, and markets its own software and the software is only sold and supported by Yardi, who retains exclusive rights to the licenses. Therefore, the purchase of software license and maintenance services provided from Yardi is determined to be a sole source provider. During the Contract term with Yardi, the Housing Authority intends to issue a Request for Proposal for a new contract with a vendor that will provide the best solutions to meet current needs of the Housing Authority's Public Housing and Section 8 systems.

This Contract contains all latest applicable Board mandated provisions, including those pertaining to consideration of hiring qualified County employees targeted for layoffs, contractor responsibility and debarment, Safely Surrendered Baby Law, and the provisions of Paid Jury Service time for the Contractor's employees.

As a result of the negotiations, the parties agreed to the following deviations from the County standard or preferred agreement provisions:

1. Disclaimer of Warranties – The Yardi contract provides for industry standard disclaimer that limits the warranties to those specifically identified anywhere in the Yardi Contract.
2. Venue, Limitation of Liability – The Housing Authority and Contractor have agreed to minor revisions to the standard Housing Authority provisions all with the consent from the Housing Authority

Risk Management division. Either party's liability under the Yardi Contract is capped at the Contract sum and Venue will be in Santa Barbara.

3. Termination for Cause– The Housing Authority and Contractor have agreed to revisions to the standard Housing Authority provisions, with mutual termination for default.

4. Section 3 of the Housing and Urban Development Act of 1968, As Amended– The services are being federally funded, and are not subject to the requirements of the Greater Avenues for Independence (GAIN) Program or the General Relief Opportunity for Work (GROW) Program implemented by the County of Los Angeles. Instead, Yardi will comply with Section 3 of the Housing and Community Development Act of 1968, as amended, which requires that employment and other economic opportunities generated by certain HUD assistance be directed to low- and very low-income persons, particularly to persons who are recipients of HUD housing assistance.

The Yardi Contract has been reviewed and approved as to form by County Counsel, as well as the Housing Authority's Procurement and Risk Management Departments. It has been determined that the Contract complies with all applicable laws, statutes, rules, regulations, and order of the United States and the State of California. On June 24, 2015, the Housing Commission recommended approval of the Contract.

The Chief Information Office (CIO) has reviewed this request and recommends approval. The CIO Analysis is attached.

## **ENVIRONMENTAL DOCUMENTATION**

Computer software purchases are exempt from the National Environmental Policy Act pursuant to 24 Code of Federal Regulations, Part 58, Section 58.35 (b)(3), because they involve activities that will not have a physical impact on or result in any physical changes to the environment. These activities are not subject to the provisions of CEQA pursuant to State CEQA Guidelines 15060(c)(3) and 15378(b)(4), because they are not defined as a project under CEQA and do not have the potential for causing a significant effect on the environment.

## **CONTRACTING PROCESS**

The Yardi software license is solely provided by Yardi, and the Housing Authority intends to execute a Sole Source Contract, pending Board approval, as allowed under HUD 24 CFR 85.36, Procurement, subsection (d)(4)(i)(A), Sole Source, known as the "Common Rule". The contracting process was conducted in accordance with the Housing Authority Procurement Policies and Procedures.

## **IMPACT ON CURRENT SERVICES (OR PROJECTS)**

The purchase of these services from Yardi will provide the Housing Authority with software license, support, and the ability to update services as necessary. The software will continue to be instrumental in maintaining the Housing Authority's high-performer status and integrating with the systems used by HUD. The Housing Authority is developing a comprehensive scope of services in an effort to solicit through an RFP for a long term vendor.

The Honorable Board of Commissioners

7/21/2015

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Respectfully submitted,



Reviewed by:



SEAN ROGAN  
Executive Director

SR:MF:mr

Enclosures

c: Chief Executive Office  
County Counsel  
Executive Office, Board of Supervisors

## SOLE SOURCE CHECKLIST

Check (✓)	JUSTIFICATION FOR SOLE SOURCE CONTRACTS
✓	<p><i>Identify applicable justification and provide documentation for each checked item.</i></p> <ul style="list-style-type: none"> <li>➤ Only one bona fide source for the service exists; performance and price competition are not available.</li> </ul>
	<ul style="list-style-type: none"> <li>➤ Quick action is required (emergency situation).</li> </ul>
	<ul style="list-style-type: none"> <li>➤ Proposals have been solicited but no satisfactory proposals were received.</li> </ul>
	<ul style="list-style-type: none"> <li>➤ Additional services are needed to complete an ongoing task and it would be prohibitively costly in time and money to seek a new service provider.</li> </ul>
	<ul style="list-style-type: none"> <li>➤ Maintenance service agreements exist on equipment which must be serviced by the authorized manufacturer's service representatives.</li> </ul>
	<ul style="list-style-type: none"> <li>➤ It is more cost-effective to obtain services by exercising an option under an existing contract.</li> </ul>
	<ul style="list-style-type: none"> <li>➤ It is in the best interest of the County, e.g., administrative cost savings, excessive learning curve for a new service provider, etc.</li> </ul>
	<ul style="list-style-type: none"> <li>➤ Other reason. Please explain:</li> </ul>
<div style="display: flex; justify-content: space-between; align-items: flex-end;"> <div style="width: 40%;"> <p style="text-align: center;"><i>S. Kubhawig</i></p> <p>Deputy Chief Executive Officer, CEO <i>SK 6/29</i></p> </div> <div style="width: 20%;"></div> <div style="width: 30%; text-align: right;"> <p style="text-align: center;"><i>6/29/15</i></p> <p>Date</p> </div> </div>	



**RICHARD SANCHEZ**  
CHIEF INFORMATION OFFICER

Office of the CIO  
**CIO Analysis**

ATTACHMENT A

NUMBER: <b>CA 15-13</b>	DATE: 6/25/2015
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SUBJECT:

**APPROVAL TO PURCHASE OF SOFTWARE LICENSE AND MAINTENANCE SERVICES WITH YARDI SYSTEMS, INC.**

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RECOMMENDATION:

Approve                       Approve with Modification                       Disapprove

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CONTRACT TYPE:

New Contract                       Sole Source  
 Amendment to Contract #: Enter contract #.                       Other: Describe contract type.

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CONTRACT COMPONENTS:

Software/Maintenance Services                       Hardware  
 Telecommunications                       Professional Services

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SUMMARY:

**Department Executive Sponsor:** Sean Rogan, Executive Director, Housing Authority  
County of Los Angeles

**Description:** Housing Authority is requesting approval for Yardi annual software license payment and maintenance support services for a term not to exceed 36 months.

**Contract Amount:** \$476,354                      **Funding Source:** U.S. Dept. of Housing and Urban Development (HUD)

Legislative or Regulatory Mandate                       Subvened/Grant Funded:

<b>Strategic and Business Analysis</b>	PROJECT GOALS AND OBJECTIVES: Maintain the current Yardi software with its maintenance services while CDC constructs a Request For Proposals (RFP), as directed by HUD policies.
	BUSINESS DRIVERS: <i>The Yardi software integrates Public Housing and Housing Choice Voucher compliance, accounting, and property management on a mobile platform accessible through desktop computers and handheld devices. This end-to-end solution guides Public Housing Authorities through regulatory procedures, automates workflows, and eliminates redundant data entry to increase staff productivity, improve operational efficiency, and reduce operational costs.</i>
	PROJECT ORGANIZATION: None, the Yardi software is currently operational.

	<p>PERFORMANCE METRICS: <b>None.</b></p> <hr/> <p>STRATEGIC AND BUSINESS ALIGNMENT: The Yardi software guides Public Housing Authorities through regulatory procedures, automates workflows, and eliminates redundant data entry to increase staff productivity, improve operational efficiency, and reduce operational costs.</p> <hr/> <p>PROJECT APPROACH: Yardi software is currently operational.</p> <hr/> <p>ALTERNATIVES ANALYZED: None, the Yardi software is currently operational.</p>
<b>Technical Analysis</b>	<p>ANALYSIS OF PROPOSED IT SOLUTION: The Yardi software is currently operational. The Yardi software integrates Public Housing and Housing Choice Voucher compliance, accounting, and property management on a mobile platform that is accessible through desktop computers and handheld devices.</p>
<b>Financial Analysis</b>	<p>BUDGET:</p> <p><b>Contract Costs</b></p> <p>    One-time costs:</p> <p>        FY 2015-2016 .....           \$ 141,501</p> <p>        FY 2016-2017 .....           \$ 144,331</p> <p>        FY 2017-2018 .....           \$ 147,217</p> <p>    <b>Sub-total Contract Costs:</b>       \$ 433,049</p> <p>    <b>Pool Dollars:</b> .....           \$ 43,305</p> <p><b>Total Contract Costs:</b>               <b>\$ 476,354</b></p> <p>Funding is included in the Housing Authority’s FY 2015-16 Adopted Budget utilizing General Fund Bond Proceeds. There is no impact on the County General Fund.</p>
<b>Risk Analysis</b>	<p>RISK MITIGATION:</p> <p>The software is operational. The Contract is to extend the current software annual license and maintenance services until a competitive solicitation can be issued, negotiated and approved.</p> <p>The Chief Information Security Officer (CISO) reviewed the request and did not identify any IT security of privacy related issues.</p>

**CIO Approval**

PREPARED BY:

James R. Hall

6/30/2015

James Hall, Sr. Associate CIO

Date

APPROVED:

Richard Sanchez

6/30/15

Richard Sanchez, County Chief Information Officer

Date

Please contact the Office of the CIO (213.253.5600 or [info@cio.lacounty.gov](mailto:info@cio.lacounty.gov)) for questions concerning this CIO Analysis. This document is also available online at <http://ciointranet.lacounty.gov/>



## **CONTRACT FOR PUBLIC HOUSING AND SECTION 8 SYSTEMS SOFTWARE LICENSE SUPPORT AND UPDATE SERVICES**

This Contract (together with the Attachments and Exhibits hereto, the "Contract")~~is~~ made and entered into this 1st day of August, 2015, by and between the Housing Authority of the County of Los Angeles, hereinafter referred to as "Housing Authority", and Yardi Systems, Inc., hereinafter referred to as "Contractor," effective as of the Effective Date.

### **RECITAL**

#### **1. PURPOSE**

The Contractor is in the business of providing real property management and accounting software (including functionality for Public Housing and Section 8 Housing) and associated services. The Housing Authority intends to enter into sole source contract with Yardi Systems, Inc. (Yardi) to assume the administration of the software license and services maintenance and support for the Public Housing and Section 8 Systems Software License Support and Update services. The Yardi software license and software agreement is solely maintained by Yardi under an approved sole source contract as allowed under 24 CFR 85.36, Procurement, subsection (d)(4)(i)(A), Sole Source, known as the "Common Rule".

### **TERMS AND CONDITIONS**

#### **2. DEFINITIONS**

The terms and phrases in this paragraph shall have the particular meanings set forth in this Paragraph 2 whenever such terms are used in capitalized form in this Contract.

A. Agreement  
"Agreement," "Yardi Software License and Service Agreement" or "Yardi SLSA" shall mean the entire document attached as Attachment E (Yardi Software License and Service Agreement) to this Contract.

B. Business Day(s)  
"Business Day" or "Business Days," whether singular or plural, shall mean any day or days of eight (8) working hours during a single day from 8:00 a.m. to 5:00 p.m. Pacific Time (PT), Monday through Friday, excluding The Housing Authority observed holidays.

C. Contractor; Licensor

"Contractor" and "Licensor" shall mean Yardi Systems, Inc., a California corporation.

D. Contractor's Account Manager

"Contractor's Account Manager" shall mean the Contractor's point of contact responsible for the Contractor's performance of its application support tasks and subtasks.

E. County

"County" shall mean County of Los Angeles, California.

F. CPI Adjustment

"CPI Adjustment" shall mean a percentage increase to the annual fee for support and Update Services specified in Attachment B (Fee Schedule). This proportional increase shall be an amount equal to the percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W): Los Angeles Region, for the most recently published percentage change for the 12-month period preceding the then-current Contract anniversary date.

G. The Housing Authority; Licensee

"The Housing Authority" and "Licensee" shall mean the Housing Authority of County of Los Angeles, California.

H. The Housing Authority's Project Director

"The Housing Authority's Project Director" shall mean the Housing Authority's point of contact responsible for notifying the Contractor in writing of any changes in the name or address of the Housing Authority's Project Director and ensuring that the objectives of this Contract are met.

I. The Housing Authority's Project Manager

"The Housing Authority's Project Manager" shall mean the Housing Authority's Project Manager responsible for ensuring that the technical standards and requirements of this Contract are met.

J. Day(s)

"Day" or "Days," whether singular or plural, shall mean calendar days (not Business Days).

K. Deficiency(ies)

"Deficiency" or "Deficiencies," whether singular or plural, shall mean and include any material deviation(s) from the Contractor's Related Documentation and the Specifications.

L. Deliverable(s)

"Deliverable" or "Deliverables," whether singular or plural, shall mean any Software License, services, and/or other consideration of any kind to be provided by Contractor to the Housing Authority under this Contract.

M. Effective Date

"Effective Date" shall mean the date this Contract has been executed by both the Housing Authority and the Contractor.

N. Fee Schedule(s)

"Fee Schedule" shall mean the schedule of prices located in Attachment B (Fee Schedule).

O. Installation

"Installation" shall mean software installation Services provided by Contractor.

P. Related Documentation

"Related Documentation" shall mean Contractor's written and electronic publications relating to the Software delivered or otherwise made available by the Contractor to the Housing Authority.

Q. Services

"Services" shall mean the services provided by the Contractor to the Housing Authority under this Contract.

R. Software

"Software" shall mean the computer software programs provided by the Contractor to the Housing Authority under this Contract listed in Attachment B (Fee Schedule), including any Updates, under this Contract.

S. Source Code

"Source Code" shall mean the source code for the Software including all new releases, Updates, modifications, enhancements, corrections, patches and improvements, and all documentation contained in the Source Code.

T. Specifications

"Specifications" shall mean the functional and technical specifications for the Yardi Software licensed under this Agreement as identified in the Related Documentation.

U. State

"State" shall mean the State of California.

V. Third Party Software

"Third Party Software" shall mean that portion of the Software, including object code and Related Documentation, sublicensed by the Contractor to the Housing Authority under this Contract.

W. Update(s)

"Update(s)" shall mean those subsequent releases of the Software, including updates, enhancements, modifications, improvements, corrections, bug fixes, patches, new releases and versions of the software. Updates shall be delivered to the Housing Authority when generally available to Contractor's clients so long as the Housing Authority is current in its payment of annual support and Updates fees.

X. Initial Term

"Initial Term" shall have the meaning set forth in Paragraph 3 (Term).

Y. Term

"Term" shall have the meaning set forth in Paragraph 3 (Term).

**3. TERM**

This Contract shall commence on as of the day and year first above written and shall remain in full force and effect for 12 months until July 31, 2016 unless sooner terminated as provided herein. This Contract may be extended in one-year increments, for a total of two (2) additional years at the sole discretion of the Housing Authority. The Housing Authority shall be deemed to have exercised its

extension option(s) automatically, without further act, unless, no later than thirty (30) days prior to the expiration of the Initial Term or any Extended Term, it notifies Contractor in writing that it elects not to extend the Contract pursuant to this Section

#### **4. SOFTWARE LICENSE**

Subject to the terms and conditions of, and any use restrictions set forth in, this Contract, the Contractor grants to the Housing Authority a non-exclusive, non-transferable, perpetual license (“License” or “Software License”) for the Housing Authority’s Designated Users (as defined in Attachment E) to Use (as defined in Attachment E) the Software in accordance with the terms of this Contract and specifically including the license terms, restrictions and other terms contained in the Yardi SLSA attached as Attachment A (Yardi Software License and Service Agreement). The Housing Authority acknowledges that it has licensed the right for a finite number of Designated Users to Use the Software as specified in this Contract.

#### **5. LICENSE TERM**

Provided the Housing Authority is not in violation of the license terms and restrictions, the License granted under this Contract shall commence upon the Effective Date and shall continue in perpetuity and without regard to the Term.

#### **6. SCOPE OF LICENSE**

Provided (i) the Housing Authority has paid all of its annual support and Updates payments, and (ii) Contractor has not elected to cease support Services under support and Updates Paragraphs 8 and 9 of the Yardi SLSA, the Software License shall include the specified amount of annual support time set forth in this Contract.

The Software License granted under this Contract provides the Housing Authority with the following rights:

- A. For Designated Users to Use the Software for management of the Housing Authority's business purposes;
- B. To build the Software applications using the Contractor's application building tools licensed under this Contract;
- C. To copy the Software solely for backup and archival purposes; and
- D. To use, modify and distribute within the Housing Authority the Related Documentation in a hard copy format and, if and when available, electronically or on read-only CD-ROM in connection with the Housing Authority’s Use of the Software solely in connection with management of the Housing Authority’s business purposes.

## **7. OPTION TO LICENSE ADDITIONAL SOFTWARE PRODUCTS**

Provided the Housing Authority is not in material breach of the terms of the Contract, the Contractor grants the Housing Authority the option to license additional Software products (“Additional Products”) which are generally available from Contractor. The Housing Authority may exercise the option, via an Amendment to this Contract and paying the applicable License and support fees due. Upon the Housing Authority’s execution of an amendment to this Contract for such Additional Products, and paying the associated fees, such Additional Products shall be deemed Software for the purpose of this Contract. The warranty related to Additional Products shall take effect upon Acceptance of such Additional Products by Housing Authority.

## **8. LICENSE RESTRICTIONS**

No license, right or interest in any trademark, trade name or service mark of the Contractor or any third party from whom the Contractor has acquired License rights is granted under this Contract.

The Software and/or Related Documentation may not be sold, licensed or sublicensed, assigned or otherwise transferred, in whole or in part, by the Housing Authority except as otherwise expressly provided in this Contract.

The Housing Authority will not reverse-engineer, disassemble, decompile, decode or otherwise attempt to discover the source code for the Software.

The license terms and restrictions set forth in Standard Terms section 3 of the Yardi SLSA also apply to the Software and Related Documentation license.

## **9. SOURCE CODE ESCROW AGREEMENT**

Escrow Agent. Provided the Housing Authority agrees to be bound by the relevant terms and pays the associated annual beneficiary fee (currently \$235.00/year), Contractor agrees to enroll the Housing Authority as a beneficiary of the Contractor’s software escrow agreement (“Flexsafe Escrow Agreement”) with Iron Mountain (formerly DSI Technology Escrow Services, Inc.) (“Escrow Agent”) for release of the source code for the Licensed Programs (the “Code”) in accord with the release conditions in the Flexsafe Escrow Agreement. An copy of the Flexsafe Escrow Agreement is attached as Attachment F to this Agreement. The Contractor will place the Code in an escrow account maintained by Escrow Agent according to the Flexsafe Escrow Agreement.

Release Conditions. Upon the occurrence of the release conditions set forth in the Flexsafe Escrow Agreement, the Contractor acknowledges that Escrow Agent shall deliver the Code to the Housing Authority.

Fees. The Housing Authority agrees to pay all annual beneficiary fees for the Flexsafe Escrow Agreement. The Housing Authority acknowledges that the annual escrow beneficiary renewal fee may be updated from time to time as determined by the Escrow Agent.

Source Code License. Upon the occurrence of the release conditions set forth in the Flexsafe Escrow Agreement, the Contractor grants to the Housing Authority a non-exclusive, non-transferable, limited, perpetual license to use and modify the Code to support the Housing Authority's Use of the Software.

Maintenance of Escrow Agreement. During the term of this Agreement, the Contractor agrees to maintain the Flexsafe Escrow Agreement or an escrow agreement materially similar to the Flexsafe Escrow Agreement. The Contractor shall maintain in Escrow the most recent versions of the Deposit Materials. The Contractor may change the Escrow Agent at any time upon notice to the Housing Authority.

#### **10. ADDITIONAL SOURCE CODE PROVISION**

Contractor additionally agrees that if: (i) Contractor has an enforceable obligation to continue support of the Software pursuant to this Contract, and (ii) notwithstanding the enforceable obligation identified in subparagraph (i), above, Contractor nevertheless elects to entirely stop supporting the Software, Contractor agrees to provide a copy of the source code for the Software to the Housing Authority. If Contractor provides a copy of the Software source code pursuant to this Paragraph 11, Contractor grants to the Housing Authority a non-exclusive, non-transferable, limited, perpetual license to use and modify the source code to support the Housing Authority's Use of the Software.

#### **11. SUPPORT AND UPDATE SERVICES**

Provided that the Housing Authority has met all of its payment obligations as set forth in this Contract, the Contractor shall provide to the Housing Authority Updates and technical support in accordance with Attachment E (Yardi Software License and Service Agreement). If elected by the Housing Authority, support and Update Services shall be renewed annually in accordance with this Contract; provided, however, that if at any point the Housing Authority elects not to pay for support and Update Services, the Contractor shall have no obligation to provide support Updates or other Services under this Agreement. The Housing Authority may cancel support and Updates Services at anytime by giving Contractor not less than thirty (30) days written notice. Upon any such cancellation, any prepaid support and Update Services fees shall be refunded to the Housing Authority by Contractor on a pro rata basis as of the date of cancellation.

#### **12. CONTRACTOR'S RESPONSIBILITIES**

The Contractor agrees to perform in a good workmanlike manner, to the reasonable satisfaction of the Housing Authority's Executive Director, all the work described in the attached Statement of Work, Attachment A.

### **13. COMPENSATION**

- A. The Contractor shall be paid using the Housing Authority's standard accounts payable system and in accordance with the payment terms set forth in Attachment B (Fee Schedule), based on the Contract providing to the Housing Authority the Software and Services at the price listed in Attachment B (Fee Schedule), upon execution of this Contract.
- B. The Contractor shall not be entitled to payment or reimbursement for any tasks or services performed, nor for any incidental or administrative expenses whatsoever incurred in or incidental to performance hereunder, except as specified herein. Assumption or takeover of any of the Contractor's duties, responsibilities, or obligations, or performance of same by any entity other than the Contractor, whether through assignment, subcontract, delegation, merger, buyout, or any other mechanism, with or without consideration for any reason whatsoever, shall occur only with the Housing Authority's express prior written approval.
- C. The Contractor shall have no claim against the Housing Authority for payment of any money or reimbursement, of any kind whatsoever, for any service provided by the Contractor after the expiration or other termination of this Contract. Should the Contractor receive any such payment, it shall immediately notify the Housing Authority and shall immediately repay all such funds to the Housing Authority. Payment by the Housing Authority for services rendered after expiration or termination of this Contract shall not constitute a waiver of the Housing Authority's right to recover such payment from Contractor. This provision shall survive the expiration or other termination of this Contract. Under no circumstances shall the Contractor provide, nor shall the Housing Authority request, any Services under this Contract after the expiration of the Term of this Contract.

### **14. SOURCE AND APPROPRIATION OF FUNDS**

The Housing Authority's obligation is payable only and solely from funds appropriated through the U.S. Department of Housing and Urban Development (HUD) and, for the purpose of this Contract. All funds are appropriated every fiscal year beginning July 1.

In the event this Contract extends into succeeding fiscal years and funds have not been appropriated, this Contract will automatically terminate as of June 30 of the current fiscal year. The Housing Authority will the Contractor in writing ten (10) days receipt of non-appropriation notice.



## **15. TERMINATION FOR IMPROPER CONSIDERATION**

The Housing Authority may, by written notice to the Contractor, immediately terminate the right of the Contractor to proceed under this Contract, if it is found that consideration, in any form, was offered or given by Contractor, either directly or through an intermediary, to any County office, employee or agent with the intent of securing this Contract or securing favorable treatment with respect to the award, amendment or extension of this Contract or the making of any determinations with respect to the Contractor's performance pursuant to this Contract. In the event of such termination, the Housing Authority shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of default by the Contractor.

The Contractor shall immediately report any attempt by a Housing Authority officer or employee to solicit such improper consideration. The report shall be made either to the Housing Authority's Executive Director or to the County Auditor-Controller's Employee Fraud Hotline at (800) 544-6861.

Among other items, such improper consideration may take the form of cash, discounts, services, the provision of travel or entertainment, or tangible gifts.

## **16. ASSIGNMENT BY CONTRACTOR**

The Contractor shall not assign its rights or delegate its duties under the Contract, or both, whether in whole or in part, without the prior written consent of the Housing Authority, which consent shall not be unreasonably withheld, and any attempted assignment or delegation without such consent shall be null and void. For purposes of this paragraph, Housing Authority consent shall require a written amendment to the Contract, which is formally approved and executed by the parties. Any payments by the Housing Authority to any approved delegate or assignee on any claim under the Contract shall be deductible, at the Housing Authority's sole discretion, against the claims, which the Contractor may have against the Housing Authority. However, the Housing Authority reserves the right to assign this Contract to another public agency without the consent of the Contractor.

Shareholders, partners, members, or other equity holders of the Contractor may transfer, sell, exchange, assign, or divest themselves of any interest they may have therein. In the event any such sale, transfer, merger, exchange, assignment, or divestment is affected in such a way as to give majority control of the Contractor to any person(s), corporation, partnership, or legal entity other than the majority controlling interest therein at the time of execution of the Contract, such disposition is a permitted assignment under this Contract and does not require the prior written consent of the Housing Authority.

Any assumption, assignment, delegation, or takeover of any of the Contractor's duties, responsibilities, obligations, or performance of same by any entity other than the Contractor, whether through assignment, subcontract, delegation, merger,

buyout, or any other mechanism, with or without consideration for any reason whatsoever without the Housing Authority's express prior written approval, shall be a material breach of the Contract which may result in the termination of the Contract. In the event of such termination, the Housing Authority shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of default by the Contractor.

## **17. CONFIDENTIALITY OF REPORTS**

Contractor shall keep confidential all reports, information and data received, prepared or assembled pursuant to performance hereunder. Such information shall not be made available to any person, firm, corporation or entity without the prior written consent of the Housing Authority. The parties agree to the confidentiality provisions set forth in Attachment E (Yardi Software and License Agreement).

## **18. SUBCONTRACTING**

The Contractor may subcontract only those specific portions of work allowed in the original specifications covered by this Contract with prior written approval by the Housing Authority.

The Contractor shall not subcontract any part of the work covered by this Contract or permit subcontracted work to be further subcontracted without prior written approval by the Housing Authority.

## **19. INSURANCE**

Without limiting the Contractor's duties to indemnify and defend as provided in this Contract, the Contractor shall procure and maintain, at the Contractor's sole expense, the insurance policies described herein. Such insurance shall be secured from carriers admitted in California, or authorized to do business in California. Such carriers shall be in good standing with the California Secretary of State's Office and the California Department of Insurance. Such carriers must be admitted and approved by the California Department of Insurance or must be included on the California Department of Insurance List of Approved Surplus Line Insurers (hereinafter "LASLI"). Such carriers must have a minimum rating of or equivalent to A:VIII in A.M. Best's Insurance Guide. The Contractor shall, concurrent with the execution of this Contract, deliver to the Housing Authority certificates of insurance with original endorsements evidencing the insurance coverage required by this Contract. If original endorsements are not immediately available, such endorsements may be delivered subsequent to the execution of this Contract, but no later than thirty (30) days following execution of this Contract. The certificates and endorsements shall be signed by a person authorized by the insurers to bind coverage on its behalf. The Contractor shall provide the Housing Authority with certificates of insurance and applicable endorsements each year during the term of this Contract to evidence its annual compliance with the insurance requirements set forth herein. The Housing Authority reserves the right to require complete certified

copies of all policies at any time. Said insurance shall be in a form acceptable to the Housing Authority and all deductible amounts must be provided in advance to the Housing Authority for its approval. Any self-insurance program and self-insured retention must be separately approved by the Housing Authority. In the event such insurance does provide for deductibles or self-insurance, the Contractor agrees that it will defend, indemnify and hold harmless the Housing Authority, Community Development Commission of the County of Los Angeles ("Commission"), County of Los Angeles ("County"), and their elected and appointed officers, officials, representatives, employees, and agents in the same manner as they would have been defended, indemnified and held harmless if full coverage under any applicable policy had been in effect. Contractor shall give the Housing Authority immediate notice of any insurance claim or loss which may be covered by insurance. The Contractor represents and warrants that the insurance coverage required herein will also be provided by any entities with which the Contractor contracts, as detailed below. All certificates of insurance and additional insured endorsements shall carry the following identifier:  
Yardi Systems, Inc.

The insurance policies set forth herein shall be primary insurance and non-contributory with respect to the Housing Authority. The insurance policies shall contain a waiver of subrogation for the benefit of the Housing Authority. Failure on the part of the Contractor, and/or any entities with which the Contractor contracts, to procure or maintain the insurance coverage required herein may, upon the Housing Authority's sole discretion, constitute a material breach of this Contract pursuant to which the Housing Authority may immediately terminate this Contract and exercise all other rights and remedies set forth herein, at its sole and absolute discretion, and without waiving such default or limiting the rights or remedies of the Housing Authority, procure or renew such insurance and pay any and all premiums in connection therewith and all monies so paid by the Housing Authority shall be immediately repaid by the Contractor to the Housing Authority upon demand including interest thereon at the default rate. In the event of such a breach, the Housing Authority shall have the right, at its sole election, to participate in and control any insurance claim, adjustment, or dispute with the insurance carrier. The Contractor's failure to assert or delay in asserting any claim shall not diminish or impair the Housing Authority's rights against the Contractor or the insurance carrier.

When the Contractor, or any entity with which the Contractor contracts, is naming the Housing Authority as an additional insured on the general liability insurance policy set forth below, then the additional insured endorsement shall contain language similar to the language contained in ISO form VCG 346 07 13.

The following insurance policies shall be maintained by the Contractor and any entity with which the Contractor contracts for the duration of this Contract, unless otherwise set forth herein:

- A. GENERAL LIABILITY INSURANCE (written on ISO policy form CG 00 01 or its equivalent) including coverage for bodily injury, personal injury, property damage, and contractual liability with limits of not less than the following:

General Aggregate .....	\$2,000,000
Products/Completed Operations Aggregate .....	\$2,000,000
Personal and Advertising Injury .....	\$1,000,000
Each Occurrence.....	\$1,000,000

The Housing Authority, Commission, County, and each of their elected and appointed officers, officials, representatives, employees, and agents (hereinafter collectively referred to as the "Public Agencies and their Agents"), shall be named as additional insureds for contractor's work on such policy.

- B. AUTOMOBILE LIABILITY INSURANCE (written on ISO policy form CA 00 01 or its equivalent) with a limit of liability of not less than \$1 million for each incident. Such insurance shall include coverage of all "owned", "hired" and "non-owned" vehicles, or coverage for "any auto".

- C. WORKERS' COMPENSATION and EMPLOYER'S LIABILITY insurance providing worker's compensation benefits, as required by the Labor Code of the State of California. This must include a waiver of subrogation in favor of the Public Agencies and their Agents. In all cases, the above insurance also shall include Employer's Liability coverage with limits of not less than the following:

Each Accident.....	\$1,000,000
Disease-policy limit.....	\$1,000,000
Disease-each employee.....	\$1,000,000

- D. PROFESSIONAL LIABILITY INSURANCE, appropriate to the professional's profession in an amount not less than One Million Dollars (\$1,000,000) for each occurrence and Two Million Dollars (\$2,000,000) aggregate. Said insurance shall be maintained for the statutory period during which the professional maybe exposed to liability. If the Contractor is not providing professional services, then it is the responsibility of the Contractor to obtain separate written approval from Housing Authority to eliminate this professional liability insurance requirement.

The Contractor agrees that it will require all of the above mentioned insurance requirements be incorporated in its contract with any entity with which it contracts in relation to this Contract or in relation to the property or project that is the subject of this Contract.

**20. INDEMNIFICATION**

The Contractor shall indemnify, defend and hold harmless the Housing Authority, Commission, County, and each of their elected and appointed officers, officials,

representatives, employees, and agents from and against any and all third party liabilities, demands, damages, claims, causes of action, expenses, and fees (including reasonable attorney's fees and costs and expert witness fees) (hereinafter collectively referred to as "Liabilities"), that arise out of, pertain to, or relate to the Contractor's acts of gross negligence or willful misconduct, except for such loss or damage arising from the negligence or willful misconduct of Housing Authority, Commission, or County.

## **21. HOUSING AUTHORITY'S QUALITY ASSURANCE PLAN**

The Housing Authority will evaluate Contractor's performance under this Contract on not less than an annual basis. Such evaluation will include assessing Contractor's compliance with all contract terms and performance standards. Contractor deficiencies, which Housing Authority determines are severe or continuing and that may place performance of the Contract in jeopardy, if not corrected, will be reported to the Board of Commissioners. The report will include improvement/corrective action measures taken by the Housing Authority and Contractor. If improvement does not occur consistent with the corrective measure, the Housing Authority may, subject to the notice and cure provisions, terminate this Contract, pursuant to Paragraph 13 or 14, or impose other remedies as specified in this Contract.

A performance review will be conducted no later than ninety (90) days prior to the end of the first and second years of this Contract to evaluate the performance of the Contractor. Based on the assessment of the performance review, as determined by the Housing Authority in its sole discretion, written notification will be given to the Contractor whether this Contract will be terminated at the end of the current year or will be continued into the next contract year.

## **22. TERMINATION FOR CONVENIENCE**

The Housing Authority reserves the right to cancel this Contract for any reason at all upon thirty (30) days prior written notice to Contractor. In the event of such termination, Contractor shall be entitled to a prorated portion paid for all satisfactory work unless such termination is made for cause, in which event, compensation if any, shall be adjusted in such termination, and terminate this Contract in its entirety, or with respect to certain products or Services referenced in Attachment B (Fee Schedule), when such action is deemed by Housing Authority to be in its best interest. Termination of Services under this Contract shall be effected by notice of termination to Contractor specifying the extent to which performance of work is terminated and the date upon which such termination becomes effective, which shall be no less than thirty (30) calendar days after the notice is sent.

After receipt of a notice of termination and except as otherwise directed by Housing Authority, Contractor shall stop performance of its Services with respect to any or all orders under this Contract on the date and to the extent specified in such notice. Contractor shall complete performance of such part of the Services not terminated by such notice.

After receipt of a notice of termination, Contractor shall submit to Housing Authority, Contractor's termination claim and invoice. Such claim and invoice shall be submitted promptly, but no later than ninety (90) days from the effective date of termination.

### **23. TERMINATION FOR CAUSE**

(A) Subject to the notice and cure provision set forth in subsection (B), below, this Contract may be terminated by either party upon written notice to the other party if the other party materially breaches this agreement.

(B) Notwithstanding subsection (A), either party may terminate this Contract upon written notice to the other party if the other party materially breaches this Contract and fails to cure such breach within seven (7) days of the date of written notice of the breach or, if the breach cannot be reasonably cured within seven (7) days, fails to initiate cure within said seven (7) days and fails to continuously and diligently work to cure said breach until the breach is cured. If the Agreement is terminated pursuant to this Section 23, termination shall be effective upon expiration of the applicable cure period after delivery of the specified notice.

(C) Either party may terminate this Agreement in accord with U.S Bankruptcy Law upon the filing of a bankruptcy petition by or against the other party that is not dismissed within Ninety (90) days.

(D) Except for a termination by Contractor due to a material breach by the Housing Authority, the Housing Authority shall have the right to continue Use of the Software.

(E) The rights and remedies of the parties provided in this Paragraph 23 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

### **24. CONTRACTOR'S WARRANTY OF ADHERENCE TO HOUSING AUTHORITY'S CHILD SUPPORT COMPLIANCE PROGRAM**

The Contractor acknowledges that the Housing Authority has established a goal of ensuring that all individuals who benefit financially from the Housing Authority through a contract, are in compliance with their court-ordered child, family, and spousal support obligations in order to mitigate the economic burden otherwise imposed upon the taxpayers of the County of Los Angeles.

As required by Housing Authority Child Support Compliance Program and without limiting Contractor's duty under this Contract to comply with all applicable provisions of law, Contractor warrants that it is now in compliance and shall, during the term of this Contract, maintain compliance with employment and wage reporting requirements as required by the Federal Social Security Act (42 USC Section 653a) and California Unemployment Insurance Code Section 1088.5, and shall implement

all lawfully served Wage and Earnings Withholding Orders or CSSD Notices of Wage and Earnings Assignment for Child or Spousal Support, pursuant to Code of Civil Procedure Section 706.031 and Family Code Section 5246(b).

**25. TERMINATION FOR BREACH OF WARRANTY TO COMPLY WITH HOUSING AUTHORITY'S CHILD SUPPORT COMPLIANCE PROGRAM**

Failure of the Contractor to maintain compliance with the requirements set forth in Paragraph 24, "*CONTRACTOR'S WARRANTY OF ADHERENCE TO Housing Authority's CHILD SUPPORT COMPLIANCE PROGRAM*" shall constitute default under this Contract. Without limiting the rights and remedies available to Housing Authority under any other provision of this Contract, failure of Contractor to cure such default within 90 calendar days of written notice shall be grounds upon which Housing Authority may terminate this Contract pursuant to Paragraph 23 - "TERMINATION FOR CAUSE" and pursue debarment of Contractor, pursuant to Housing Authority policy.

**26. POST MOST WANTED DELINQUENT PARENTS LIST**

INTENTIONALLY OMITTED.

**27. INDEPENDENT CONTRACTOR**

This Contract does not, is not intended to, nor shall it be construed to create the relationship of agent, employee or joint venture between the Housing Authority and the Contractor.

**28. EMPLOYEES OF CONTRACTOR**

*Workers' Compensation:* The Contractor understands and agrees that all persons furnishing Services to the Housing Authority pursuant to this Contract are, as between the Contractor and the Housing Authority, and for the purposes of Workers' Compensation liability, employees solely of the Contractor (except for persons with whom the Housing Authority may separately contract to consult and/or perform services related to this Contract). Contractor shall bear sole responsibility and liability for providing Workers' Compensation benefits to any person providing Services pursuant to this Contract (except for persons with whom the Housing Authority may separately contract to consult and/or perform services related to this Contract) for injuries arising from an accident connected with Services provided to the Housing Authority under this Contract.

*Professional Conduct:* The Housing Authority does not and will not condone any acts, gestures, comments or conduct from the Contractor's employees, agents or subcontractors which may be construed as sexual harassment or any other type of activities or behavior that might be construed as harassment. The Housing Authority will properly investigate all charges of harassment by residents, employees or agents

of the Housing Authority against any and all Contractor's employees, agents or subcontractors providing Services for the Housing Authority. The Contractor assumes all liability for the actions of the Contractor's employees, agents or subcontractors in the course and scope of their employment, agency, and/or subcontract with Contractor, as applicable, and is responsible for taking appropriate action after reports of harassment are received by the Contractor.

### **29. DRUG-FREE WORKPLACE ACT OF THE STATE OF CALIFORNIA**

The Contractor certifies under penalty of perjury under the laws of the State of California that the Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990.

### **30. SAFETY STANDARDS AND ACCIDENT PREVENTION**

The Contractor shall comply with all applicable federal, state and local laws governing safety, health and sanitation. The Contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions, as its own responsibility, reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of this Contract.

### **31. COMPLIANCE WITH LAWS**

The Contractor agrees to be bound by all applicable federal, state and local laws, regulations, and directives as they pertain and apply to the performance of this Contract. The applicable federal, state and local laws, regulations, and directives may include, but are not necessarily limited to, the Housing and Community Development Act of 1974, as amended by the Cranston-Gonzalez National Affordable Housing Act, 1990, and the 24 CFR Part 85, and the Americans with Disabilities Act of 1990. If the compensation under this Contract is in excess of \$100,000 then Contractor shall comply with applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 18579h), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency Regulations (40 CFR part 15).

The Contractor must obtain and present all applicable state and local insurance, training and licensing pursuant to Services required by this Contract.

The Contractor shall comply with the following laws in Sections 23-32, inclusive, and 41-46, inclusive.

### **32. CIVIL RIGHTS ACT OF 1964, TITLE VI (NON-DISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS)**



The Contractor shall comply with the Civil Rights Act of 1964 Title VI which provides that no person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

**33. SECTION 109 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974**

The Contractor shall comply with Section 109 of the Housing and Community Development Act of 1974 which states that no person in the United States shall, on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.

**34. AGE DISCRIMINATION ACT OF 1975 AND SECTION 504 OF THE REHABILITATION ACT OF 1973**

The Contractor shall comply with the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, which require that no person in the United States shall be excluded from participating in, denied the benefits of, or subject to discrimination under this Contract on the basis of age or with respect to an otherwise qualified disabled individual.

**35. EXECUTIVE ORDER 11246 AND 11375, EQUAL OPPORTUNITY IN EMPLOYMENT (NON-DISCRIMINATION IN EMPLOYMENT BY GOVERNMENT CONTRACTORS AND SUBCONTRACTORS)**

The Contractor shall comply with Executive Order 11246 and 11375, Equal Opportunity in Employment, which requires that during the performance of this Contract, the Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated fairly during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of the non-discrimination clause.

The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

The Contractor will send to each labor union or representative of workers with which he has a collective bargaining Contract or other contract or understanding, a notice to be

provided by the agency of the Contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment. The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

The Contractor will furnish all information and reports required by the Executive Order and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the Housing Authority and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

In the event of Contractor's noncompliance with the non-discrimination clauses of this Contract or with any of such rules, regulations or orders, this Contract may be canceled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in the Executive Orders and such other sanctions may be imposed and remedies invoked as provided in the Executive Order or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

The Contractor will include the provisions of these paragraphs in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of the Executive Order No. 11246 of September 24, 1965, that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such actions with respect to any subcontract or purchase order as the Housing Authority may direct as a means of enforcing such provisions including sanctions for noncompliance, provided however, that in the event the Contractor becomes involved in, or is threatened with litigation by a subcontractor or vendor as a result of such direction by the Housing Authority, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

**36. SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968, AS AMENDED**

- a. The work to be performed under this Contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low-and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- b. The parties to this Contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of this Contract, the parties to this Contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.

- c. The Contractor agrees to send to each labor organization or representative of workers with which the Contractor has a collective bargaining Contract or other understanding, if any, a notice advising the labor organization or workers' representative of the Contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- d. The Contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The Contractor will not subcontract with any subcontractor where the Contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.
- e. The Contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the Contractor is selected but before the Contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the Contractor's obligations under 24 CFR Part 135.
- f. Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this Contract for default, and debarment or suspension from future HUD assisted contracts.
- g. With respect to work performed in connection with Section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this Contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this Contract that are subject to the provisions of Section 3 and section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

### **37. FEDERAL LOBBYIST REQUIREMENTS**

The Contractor is prohibited by the Department of Interior and Related Agencies Appropriations Act, known as the Byrd Amendments, and HUD's 24 CFR Part 87, from using federally appropriated funds for the purpose of influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, loan or cooperative Contract, and any extension, continuation, renewal, amendment or modification of said documents.

The Contractor must certify in writing on the Federal Lobbyist Requirements Certification form that they are familiar with the Federal Lobbyist Requirements and that all persons and/or subcontractors acting on behalf of the Contractor will comply with the Lobbyist Requirements.

Failure on the part of the Contractor or persons/subcontractors acting on behalf of the Contractor to fully comply with the Federal Lobbyist Requirements may be subject to civil penalties.

### **38. NOTICE TO EMPLOYEES REGARDING THE FEDERAL EARNED INCOME CREDIT**

The Contractor shall notify its employees, and shall require each subcontractor to notify its employees, that they may be eligible for the Federal Earned Income Credit under the federal income tax laws. Such notice shall be provided in accordance with the requirements set forth in Internal Revenue Service Notice 1015.

### **39. USE OF RECYCLED-CONTENT PAPER PRODUCTS**

Consistent with the Board of Supervisors' policy to reduce the amount of solid waste deposited at the County landfills, the Contractor agrees to use recycled-content paper to the maximum extent possible on the Project.

### **40. CONTRACTOR RESPONSIBILITY AND DEBARMENT**

- a. A responsible contractor is a contractor, consultant, vendor, or operating agency who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity and experience to satisfactorily perform the contract. It is the policy of the Housing Authority, Commission, and County to conduct business only with responsible contractors.
- b. The Contractor is hereby notified that if the Housing Authority acquires information concerning the performance of the Contractor on this or other contracts which indicates that the Contractor is not responsible, the Housing Authority may, in addition to other remedies provided in the contract, recommend that the Contractor be debarred from bidding or proposing on, or

being awarded, and/or performing work on Housing Authority contracts for a specified period of time, which generally will not to exceed five years but may exceed five years or be permanent if warranted by circumstances, and terminate any or all existing contracts the Contractor may have with the Housing Authority.

- c. The Housing Authority may recommend that the Board of Commissioners debar a contractor, consultant, vendor or operating agency if the Board of Commissioners finds, in its discretion, that the contractor, consultant, vendor, or operating agency has done any of the following: (1) violated any term of a contract with the Housing Authority, Commission, or County, or a nonprofit corporation created by the Housing Authority, Commission, or County (2) committed an act or omission which negatively reflects on the its quality, fitness or capacity to perform a contract with the Housing Authority, Commission, or County or any other public entity, or a nonprofit corporation created by the Housing Authority, Commission, or County, or engaged in a pattern or practice which negatively reflects on same, (3) committed an act or offense which indicates a lack of business integrity or business honesty, or (4) made or submitted a false claim against the Housing Authority, Commission, County, or any other public entity.
- d. If there is evidence that the Contractor may be subject to debarment, the Housing Authority will notify the Contractor in writing of the evidence, which is the basis for the proposed debarment and will advise the Contractor of the scheduled date for a debarment hearing before the Contractor Hearing Board.
- e. The Contractor Hearing Board will conduct a hearing where evidence on the proposed debarment is presented. The Contractor and/or the Contractor's representative shall be given an opportunity to submit evidence at that hearing. After the hearing, the Contractor Hearing Board shall prepare a tentative proposed decision, which shall contain a recommendation regarding whether the Contractor should be debarred, and, if so, the appropriate length of time of the debarment. The Contractor and the Housing Authority shall be provided an opportunity to object to the tentative proposed decision prior to its presentation to the Board of Commissioners.
- f. After consideration of any objections, or if no objections are submitted, a record of the hearing, the proposed decision and any other recommendation of the Contract Hearing Board shall be presented to the Board of Commissioners. The Board of Commissioners shall have the right to modify, deny or adopt the proposed decision and recommendation of the Hearing Board.
- g. If a Contractor has been debarred for a period longer than five years, that Contractor may, after the debarment has been in effect for at least five years, submit a written request for review of the debarment determination to reduce

the period of debarment or terminate the debarment. The Housing Authority may, in its discretion, recommend that the Board of Commissioners reduce the period of debarment or terminate the debarment if it finds that the Contractor has adequately demonstrated one or more of the following: (1) elimination of the grounds for which the debarment was imposed; (2) a bona fide change in ownership or management; (3) material evidence discovered after debarment was imposed; or (4) any other reason that is in the best interests of the Housing Authority.

- h. The Contractor Hearing Board will consider a request for review of the debarment determination only where (1) the Contractor has been debarred for a period longer than five years; (2) the debarment has been in effect for at least five years; and (3) the request is in writing, states one or more of the ground for reduction of the debarment period or termination of the debarment, and includes supporting documentation. Upon receiving an appropriate request, the Contractor Hearing Board will provide notice of the hearing on the request. At the hearing, the Contractor Hearing Board shall conduct a hearing where evidence on the proposed reduction of debarment period or termination of debarment is presented. This hearing shall be conducted and the request for review decided by the Contractor Hearing Board pursuant to the same procedures as for a debarment Hearing.

The Contractor Hearing Board's proposed decision shall contain a recommendation on the request to reduce the period of debarment or terminate the debarment. The Contractor Hearing Board shall present its proposed decision and recommendation to the Board of Commissioners. The Board of Commissioners shall have the right to modify, deny or adopt the proposed decision and recommendation of the Contractor Hearing Board.

- i. These terms shall also apply to subcontractors and subconsultants of County, Housing Authority, or Commission contractors, consultants, vendors and operating agencies.

#### **41. COMPLIANCE WITH JURY SERVICE PROGRAM**

- A. Unless the Contractor has demonstrated to the Housing Authority satisfaction either that Contractor is not a "Contractor" as defined under the Jury Service Program or that Contractor qualifies for an exception to the Jury Service Program, Contractor shall 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. The policy may provide that Employees deposit any fees received for such jury service with the Contractor or that the Contractor deduct from the Employee's regular pay the fees received for jury service.

- B. For purposes of this Section, "Contractor" means a person, partnership, corporation or other entity which has a contract with the Housing Authority, Commission, or County or a subcontract with a Housing Authority, Commission, or County contractor and has received or will receive an aggregate sum of \$50,000 or more in any 12-month period under one or more Housing Authority, Commission, or County contracts or subcontracts. "Employee" means any California resident who is a full time employee of Contractor. "Full time" means 40 hours or more worked per week, or a lesser number of hours if: 1) the lesser number is a recognized industry standard as determined by the Housing Authority or County, or 2) Contractor has a long-standing practice that defines the lesser number of hours as full-time. Full-time employees providing short-term, temporary Services of 90 days or less within a 12-month period are not considered full-time for purposes of the Jury Service Program. If Contractor uses any subcontractor to perform services for the Housing Authority under the Contract, the subcontractor shall also be subject to the provisions of this Section. The provisions of this Section shall be inserted into any such subcontract Contract and a copy of the Jury Service Program shall be attached to the Contract.
- C. If the Contractor is not required to comply with the Jury Service Program when the Contract commences, Contractor shall have a continuing obligation to review the applicability of its "exception status" from the Jury Service Program, and Contractor shall immediately notify Housing Authority if Contractor at any time either comes within the Jury Service Program's definition of "Contractor" or if Contractor no longer qualifies for an exception to the Program. In either event, Contractor shall immediately implement a written policy consistent with the Jury Service Program. The Housing Authority may also require, at any time during the Contract and at its sole discretion, that Contractor demonstrate to the Housing Authority's satisfaction that Contractor either continues to remain outside of the Jury Service Program's definition of "Contractor" and/or that Contractor continues to qualify for an exception to the Program.
- D. The Contractor's violation of this Section of the contract may constitute a material breach of the Contract. In the event of such material breach, Housing Authority may, in its sole discretion, terminate the Contract and/or bar Contractor from the award of future Housing Authority, or County contracts for a period of time consistent with the seriousness of the breach.

#### **42. ACCESS AND RETENTION OF RECORDS**

The Contractor shall, upon reasonable advance written notice, provide reasonable access to the Housing Authority, the Federal Grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers and records of the Contractor which are directly pertinent to this Contract for the purpose of making audits, examinations, excerpts and transcriptions.

The Contractor is required to retain the aforementioned records for a period of five years after the Housing Authority pays final payment and other pending matters are closed under this Contract.

#### **43. CONFLICT OF INTEREST**

The Contractor represents, warrants and agrees that to the best of its knowledge, it does not presently have, nor will it acquire during the term of this Contract, any interest direct or indirect, by contract, employment or otherwise, or as a partner, joint venture or shareholder (other than as a shareholder holding a one (1%) percent or less interest in publicly traded companies) or affiliate with any business or business entity that has entered into any contract, subcontract or arrangement with the Housing Authority. Upon execution of this Contract and during its term, as appropriate, the Contractor shall, disclose in writing to the Housing Authority any other contract or employment during the term of this Contract by any other persons, business or corporation in which employment will or may likely develop a conflict of interest between the Housing Authority's interest and the interests of the third parties.

#### **44. SEVERABILITY**

In the event that any provision herein is held to be invalid, void, unenforceable, or illegal by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this Contract and shall in no way affect, impair or invalidate any other provision contained herein. If any such provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

#### **45. INTERPRETATION**

No provision of this Contract is to be interpreted for or against either party because that party or that party's legal representative drafted such provision, but this Contract is to be construed as if drafted by both parties to this Contract.

#### **46. WAIVER**

No breach of any provision hereof can be waived unless in writing. Waiver of any one breach of any provision shall not be deemed to be a waiver of any breach of the same or any other provision of this Contract.

#### **47. OWNERSHIP AND LICENSE**

**A. System Data:** As between Contractor and Housing Authority, Housing Authority data that is entered into the Software by Housing Authority ("System Data") and provided or made accessible to Contractor by Housing Authority relating to the Services provided pursuant to this Agreement and shall remain the property of Housing Authority.



**B. Work Product:** As further set forth in Attachment E (Yardi Software License and Service Agreement), Contractor shall remain the sole owner of the Software and Deliverables provided by Contractor under the Contract and all derivative works therein (hereinafter collectively "Work Product"). Work Product does not include any Housing Authority materials designed or independently developed by Housing Authority without use of or reference to Contractor's Software, Deliverables, Work Product, or other Confidential Information (as defined in Attachment E (Yardi Software License and Service Agreement)).

**C.** The Contractor will hold all copyrights in and to works of authorship performed in whole or in part by the Contractor in connection with the licenses or Services provided under this Contract.

**D.** The Contractor will hold all the patent rights with respect to any discovery or invention by the Contractor, which arises or is developed in the course of, or under this Contract.

**48. INTENTIONALLY OMITTED.**

**49. NOTICES**

The Housing Authority shall provide the Contractor with notice of any injury or damage arising from or connected with Services rendered pursuant to this Contract to the extent that Housing Authority has actual knowledge of such injury or damage. Housing Authority shall provide such notice within ten (10) days of receiving actual knowledge of such injury or damage.

Notices provided for in this Contract shall be in writing and shall be addressed to the person intended to receive the same, at the following address:

The Housing Authority: Sean Rogan, Executive Director  
Housing Authority of the County of Los Angeles  
700 W. Main Street  
Alhambra, CA 91801

The Contractor: Gordon Morrell, Chief Operating Officer  
Yardi Systems, Inc.  
430 S. Fairview Avenue  
Goleta, CA 93117

With copy to:  
Attn: Legal Department  
Yardi Systems, Inc.  
430 S. Fairview Avenue  
Goleta, CA 93117

Notices addressed as above provided shall be deemed delivered three (3) business days after mailed by U.S. Mail or when delivered in person with written acknowledgement of the receipt thereof. The Contractor and the Housing Authority may designate a different address or addresses for notices to be sent by giving written notice of such change of address to all other parties entitled to receive notice.

**50. NOTICE TO EMPLOYEES REGARDING THE SAFELY SURRENDERED BABY LAW**

The Contractor shall notify and provide to its employees, and shall require each subcontractor to notify and provide to its employees, a fact sheet regarding the Safely Surrendered Baby Law, its implementation in Los Angeles County, and where and how to safely surrender a baby. The fact sheet is set forth in *Attachment D – Required Contract Notices* of this Contract and is also available on the Internet at [www.babysafela.org](http://www.babysafela.org) for printing purposes.

**51. CONTRACTOR’S ACKNOWLEDGMENT OF HOUSING AUTHORITY’S COMMITMENT TO THE SAFELY SURRENDERED BABY LAW**

The Contractor acknowledges that the Housing Authority places a high priority on the implementation of the Safely Surrendered Baby Law. The Contractor understands that it is the Housing Authority’s policy to encourage all Housing Authority contractors to voluntarily post the Housing Authority’s “Safely Surrendered Baby Law” poster in a prominent position at the Contractor’s place of business. The Contractor will also encourage its Subcontractors, if any, to post this poster in a prominent position in the Subcontractor’s place of business. The Department of Children and Family Services of the County of Los Angeles will supply the Contractor with the poster to be used.

**52. CONTRACTOR’S CHARITABLE CONTRIBUTIONS COMPLIANCE**

The Supervision of Trustees and Fundraisers for Charitable Purposes Act regulates entities receiving or raising charitable contributions. The “Nonprofit Integrity Act of 2004” (SB 1262, Chapter 919) increased Charitable Purposes Act requirements. By requiring Contractors to complete the Charitable Contributions Certification as included in *Attachment C – Required Contract Forms*, the Housing Authority seeks to ensure that all Housing Authority contractors that receive or raise charitable contributions comply with California law in order to protect the Housing Authority and its taxpayers. A Contractor that receives or raises charitable contributions without complying with its obligations under California law commits a material breach subjecting it to either contract termination or debarment proceedings, or both.

**53. CONTRACTOR'S WARRANTY OF COMPLIANCE WITH COUNTY'S DEFAULTED PROPERTY TAX REDUCTION PROGRAM**

The Contractor acknowledges that the Housing Authority has established a goal of ensuring that all individuals and businesses that benefit financially from the Housing Authority through contract are current in paying their property tax obligations (secured and unsecured roll) in order to mitigate the economic burden otherwise imposed upon the County and its taxpayers. Unless the Contractor qualifies for an exemption or exclusion, the Contractor warrants and certifies that to the best of its knowledge it is now in compliance, and during the term of this Contract will maintain compliance, with the County's Defaulted Tax Program pursuant to Los Angeles County Code, Chapter 2.206.

**54. TERMINATION FOR BREACH OF WARRANTY TO MAINTAIN COMPLIANCE WITH COUNTY'S DEFAULTED PROPERTY TAX REDUCTION PROGRAM**

Failure of the Contractor to maintain compliance with the requirements set forth in Paragraph "CONTRACTOR'S WARRANTY OF COMPLIANCE WITH COUNTY'S DEFAULTED PROPERTY TAX REDUCTION PROGRAM" shall constitute default under this Contract. Without limiting the rights and remedies available to the Housing Authority under any other provision of this Contract, failure of the Contractor to cure such default within 10 days of notice shall be grounds upon which Housing Authority may terminate this contract and/or pursue debarment of the Contractor, pursuant to County's Defaulted Property Tax Reduction Program pursuant to Los Angeles County Code, Chapter 2.206.

**55. AUTHORIZATION WARRANTY**

Each party represents and warrants that the person executing this Agreement or any amendment thereto for that party is an authorized agent of such party who has actual authority to bind the party to each and every term, condition and obligation of this Agreement, and that all requirements of each party have been fulfilled to provide such actual authority.

**56. TIME OFF FOR VOTING**

If applicable, the Contractor shall notify its employees, and shall require each subcontractor to notify and provide to its employees, information regarding the time off for voting law (Elections Code Section 14000). Not less than ten (10) days before every statewide election, every Contractor and subcontractors shall keep posted conspicuously at the place of work, if practicable, or elsewhere where it can be seen as employees come or go to their place of work, a notice setting forth the provisions of Section 14000.

**57. ENTIRE CONTRACT; CONFLICTS INTERPRETATION; ORDER OF PRECEDENCE**

This Contract with Attachments A through F constitutes the entire understanding and Contract of the parties. The parties agree that any court or other body of competent jurisdiction interpreting this Contract shall, to the fullest extent possible, interpret the

terms of this Contract, including all attachments, as complementary rather than conflicting. In the event that, notwithstanding the interpretation provided in the preceding sentence, an unavoidable conflict arises, the conflict shall be resolved by the following order of precedence of the Contract Components:

- The body of this Contract;
- E. Yardi Software License and Service Agreement
- A. Statement of Work
- B. Fee Schedule
- C. Required Contract Forms
- D. Required Contract Notices
- F. Flexsafe Escrow Agreement

/  
/  
/  
/

**SIGNATURES**

IN WITNESS WHEREOF, the Housing Authority and the Contractor, through their duly authorized officers, have executed this Contract as of the date first above written.

APPROVED AS TO FORM:  
MARK J. SALADINO  
County Counsel

HOUSING AUTHORITY  
OF THE COUNTY OF LOS ANGELES

By \_\_\_\_\_  
Behnaz Tashakorian  
Deputy County Counsel

By \_\_\_\_\_  
Sean Rogan  
Executive Director

YARDI SYSTEMS, INC.

By \_\_\_\_\_  
Gordon Morrell  
Chief Operating Officer

APPROVED AS TO PROGRAM:  
ADMINISTRATIVE SERVICE DIVISION

By \_\_\_\_\_  
Matthew Fortini  
Director

# **ATTACHMENT A**

# **STATEMENT OF WORK**



# ATTACHMENT A

## STATEMENT OF WORK

### HOUSING MANAGEMENT AND SECTION 8 SYSTEM

#### 1.0 SCOPE OF WORK

##### 1.1 General Background

The Housing Authority of the County of Los Angeles (Housing Authority) is the County's affordable housing agency. The Housing Authority helps strengthen neighborhoods, empower families, support local economies, and promote individual achievement. The Housing Authority maintains many administrative buildings and 70 housing developments that include over 3,000 residential units within the County of Los Angeles.

The Housing Authority is divided into two separate divisions: Housing Management - management of Public Housing and other affordable site based developments, and Assisted Housing - administration of the Section 8 Program. The programs are broken down as follows:

##### Housing Management Division Programs

- Currently using Yardi's Voyager® system, version 6.08.22, SP19, PHA Plug-in 13
- 3,255 Rental Units distributed among 50 scattered sites, throughout Los Angeles County

##### Assisted Housing Division (Section 8)

- Currently using Yardi's Voyager® system, version 6.08.22, SP19, PHA Plug-in 13
- One main office, one satellite office and three service centers
- 23,185 LA County Housing Authority Vouchers

The Housing Authority is seeking a software maintenance contractor to provide Yardi Voyager® Software License Support and Update services.

#### 2.0 GENERAL REQUIREMENTS

- 2.1 The Contractor must provide qualified and experienced personnel to the Voyager® Software maintenance.
- 2.2 The Contractor shall provide qualified personnel to perform all work in accordance with this Statement of Work.
- 2.3 The Contractor shall provide lead personnel that can communicate in English.



### **3.0 SPECIFIC REQUIREMENTS**

- 3.1. The Contractor shall provide technical support from 7 a.m. – 5 p.m. Pacific Standard Time with off hours support available as necessary with the ability to provide remote support via VPN, Terminal Services, Citrix or equivalent to support application as needed.
- 3.2. The Contractor shall provide supported software user groups comprised of end users and having representation from the software manufacturer involved and supporting the group.
- 3.3. The Contractor shall provide timely and clean (bug free) updates to software.
- 3.4. The Contractor shall have the ability to perform software customizations with a predefined labor rate.
- 3.5. The Contractor shall provide Internet website support for configuration documentation, data dictionary, FAQ's and knowledge base and system updates.
- 3.6. License, Support, Update Fees; Taxes
  - 3.6.1 As compensation for the License, Support, Updates and other Services, Housing Authority shall pay the fees stated in Attachment B (Fee Schedule) to the Contract. The Fees are payable as specified in Attachment B (Fee Schedule) to the Contract and failure of Housing Authority to timely pay Fees shall be deemed a default by Housing Authority under the terms of the Contract. Failure of Housing Authority to pay any fees due pursuant to the Contract shall relieve Licensor of any and all further obligations to Housing Authority.
  - 3.6.2 The fees specified in Attachment B (Fee Schedule) to the Contract are exclusive of any tariff, duty, or tax, however designated, levied or based including, without limitation, any sales or use taxes in any state and local privilege or excise taxes based on gross revenue, on (i) this Agreement or the Contract, (ii) the Licensed Programs, (iii) Housing Authority's Use of the Licensed Programs per this Agreement and/or the Contract, or (iv) any materials or supplies furnished by Licensor under this Agreement and/or the Contract. Housing Authority agrees to pay and be responsible for any and all of such tariffs, duties, and taxes (exclusive, however, of taxes based on the Licensor's net income) unless Housing Authority provides documentation to Licensor establishing that Housing Authority is exempt from such taxation.

#### **4.0 HOURS / DAYS OF WORK**

The Housing Authority office hours are from 8:00 a.m. to 5:00 p.m. The Housing Authority offices are closed on the following Holidays:

- New Year's Day
- Martin Luther King, Jr. Day
- President's Day
- Memorial Day
- Independence Day
- Labor Day
- Columbus Day
- Veterans Day
- Thanksgiving Day
- Day after Thanksgiving Day
- Christmas Day

# **ATTACHMENT B**

# **FEE SCHEDULE**

**ATTACHMENT B  
FEE SCHEDULE**

**SECTION I**

In Section I, the Contractor shall provide costs for Public Housing and Section 8 Systems Software License Support and Update services as described in Attachment A, Statement of Work. The Contractor shall provide costs for extended one-year increments as noted in Section II. The costs noted below include all hardware, accessories and services, and any other associated fees whether implied or not, unless otherwise noted in the Attachment A, Statement of Work.

<b>Section I</b>					
<b>Item</b>	<b>Description</b>	<b>Quantity</b>	<b>Unit Cost</b>	<b>CPI<sup>1</sup></b>	<b>Extended Cost</b>
1	Yardi Software License and Service Agreement - Annual Support and Update Services	Year 1	\$138,726	\$2,774.52	\$141,500.52

**SECTION II**

In Section II, if the contract is extended in one-year increments, for a total of two (2) additional years at the sole discretion of the Commission, the following is the Contractor's provided yearly support and maintenance cost. The yearly contract extension amount reflects the costs for all items in Section I.

<b>Section II</b>				
<b>Year</b>	<b>Maintenance Period</b>	<b>Unit Cost</b>	<b>CPI<sup>1</sup></b>	<b>Extended Cost</b>
2	08/01/2016-07/31/2017	\$141,500.52	\$2,830.01	\$144,330.53
3	08/01/2017-07/31/2018	\$144,330.53	\$2,886.61	\$147,217.14

**Years: 2-3<sup>1</sup>**

**Previous Year's  
Cost Plus Cap\***

<sup>1</sup> Annual fees for subsequent years are based on total of 335 users and the product mix referenced above. Each subsequent years' annual fee is subject to change upon anniversary date of the Contract, to include an escalation percentage cap equal to the allowable Consumer Price Index (CPI) increase, calculated as defined in the Definition Section of the Agreement. ("CPI").

The Housing Authority shall process all invoices for the Implementation of Yardi Software within 30 days of receipt of invoice, completion and acceptance. Invoices for the Annual License and Maintenance Service shall be processed and paid by Housing Authority prior to the arrival of each anniversary date, contingent on the prior receipt from Yardi of a valid invoice at least 30 days prior to the anniversary date.

# ATTACHMENT C

## REQUIRED CONTRACT FORMS

- Insurance certificates and endorsements
- W-9 form/ Payee Registration Form/ Organization Information Form
- Equal Employment Opportunities (EEO) Certification form
- Charitable Contributions Certification form
- Jury Service Exemption/Certification form
- Defaulted Property Tax Reduction Program form
- Federal Lobbyist Requirements Certification form

***(Insert the following aforementioned forms and any other applicable required forms)***

**ATTACHMENT D**

**REQUIRED CONTRACT  
NOTICES**

## **BACKGROUND AND RESOURCES: CALIFORNIA CHARITIES REGULATION**

There is a keen public interest in preventing misuse of charitable contributions. California's "Supervision of Trustees and Fundraisers for Charitable Purposes Act" regulates those raising and receiving charitable contributions. The "Nonprofit Integrity Act of 2004" (SB 1262, Chapter 919) tightened Charitable Purposes Act requirements for charitable organization administration and fundraising.

The Charitable Purposes Act rules cover California public benefit corporations, unincorporated associations, and trustee entities. They may include similar foreign corporations doing business or holding property in California. Generally, an organization is subject to the registration and reporting requirements of the Charitable Purposes Act if it is a California nonprofit public benefit corporation or is tax exempt under Internal Revenue Code § 501(c)(3), and not exempt from reporting under Government Code § 12583. Most educational institutions, hospitals, cemeteries, and religious organizations are exempt from Supervision of Trustees Act requirements.

Key new Charitable Purposes Act requirements affect executive compensation, fundraising practices and documentation. Charities with over \$2 million of revenues (excluding grants and service-contract funds a governmental entity requires to be accounted for) have new audit requirements. Charities required to have audits must also establish an audit committee whose members have no material financial interest in any entity doing business with the charity.

Organizations or persons that receive or raise charitable contributions are likely to be subject to the Charitable Purposes Act. A bidder/proposer on Housing Authority and/or Housing Authority contracts must determine if it is subject to the Charitable Purposes Act and certify either that:

- It is not presently subject to the Act, but will comply if later activities make it subject, or,
- If subject, it is currently in compliance.

### **RESOURCES**

The following resource references are offered to assist bidders/proposers who engage in charitable contributions activities, however, each bidder/proposer is responsible to research and determine its own legal obligations and properly complete the Charitable Contributions Certification form.

In California, supervision of charities is the responsibility of the Attorney General, whose website, <http://caag.state.ca.us/>, contains much information helpful to regulated charitable organizations.

#### **1. LAWS AFFECTING NONPROFITS**

The "Supervision of Trustees and Fundraisers for Charitable Purposes Act" is found at California Government Code §§ 12580 through 12599.7. Implementing regulations are found at Title 11, California Code of Regulations, §§ 300 through 312. In California, charitable solicitations ("advertising") are governed by Business & Professions Code §§ 17510 through 17510.95. Regulation of nonprofit corporations is found at Title 11, California Code of Regulations, §§ 999.1 through 999.5. (Amended regulations are pending.) Links to all of these rules are at: <http://caag.state.ca.us/charities/statutes.htm>.

#### **2. SUPPORT FOR NONPROFIT ORGANIZATIONS**

Several organizations offer both complimentary and fee-based assistance to nonprofits, including in Los Angeles, the *Center for Nonprofit Management*, 606 S. Olive St #2450, Los Angeles, CA 90014 (213) 623-7080 <http://www.cnmsocal.org/>, and statewide, the *California Association of Nonprofits*, <http://www.canonprofits.org/>. Both organizations' websites offer information about how to establish and manage a charitable organization.

**The above information, including the organizations listed, is for informational purposes only. Nothing contained in this sub-section shall be construed as an endorsement by the Housing Authority of such organizations.**



**COUNTY OF LOS ANGELES**  
**DEFAULTED PROPERTY TAX REDUCTION PROGRAM**  
**(Los Angeles County Code 2.206)**

- 2.206.010 Findings and declarations.
- 2.206.020 Definitions.
- 2.206.030 Applicability.
- 2.206.040 Required solicitation and contract language.
- 2.206.050 Administration and compliance certification.
- 2.206.060 Exclusions/Exemptions.
- 2.206.070 Enforcement and remedies.
- 2.206.080 Severability.

**2.206.010 Findings and declarations.**

The Board of Supervisors finds that significant revenues are lost each year as a result of taxpayers who fail to pay their tax obligations on time. The delinquencies impose an economic burden upon the County and its taxpayers. Therefore, the Board of Supervisors establishes the goal of ensuring that individuals and businesses that benefit financially from contracts with the County fulfill their property tax obligation. (Ord. No. 2009-0026 § 1 (part), 2009.)

**2.206.020 Definitions.**

The following definitions shall be applicable to this chapter:

- A. "Contractor" shall mean any person, firm, corporation, partnership, or combination thereof, which submits a bid or proposal or enters into a contract or agreement with the County.
- B. "County" shall mean the county of Los Angeles or any public entities for which the Board of Supervisors is the governing body.
- C. "County Property Taxes" shall mean any property tax obligation on the County's secured or unsecured roll; except for tax obligations on the secured roll with respect to property held by a Contractor in a trust or fiduciary capacity or otherwise not beneficially owned by the Contractor.
- D. "Department" shall mean the County department, entity, or organization responsible for the solicitation and/or administration of the contract.
- E. "Default" shall mean any property tax obligation on the secured roll that has been deemed defaulted by operation of law pursuant to California Revenue and Taxation Code section 3436; or any property tax obligation on the unsecured roll that remains unpaid on the applicable delinquency date pursuant to California Revenue and Taxation Code section 2922; except for any property tax obligation dispute pending before the Assessment Appeals Board.
- F. "Solicitation" shall mean the County's process to obtain bids or proposals for goods and services.
- G. "Treasurer-Tax Collector" shall mean the Treasurer and Tax Collector of the County of Los Angeles. (Ord. No. 2009-0026 § 1 (part), 2009.)

**2.206.030 Applicability.**

This chapter shall apply to all solicitations issued 60 days after the effective date of the ordinance codified in this chapter. This chapter shall also apply to all new, renewed,

extended, and/or amended contracts entered into 60 days after the effective date of the ordinance codified in this chapter. (Ord. No. 2009-0026 § 1 (part), 2009.)

#### **2.206.040 Required solicitation and contract language.**

All solicitations and all new, renewed, extended, and/or amended contracts shall contain language which:

- A. Requires any Contractor to keep County Property Taxes out of Default status at all times during the term of an awarded contract;
- B. Provides that the failure of the Contractor to comply with the provisions in this chapter may prevent the Contractor from being awarded a new contract; and
- C. Provides that the failure of the Contractor to comply with the provisions in this chapter may constitute a material breach of an existing contract, and failure to cure the breach within 10 days of notice by the County by paying the outstanding County Property Tax or making payments in a manner agreed to and approved by the Treasurer-Tax Collector, may subject the contract to suspension and/or termination. (Ord. No. 2009-0026 § 1 (part), 2009.)

#### **2.206.050 Administration and compliance certification.**

- A. The Treasurer-Tax Collector shall be responsible for the administration of this chapter. The Treasurer-Tax Collector shall, with the assistance of the Chief Executive Officer, Director of Internal Services, and County Counsel, issue written instructions on the implementation and ongoing administration of this chapter. Such instructions may provide for the delegation of functions to other departments.
- B. Contractor shall be required to certify, at the time of submitting any bid or proposal to the County, or entering into any new contract, or renewal, extension or amendment of an existing contract with the County, that it is in compliance with this chapter is not in Default on any County Property Taxes or is current in payments due under any approved payment arrangement. (Ord. No. 2009-0026 § 1 (part), 2009.)

#### **2.206.060 Exclusions/Exemptions.**

- A. This chapter shall not apply to the following contracts:
  - 1. Chief Executive Office delegated authority agreements under \$50,000;
  - 2. A contract where federal or state law or a condition of a federal or state program mandates the use of a particular contractor;
  - 3. A purchase made through a state or federal contract;
  - 4. A contract where state or federal monies are used to fund service related programs, including but not limited to voucher programs, foster care, or other social programs that provide immediate direct assistance;
  - 5. Purchase orders under a master agreement, where the Contractor was certified at the time the master agreement was entered into and at any subsequent renewal, extension and/or amendment to the master agreement.
  - 6. Purchase orders issued by Internal Services Department under \$100,000 that is not the result of a competitive bidding process.
  - 7. Program agreements that utilize Board of Supervisors' discretionary funds;
  - 8. National contracts established for the purchase of equipment and supplies for and by the National Association of Counties, U.S. Communities Government Purchasing Alliance, or any similar related group purchasing organization;
  - 9. A monopoly purchase that is exclusive and proprietary to a specific manufacturer, distributor, reseller, and must match and inter-member with

existing supplies, equipment or systems maintained by the county pursuant to the Los Angeles Purchasing Policy and Procedures Manual, section P-3700 or a successor provision;

10. A revolving fund (petty cash) purchase pursuant to the Los Angeles County Fiscal Manual, section 4.6.0 or a successor provision;
  11. A purchase card purchase pursuant to the Los Angeles County Purchasing Policy and Procedures Manual, section P-2810 or a successor provision;
  12. A non-agreement purchase worth a value of less than \$5,000 pursuant to the Los Angeles County Purchasing Policy and Procedures Manual, section A-0300 or a successor provision; or
  13. A bona fide emergency purchase pursuant to the Los Angeles County Purchasing Policy and Procedures Manual section P-0900 or a successor provision;
  14. Other contracts for mission critical goods and/or services where the Board of Supervisors determines that an exemption is justified.
- B. Other laws. This chapter shall not be interpreted or applied to any Contractor in a manner inconsistent with the laws of the United States or California. (Ord. No. 2009-0026 § 1 (part), 2009.)

#### **2.206.070 Enforcement and remedies.**

- A. The information furnished by each Contractor certifying that it is in compliance with this chapter shall be under penalty of perjury.
- B. No Contractor shall willfully and knowingly make a false statement certifying compliance with this chapter for the purpose of obtaining or retaining a County contract.
- C. For Contractor's violation of any provision of this chapter, the County department head responsible for administering the contract may do one or more of the following:
  1. Recommend to the Board of Supervisors the termination of the contract; and/or,
  2. Pursuant to chapter 2.202, seek the debarment of the contractor; and/or,
  3. Recommend to the Board of Supervisors that an exemption is justified pursuant to Section 2.206.060.A.14 of this chapter or payment deferral as provided pursuant to the California Revenue and Taxation Code. (Ord. No. 2009-0026 § 1 (part), 2009.)

#### **2.206.080 Severability.**

If any provision of this chapter is found invalid by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect. (Ord. No. 2009-0026 § 1 (part), 2009.)



Department of the Treasury  
Internal Revenue Service

## Notice 1015

(Rev. December 2014)

### Have You Told Your Employees About the Earned Income Credit (EIC)?

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#### What is the EIC?

The EIC is a refundable tax credit for certain workers.

#### Which Employees Must I Notify About the EIC?

You must notify each employee who worked for you at any time during the year and from whom you did not withhold income tax. However, you do not have to notify any employee who claimed exemption from withholding on Form W-4, Employee's Withholding Allowance Certificate.

**Note.** You are encouraged to notify each employee whose wages for 2014 are less than \$52,427 that he or she may be eligible for the EIC.

#### How and When Must I Notify My Employees?

You must give the employee one of the following:

- The IRS Form W-2, Wage and Tax Statement, which has the required information about the EIC on the back of Copy B.
- A substitute Form W-2 with the same EIC information on the back of the employee's copy that is on Copy B of the IRS Form W-2.
- Notice 797, Possible Federal Tax Refund Due to the Earned Income Credit (EIC).
- Your written statement with the same wording as Notice 797.

If you are required to give Form W-2 and do so on time, no further notice is necessary if the Form W-2 has the required information about the EIC on the back of the employee's copy. If a substitute Form W-2 is given on time but does not have the required information, you must

notify the employee within 1 week of the date the substitute Form W-2 is given. If Form W-2 is required but is not given on time, you must give the employee Notice 797 or your written statement by the date Form W-2 is required to be given. If Form W-2 is not required, you must notify the employee by February 9, 2015.

You must hand the notice directly to the employee or send it by first-class mail to the employee's last known address. You will not meet the notification requirements by posting Notice 797 on an employee bulletin board or sending it through office mail. However, you may want to post the notice to help inform all employees of the EIC. You can get copies of the notice from [IRS.gov](http://IRS.gov) or by calling 1-800-829-3676.

#### How Will My Employees Know If They Can Claim the EIC?

The basic requirements are covered in Notice 797. For more detailed information, the employee needs to see Pub. 596, Earned Income Credit (EIC), or the instructions for Form 1040, 1040A, or 1040EZ.

#### How Do My Employees Claim the EIC?

Eligible employees claim the EIC on their 2014 tax return. Even employees who have no tax withheld from their pay or owe no tax can claim the EIC and get a refund, but they must file a tax return to do so. For example, if an employee has no tax withheld in 2014 and owes no tax but is eligible for a credit of \$800, he or she must file a 2014 tax return to get the \$800 refund.

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Notice 1015 (Rev. 12-2014)  
Cat. No. 205001

# *Safely* Surrendered



No shame. No blame. No names.

In Los Angeles County: 1-877-BABY SAFE • 1-877-222-9723

[www.babysafe.org](http://www.babysafe.org)



# Safely Surrendered Baby Law

## What is the Safely Surrendered Baby Law?

California's Safely Surrendered Baby Law allows parents or other persons, with lawful custody, which means anyone to whom the parent has given permission to confidentially surrender a baby. As long as the baby is three days (72 hours) of age or younger and has not been abused or neglected, the baby may be surrendered without fear of arrest or prosecution.

### How does it work?

A distressed parent who is unable or unwilling to care for a baby can legally, confidentially, and safely surrender a baby within three days (72 hours) of birth. The baby must be handed to an employee at a hospital or fire station in Los Angeles County. As long as the baby shows no sign of abuse or neglect, no name or other information is required. In case the parent changes his or her mind at a later date and wants the baby back, staff will use bracelets to help connect them to each other. One bracelet will be placed on the baby, and a matching bracelet will be given to the parent or other surrendering adult.

### What if a parent wants the baby back?

Parents who change their minds can begin the process of reclaiming their baby within 14 days. These parents should call the Los Angeles County Department of Children and Family Services at 1-800-540-4000.

### Can only a parent bring in the baby?

No. While in most cases a parent will bring in the baby, the Law allows other people to bring in the baby if they have lawful custody.

### Does the parent or surrendering adult have to call before bringing in the baby?

No. A parent or surrendering adult can bring in a baby anytime, 24 hours a day, 7 days a week, as long as the parent or surrendering adult surrenders the baby to someone who works at the hospital or fire station.

### Does the parent or surrendering adult have to tell anything to the people taking the baby?

No. However, hospital or fire station personnel will ask the surrendering party to fill out a questionnaire designed to gather important medical history information, which is very useful in caring for the baby. The questionnaire includes a stamped return envelope and can be sent in at a later time.

### What happens to the baby?

The baby will be examined and given medical treatment. Upon release from the hospital, social workers immediately place the baby in a safe and loving home and begin the adoption process.

### What happens to the parent or surrendering adult?

Once the parent or surrendering adult surrenders the baby to hospital or fire station personnel, they may leave at any time.

### Why is California doing this?

The purpose of the Safely Surrendered Baby Law is to protect babies from being abandoned, hurt or killed by their parents. You may have heard tragic stories of babies left in dumpsters or public bathrooms. Their parents may have been under severe emotional distress. The mothers may have hidden their pregnancies, fearful of what would happen if their families found out. Because they were afraid and had no one or nowhere to turn for help, they abandoned their babies. Abandoning a baby is illegal and places the baby in extreme danger. Too often, it results in the baby's death. The Safely Surrendered Baby Law prevents this tragedy from ever happening again in California.

## A baby's story

Early in the morning on April 9, 2005, a healthy baby boy was safely surrendered to nurses at Harbor-UCLA Medical Center. The woman who brought the baby to the hospital identified herself as the baby's aunt and stated the baby's mother had asked her to bring the baby to the hospital on her behalf. The aunt was given a bracelet with a number matching the anklet placed on the baby; this would provide some identification in the event the mother changed her mind about surrendering the baby and wished to reclaim the baby in the 14-day period allowed by the Law. The aunt was also provided with a medical questionnaire and said she would have the mother complete and mail back in the stamped return envelope provided. The baby was examined by medical staff and pronounced healthy and full-term. He was placed with a loving family that had been approved to adopt him by the Department of Children and Family Services.



# *Ley de* Entrega de Bebés *Sin Peligro*



*Los recién nacidos pueden ser entregados en forma segura al personal de cualquier hospital o cuartel de bomberos del Condado de Los Ángeles*

Sin pena. Sin culpa. Sin nombres.

En el Condado de Los Ángeles: 1-877-BABY SAFE • 1-877-222-9723

[www.babysafela.org](http://www.babysafela.org)



# Ley de Entrega de Bebés Sin Peligro

## ¿Qué es la Ley de Entrega de Bebés sin Peligro?

La Ley de Entrega de Bebés sin Peligro de California permite la entrega confidencial de un recién nacido por parte de sus padres u otras personas con custodia legal, es decir cualquier persona a quien los padres le hayan dado permiso. Siempre que el bebé tenga tres días (72 horas) de vida o menos, y no haya sufrido abuso ni negligencia, pueden entregar al recién nacido sin temor de ser arrestados o procesados.

*Cada recién nacido se merece la oportunidad de tener una vida saludable. Si alguien que usted conoce está pensando en abandonar a un recién nacido, infórmele que tiene otras opciones. Hasta tres días (72 horas) después del nacimiento, se puede entregar un recién nacido al personal de cualquier hospital o cuartel de bomberos del condado de Los Angeles.*

## ¿Cómo funciona?

El padre/madre con dificultades que no pueda o no quiera cuidar de su recién nacido puede entregarlo en forma legal, confidencial y segura dentro de los tres días (72 horas) del nacimiento. El bebé debe ser entregado a un empleado de cualquier hospital o cuartel de bomberos del Condado de Los Ángeles. Siempre que el bebé no presente signos de abuso o negligencia, no será necesario suministrar nombres ni información alguna. Si el padre/madre cambia de opinión posteriormente y desea recuperar a su bebé, los trabajadores utilizarán brazaletes para poder vincularlos. El bebé llevará un brazaletes y el padre/madre o el adulto que lo entregue recibirá un brazaletes igual.

## ¿Qué pasa si el padre/madre desea recuperar a su bebé?

Los padres que cambien de opinión pueden comenzar el proceso de reclamar a su recién nacido dentro de los 14 días. Estos padres deberán llamar al Departamento de Servicios para Niños y Familias (Department of Children and Family Services) del Condado de Los Ángeles al 1-800-540-4000.

## ¿Sólo los padres podrán llevar al recién nacido?

No. Si bien en la mayoría de los casos son los padres los que llevan al bebé, la ley permite que otras personas lo hagan si tienen custodia legal.

## ¿Los padres o el adulto que entrega al bebé deben llamar antes de llevar al bebé?

No. El padre/madre o adulto puede llevar al bebé en cualquier momento, las 24 horas del día, los 7 días de la semana, siempre y cuando entreguen a su bebé a un empleado del hospital o cuartel de bomberos.

## ¿Es necesario que el padre/madre o adulto diga algo a las personas que reciben al bebé?

No. Sin embargo, el personal del hospital o cuartel de bomberos le pedirá a la persona que entregue al bebé que llene un cuestionario con la finalidad de recabar antecedentes médicos importantes, que resultan de gran utilidad para cuidar bien del bebé. El cuestionario incluye un sobre con el sello postal pagado para enviarlo en otro momento.

## ¿Qué pasará con el bebé?

El bebé será examinado y le brindarán atención médica. Cuando le den el alta del hospital, los trabajadores sociales inmediatamente ubicarán al bebé en un hogar seguro donde estará bien atendido, y se comenzará el proceso de adopción.

## ¿Qué pasará con el padre/madre o adulto que entregue al bebé?

Una vez que los padres o adulto hayan entregado al bebé al personal del hospital o cuartel de bomberos, pueden irse en cualquier momento.

## ¿Por qué se está haciendo esto en California? ?

La finalidad de la Ley de Entrega de Bebés sin Peligro es proteger a los bebés para que no sean abandonados, lastimados o muertos por sus padres. Usted probablemente haya escuchado historias trágicas sobre bebés abandonados en basureros o en baños públicos. Los padres de esos bebés probablemente hayan estado pasando por dificultades emocionales graves. Las madres pueden haber ocultado su embarazo, por temor a lo que pasaría si sus familias se enteraran. Abandonaron a sus bebés porque tenían miedo y no tenían nadie a quien pedir ayuda. El abandono de un recién nacido es ilegal y pone al bebé en una situación de peligro extremo. Muy a menudo el abandono provoca la muerte del bebé. La Ley de Entrega de Bebés sin Peligro impide que vuelva a suceder esta tragedia en California.

## Historia de un bebé

A la mañana temprano del día 9 de abril de 2005, se entregó un recién nacido saludable a las enfermeras del Harbor-UCLA Medical Center. La mujer que llevó el recién nacido al hospital se dio a conocer como la tía del bebé, y dijo que la madre le había pedido que llevara al bebé al hospital en su nombre. Le entregaron a la tía un brazaletes con un número que coincidía con la pulsera del bebé; esto serviría como identificación en caso de que la madre cambiara de opinión con respecto a la entrega del bebé y decidiera recuperarlo dentro del periodo de 14 días que permite esta ley. También le dieron a la tía un cuestionario médico, y ella dijo que la madre lo llenaría y lo enviaría de vuelta dentro del sobre con franqueo pagado que le habían dado. El personal médico examinó al bebé y se determinó que estaba saludable y a término. El bebé fue ubicado con una buena familia que ya había sido aprobada para adoptarlo por el Departamento de Servicios para Niños y Familias.





# **ATTACHMENT E**

# **YARDI'S SOFTWARE LICENSE AND SERVICE AGREEMENT**

## YARDI SOFTWARE LICENSE AND SERVICE AGREEMENT

### SPECIFIC TERMS

- 1. *Grant of License.*** Yardi Systems, Inc., 430 South Fairview Ave., Goleta, California, 93117 ("Contractor" or "Licensor") hereby grants to Housing Authority and Housing Authority accepts from and Licensor, pursuant to the terms and conditions of the Contract and this Software License and Service Agreement ("Agreement"), a non-exclusive, perpetual license ("License") to Use each Licensed Program (as such terms are defined, below) as set forth in the Contract (including any schedules, exhibits or appendixes thereto) to which this Agreement is attached as Attachment E (Yardi Software License and Service Agreement). Notwithstanding any other provision of this Agreement, the License granted under this Agreement shall include the right to permit access to the Licensed Program on Housing Authority's servers to any user affiliated with Housing Authority who has access to the central server, provided that such access to the Licensed Program shall be subject to the terms and restrictions applicable to Housing Authority's Use of the Licensed Program including, without limitation, and restriction on the number of Designated Users (defined below). To the extent that any of the terms or conditions contained in this Agreement are in conflict with the terms or conditions contained in the Contract, the terms and conditions of the Contract shall prevail, and the conflicting provisions in this Agreement shall be null and void. The parties agree that, to the fullest extent possible, terms should be interpreted as complementary rather than conflicting.
- 2. *Standard Terms and Conditions.*** The standard terms and conditions for this Agreement are set forth below and made a part of this Agreement and the Contract.
- 3. *Fees.*** On the terms and subject to the limitations set forth in this Agreement and the Contract, Housing Authority shall pay Licensor the fees specified in Attachment B (Fee Schedule) to the Contract. Fees shall be payable as set forth in Attachment B-2 (Payment Schedule) to the Contract.
- 4. *Software Implementation and Training.*** On the terms and subject to the limitations set forth in this Agreement, and the Contract, Licensor shall implement and provide appropriate training for the Licensed Programs as specified in Attachment E (Implementation Services Days) and Attachment F (Training Days and Curriculum) to the Contract.
- 5. *Support and Updates.*** On the terms and subject to the limitations set forth in this Agreement and the Contract, and subject to annual renewal, Licensor shall provide telephone support and program Updates to Housing Authority as specified below.
- 6. *Product Development.*** On the terms and subject to the limitations set forth in this Agreement and the Contract, Licensor shall provide custom

programming to Housing Authority as specified below. Included are all Upgrades to the Licensed Programs.

#### *SUPPORT AND UPDATES*

1. **Housing Authority Service.** It is the goal of Licensor to provide effective and timely product support for its Licensed Programs subject to the terms and conditions of this Agreement and the Contract.
2. **Housing Authority Contacts.** In order to facilitate achievement of Licensor's service goals, Housing Authority agrees to appoint a single point of contact ("SPOC") for software installation, support and maintenance. Housing Authority may change the identity of the SPOC upon advance written notice to Licensor.
3. **Licensor's Contacts.** Licensor shall appoint an account manager to Housing Authority's account. Licensor may change the identity of the account managers from time to time and Housing Authority's file shall be available to Licensor's entire technical support team to provide coverage and back-up for the account manager.
4. **Product Support Services.** Licensor shall provide technical support and maintenance for the Licensed Programs through its account managers and technical staff to Housing Authority's SPOC for day to day operational inquiries by Housing Authority through telephone, fax, or e-mail contacts. Product support does not include onsite installation, implementation, training, or testing of the Licensed Programs, nor does it include any data conversion. These services, if ordered, are specified on Attachment B (Fee Schedule) to the Contract. Support service will use professional, reasonable efforts to address and solve Housing Authority's issues.
5. **Total Hours Included.** The total amount of support time included with Housing Authority's annual fee is specified in Attachment B (Fee Schedule). The annual periods covered by this Agreement and the Contract shall begin on the Effective Date and shall not include unused support time from prior years. If additional hours of technical support are needed by Housing Authority during an annual period, Housing Authority may purchase additional hours at the Licensor's then-current prevailing rate for technical support at the time the hours are needed. Licensor's current rate for technical support is \$120.00/hour.
6. **Support hours.** Licensor's hours for support service are between 6:00 A.M. and 4:00 P.M. (Pacific Time) Monday through Friday (excluding holidays).
7. **Priority.** Licensor shall have the right to prioritize Housing Authority's support requests according to the severity of the impact of the software problem on the Housing Authority. Generally, Licensor will prioritize support requests in the following order:

Priority: Housing Authority Impact: Service Priority Goals

Priority 1: Business halted – response within 2 business hours.

Priority 2: Business impacted - response within 4 business hours.

Priority 3: Non-critical service requests - response within 1 business day.

8. **Software updates.** Licensor shall provide to Housing Authority, and Housing Authority shall install, current versions of the Licensed Programs, which may include corrections, enhancement, and improvements. Licensor shall not be required to provide support services for old versions of the Licensed Programs.
9. **Standard term.** Support provided under the Contract shall be subject to all of the Standard Terms of this Agreement, the terms of the Contract, and the timely payment of all fees required by Housing Authority to Licensor under the Contract. Support services may be suspended if any payments due by Housing Authority to Licensor are in arrears for more than thirty (30) days.
10. **Obsolescence.** Licensor reserves the right to cease providing support services for Licensed Program (a) three (3) years from the last date Licensor ceases to license the Licensed Program, or (b) five (5) years from the Effective Date, whichever is later. Licensor agrees to notify Housing Authority when Licensor ceases such service.

## **IMPLEMENTATION/TRAINING**

1. **Delivery.** Licensor shall ship via common carrier one copy of the Licensed Programs to the Housing Authority's location designated in the Specific Terms within ten (10) days of the Effective Date.
2. **Installation.** Housing Authority shall provide, at the location designated in the Contract, the computer equipment on which the Licensed Programs are to be installed. Housing Authority agrees that such computer equipment shall be installed and fully operational before beginning installation of the Licensed Programs and that this functionality is the responsibility of Housing Authority. The Licensed Programs shall be installed only at the location specified in the Contract. Housing Authority shall grant Licensor access to the site and the computer equipment as determined by Licensor and for the period of time required for implementation and/or training and shall give Licensor priority use of such computer equipment during those periods. Database and network administration will be the responsibility of the Housing Authority.
3. **Data Conversion.** Electronic data conversion is available on a pre-scheduled basis. Housing Authority will be billed for electronic conversion services, if ordered, at the rate stated on Attachment B-1 (Fee Schedule) in the Contract. Data Preparation and post conversion 'clean-up' is inherent in any data

conversion. Unless otherwise agreed, Housing Authority shall be solely responsible for data conversion, data entry and verification of data.

4. **Acceptance.** Acceptance shall occur upon the earlier of: (i) Housing Authority's delivery of notice to Licensor that the Licensed Programs substantially comply with the Specifications, or (ii) 30 days after Live Processing..
5. **Location.** Implementation and training may take place at Housing Authority's location or via telephone. Housing Authority may request on-site implementation or training and Licensor shall make commercially reasonable to accommodate Housing Authority's requests. Housing Authority will be billed at the rate stated in Attachment B (Fee Schedule) to the Contract.

## PRODUCT DEVELOPMENT

1. Licensor provides Custom Programming Services (as defined in Paragraph 2 of the Product Development section of the Agreement) for its clients. The fees for such Custom Programming Services, if initially ordered, are set forth in Attachment B (Fee Schedule) to the Contract. Custom Programming Services are otherwise subject to the parties' mutual agreement.
2. Custom Programming Services include, but are not limited to, development of custom computer programs and installation, training, and maintenance with respect to such custom computer programs. Housing Authority assumes responsibility for the creation of financial reports and the creation of custom reports and data elements.
3. Housing Authority shall be responsible for initiating any requests for Custom Programming Services by providing written notice to Licensor of the desired services. Licensor will advise Housing Authority of Licensor's availability, schedule, and fee for performing the Custom Programming Services. All Custom Programming Services will be subject to Housing Authority's written acceptance of (i) Licensor's schedule for meeting Housing Authority's request for Custom Programming Services and (ii) Licensor's fees for such services.

## STANDARD TERMS

1. **Definitions.** The following terms are defined for the purposes of this Agreement, and the Contract, as follows:
  - a. "License Fee" means those fees, as specified in the Specific Terms section of this Agreement and the Schedules and Attachments to the Contract, paid for the Use of the Licensed Program.
  - b. "Licensed Program" means each computer software program enumerated in Attachment B (Fee Schedule).

c. "Use" means (i) copying any portion of any Licensed Program only into Housing Authority's computer system for processing, (ii) consulting any Licensed Program in printed form in support of this processing, and (iii) copying for archival or emergency restart purposes. "Use" shall not include service, maintenance or modifications by anyone other than Licensor.

d. "Designated User" means any Housing Authority user logging onto the Licensor system at any time. Each Designated User should have a unique name and password.

## 2. Survival.

Housing Authority's obligations under the provisions of sections 3, 4, 5, 6, and 10 shall survive any termination of this Agreement and/or the Contract.

## 3. Licenses; Restrictions.

a. **Nonexclusive License.** Subject to all the terms and conditions of this Agreement, and the Contract, Licensor hereby grants to Housing Authority a nonexclusive license to Use the Licensed Program at the location specified in the Specific Terms during the term of the Contract. The Agreement and the Contract, do not give Housing Authority a license or right to distribute or sell the Licensed Programs or any modification of them, to make modifications of the Licensed Programs except as authorized by Licensor, or to Use the Licensed Programs or any portion of them for assistance in the preparation for sale or distribution of any computer program. This Agreement does not grant a license or right to Use the Licensed Program on any computer or computer system other than those owned by Housing Authority or in Housing Authority's possession and control, or authorized by Housing Authority to serve as an application host. Housing Authority further agrees to establish data for Use with the Licensed Programs in not more than one central (home office) location.

b. **Restrictions.** Housing Authority may not rent, lease, sell, sublicense, transfer, time share, modify, reproduce, distribute, publish or publicly display the Licensed Programs. Housing Authority may not Use the Licensed Programs for any purpose other than those purposed expressly stated in the Contract. Housing Authority may not reverse engineer, decompile or otherwise attempt to discover the source code for the Licensed Programs unless permitted by applicable law. Housing Authority may not permit any person or entity to breach the restrictions included in this section.

## 4. Confidentiality.

a. **Definition of Confidential Information.** "Confidential Information" as used in this Agreement, and the Contract, shall mean any and all technical and non-technical information including: the Housing Authority Data,

patent, copyright, trade secret, proprietary information, techniques, sketches, drawings, statistical and/or probabilistic mathematical models, mathematical calculations and/or simulations, inventions, know-how, processes, apparatus, equipment, algorithms, software programs, data, software source documents, object code, source code, and formula related to the current, future and proposed products and services of each of the parties, and includes, without limitation, each party's respective information concerning research, experimental work, development, design details and specifications, engineering, financial information, procurement requirements, purchasing, manufacturing, customer lists, business forecasts, sales and merchandising, and marketing plans and information. "Confidential Information" also includes proprietary or confidential information of any third party who may disclose such information to either party in the course of the other party's business.

- b. **Nondisclosure and Nonuse Obligation.** Each party (the "Receiving Party") agrees that it will not use, disseminate, or in any way disclose any Confidential Information of the other party (the "Disclosing Party"), to any person, firm or business, except that the Receiving Party may use the Disclosing Party's Confidential Information to the extent necessary to perform its obligations or exercise its rights and License under this Agreement and the Contract. The Receiving Party agrees that it shall treat all Confidential Information of the Disclosing Party with the same degree of care as the Receiving Party accords to its own Confidential Information, but in no case less than reasonable care. The Receiving Party agrees that it shall disclose Confidential Information of the other party only to those of its employees and contractors who need to know such information, and the Receiving Party certifies that such employees and contractors have previously agreed, either as a condition to employment or in order to obtain the Confidential Information of the Disclosing Party, to be bound by terms and conditions applicable to the Receiving Party under this Agreement and the Contract. The Receiving Party may not make disclosure of Confidential Information to its employees and contractors for the purpose of enabling them to service, maintain or modify the Licensed Program except to the extent necessary to coordinate and implement such service, maintenance and modification by Licensor. The Receiving Party shall immediately give notice to the Disclosing Party of any unauthorized use or disclosure of Disclosing Party's Confidential Information. The Receiving Party agrees to assist the Disclosing Party in remedying any such unauthorized Use or disclosure of Disclosing Party's Confidential Information.
- c. **Exclusions from Nondisclosure and Nonuse Obligations.** The obligations under Section 4.b ("Nondisclosure and Nonuse Obligations") of the Receiving Party, with respect to any portion of the Confidential Information of the Disclosing Party, shall not apply to such portion that such Receiving Party can document: (a) was in the public domain at or subsequent to the time such portion was communicated to the Receiving Party by the Disclosing Party through no fault of the Receiving Party, (b)

was rightfully in the Receiving Party's possession free of any obligation of confidence at or subsequent to the time such portion was communicated to the Receiving Party by the Disclosing Party, (c) was developed by employees or agents of such Receiving Party independently of and without reference to any information communicated to the Receiving Party by the Disclosing Party, or (d) was communicated by the Disclosing Party to an unaffiliated third party free of any obligation of confidence. A disclosure by the Receiving Party of Confidential Information of the Disclosing Party, either (a) in response to a valid order by a court or other governmental body, (b) otherwise required by law, or (c) necessary to establish the rights of either party under this Agreement and the Contract, shall not be considered to be a breach of this Agreement and the Contract by the Receiving Party or a waiver of confidentiality for other purposes; provided, however, the Receiving Party shall provide prompt prior written notice thereof to the Disclosing Party to enable the Disclosing Party to seek a protective order or otherwise prevent such disclosure.

- d. **Ownership and Return of Confidential Information and Other Materials.** All Confidential Information of the Disclosing Party, and any Derivatives (as hereinafter defined) thereof whether created by the Disclosing Party or the Receiving Party, shall remain the property of the Disclosing Party, and no license or other rights to the Disclosing Party's Confidential Information or Derivatives is granted or implied hereby, except as expressly set forth in this Agreement and the Contract. For purposes of this Agreement and the Contract, "Derivatives" shall mean: (a) for copyrightable or copyrighted material, any translation, abridgment, revision or other form in which an existing work may be recast, transformed or adapted; (b) for patentable or patented material, any improvement thereon; and (c) for material which is protected by trade secret, any new material derived from such existing trade secret material, including new material which may be protected under copyright, patent and/or trade secret laws. All materials (including, without limitation, documents, drawings, statistical and/or probabilistic mathematical models, mathematical calculations and/or simulations, apparatus, sketches, designs, lists and all other tangible media of expression) furnished by the Disclosing Party to the Receiving Party shall remain the property of the Disclosing Party. At the Disclosing Party's request and no later than five (5) business days after such request, the Receiving Party shall promptly destroy or deliver to the Disclosing Party, at the Disclosing Party's option, (a) all materials furnished to the Receiving Party, (b) all tangible media of expression in such Receiving Party's possession or control to the extent that such tangible media incorporate any of the Disclosing Party's Confidential Information, and (c) written certification of the Receiving Party's compliance with such obligations under this sentence.
- e. **Disclosure of Third Party Information.** Neither party shall communicate any information to the other in violation of the proprietary rights of any third party.



## **5. Copies.**

- a. Housing Authority may make copies of the Licensed Programs and documentation needed for backup or archival purposes, provided, however, that no more copies will be in existence at one time, other than those needed for daily operation, testing, and archival purposes, without the prior written consent of Licensor. Housing Authority further agrees that any copies of the Licensed Programs remain the property of Licensor. This section does not affect copies of Housing Authority's data.
- b. Housing Authority agrees to reproduce the following notice on all copies of the Licensed Program in any form:

This computer program is a proprietary trade secret of Yardi Systems, Inc. Possession and use of this program must conform strictly to the license agreement between user and Licensor, and receipt or possession does not convey any rights to divulge, reproduce, or allow others to use this program without Licensor's specific written authorization.

*Copyright 2006, by Yardi Systems, Inc. All rights reserved*

## **6. Security.**

Housing Authority agrees not to provide or otherwise make available any Licensed Programs in any form to anyone other than employees or consultants of the Housing Authority who are obligated to maintain in confidence third party trade secrets and know-how, licensed or otherwise, in the possession of Housing Authority, without prior written consent of an officer of Licensor. Housing Authority agrees to advise all employees having access to the Licensed Program of the proprietary and confidential nature of the Licensed Program.

## **7. License, Support, Update Fees; Taxes.**

- a. As compensation for the License, Support, Updates and other Services, Housing Authority shall pay the fees stated in Attachment B (Fee Schedule) to the Contract. The Fees are payable as specified in Attachment B (Fee Schedule) to the Contract and failure of Housing Authority to timely pay Fees shall be deemed a default by Housing Authority under the terms of the Contract. Failure of Housing Authority to pay any fees due pursuant to the Contract shall relieve Licensor of any and all further obligations to Housing Authority.
- b. The fees specified in Attachment B (Fee Schedule) to the Contract are exclusive of any tariff, duty, or tax, however designated, levied or based including, without limitation, any sales or use taxes in any state and local privilege or excise taxes based on gross revenue, on (i) this Agreement or the Contract, (ii) the Licensed Programs, (iii) Housing Authority's Use of the Licensed Programs per this Agreement and/or the Contract, or (iv) any materials or supplies furnished by Licensor under this Agreement and/or the Contract. Housing Authority agrees to pay and be responsible for any and all of such tariffs, duties, and taxes (exclusive, however, of taxes

based on the Licensor's net income) unless Housing Authority provides documentation to Licensor establishing that Housing Authority is exempt from such taxation.

#### **8. Title.**

Licensor retains title to and ownership of the Licensed Programs and all portions of them at all times. Licensor shall defend, indemnify and hold Housing Authority harmless against all liability to third parties arising from the alleged violation of any third parties' trade secrets, proprietary information, trademark, copyright, patent rights or intellectual property rights in connection with the grant of this License for the Licensed Program under this Agreement and/or the Contract.

#### **9. Limited Warranty; Warranty Disclaimer; Consequential Damage, etc. Waiver.**

a. During the term of the Contract, Licensor warrants that the Licensed Programs will perform as specified in the Licensed Programs Documentation (user manuals) regarding the Licensed Programs identified in Attachment A. Licensor does not warrant that the Licensed Programs will meet the requirements and expectations of Housing Authority.

b. **TO THE FULLEST EXTENT ALLOWED UNDER APPLICABLE LAW, AND EXCEPT AS EXPRESSLY SET FORTH IN THE CONTRACT, LICENSOR DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. TO THE FULLEST EXTENT ALLOWED UNDER APPLICABLE LAW AND REGARDLESS OF ANY OTHER PROVISION OF THIS AGREEMENT OR THE CONTRACT, LICENSOR ADDITIONALLY DISCLAIMS ALL OBLIGATIONS AND LIABILITIES ON THE PART OF LICENSOR FOR SPECIAL, INDIRECT, PUNITIVE, EXEMPLARY, INCIDENTAL AND CONSEQUENTIAL DAMAGES, ATTORNEYS' AND EXPERTS' FEES, AND COURT COSTS (EVEN IF LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF THESE DAMAGES), ARISING FROM OR IN CONNECTION WITH THE CONTRACT.**

#### **10. Remedies.**

a. (i) The parties acknowledge and agree that, if Housing Authority breaches any of its obligations under Standard Terms Paragraphs 3, 4 or 6 of this Agreement, Licensor might incur irreparable harm and damage that might not be fully compensated with monetary damages. Accordingly, if Housing Authority breaches any provision of Standard Terms Paragraphs 3, 4 or 6 of this Agreement, Licensor, in addition to monetary damages, shall be entitled to seek specific performance of Housing Authority's obligations under those sections and injunctive relief against any further violations of those sections. (ii) The parties acknowledge and agree that, if Licensor breaches any of its obligations under Standard Terms Paragraph of this Agreement, Housing Authority might incur

irreparable harm and damage that might not be fully compensated with monetary damages. Accordingly, if Licensor breaches any provision of Standard Terms Paragraph of this Agreement, Housing Authority, in addition to monetary damages, shall be entitled to seek specific performance of Licensor's obligations under those sections and injunctive relief against any further violations of those sections.

- b. Licensor's sole obligation with respect to a curable breach by Licensor of any representation, warranty, or obligation under this Agreement and/or the Contract is to correct that breach.
- c. It agreed that if any liabilities are imposed on Licensor under this Agreement or the Contract for any reason whatsoever, including, but not limited to, any liabilities resulting from Licensor's inability to correct any breach of this Agreement or the Contract, the maximum aggregate amount payable by Licensor for all such liabilities will not exceed the aggregate amount of fees received by Licensor from Housing Authority during the one (1) year prior to event giving rise to the liability.

#### **11. Governing Law; Venue.**

This Contract, and any dispute arising from the relationship between the parties to this Contract, shall be governed and determined by California law. Any dispute that arises under or relates to the Contract initiated by Housing Authority (whether contract, tort, or both) shall be resolved only in a court of competent jurisdiction in the City of Santa Barbara, State of California (or, if no court of competent jurisdiction resides in the City of Santa Barbara, CA, then the court of competent jurisdiction closest to the City of Santa Barbara, CA), and the parties expressly waive any right they may otherwise have to cause any such action or proceeding to be brought or tried elsewhere. Any dispute that arises under or relates to the Contract initiated by Licensor (whether contract, tort, or both) shall be resolved only in a court of competent jurisdiction in the City of Los Angeles, State of California, and the parties expressly waive any right they may otherwise have to cause any such action or proceeding to be brought or tried elsewhere.

**12. Binding Effect.** This Contract is binding on and inures to the benefit of the Licensor and its successors, assigns, and legal representatives. This Contract is binding on and personal to Housing Authority.

#### **13. Mediation.**

- a. In the event of any disputes between Licensor and Housing Authority arising out of or connected with this Agreement and/or the Contract which the parties are unable to resolve through direct negotiation, either party may serve upon the other at its principal place of business a request for mediation. Neither party may file an action against the other in any court unless and until the party seeking to file such an action has first requested a mediation hearing and made a good faith effort to complete the mediation process provided in this Agreement.

- b. The party requesting mediation shall arrange for a neutral, independent person with experience in dispute mediations to act as mediator. The mediation shall be held not less than ten (10) or more than twenty (20) days from the date the party requesting mediation gives notice of the request for mediation to the other party. If requested by the Housing Authority, the mediation shall be held in Santa Barbara, California. If requested by Contractor, the mediation shall be held in the County of Los Angeles, California. The cost of mediation shall be borne by the parties equally.
- c. The parties shall maintain the mediation proceedings in confidence and shall not disclose to third persons the statements made therein by the other parties or the mediator. The provisions of California Evidence Code Sections 1115 - 1128 shall apply to the mediation proceedings.
- d. At least five (5) days before the date of the mediation, each party shall provide the mediator with a statement of its position and copies of all supporting documents. Each party shall send to the mediation a person who has authority to bind the party. If the dispute involves third parties, such as Housing Authority's customers they shall also be asked to participate in the mediation, but their presence shall not be necessary for the mediation to proceed.
- e. If a party has participated in good faith in a mediation and is dissatisfied with the outcome, that party may then invoke all legal rights and remedies available to the party at law or in equity.

#### **14. Headings.**

The captions of the sections of this Agreement and the Contract are inserted for convenience only and are not intended to be a part of this Agreement or the Contract for purposes of interpreting the Agreement or the Contract.

- 15. Entire Agreement.** This Agreement, the Contract, and all other agreements, Schedules, Attachments, and Exhibits referred to in this Agreement and the Contract constitute the final, complete, and exclusive statement of the terms of the agreement between the parties pertaining to the subject matter of this Agreement and the Contract, and supersede all prior and contemporaneous understandings or agreements of the parties. No party has been induced to enter into this Agreement or the Contract by, nor is any party relying on, any representation or warranty outside those expressly set forth in this Agreement and the Contract.

**ATTACHMENT F**

**FLEXSAFE ESCROW  
AGREEMENT**

## FLEXSAFE ESCROW AGREEMENT

Account Number \_\_\_\_\_

This agreement ("Agreement") is effective \_\_\_\_\_, 2003 between DSI Technology Escrow Services, Inc. ("DSI") and Yardi Systems, Inc. ("Depositor"), who collectively may be referred to in this Agreement as the parties ("Parties") and who are more fully identified in Exhibit A.

- A. Depositor and Depositor's client have entered or will enter into a license agreement, development agreement, and/or other agreement regarding certain proprietary technology of Depositor (referred to in this Agreement as "the License Agreement").
- B. Depositor desires to avoid disclosure of its proprietary technology except under certain limited circumstances.
- C. Depositor desires to establish an escrow with DSI to provide for the retention, administration and controlled access of the proprietary technology materials of Depositor.
- D. The parties desire this Agreement to be supplementary to the License Agreement pursuant to 11 United States [Bankruptcy] Code, Section 365(n).

### ARTICLE 1 -- DEPOSITS

- 1.1 Obligation to Make Deposit. Upon the signing of this Agreement by the parties, Depositor shall deliver to DSI the proprietary technology and other materials ("Deposit Materials") to be deposited under this Agreement.
- 1.2 Identification of Tangible Media. Prior to the delivery of the Deposit Materials to DSI, Depositor shall conspicuously label for identification each document, magnetic tape, disk, or other tangible media upon which the Deposit Materials are written or stored. Additionally, Depositor shall complete Exhibit B to this Agreement by listing each such tangible media by the item label description, the type of media and the quantity. Exhibit B shall be signed by Depositor

and delivered to DSI with the Deposit Materials. Unless and until Depositor makes the initial deposit with DSI, DSI shall have no obligation with respect to this Agreement, except the obligation to notify Depositor regarding the status of the account as required in Section 3.2.

- 1.3 Deposit Inspection. When DSI receives the Deposit Materials and Exhibit B, DSI will conduct a deposit inspection by visually matching the labeling of the tangible media containing the Deposit Materials to the item descriptions and quantity listed on Exhibit B.

- 1.4 Acceptance of Deposit. At completion of the deposit inspection, if DSI determines that the labeling of the tangible media matches the item descriptions and quantity on Exhibit B, DSI will date and sign Exhibit B and mail a copy thereof to Depositor. If DSI determines that the labeling does not match the item descriptions or quantity on Exhibit B, DSI will (a) note the discrepancies in writing on Exhibit B; (b) date and sign Exhibit B with the exceptions noted; and (c) mail a copy of Exhibit B to Depositor. DSI's acceptance of the deposit occurs upon the signing of Exhibit B by DSI.
- 1.5 Depositor's Representations. Depositor represents as follows:
- a. Depositor lawfully possesses all of the Deposit Materials deposited with DSI;
  - b. With respect to all of the Deposit Materials, Depositor has the right and authority to grant to DSI the rights as provided in this Agreement; and
  - c. The Deposit Materials are not subject to any lien or other encumbrance.
  - d. The Deposit Materials are readable and useable in their current form or, if any portion of the Deposit Materials is encrypted, the decryption tools and decryption keys have also been deposited.
- 1.6 Deposit Updates. Updates to the Deposit Materials may be added to the existing deposit. All deposit updates shall be listed on a new Exhibit B and Depositor shall sign the new Exhibit B. Each Exhibit B will be held and maintained separately within the escrow account. An independent record will be created which will document the activity for each Exhibit B. The processing of all deposit updates shall be in accordance with Sections 1.2 through 1.5. All references in this Agreement to the Deposit Materials shall include the initial Deposit Materials and any updates.
- 1.7 Removal of Deposit Materials. The Deposit Materials may be removed and/or exchanged only on written instructions signed by Depositor or as otherwise provided in this Agreement.

## ARTICLE 2 -- FLEXSAFE ENROLLMENTS

- 2.1 FlexSAFE Beneficiary. As used in this Agreement ("FlexSAFE Beneficiary") shall mean one or more FlexSAFE Beneficiaries depending on Depositor Enrollment(s), in accordance with Section 2.2.
- 2.2 FlexSAFE Enrollment(s). Depositor may enroll one or more beneficiaries under this Agreement. Depositor will execute and submit to DSI a FlexSAFE Beneficiary Enrollment document, referenced in this Agreement as Exhibit T, listing each beneficiary to be enrolled as a FlexSAFE Beneficiary under the Agreement. Upon DSI's acceptance of Exhibit T and any additional Exhibit T thereto, DSI will issue an enrollment letter and a copy of this Agreement to the FlexSAFE Beneficiary.



- 2.3 Other Third Parties. DSI shall have no obligation to any other third party except a FlexSAFE Beneficiary accepted by DSI. DSI and Depositor shall have the right to modify or cancel the Agreement without the consent of any third party.

### ARTICLE 3 -- CONFIDENTIALITY AND RECORD KEEPING

- 3.1 Confidentiality. DSI shall maintain the Deposit Materials in a secure, environmentally safe, locked facility which is accessible only to authorized representatives of DSI. DSI shall have the obligation to reasonably protect the confidentiality of the Deposit Materials. Except as provided in this Agreement, DSI shall not disclose the content of this Agreement to any third party and shall not disclose, transfer, make available, or use the Deposit Materials. If DSI receives a subpoena or any other order from a court or other judicial tribunal pertaining to the disclosure or release of the Deposit Materials, DSI will immediately notify Depositor unless prohibited by law. It shall be the responsibility of Depositor to challenge any such order; however, DSI does not waive its rights to present its position with respect to any such order. DSI will not be required to disobey any order from a court or other judicial tribunal. (See Section 8.5 for notices of requested orders.)
- 3.2 Status Reports. DSI will issue to Depositor and FlexSAFE Beneficiary a report profiling the account history at least semi-annually. DSI may provide copies of the account history upon request. Depositor will notify DSI if the account history is not to be provided to FlexSAFE Beneficiary.
- 3.3 Audit Rights. During the term of this Agreement, Depositor shall have the right to inspect the written records of DSI pertaining to this Agreement. Any inspection shall be held during normal business hours and following reasonable prior notice.

### ARTICLE 4 -- GRANT OF RIGHTS TO DSI

- 4.1 Title to Media. Depositor hereby transfers to DSI the title to the media upon which the proprietary technology and materials are written or stored. However, this transfer does not include the ownership of the proprietary technology and materials contained on the media such as any copyright, trade secret, patent or other intellectual property rights.
- 4.2 Right to Make Copies. DSI shall have the right to make copies of the Deposit Materials as reasonably necessary to perform this Agreement. DSI shall copy

all copyright, nondisclosure, and other proprietary notices and titles contained on the Deposit Materials onto any copies made by DSI. With all Deposit Materials submitted to DSI, Depositor shall provide any and all instructions as may be necessary to duplicate the Deposit Materials including but not limited to the hardware and/or software needed.

- 4.3 Right to Transfer Upon Release. Depositor hereby grants to DSI the right to transfer the Deposit Materials to FlexSAFE Beneficiary upon any release of the Deposit Materials for use by FlexSAFE Beneficiary in accordance with Section 5.4. Except upon such a release or as otherwise provided in this Agreement, DSI shall not transfer the Deposit Materials.

## ARTICLE 5 -- RELEASE OF DEPOSIT

- 5.1 Release of Deposit Upon Depositor's Instruction. Upon receipt by DSI of written instruction(s) directly from Depositor, Depositor's trustee in bankruptcy, or a court of competent jurisdiction, DSI will release a copy of the Deposit Materials to the FlexSAFE Beneficiary identified in the instruction(s). However, DSI is entitled to receive any fees due DSI before making the release. Any copying expense in excess of \$300 will be chargeable to FlexSAFE Beneficiary. This Agreement will terminate upon the release of the Deposit Materials held by DSI.

5.2 Filing for Release of Deposit by FlexSAFE Beneficiary.

- a. Upon notice to DSI by FlexSAFE Beneficiary of the occurrence of a release condition as defined in Section 5.3, DSI shall provide Depositor with a copy of FlexSAFE Beneficiary's notice by commercial express mail. From the date DSI mails the notice requesting release of the Deposit Materials, Depositor shall have 30 days to deliver to DSI contrary instructions ("Contrary Instructions").

Contrary Instructions shall mean the written representation by Depositor that a Release Condition has not occurred or has been cured. Upon receipt of Contrary Instructions, DSI shall send a copy of the Contrary Instructions to FlexSAFE Beneficiary by commercial express mail. Additionally, DSI shall notify both Depositor and FlexSAFE Beneficiary that there is a dispute to be resolved pursuant to Section 8.3. Subject to Section 6.3, DSI will continue to store the Deposit Materials without release pending (a) joint instructions from Depositor and FlexSAFE Beneficiary; (b) dispute resolution pursuant to Section 8.3; or (c) order of a court.

- b. If no Contrary Instructions are given to DSI, Depositor agrees that DSI shall deliver a copy of the Deposit Materials to the FlexSAFE Beneficiary who provides DSI with all of the following:

1. Copy of the current License Agreement between Depositor and FlexSAFE Beneficiary;
2. Written demand that a copy of the Deposit Materials be released and delivered to FlexSAFE Beneficiary;
3. Written notice that the copy of the Deposit Materials being released to FlexSAFE Beneficiary only be used as permitted under the License Agreement;
4. Specific delivery instructions along with any fees due DSI; and
5. Written notice that the release of the copy of the Deposit Materials is pursuant to 11 United States Code Section 365(n) or other applicable federal or state bankruptcy, insolvency, reorganization or liquidation statute.

5.3 Release Conditions. As used in this Agreement, "Release Condition" shall mean the existence of any one or more of the following circumstances, uncorrected for more than 30 days:

- a. Entry of an order for relief under Title 11 of the United States Code;
- b. The making by Depositor of a general assignment for the benefit of creditors;
- c. The appointment of a general receiver or trustee in bankruptcy of Depositor's business or property; or
- d. Action by Depositor under any state or federal insolvency or similar law for the purpose of its bankruptcy, reorganization, or liquidation.

5.4 Right to Use Following Release. Unless otherwise provided in the License Agreement; upon release of the Deposit Materials in accordance with this Article 5, FlexSAFE Beneficiary shall have the right to use the Deposit Materials for the sole purpose of continuing the benefits afforded to FlexSAFE Beneficiary by the License Agreement. FlexSAFE Beneficiary shall be obligated to maintain the confidentiality of the released Deposit Materials.

## ARTICLE 6 -- **TERM AND TERMINATION**

6.1 Term of Agreement. The initial term of this Agreement is for a period of one year. Thereafter, this Agreement shall automatically renew from year-to-year unless (a) Depositor instructs DSI in writing that the Agreement is terminated; or (b) DSI instructs Depositor and FlexSAFE Beneficiary in writing that the Agreement is terminated for nonpayment in accordance with Section 6.3 or by resignation in accordance with Section 6.4. If the Deposit Materials are subject to another escrow agreement with DSI, DSI reserves the right, after

the initial one year term, to adjust the anniversary date of this Agreement to match the then prevailing anniversary date of such other escrow arrangements.

- 6.2 Term of FlexSAFE Enrollment. Upon receipt by DSI of Depositor's executed Exhibit T, the FlexSAFE Beneficiary will be enrolled for an initial term of one year, unless this Agreement terminates earlier, causing the FlexSAFE Beneficiary enrollment to terminate. Subsequent enrollment terms may be adjusted to the anniversary date of this Agreement and shall automatically renew from year-to-year unless (a) Depositor instructs DSI in writing to terminate the FlexSAFE Beneficiary enrollment; (b) FlexSAFE Beneficiary instructs DSI in writing to terminate the FlexSAFE Beneficiary; or (c) the enrollment is terminated by DSI for nonpayment in accordance with Section 6.3.
- 6.3 Termination for Nonpayment. In the event of the nonpayment of fees owed to DSI, DSI shall provide written notice of delinquency to all parties to this Agreement. Unless Depositor has instructed DSI to terminate FlexSAFE Beneficiary pursuant to subsection 6.2(a), Depositor or FlexSAFE Beneficiary shall have the right to make the payment to DSI to cure the default. If the past due payment is not received in full by DSI within one month of the date of such notice, then DSI shall have the right to terminate this Agreement at any time thereafter by sending written notice of termination to all parties. DSI shall have no obligation to take any action under this Agreement so long as any payment due to DSI remains unpaid.
- 6.4 Termination by Resignation. DSI reserves the right to terminate this Agreement, for any reason, by providing Depositor with 60-days' written notice of its intent to terminate this Agreement. Within the 60-day period, the Depositor may provide DSI with written instructions authorizing DSI to forward the Deposit Materials to another escrow company and/or agent or other designated recipient. If DSI does not receive said written instructions within 60 days of the date of DSI's written termination notice, then DSI shall destroy, return or otherwise deliver the Deposit Materials in accordance with Section 6.5.
- 6.5 Disposition of Deposit Materials Upon Termination. Subject to the foregoing termination provisions, and upon termination of this Agreement, DSI shall destroy, return, or otherwise deliver the Deposit Materials in accordance with Depositor's instructions. If there are no instructions, DSI may, at its sole discretion, destroy the Deposit Materials or return them to Depositor. DSI shall have no obligation to destroy or return the Deposit Materials if the Deposit Materials are subject to another escrow agreement with DSI or have been released to the FlexSAFE Beneficiary in accordance with Section 5.3.
- 6.6 Survival of Terms Following Termination. Upon termination of this Agreement, the following provisions of this Agreement shall survive:
- a. Depositor's Representations (Section 1.5);

- b. The obligations of confidentiality with respect to the Deposit Materials;
- c. The rights granted in the sections entitled Right to Transfer Upon Release (Section 4.3) and Right to Use Following Release (Section 5.4), if a release of the Deposit Materials has occurred prior to termination;
- d. The obligation to pay DSI any fees and expenses due;
- e. The provisions of Article 8; and
- f. Any provisions in this Agreement which specifically state they survive the termination of this Agreement.

## ARTICLE 7 -- DSI'S FEES

- 7.1 Fee Schedule. DSI is entitled to be paid its standard fees and expenses applicable to the services provided. DSI shall notify the party responsible for payment of DSI's fees at least 60 days prior to any increase in fees. For any service not listed on DSI's standard fee schedule, DSI will provide a quote prior to rendering the service, if requested.
- 7.2 Payment Terms. DSI shall not be required to perform any service unless the payment for such service and any outstanding balances owed to DSI are paid in full. Fees are due upon receipt of a signed contract or receipt of the Deposit Materials whichever is earliest.

## ARTICLE 8 -- LIABILITY AND DISPUTES

- 8.1 Right to Rely on Instructions. DSI may act in reliance upon any instruction, instrument, or signature reasonably believed by DSI to be genuine. DSI may assume that any employee of Depositor or FlexSAFE Beneficiary who gives any written notice, request, or instruction has the authority to do so. DSI will not be required to inquire into the truth or evaluate the merit of any statement or representation contained in any notice or document. DSI shall not be responsible for failure to act as a result of causes beyond the reasonable control of DSI.
- 8.2 Indemnification. Depositor agrees to indemnify, defend and hold harmless DSI from any and all claims, actions, damages, arbitration fees and expenses, costs, attorney's fees and other liabilities ("Liabilities") incurred by DSI relating in any way to this escrow arrangement unless such Liabilities were caused solely by the negligence or willful misconduct of DSI.
- 8.3 Dispute Resolution. Any dispute relating to or arising from this Agreement shall be resolved by arbitration under the Commercial Rules of the American Arbitration Association. Three arbitrators shall be selected. The Depositor and FlexSAFE Beneficiary shall each select one arbitrator and the two chosen arbitrators shall select the third arbitrator, or failing agreement on the selection

of the third arbitrator, the American Arbitration Association shall select the third arbitrator. However, if DSI is a party to the arbitration, DSI shall select the third arbitrator. Unless otherwise agreed by Depositor and FlexSAFE Beneficiary, arbitration will take place in San Diego, California, U.S.A. Any court having jurisdiction over the matter may enter judgment on the award of the arbitrator(s). Service of a petition to confirm the arbitration award may be made by First Class mail or by commercial express mail, to the attorney for the party or, if unrepresented, to the party at the last known business address.

8.4 Controlling Law. This Agreement is to be governed and construed in accordance with the laws of the State of California, without regard to its conflict of law provisions.

8.5 Notice of Requested Order. If any party intends to obtain an order from the arbitrator or any court of competent jurisdiction which may direct DSI to take, or refrain from taking any action, that party shall:

- a. Give DSI at least two business days' prior notice of the hearing;
- b. Include in any such order that, as a precondition to DSI's obligation, DSI be paid in full for any past due fees and be paid for the reasonable value of the services to be rendered pursuant to such order; and
- c. Ensure that DSI not be required to deliver the original (as opposed to a copy) of the Deposit Materials if DSI may need to retain the original in its possession to fulfill any of its other duties.

## ARTICLE 9 -- GENERAL PROVISIONS

9.1 Entire Agreement. This Agreement, which includes Exhibits described herein, embodies the entire understanding between the parties with respect to its subject matter and supersedes all previous communications, representations or understandings, either oral or written. DSI is not a party to the License Agreement between Depositor and FlexSAFE Beneficiary and has no knowledge of any of the terms or provisions of any such License Agreement. DSI's only obligations to Depositor or FlexSAFE Beneficiary are as set forth in this Agreement. No amendment or modification of this Agreement shall be valid or binding unless signed by both parties hereto, except Exhibit A need not be signed by either party.

9.2 Notices. All notices, invoices, payments, deposits and other documents and communications shall be given to the parties at the addresses specified in Exhibit A. It shall be the responsibility of the parties to notify each other as provided in this Section in the event of a change of address. The parties shall have the right to rely on the last known address of the other parties. Unless

otherwise provided in this Agreement, all documents and communications may be delivered by First Class mail.

- 9.3 Severability. In the event any provision of this Agreement is found to be invalid, voidable or unenforceable, the parties agree that unless it materially affects the entire intent and purpose of this Agreement, such invalidity, voidability or unenforceability shall affect neither the validity of this Agreement nor the remaining provisions herein, and the provision in question shall be deemed to be replaced with a valid and enforceable provision most closely reflecting the intent and purpose of the original provision.
- 9.4 Successors. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties. However, DSI shall have no obligation in performing this Agreement to recognize any successor or assign of Depositor unless DSI receives clear, authoritative and conclusive written evidence of the change of parties.
- 9.5 Regulations. Depositor is responsible for and warrants compliance with all applicable laws, rules and regulations, including but not limited to customs laws, import, export, and re-export laws and government regulations of any country from or to which the Deposit Materials may be delivered in accordance with the provisions of this Agreement.

Yardi Systems, Inc.  
Depositor

DSI Technology Escrow Services, Inc.

By: Gordon Morrell

By:

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

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

Title: Executive VP, C.O.O.

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

Date: October 1, 2001

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

**DESIGNATED CONTACT**

Account Number \_\_\_\_\_

Notices, deposit material returns and communications to Depositor should be addressed to:

Company Name: Yardi Systems, Inc.  
Address: 819 Reddick Ave.

Santa Barbara, CA 93103

Designated Contact: Gordon Morrell

Telephone: 805-966-3373 x105

Facsimile: 805-966-7026

**E-Mail: [gordon@yardi.com](mailto:gordon@yardi.com)**

Invoices to Depositor should be addressed to:

Yardi Systems, Inc.

819 Reddick Ave.

Santa Barbara, CA 93103

Contact: Marie Watson

**P.O.#, if required:** \_\_\_\_\_

Requests from Depositor to change the designated contact should be given in writing by the designated contact or an authorized employee.

Contracts, Deposit Materials and notices to DSI should be addressed to:

DSI Technology Escrow Services, Inc.

Contract Administration

9265 Sky Park Court, Suite 202

San Diego, CA 92123

Telephone: (858) 499-1600

Facsimile: (858) 694-1919

E-Mail: [ca@dsiescrow.com](mailto:ca@dsiescrow.com)

Invoice inquiries and fee remittances to DSI should be addressed to:

DSI Technology Escrow Services, Inc.

PO Box 45156

San Francisco, CA 94145-0156

(858) 499-1636

(858) 499-1637

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



**EXHIBIT B**

**DESCRIPTION OF DEPOSIT MATERIALS**

Depositor Company Name: Yardi Systems, Inc.

Account Number \_\_\_\_\_

Product Name: Yardi Enterprise \_\_\_\_\_Version \_\_\_\_\_  
(Product Name will appear as Exhibit B Name on Account History report)

**DEPOSIT MATERIAL DESCRIPTION:**

**Quantity      Media Type & Size      Label Description of Each Separate Item**

- \_\_\_\_\_ Disk 3.5" or \_\_\_\_\_
- \_\_\_\_\_ DAT tape \_\_\_\_\_mm
- \_\_\_\_\_ CD-ROM
- \_\_\_\_\_ Data cartridge tape \_\_\_\_\_
- \_\_\_\_\_ TK 70 or \_\_\_\_\_ tape
- \_\_\_\_\_ Magnetic tape \_\_\_\_\_
- \_\_\_\_\_ Documentation
- \_\_\_\_\_ Other \_\_\_\_\_

**PRODUCT DESCRIPTION:**

Environment \_\_\_\_\_

**DEPOSIT MATERIAL INFORMATION:**

Is the media or are any of the files encrypted? Yes / No If yes, please include any passwords and the decryption tools.

Encryption tool name \_\_\_\_\_ Version \_\_\_\_\_

Hardware required \_\_\_\_\_

Software required \_\_\_\_\_

Other required information \_\_\_\_\_

I certify for **Depositor** that the above described Deposit Materials have been transmitted to DSI:

**DSI** has inspected and accepted the above materials (*any exceptions are noted above*):

Signature \_\_\_\_\_

Signature \_\_\_\_\_

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

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

Date \_\_\_\_\_

Date Accepted \_\_\_\_\_

Exhibit B# \_\_\_\_\_

Send materials to: DSI, 9265 Sky Park Ct., Suite 202, San Diego, CA 92123 (858) 499-1600

**EXHIBIT T**

**FLEXSAFE BENEFICIARY ENROLLMENT**

Account Number \_\_\_\_\_

Pursuant to the FlexSAFE Escrow Agreement ("Agreement"), Depositor hereby enrolls the following as a FlexSAFE Beneficiary:

Notices and communications to FlexSAFE Beneficiary should be addressed to:

Invoices to FlexSAFE Beneficiary should be addressed to:

Company Name: \_\_\_\_\_

\_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Designated Contact: \_\_\_\_\_

Contact: \_\_\_\_\_

Telephone: \_\_\_\_\_

\_\_\_\_\_

Facsimile: \_\_\_\_\_

**P.O.#, if required:** \_\_\_\_\_

E-Mail: \_\_\_\_\_

\_\_\_\_\_  
Depositor

DSI Technology Escrow Services, Inc.

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

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

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

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

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

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

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

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