

## Technology System Contract

### LICENSING AND MAINTENANCE OF A HOSTED AFFORDABLE HOUSING AND DEVELOPMENT CORE SYSTEM

CONTRACT NO: \_\_\_\_\_

This "Contract" is made by and between the **City of Portland**, a municipal corporation of the State of Oregon, and its successors or assigns (hereinafter referred to as "City") and **Housing and Development Services, Inc.** (hereinafter referred to as "Contractor"), a(n) sub-chapter S Florida corporation, by and through their duly authorized representatives. The Initial Term of this contract shall be September 16, 2011 through **September 15, 2016**, with the City's option to extend for five (5) additional option period/years for a maximum total term of ten (10) years. This Contract may refer to the City and Contractor individually as a "Party" or jointly as the "Parties." The total not-to-exceed price under this Contract shall be **\$1,120,000**.

Contractor Authorized Representative:  
Housing and Development Services, Inc.  
Cristina M. Gilson  
2685 Executive Park Drive, Suite 8  
Weston, FL 33331  
TEL: (888) 326 - 7680 ext 201  
FAX: (954) 217 - 9598

City of Portland Contract Administrator:  
Antoinette Pietka  
421 SW 6th Ave., Suite 500  
Portland, OR 97204  
TEL: (503) 823 - 2394  
FAX: (503) 279 - 2673

#### **Recitals:**

WHEREAS, in conjunction with its government operations, the City of Portland desires to procure Licensing and Maintenance of a Hosted Affordable Housing and Development Core System (the "Project");

WHEREAS, in its Proposal dated December 16, 2010 and submitted in response to City RFP # 112506, Contractor represents that it has the proprietary right, knowledge, experience and expertise in Licensing and Maintaining a Hosted Affordable Housing and Development Core System; and

**NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:**

#### **SECTION 1 DEFINITIONS (04/10)**

General Definitions. These definitions apply to the entire Contract and subsequent Amendments, Task/Change Orders:

"Acceptance" means Product has been inspected, loaded, shipped, transported, installed, delivered, configured and diagnostics tests have been performed to demonstrate, to the City's satisfaction, that Product conforms and operates according to the requirements of this Contract, applicable Documentation and Contractor's representations.

“Acceptance Criteria” means all specifications, functionality and performance requirements as set forth in the RFP, the Statement of Work (as such specifications, and requirements and Statement of Work may be changed from time to time by mutual agreement in writing), Contractor’s proposal and Contractor’s representations and warranties. The City’s acceptance criteria will be based on reliance on Contractor’s experience and expertise. City and Contractor agree to establish the Acceptance Criteria in writing for the purpose of conducting Acceptance Testing. Terms and Conditions for Acceptance Criteria are set forth in Section 5.

“Acceptance Date” means the date on which the City issues a Certificate of Acceptance for the System. In regard to a particular Task Order without a requirement for an Acceptance Test, the Acceptance Date is the date when the City certifies to Contractor in writing that the Service or installation is complete.

“Acceptance Test” means the evaluation and testing method, procedures, or both, that are used to determine whether or not the System or a Product requiring Acceptance Testing operates in accordance with the Acceptance Criteria. Acceptance Testing may occur in one or more phases, depending on the integration of contingent products, scalability, performance tuning or other measurable features or milestones.

“Affiliates” means, with respect to a named individual or entity, any individual, association, partnership, corporation or other entity controlling, controlled by, or under common control with the named individual or entity. The term “control” means the power to direct or cause the direction of the management and policies of an individual or entity, whether through the ownership of voting securities, by contract, agreement or otherwise.

“Amendment” means a written document required to be signed by both Parties when in any way altering the Master Terms and Conditions, term, or cost provisions of the Contract or changing, adding to, or substantially altering a Statement of Work.

“Certificate of Acceptance” means a written instrument by which the City notifies Contractor either that in its sole discretion the Acceptance Criteria have been met or waived, in whole or in part.

“Change Order” means a written request to document a change to an existing Task Order that the City and Contractor may execute from time to time under this Contract.

“City Confidential Information” means any information, in any form or media, including verbal discussions, whether or not marked or identified by the City, which is reasonably described by one or more of the following categories of information: (1) financial, statistical, personnel, human resources data or Personally Identifiable Information as described in the Oregon Consumer Identity Theft Protection Act of 2007; (2) business plans, negotiations, or strategies; (3) unannounced pending or future products, services, designs, projects or internal public relations information; (4) trade secrets, as such term is defined by ORS 192.501(2) and the Uniform Trade Secrets Act ORS 646.461 to 646.475; (5) Exempt per ORS 192.501 and/or ORS 192.502 (6) attorney/client privileged communications, (7) exempt per federal laws (including but not limited to Copyright, HIPPA) and (8) information relating to or embodied by designs, plans, configurations, specifications, or programs, including without limitation, data and related materials licensed or provided to the City by third parties; processes; modifications and

enhancements thereto; and any work products produced for the City. Notwithstanding the foregoing, City Confidential Information does not include HDS' Solution or proprietary information.

"Confidential Information" means any information that is disclosed in written, graphic, verbal, or machine-recognizable form, and is marked, designated, labeled or identified at the time of disclosure as being confidential or its equivalent; or if the information is in verbal form, it is identified as confidential or proprietary at the time of disclosure and is confirmed in writing within thirty (30) days of the disclosure. Confidential Information does not include any information that: is or becomes publicly known through no wrongful or negligent act of the receiving party; is already known to the receiving party without restriction when it is disclosed; is, or subsequently becomes, rightfully and without breach of this Contract or any other agreement between the Parties or of any applicable protective or similar order, in the receiving party's possession without any obligation restricting disclosure; is independently developed by the receiving party without breach of this Contract; or is explicitly approved for release by written authorization of the disclosing party. All usage of the term "Confidential Information" in this Contract shall be deemed to include the qualifications set forth in Section 2.29.

"Contingent Product" means a Product or Service which the City intends to use in conjunction with some other Product or Service and from which the City would not derive the essential purpose of the bargain if acquiring one without the other.

"Contract" means the Master Terms and Conditions and all the documents referenced in Paragraph 2.1.

"Contract Administrator" means the individual appointed by the City to manage the resulting Contract and to serve as the official point of contact for all administrative matters relating to the Contract.

"Contract Price" means the not-to-exceed price agreed upon by the Parties for the System, subject to the provisions herein.

"Coverage Hours" means those hours specified in this Contract or subsequent Task Order during which period Contractor shall provide Maintenance.

"Customization" means (a) any modification to or adaptation of the Products, or (b) any new component or accessory or, in the case of Software, new code, designed to run in conjunction with the Products.

"Day" means a calendar day of twenty four (24) hours unless otherwise stated in the Contract.

"Deliverables" shall be considered those tangible resulting work products which are to be delivered to the City such as reports, draft documents, data, interim findings, drawings, schematics, training, meeting presentations, final drawings and reports. Deliverables are provided in Exhibit B.

"Delivery of Products" means Product has been received at the location specified in this Contract or a Task Order. Delivery of Products shall not be construed to represent Final Acceptance following delivery of the System.

“Documentation” means user manuals and other written materials in any form that describe the features or functions of the Products and System, including but not limited to published specifications, marketing materials, technical manuals, and operating instructions provided by Contractor to the City, or readily available to the public, or as required to be produced by Contractor subject to the terms of this Contract.

“Equipment” means any hardware, machinery, device, tool, computer, computer component, computer system, including add-ons, or peripherals of tangible form together with the necessary supplies for upkeep and maintenance, and other apparatus necessary for the proper execution, installation and acceptable completion of the System or any Task/Change Order hereunder.

“Error” means any defect, problem, condition, bug, or other partial or complete inability of the System to operate either (a) in accordance with the applicable Specifications and Documentation or (b) as to the System, in the same manner in which the System operated as of the Acceptance Date. Errors are reported to Contractor via MyHDS Customer Portal.

“Final Acceptance” means the City has determined that the System or a Product requiring Acceptance Testing: (a) has met the Acceptance Criteria and the City has provided a Certificate of Acceptance to Contractor; and (b) all Products function and perform compatibly and without Error when integrated as functional components of the System.

“Fix” means a correction to Software that does not function or operate in accordance with the Documentation. A Fix is not a Modification, Upgrade or Software Enhancement

“Hosting Services” means Contractor is providing its licensed System(s) in supported environments for City to access via the Internet, with a small client application which City will install in each of its authorized workstations. Hosting Services do not include any hardware, software, Internet line, firewalls, or other peripherals installed on City equipment or provided by City to its employees, some of which may be necessary to access the HDS Systems.

“Knowledge Transfer” means information and know how regarding technological or general business issues, including, without limitation, products, identified or foreseeable problems, personnel, resources, or costs, as may relate to the System or any component thereof which Contractor may be required under this Contract or any subsequent Task Order or Change Order to pass on to the City.

“Mandatory Priced Options” means features and functionality that must be available, offered and priced in the Contract, but which the City may or may not purchase at the time the Task Order or Change Order is issued. The City may purchase Mandatory Priced Options by issuing a Task Order or Change Order at any time during the Contract term. The quoted price of Mandatory Priced Options shall remain effective for one-year following Acceptance, and may be adjusted per the Contract for subsequent years.

“Maintenance” means periodic enhancements made to the System which HDS in its sole discretion elects to make to the System but that do not constitute a new version, module, or rewrite of the System. Maintenance releases include modifications made as the result of changes in federal government regulations, technology upgrades, and the ability for the system to perform as documented in the

System help files. Maintenance also includes technical support, which is defined as answers to problem questions directly related to the System(s) provided under this Contract. Technical Support includes MyHDS Customer Portal and related features.

“Maintenance Fee” means the fee paid by the City for Maintenance.

“Maintenance Period” means the time period when Contractor provides Maintenance to the City, which begins as noted in Exhibit A, Payment Schedule, and renewable on an annual basis.

“Manufacturer’s Warranty” means that the HDS Software will operate as documented in the HDS Software, Acceptance Criteria. System “Manufacturer’s Warranty Period” means the period covered under the maintenance agreement.

“Master Terms and Conditions” means this portion of the Contract, the body of text from the preamble through the signature page.

“Material Breach” means any breach of this Contract that (a) causes or may cause substantial harm to the non-breaching party; or (b) substantially deprives the non-breaching party of the benefit it reasonably expected under this Contract.

“Product(s)” means Software, Equipment, Documentation and supplies, Services including warranty services, installation and Maintenance and professional services, which may include Upgrades, Customization and training as applicable.

“Project” means the overall collection of activities required for delivery and support of the System including, without limitation, design, development, integration, testing, support and Maintenance, any of which Contractor may be providing in whole or in part.

“Repair” means to fix, patch, reprogram, or replace the System or any Equipment or Software component thereof so as to eliminate Errors.

“Services” means both ordinary and professional services as required to be performed by Contractor under this Contract for the City. Services include, but are not limited to, Maintenance, consulting, training, site management, installation, analysis, modifications, needs assessment, Hosting Services, or technology review.

“Software Enhancement” means a modification of Contractor’s Software Source Code to increase its capabilities.

“Software Enhancement Release” means Software Enhancements provided by Contractor to the City as part of its Maintenance and Support services.

“Source Code” means a complete copy, expressed in high-level (i.e., human readable; not machine language or object code) computer language, of the Software which, when assembled or compiled, becomes the executable object code of the Software. All source code related to this Contract is the exclusive, proprietary property of Contractor.

“Statement of Work” (SOW) means the written detailed specifications of the System, Product(s), or

Services(s) to be delivered to the City by Contractor subject to the terms and conditions of the Contract.

“Subcontractor” means any person or business entity employed to perform all or part of an obligation of this Contract under the control of the Contractor.

“Task Order” means any written request or document issued by the City and signed by both Parties for additional Product(s) or Service(s) to be provided under this Contract that the City may require in conjunction with its use of the System. Task Orders shall document the description of goods and/or services, price, payment schedule, project and performance schedule, due dates, milestones and deliverables.

“Third Party Software” means software other than Contractor Software provided to City by Contractor under this Contract and that Contractor is authorized to license to the City subject to the original manufacturer’s standard provisions.

“Update” means a change, modification, or enhancement to the Hardware or Software, and related Documentation, which improves its performance or efficiency, but does not alter its core functionality.

“Upgrade” means a newer, better version, change, modification, or enhancement to the Hardware or Software (including Third Party Software), and related Documentation, which Contractor makes available from time to time, which incorporates major new features or increases the core functionality of the Software and may be considered a new version. Software Upgrades may include error correction, bug fixes, additions to, or patches to the Software.

“Use” means the City’s right to install, integrate, configure, implement, test, access, maintain and operate the System; any Contractor-provided software tools to customize the System; Documentation listed in the Contract; training materials City may acquire to provide internal training on the System to City Users. Use of Contractor software is governed by Section 3.

“User” means any person employed or working on behalf of the City, its Bureaus, Divisions, Offices, Directors, and any person or entity under contract or authorized by the City to provide it with services and to use the City’s resources in whole or in part, in the course of assisting the City .

## SECTION 2 GENERAL PROVISIONS

2.1 Order of Precedence: (04/10) In the event there is a conflict between the terms and conditions of one portion of this Contract with another portion of this Contract, the conflict will be resolved by designating which portion of the Contract documents takes precedence over the other for purposes of interpretation, except where a clear statement of precedence other than that set forth in this section is included in the document. In this Contract the order of precedence shall be:

1. Amendments
2. Master Terms and Conditions
3. Change Orders

4. Task Orders
  5. Exhibit A, Contractor's Price and Payment Schedule
  6. Exhibit B, Statement of Work
  7. Exhibit C, Sample Task Order
  8. Exhibit D, Sample Change Order
  9. Exhibit E, Sample Status Report
  10. Exhibit F, Sample Certificate of Acceptance
  11. Exhibit G, HDS Application Service Provider Agreement
  12. Exhibit H, HDS Hosting Services
  13. City RFP # 112506 (including any addenda issued)
  14. Contractor's Proposal, incorporated by reference
  15. Contractor Documents (including any licenses, EULA, maintenance agreement, support agreement or others)
- 2.2 Point of Contact: (04/10) Contractor shall be the sole point of contact for the City with regard to the Contract.
- 2.3 Capacity to Contract. (04/10) Contractor warrants it has the legal authority and capacity to enter into and perform this Contract.
- 2.4 Compliance with Law/Venue
- 2.4.1 Authority to Conduct Business. (04/10) Contractor warrants it is duly authorized to operate and do business in all places where it shall be required to do business under the Contract; that it has obtained or shall obtain all necessary licenses and permits required in connection with the Contract, and that it shall fully comply with all laws, ordinances, orders, decrees, labor standards and regulations of its domicile and wherever performance occurs during the term of this Contract. Contractor warrants it is lawfully organized and constituted under all federal, state and local laws, ordinances and other authorities of its domicile and is otherwise in full compliance with all legal requirements of its domicile.
- 2.4.2 Oregon Venue/Choice of Law. (04/10) This Contract shall be construed according to the laws of the State of Oregon without reference to its conflict of laws provisions. Any litigation between the City and Contractor arising under this Contract or out of work performed under this Contract shall occur, if in the state courts, in the Multnomah County Circuit Court, and if in the federal courts, in the United States District Court for the District of Oregon.
- 2.4.3 Compliance with Applicable Law. (04/10) Contractor warrants it has complied and shall comply with all applicable law, ordinances, orders, decrees, labor standards and regulations of its

domicile and wherever performance occurs in connection with the execution, delivery, and performance of this Contract and any Task/Change Order subject to this Contract.

2.4.4 Conflict of Interest. (04/10) Contractor warrants it has no present interest and shall not acquire any interest that would conflict in any manner with its duties and obligations under the Contract.

2.4.5 Rule of Construction/Contract Elements/Headings. (04/10) This Contract has been drafted by the City in the general format by the City for the Parties only and shall not, by reason of such action, be construed against the City. Section headings are for ease of reference and convenience only and shall not affect or enter into the interpretation of any portion of the Contract.

2.5 Term. (04/10) Unless terminated earlier under the provisions herein, this Contract shall remain in effect during the Initial Term through design and implementation of the Project as well as the period for Services agreed to by the City and Contractor, including option years exercised at the City's discretion. Initial Term cannot exceed five (5) years. City Contracts can be no longer than ten (10) years total.

## 2.6 Changes to Contract

2.6.1 Amendment of the Contract. (04/10) No provision of this Contract may be amended or modified unless such Amendment or modification is approved as to form by the City Attorney and executed in writing by authorized representatives of the Parties. All changes that would permanently change any provisions of this Contract shall be memorialized in the form of an Amendment. If the requirements for Amendment or modification of this Contract as described in this section are not satisfied in full, then such Amendments or modifications automatically will be deemed null, void, invalid, non-binding, and of no legal force or effect.

2.6.2 Task Orders. (04/10) The City and Contractor agree that if the City requires additional Services or Products, it may submit a Task Order to Contractor. Task Orders are subject to the terms of this Contract. Agreed-upon changes shall not be retroactive and shall apply as of the effective date of the respective Task Order. Changes to a Task Order shall be done via the Change Order process, outlined below.

2.6.3 Change Orders to a Task Order. (04/10) The City reserves the right to make changes, at any time to a Task Order in the form of a Change Order agreed to in writing by the Parties. Contractor agrees to timely alter the delivery of Products or Services accordingly. If such changes materially increase or decrease Contractor's obligations, the Parties shall execute an Amendment to the Contract as needed or adjust the fee accordingly, and if the amount of such adjustment is not calculable as a function of hours or tasks, the Parties shall negotiate in good faith a modified fee.

2.7 Survival of Orders. (04/10) In the event that a Task Order/Change Order is not completed prior to the expiration of this Contract, the Task Order/Change Order shall survive the expiration of such until completion and all provisions of this Contract shall be considered active and in full force until the Task Order/Change Order reaches conclusion. In no case shall a new Task Order/Change Order be placed by the City or be accepted by Contractor after the expiration date of this Contract.

- 2.8 Delivery. (04/10) Contractor shall deliver the System and Products freight and insurance prepaid; F.O.B. the City's designated location at the time indicated herein or on any Task/Change Order. Shipments will be complete and partial shipments will be avoided unless the City agrees in writing to the partial shipment in advance of such a shipment. The risk of loss or damage in transit shall be upon Contractor until Product is received by the City at the delivery site. Contractor shall furnish on-site or other assistance, as may be required to install the Product at no additional cost to the City, if required by the City. Acceptance shall not relieve Contractor from its responsibility under any representation or warranty. If the City makes a payment for a Product prior to Final Acceptance, the payment does not grant a waiver of any representation or warranty by Contractor. In the case of the System, delivery of Products shall not be deemed to be complete until the System is available for commencement of the Acceptance Test.
- 2.9 Delivery Schedule. (04/10) Contractor shall use best efforts to deliver Product(s) and/or Services(s) on time, in accordance with the scheduled delivery date as set forth in this Contract or an individual Task/Change Order. If Contractor delivers Product more than Thirty (30) days later than the scheduled delivery date as listed in this Contract or an individual Task/Change Order, the City may cancel the Task/Change Order without penalty.
- 2.10 Written Notifications. (04/10) All notifications and written Amendments shall be sent, return receipt requested, to the following:

For City of Portland:	For Contractor:
Name: Antoinette Pietka	Name: Charlene Bernier
Title: Contract Administrator	Title: Director of Marketing
Address: 421 SW 6th Ave., Suite 500	Address: 2685 Executive Park Drive, Suite 8
City, State: Portland, OR 97204	City, State: Weston, FL 33331
e-mail: Antoinette.Pietka@Portlandoregon.gov	e-mail: Charlene.Bernier@hdsoftware.com
Copy to: Technology Contracts	Copy to: Debora Stevenson
Procurement Services	Director of Administration
1120 SW Fifth Avenue Room 750	2685 Executive Park Drive, Suite 8
Portland OR 97204	Weston, FL 33331
	email:
	<a href="mailto:Debora.Stevenson@hdsoftware.com">Debora.Stevenson@hdsoftware.com</a>

- 2.11 City Reporting Requirements. (04/10) The City is required to track certain types of contract data for reporting purposes. Items which the City must report on may include, but are not limited to, Subcontractor utilization, Minority, Women, and Emerging Small Business (M/W/ESB) participation and Subcontractor/Supplier Payment. Contractor is a Minority and Woman owned business and certified in the State of Florida. The Contractor has proposed that no subcontractors will be utilized for any of the work identified in this Contract.
- 2.12 Payment. (04/10) Unless subject to successful completion of an Acceptance Test or other payment milestone specified in any respective Task/Change Order, payment for the System and/or any Product shall be in accordance with the Payment Schedule attached hereto as Exhibit

A. Payment shall be issued by the City net forty-five (45) days from receipt and acceptance of a proper invoice from Contractor. Contractor invoices must contain Contractor's name and address; invoice number; date of invoice; Contract number and date; description of Products and/or Services; quantity, unit price, (where appropriate), and total amount; City-required reporting, if any, and the title and phone number of the responsible official to whom payment is to be sent. The City may stipulate how line items are entered on an invoice to ensure compatibility with the City's accounting and financial systems and to facilitate payment to vendor.

- 2.13 Payment of Taxes/Contractor Shall Withhold. (04/10) Contractor shall, at its own expense, timely (a) pay all salaries, wages, and other compensation to its employees; (b) withhold, collect, and pay all applicable federal, state, and local income taxes (domestic or foreign), FICA, Medicare, unemployment insurance and any other taxes or charges in connection with its employees; and (c) provide and pay for workers compensation insurance and any statutory or fringe benefits to employees. Contractor shall be solely responsible for all such obligations. Contractor shall also assure that any Subcontractors shall comply with the foregoing obligations.
- 2.14 Independent Contractor/No Duty for the City to Withhold. (04/10) Contractor is a contractor independent of the City and, accordingly, no Task/Change Order for Services pursuant to this Contract is entered into as a joint venture, partnership, or agency between the Parties. No employment relationship is or is intended to be created between the City and any individual representing Contractor. During the term of this Contract, employees of Contractor and any authorized Subcontractors shall at all times remain employees of Contractor or authorized Subcontractors and ultimately shall remain under Contractor's sole control.
- 2.15 Assignment. (04/10) Neither Party shall assign, transfer, subcontract, or delegate all or any part of this Contract, or any interest therein, without the other Party's prior written consent, which shall not be unreasonably withheld, except that (a) either Party may assign to any corporate Affiliate pursuant to any merger, consolidation or other reorganization, without the other Party's consent but upon written notice to the other Party, (b) in the event that the City's business needs change or the City enters into an agreement with a provider for outsourcing services, Contractor agrees that the City shall have the right to assign this Contract to a successor of all, substantially all, or specified area(s) of the City's business, including an outsourcing provider, provided such outsourcing provider operates the Software licensed hereunder expressly and solely for the City's benefit, upon written notice to the other Party, and (c) Contractor may, without the other Party's consent but upon prior written notice to the other Party, assign its right to payment under this Contract or grant a security interest in such payment to any third party without requiring that the third party be liable for the obligations of Contractor under this Contract.
- 2.16 Delegation of Obligations/Subcontractors. (04/10) Contractor shall not subcontract any work, assign any rights (including, without limitation, in connection with the sale of all or substantially all of Contractor's assets, stock, or the line(s) of business applicable to any Task/Change Order), or delegate any obligations under this Contract, cancel or change any previously approved subcontract without the City's prior written consent. Contractor shall be fully responsible for the acts and omissions of its Subcontractors at all levels, and of their agents and employees. Contractor shall ensure that all applicable provisions of this Contract (including those relating to Insurance, Indemnification, and Confidentiality) are included in all of its subcontracts. The City

reserves the right to review any agreements between Contractor and its Subcontractors for Products and/or Services authorized under this Contract.

All M/W/ESB subcontractors/suppliers identified in Contractor's proposals shall be used in their proposed capacity during Contract performance. If Contractor desires to replace any M/W/ESB subcontractors/suppliers under this Contract all substitution requests must have approval from the City's Purchasing Agent before such substitutions can be made.

2.17 Warranties. Contractor and its Subcontractors warrant as follows:

2.17.1 Disclosure and Assignment of Manufacturer's Warranties. (04/10) In all cases where Product or Services are covered by a Manufacturer's Warranty, Contractor will provide the City with a complete and accurate list of all Manufacturer's Warranties pertaining to all Services or Products provided by Contractor. Contractor will assign to the City any Manufacturer's Warranty applicable to any respective Product or Service. Notwithstanding the foregoing, Contractor shall be held responsible by the City for correction to or replacement of the System or any of its components during the Manufacturer's Warranty period.

2.17.2 Equipment and Parts Warranty. (04/10) Not Applicable

2.17.3 Warranty Against Planned Obsolescence. (04/10) The Contractor warrants that at the time of Delivery of Products, it has no plans in the next 12 months for announcing a line of products to replace the ones delivered pursuant to this Contract or any plans that would result in reduced support for the product line delivered.

2.17.4 Industry Standards. (04/10) The System and all components of the System are compliant with all other generally accepted industry standards at time of any respective Task/Change Order.

2.17.5 Warranty and Representations. Contractor warrants and represents the following:

2.17.5.1 Performance to Specifications. (04/10) The System, including all components and Upgrades supplied by Contractor shall operate in accordance with Acceptance Criteria and all current system Documentation during the Contract Term.

2.17.5.2 All Necessary Materials. (04/10) The City has all necessary materials and that no other Equipment, Software, interfaces, applications, or other products and/or services are required to be used in conjunction with the System in order for the System to operate in accordance with the Acceptance Criteria and Documentation.

2.17.5.3 System Compatible. (04/10) The System is compatible with the City's existing data files and systems as may be applicable and identified at the time of a Task/Change Order, and shall run in accordance with the Documentation.

2.17.5.4 No Material Defects or Viruses/Illicit Code. (04/10) The System (A) is free of any defect in material of the media in which it is delivered; and (B) is free of any virus, Trojan horse, spyware, malware, or other program routine designed

to erase, disable or otherwise harm the City's hardware, data or other programs that Contractor or any Subcontractor to Contractor knew or should have known was contained in the Software or other code or program.

2.17.5.5 Illicit Code. (04/10) Contractor's Software and Third Party Software shall not:

- A) contain any hidden files that Contractor or any Subcontractor to Contractor knew or should have known were contained in the Software or programming
- B) replicate, transmit, or activate itself without the control of an authorized person operating computing equipment on which it resides, unless requested or authorized by the Contract Manager
- C) alter, damage or erase any data or computer programs without the control of an authorized person operating the computing equipment on which it resides
- D) contain any key, node lock, time-out or other function, whether implemented by electronic, mechanical or other means, which restricts or may restrict use or access to any programs or data developed under this contract, based on residency on a specific hardware configuration, frequency of duration of use or other limiting criteria (any of the foregoing shall constitute "illicit code")

2.17.6 Documentation Explains Use. (04/10) Contractor warrants that the Documentation shall explain the operation of the System in terms understandable by City Users of reasonable technical competence.

2.17.7 No Third Party Conflict or Infringement. (04/10) Contractor warrants the execution, delivery, and performance of this Contract and any Task/Change Order subject to this Contract shall not contravene the terms of any contracts with third parties or any third-party rights in any patent, trademark, copyright, trade secret, or similar right; and, as of the date of this Contract, there are no actual or threatened legal actions with respect to the matters in this provision.

2.17.8 Commencing of the Warranty Period. (04/10) Where Contingent Products are ordered and no Acceptance Test is required, the Warranty Period shall not commence until Acceptance by the City of all required or all Contingent Products. The City may, at its election, postpone Services in support of Products so as to coincide with Delivery and Acceptance of all Contingent Products. The City shall not incur any additional fees whatsoever for reordered or replacement Contingent Products.

2.18 Indemnification. (04/10) Contractor shall defend, save, and hold harmless the City of Portland, its officers, agents, and employees, from all claims, demands, suits, actions, losses, damages, liabilities, costs and expenses of whatsoever nature (including all attorneys' fees and costs), resulting from or arising out of the activities, errors or omissions of Contractor or its officers, employees, Subcontractors, or agents, including intentional acts, under this Contract.

Contractor agrees to hold harmless and indemnify the City and its Affiliates against any taxes, premiums, assessments, and other liabilities (including penalties and interest) that the City or its Affiliates may be required to pay arising from Products and/or Services provided by Contractor under any Task/Change Order to this Contract. The City of Portland, as a municipal corporation

of the State of Oregon, is a tax-exempt unit of local government under the laws of the State of Oregon and is not liable for any taxes.

## 2.19 Force Majeure

2.19.1 (04/10) In the event that either Party is unable to perform any of its obligations under this Contract (including any Task/Change Order(s) or loss of any Software licensed or developed hereunder) due to natural disaster, actions or decrees of governmental bodies or communications line failure not the fault of the affected Party (hereinafter referred to as a "Force Majeure Event"), the Party who has been so affected immediately shall give notice to the other Party and shall do everything possible to resume performance. Upon receipt of such notice, this Contract and/or any affected Task/Change Order shall immediately be suspended.

2.19.2 (04/10) If the period of nonperformance exceeds fifteen (15) days from the receipt of notice of the Force Majeure Event, the Party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract or any Task/Change Order or any license granted hereunder.

2.19.3 (04/10) If delay in delivery due to a Force Majeure Event does not exceed thirty (30) days, such delays in delivery shall automatically extend the delivery date for a period equal to the duration of such events; any Warranty Period affected by a Force Majeure Event shall likewise be extended for a period equal to the duration of such event so long as it does not exceed thirty (30) days.

2.19.4 (04/10) If delay in delivery due to Force Majeure Event is longer than thirty (30) days, the City shall have the right to terminate this Contract, a Task/Change Order, Maintenance agreement or any license hereunder upon written notice to Contractor, in accordance with this Section.

2.19.5 (04/10) If this Contract involves the acquisition of Equipment or Software that contains personally identifiable information and/or processes credit card transactions, a security breach of Contractor's system shall not be considered a Force Majeure Event.

2.20 Insurance and Bonding. (04/10) Work shall not commence until all insurance requirements listed below have been met and certificates have been approved by the City Attorney and filed with the Auditor. All required insurance must be issued by companies or financial institutions that are financially rated A or better and duly licensed, admitted and authorized to do business in the State of Oregon.

2.20.1 Insurance Certificate. (04/10) As evidence of the required insurance coverage, Contractor shall furnish acceptable insurance certificates to the City prior to or with the return of the signed contract. The Contractor shall provide the City a 30-day notice of cancellation and the certificate shall include a 10-day notice for non-payment. There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance. If the insurance is canceled or terminated prior to completion of the Contract, Contractor shall provide a new policy with the same terms. Contractor agrees to maintain continuous, uninterrupted coverage for the duration of the Contract. Failure to maintain insurance as required by this Contract may be cause for immediate termination of the Contract by the City. Contractor's insurance will cover damages excluded from any limitation of liability to the extent of its policy limits indicated herein.

2.20.2 Additional Insureds. (04/10) The coverage shall apply as to claims between insureds on the policy. The insurance shall be without prejudice to coverage otherwise existing. The insurance certificate shall name as additional insureds "the City of Portland, Oregon, and its officers, agents and employees." Notwithstanding the naming of additional insureds, the insurance shall protect each additional insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured.

2.20.3 Insurance Costs. (04/10) Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions, and/or self-insurance.

2.20.4 Required Coverage is as follows: (04/10)

2.20.4.1 Commercial Liability & Combined Single Limit Occurrence. (04/10)  Required  Waived by City Attorney. Contractor shall provide and maintain public liability and property damage insurance in the minimum amount of \$1,000,000.00 (one million U.S. dollars) per occurrence that protects Contractor and the City and its officers, agents and employees from any and all claims, demands, actions and suits for damage to property or personal injury arising from Contractor's work under this Contract.

2.20.4.2 Automobile Liability. (04/10)  Required  Waived by City Attorney Contractor shall carry automobile liability insurance with a combined single limit of not less than \$ 1,000,000.00 (one million U.S. dollars) each occurrence for bodily injury and property damage. The insurance shall include coverage for any damages or injuries arising out of the use of automobiles or other motor vehicles by Contractor.

2.20.4.3 Workers' Compensation. (04/10)  Required  Meets Exceptions in ORS 656.027 Contractor shall comply with the workers' compensation law, ORS Chapter 656, as it may be amended, and if workers' compensation insurance is required by ORS Chapter 656. Contractor shall maintain coverage for all subject workers as defined by ORS Chapter 656 and shall maintain a current, valid certificate of workers' compensation insurance on file with the City Auditor for the entire period during which work is performed under this Contract.

Contractors who are non-subject workers meeting one of the exceptions in ORS 656.027 may not be required to carry workers compensation insurance. Any Contractor requesting an exemption from the workers compensation coverage listed above must make that request in writing to the City Attorney, stating Contractor's qualification for exemption under ORS 656.027.

2.20.4.4 Technology Errors and Omissions; Information Security & Privacy Liability. (04/10)  Required  Waived by City Attorney. Contractor shall maintain liability insurance covering acts, errors or omissions arising out of the performance or failure to perform professional services related to the Services under this Contract. The coverage shall be placed with an insurer with an AM Best Rating of A or better and shall include the following coverage:

Technology Products & Services E&O - Information Security & Privacy Liability for Service Provided to Others.

Such insurance shall cover any and all errors, omissions and/or negligent acts in the delivery of Products, Services and Software under this Contract. Such errors and omissions insurance shall include coverage for claims and losses with respect to network risks (such as data breaches, unauthorized access/use, ID theft, invasion of privacy, damage/loss/theft of data, degradation, downtime, etc.) and infringement of intellectual property, such as copyrights, trademarks, service marks and trade dress.

Such insurance shall include limits of coverage of the local currency equivalent of not less than \$1,000,000.00 (one million U.S. dollars) and shall remain in effect for not less than three (3) years following the date of termination or expiration of this Contract. Evidence of coverage must be sent to the City for three years following termination or expiration of this Contract.

2.20.4.5 Insurance Requirements for Subcontractors. (04/10) Should Contractor subcontract any part of the Contract, Contractor will require those Subcontractors or Affiliates if not covered under Contractor's insurance, to obtain and keep in force for the duration of the Contract, insurance equal to the minimum values indicated above.

2.20.5 Performance Bond. (04/10)  Required  Not Required Contractor shall maintain a performance bond in the amount of \_\_\_\_\_ or percent ( \_\_\_\_\_ %) of the value of this Contract in full force and effect throughout the Initial Term of the Contract and any renewals. The City shall accept only a performance bond furnished by a surety company authorized to do business in Oregon and who is duly listed in the United States Treasury List as published in the Federal Register or is otherwise approved by the City Attorney. The surety bond shall have the surety company's seal affixed to it, be signed by the surety's Attorney in Fact, and have attached the Power of Attorney for the Attorney in Fact. The City Attorney may waive the requirement of the surety company's seal. The performance bond shall be forfeited to the City if Contractor fails to perform as required under the Contract.

2.21 Ownership of Property. (04/10\*) In this Contract, Contractor is licensing its Windows and web-based Software application products on a non-exclusive basis for Use only on a web server hosted and controlled by the Contractor. Contractor is at all times the owner of the Software and, except as specifically licensed hereby and to third parties pursuant to non-exclusive license agreements, Contractor retains all intellectual property right to the Software. Rights not specifically granted in this Agreement, including without limitation Federal and International Copyrights, are expressly reserved by Contractor.

2.22 Proprietary Rights. (04/10\*)

2.22.1 Contractor's Proprietary Rights See Section 3.6

2.22.2 City's Proprietary Rights Notwithstanding the termination or expiration of this Contract, City will be the owner of any and all right, title and interest in and to any and all data, Reports and Reported Information. Contractor shall have no rights in such data, Reports or

Reported Information. Other than the rights conferred to Contractor in this Contract, all trademarks, service marks, patents, copyrights, trade secrets and other proprietary rights of City are and will remain the exclusive property of City or its licensors.

- 2.23 Return of Parties' Property. (04/10) When the Contract or any Task/Change Order placed pursuant to the Contract is terminated or expires, each Party shall return to the other all papers, materials, and properties of the other Party then in its possession. The City will retain one (1) copy of the Documentation as required by law.

If the City has paid in full for licensed Product prior to the expiration date of this Contract the City shall retain licenses to Product for which the City may continue to order Maintenance and Upgrades. Terms of this Contract relating to such licensed Product, Maintenance and Upgrades shall survive expiration of the Contract.

- 2.24 Financing of Property. (04/10\*) N/A

- 2.25 Disclosure of Litigation or Financial Condition. (04/10) Contractor warrants and represents that there are no suits, actions or other proceedings – pending, or threatened – in any judicial or quasi-judicial forum that will or may adversely affect Contractor's ability to fulfill its obligations under this Contract. Contractor further warrants that it will immediately notify the City if, during the term of this Contract or any extension of this Contract, Contractor becomes aware of any lawsuits, actions or proceedings – pending or threatened – in any judicial or quasi-judicial forum that involve Contractor or any Subcontractor and that will or may adversely affect Contractor's ability to fulfill its obligations under this Contract or extension of the Contract. For purposes of the disclosure requirement, any litigation, actions or other judicial or quasi-judicial proceedings that, in the aggregate, involve claims against Contractor totaling at least ten percent (10%) of the total amount of this Contract shall be presumed to adversely affect the ability of Contractor to fulfill its duties under this Contract.

- 2.26 Notice of Change in Financial Condition. (04/10) Contractor must maintain a financial condition commensurate with the requirements of the Contract. If, during the Contract, Contractor experiences a change in its financial condition which may adversely affect its ability to perform, or changes the ownership or control, Contractor shall immediately notify the City in writing. Failure to notify the City of such a change in financial condition or change in ownership or control is sufficient grounds for terminating the Contract.

- 2.27 Audits and Access to Records

2.27.1 Records Retention. (04/10) Contractor shall maintain current financial records in accordance with professional accounting standards. Contractor agrees to maintain and retain supporting financial and Contract related documents during the term of the Contract and for a period of three (3) years after the date of submission of the final billing or until the resolution of all audit questions or claims, whichever is longer. All financial records, supporting documents, statistical records and all other records pertinent to this Contract shall be retained by Contractor for a minimum of three (3) years.

2.27.2 City Audits. (04/10) The City, either directly or through a designated representative, may conduct financial and performance audits of the billings and services during the records retention period listed above. City audits shall be conducted in accordance with generally accepted auditing

standards. Contractor shall provide the City's internal auditor or external auditor, and their designees with a copy of all reports, including any management letters issued as a result of the specified audits.

2.27.3 Access to Records. (04/10) The City internal auditor or City external auditor, and their designees, shall be given the right, and the necessary access, to review the work papers of Contractor audits if the City deems it necessary. Copies of applicable records shall be made available upon request.

2.28 Overpayment. (04/10) If an audit discloses that payments to Contractor were in excess of the amount to which Contractor was entitled, then Contractor shall repay the amount of the excess to the City. Under no circumstances will the payment of previous invoices constitute an acceptance of the charges associated with those invoices. If any audit shows performance of Services is not efficient in accordance with the U.S. Government Accountability Office's Government Auditing Standards, or that the Services are not effective in accordance with these Government Auditing Standards, the City may pursue remedies as provided under Section 2.31, Termination, and Section 2.33, Remedies.

2.29 Confidentiality

2.29.1 Maintenance of Confidentiality. (04/10) Contractor shall treat as confidential any City Confidential Information that has been made known or available to Contractor or that Contractor has received, learned, heard or observed; or to which Contractor has had access. Contractor shall use City Confidential Information exclusively for the City's benefit and in furtherance of the Products and/or Services provided by Contractor. Except as may be expressly authorized in writing by the City, in no event shall Contractor publish, use, discuss or cause or permit to be disclosed to any other person such City Confidential Information. Contractor shall (1) limit disclosure of the City Confidential Information to those directors, officers, employees and agents of Contractor who need to know the City Confidential Information in connection with the City Project, (2) exercise reasonable care with respect to the City Confidential Information, at least to the same degree of care as Contractor employs with respect to protecting its own proprietary and confidential information, and (3) return immediately to the City, upon its request, all materials containing City Confidential Information, in whatever form, that are in Contractor's possession or custody or under its control. Contractor is expressly restricted from and shall not use Confidential intellectual property of the City without the City's prior written consent.

2.29.2 Scope. (04/10) This Contract shall apply to all City Confidential Information previously received, learned, observed, known by or made available to Contractor. This Contract shall not apply to City Confidential Information which (1) is or later becomes part of the public domain without breach of this Contract and through no wrongful act of Contractor; (2) Contractor lawfully receives from a third party; (3) was developed independently by and was reduced to writing by Contractor prior to the earlier of the date of this Contract or the date of any access or exposure to any City Confidential Information, or (4) is required to be disclosed under operation of law. Contractor's confidentiality obligations under this Contract shall survive termination.

2.29.3 Equitable Remedies. (04/10) Contractor acknowledges that unauthorized disclosure of City Confidential Information or misuse of a City computer system or network will result in irreparable harm to the City. In the event of a breach or threatened breach of this Contract, the

City may obtain equitable relief prohibiting the breach, in addition to any other appropriate legal or equitable relief.

2.29.4 Contractor's Confidential Information. (04/10) During the term of the Contract, Contractor may disclose to the City, certain Contractor Confidential Information pertaining to Contractor's business. Contractor shall be required to mark CONFIDENTIAL with a restrictive legend or similar marking. If CONFIDENTIAL is not clearly marked or the Contractor's Confidential Information cannot be marked with a restrictive legend or similar marking or is disclosed either orally or by visual presentation, Contractor shall identify the Confidential Information at the time of disclosure or within a reasonable time thereafter. The City shall not be deemed to have breached this Section if (1) Contractor's Confidential Information later becomes part of the public domain through no act or omission of the City; (2) is required to be disclosed under operation of law; (3) the City lawfully receives Confidential Information from a third party with no breach of any duty of confidentiality; or (4) was developed independently by and was reduced to writing by the City prior to the earlier of the date of this Contract or the date of any access or exposure to any Contractor Confidential Information.

Each party agrees to take reasonable steps to protect Confidential Information from access by unauthorized individuals. Upon completion or termination of this Agreement (regardless of the reason) or earlier at the Other Party's request, each party shall promptly destroy or deliver to the Other Party all the Confidential Information, and any notes, extracts or other reproductions (whether in paper or electronic format), except as is required by law. Upon request, each party shall certify that all Confidential Information has been destroyed or returned to the other party. Except as required during the course of its performance under this agreement, neither party shall use any Confidential Information for its own purposes and each agrees to abide by its responsibilities under the Gramm-Leach-Bliley Act, where applicable. This provision shall survive expiration or termination of this Agreement, regardless of the reason for the termination.

2.29.5 Public Records Request. (04/10) Contractor acknowledges that the City of Portland is subject to the Oregon Public Records Act and Federal law. Third persons may claim that the Confidential Information Contractor submitted to the City hereunder may be, by virtue of its possession by the City, a public record and subject to disclosure pursuant to the Oregon Public Records Act. Subject to the following conditions, the City agrees not to disclose any information Contractor submits to the City that includes a written request for confidentiality and as described above, specifically identifies the information to be treated as Confidential. The City's commitments to maintain certain information confidential under this Contract are all subject to the constraints of Oregon and federal laws. Within the limits and discretion allowed by those laws, the City will maintain the confidentiality of information.

2.29.6 City's Obligation to Notify Contractor. (04/10) If the City receives a public records request for information that Contractor has marked CONFIDENTIAL and submitted in confidence, the City shall notify Contractor of the request. The City shall provide Contractor with written notice and a copy of the request. Contractor shall have five (5) business days within which to provide a written response to the City, either consenting to disclosure of the requested Contractor Confidential Information or explaining why the Contractor's Confidential Information is exempt from disclosure under the Oregon Public Records Law or otherwise. If Contractor fails to submit a written response within the time period required, the City may

make its own determination regarding disclosure of the information sought by the request. Whether or not Contractor submits any written response to the City, the City shall retain final discretion to determine whether to disclose the requested confidential information. If Contractor contends that the Contractor's Confidential Information is exempt from disclosure, the City shall give Contractor five (5) business days' written notice prior to disclosing such Confidential Information to allow Contractor to pursue whatever legal avenues it deems appropriate.

If the City refuses to disclose the Contractor's Confidential Information pursuant to Contractor's response under the paragraph above, and the requestor files a petition for disclosure pursuant to the Oregon Public Records Act, the City shall provide Contractor with a copy of the petition within two (2) business days of receipt of the petition by the City. Within three (3) business days of delivery of the petition by the City, Contractor will provide the City with a written evaluation of the petition, detailing why the records would be exempt from disclosure under the Oregon Public Records Act. The City shall provide notice and a copy of the District Attorney's decision on the petition within two (2) business days of receipt of the decision by the City. If Contractor desires the City to contest an order of the District Attorney requiring disclosure, or if an order of the District Attorney upholding non-disclosure is challenged as provided in the Oregon Public Records Act, Contractor shall save, indemnify and hold harmless the City and pay all reasonable costs and expenses, including reasonable attorney fees, incurred by or assessed against the City as a result of contesting or defending a public records order of the District Attorney in circuit court and on appeal. Contractor shall have the right to intervene in any such proceeding, to the extent that Contractor's rights may be affected thereby.

2.29.7 Discovery of Documents. (04/10) In the event a party to litigation seeks discovery of information submitted by Contractor in confidence, the City will notify Contractor of the request. The City shall allow Contractor to participate in the response at its own expense. The City will comply with any effective order issued by the court having jurisdiction over the matter.

2.30 Dispute Resolution. (04/10) Contractor shall cooperate with the City to assure that all claims and controversies which arise during Contractor's performance of Services under this Contract or a Task/Change Order subject to this Contract and which might affect the quality of such Services will be resolved as expeditiously as possible in accordance with the following resolution procedure:

- A) Any dispute between the City and Contractor arising prior to completion of Contractor's services or the earlier termination of the Contract shall be resolved, if possible by the Contract Manager or their designee on behalf of the City and Vice President of Business Development, Elena Miranda, on behalf of Contractor.
- B) If the Contract Manager or the Contract Manager's designee and Contractor are unable to resolve any dispute within three (3) business days after notice of such dispute is given by either Party to the other, the matter shall be submitted to Bureau of Technology Services Chief Technology Officer on behalf of the City and HDS Vice President of Software, Abdul Mondol, on behalf of Contractor for resolution, if possible.
- C) Should any dispute arise between the Parties concerning this Contract that is not resolved by mutual agreement above, it is agreed that such dispute will be submitted to mandatory mediated negotiation prior to any Party's commencing arbitration or litigation. In such an event, the Parties to this Contract agree to participate in good faith in a non-binding mediation process. The mediator shall be selected by mutual agreement of the Parties, but in the absence of such agreement each Party shall select a temporary mediator and those mediators shall jointly select the permanent mediator. All costs of mediation shall be borne equally by the Parties.
- D) Should an equitable solution not result from the foregoing, the City and Contractor shall be free to pursue other remedies allowed under this Contract.
- E) Unless ordered by the City to suspend all or any portion of Contractor's Services, Contractor shall proceed with the performance of such Services or delivery of Products without any interruption or delay during the pendency of any of the foregoing dispute resolution procedures and shall comply with any mutually agreed upon Task/Change Orders that the City may issue regarding the acceleration of all or any portion of the Products or Services. During the pendency of any of the foregoing dispute resolution procedures, the City shall continue to make all payments that are not in dispute, in accordance with the provisions of the Contract or Task/Change Order.

2.31 Termination. (04/10) The following conditions apply to termination of this Contract. The City, on thirty (30) days written notice to Contractor, may terminate this Contract for any reason deemed appropriate in its sole discretion.

2.31.1 The City and Contractor, by mutual written agreement, may terminate this Contract at any time.

2.31.2 Either Party may terminate this Contract in the event of a Material Breach of the Contract by the other. Prior to such termination, however, the Party seeking the termination shall give to

the other Party written notice to cure the Material Breach and of the Party's intent to terminate. If the Party has not entirely cured the Material Breach within thirty (30) Days of the notice, then the Party giving the notice may terminate the Contract at any time thereafter by giving a written notice of termination. In the event of default under this Contract, the non-defaulting party shall have the option (upon the expiration without cure of any applicable cure period) to: (a) terminate in whole or in part this Contract or any related Task/Change Order, (b) seek remedies pursuant to this Contract (c) seek any other remedies in the Contract, in law, or at equity, to the extent not otherwise limited by the terms of this Contract , or (d) any combination thereof.

2.31.3 City Termination for Cause. (04/10) In addition to Material Breach, the City may terminate this Contract for the following reasons, which constitute cause for purposes of this Section:

- A) Bankruptcy. The City may terminate this Contract if Contractor: (a) becomes insolvent, makes a general assignment for the benefit of creditors; (b) suffers or permits the appointment of a receiver for its business or assets; (c) becomes subject to any proceeding under any bankruptcy or insolvency law whether domestic or foreign, and such proceeding has not been dismissed within a sixty (60) day period; or (d) has wound up or liquidated, voluntarily or otherwise.
- B) Maintenance Default. The City may terminate this Contract if Contractor fails to provide Warranty or Maintenance services or Contractor has not cured its failure to provide Maintenance as provided and paid for in this Contract.
- C) System or Product of Software Performance Default. The City may terminate this Contract if the System or Product exhibits defects causing serious disruption of Use and/or repeated periods of downtime, over a continuous period of six (6) months or more.
- D) Software Code. Inclusion of illicit code as set forth in Section 2.17.5, Warranty and Representations, shall be considered a Material Breach of the Contract and no notice or cure period will apply. In addition to any other remedy available to it under this Contract with respect to any such Material Breach, the City reserves the right to pursue any civil and/or criminal penalties available to it against a Contractor, including without limitation the Deceptive Trade Practices & Consumer Protection Act, the Computer Crimes Law and any other remedy at law or equity.
- E) Void Assignment. In the event that Contractor assigns its obligations to provide Products and/or Services under this Contract to any third party in a manner other than as set forth in Section 2.15, Assignment, the City shall have the option to terminate this Contract or any Task/Change Order for Products and/or Services, and promptly receive a pro rata refund for fees paid for such Products and/or Services.

2.31.4 Termination for Force Majeure. (04/10) Either party may terminate this Contract due to a Force Majeure event as set forth in Section 2.19, Force Majeure.

2.31.5 City Termination for Contractor Breach. (04/10) In the event of termination by the City due to a Material Breach by Contractor, then the City may complete the Project itself, by agreement with another contractor, or by a combination thereof. In the event of any Material Breach by

Contractor, which Breach shall not have been cured as agreed to between the Parties, the City shall have the ability to pursue the City's rights at law.

HDS SHALL NOT BE LIABLE FOR INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY, SPECIAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER SUSTAINED AS A RESULT OF ANY BREACH OF WARRANTY OR OF THIS AGREEMENT, NEGLIGENCE OR GROSS NEGLIGENCE, OR OTHERWISE.

2.31.6 Contractor Termination for City Breach. (04/10) In the event of Material Breach of this Contract by the City, then Contractor's remedy shall be limited to termination of the Contract and receipt of payment as provided in Section 2.12, Payment.

In the event (City) breaches any of the provisions of this agreement, HDS does not waive any of its rights at law, it being acknowledged HDS would suffer irreparable harm and that monetary remedies are inadequate. The parties acknowledge and agree that the provisions of this Section are a material inducement for HDS to enter this Agreement, and shall survive the termination of this Agreement.

2.31.7 Contractor Termination for Non-Payment Contractor may terminate this agreement as set forth, or may terminate maintenance, for non-payment of license, maintenance, or other outstanding services. In the event that an undisputed invoice remains unpaid for sixty (60) days, Contractor may terminate this Contract following written notice to the City and a fifteen (15) day opportunity for the City to cure.

2.32. Waiver. (04/10) No waiver of any breach of this Contract shall be held to be a waiver of any other or subsequent breach of this Contract.

2.33. Remedies. (04/10) The remedies provided in this Contract are cumulative, and may be exercised concurrently or separately. The exercise of any one remedy shall not constitute an election of one remedy to the exclusion of any other.

2.33.1 Software. (04/10\*) In the event of Software failure as set out in Contractor's Warranted uptime guarantee, the City shall have the right to one or more non-exclusive remedies.

2.33.2 Annual Maintenance and Support. (04/10\*) In addition to any other remedies provided for in this Contract or at law or in equity, the City shall have the right to obtain one or more of the following non-exclusive remedies in the event of any Material Breach involving Maintenance and Support under this Contract by Contractor: (a) suspension of contested maintenance payment obligations accruing during the period for which Contractor is in Material Breach; (b) termination of this Contract in its entirety as set forth in Section 2.31, Termination, or suspension of any affected Task Order or Maintenance Request, in the City's sole discretion; and (c) a refund of fees for Maintenance and Support paid by the City to Contractor for the period beginning from the date of the Material Breach to the end of the current Maintenance Term for which the breach occurs.

UNDER NO CIRCUMSTANCES SHALL HDS BE LIABLE TO THE CITY OR ANY CITY AUTHORIZED USERS FOR ANY LOSS, COST, EXPENSE, OR DAMAGE

DUE TO A FAILURE BY HDS TO PROVIDE MAINTENANCE IN AN AMOUNT THAT COLLECTIVELY EXCEEDS THE ANNUAL MAINTENANCE FEE.

2.33.3 Manufacturer's Warranty The City's remedy and HDS' only obligation under the manufacturer's warranty is to redo the Maintenance, Technical Support or Services until they are performed in a good and workmanlike manner. In the event that these services cannot be provided within a reasonable time after notification, the City's remedy is to terminate this Agreement upon written notice to HDS.

2.34 Severability. (04/10) Any section of this Contract which is held or declared void, invalid, illegal or otherwise not fully enforceable shall not affect any other provision of this Contract and the remainder of this Contract shall continue to be binding and of full force and effect. This Contract shall be binding upon and inure to the benefit of the City and its successors and assigns.

2.35 Rolling Estoppel. (04/10) Unless otherwise notified by Contractor, it shall be understood that the City shall have met all its obligations under the Contract. The City will be conclusively deemed to have fulfilled its obligations, unless it receives a deficiency report from Contractor by the fifteenth (15<sup>th</sup>) day of the month following the month of the alleged deficiency and Contractor identifies the specific deficiency in the City's fulfillment of its obligations in that report. Deficiencies must be described in terms of how they have affected a specific performance requirement of Contractor.

2.35.1 (04/10) Contractor is estopped from claiming that a situation has arisen that might otherwise justify changes in Project timetable, the standards of performance under the Contract or the Contract price, if Contractor knew of that problem and failed to include it in the applicable report.

2.35.2 (04/10) In the event Contractor identifies a situation that is impairing Contractor's ability to perform for any reason, Contractor's deficiency report should contain Contractor's suggested solutions to the situation. These suggestions should be in sufficient detail so that the City's Project Managers can make a prompt decision as to the best method of dealing with the problem and continuing the Project in an unimpeded fashion.

2.35.3 (04/10) If the problem is one that allows Contractor (within the terms of the Contract) to ask for changes in the Project timetable, the standards of performance, the Project price or all of these elements, the report should comply with the Task/Change Order procedure.

2.36 Business License. (04/10) Contractor shall register for a City of Portland business license as required by Chapter 7.02 of the Code of the City of Portland prior to beginning work under this Contract. Additionally, Contractor shall pay all fees or taxes due under the Business License Law and the Multnomah County Business Income Tax (MCC Chapter 12) during the full term of this contract. Failure to be in compliance may result in payments due under this Contract to be withheld to satisfy amount due under the Business License Law and the Multnomah County Business Income Tax Law.

2.37 EEO Certification. (04/10) Contractor shall be certified as Equal Employment Opportunity Affirmative Action Employer as prescribed by Chapter 3.100 of the Code of the City of Portland and maintain their certification throughout the term of the Contract.

- 2.38 Non-Discrimination in Benefits. (04/10) Throughout the term of the Contract, Contractor shall provide and maintain benefits to its employees with domestic partners equivalent to those provided to employees with spouses as prescribed by Chapter 3.100 of the Code of the City of Portland. The required documentation must be filed with the Bureau of Purchases, City of Portland, prior to Contract execution.
- 2.39 Sustainability. (04/10) Pursuant to the City's Sustainable City Principles, which direct City Bureaus to pursue long-term social equity, environmental quality, and economic vitality through innovative and traditional mechanisms, Contractor is encouraged to incorporate these Principles into its scope of work with the City wherever possible. Therefore in accordance with the Principles and the City's Sustainable Procurement Policy, it is the policy of the City of Portland to encourage the use of products or services that help to minimize the human health and environmental impacts of City operations. Contractor is encouraged to incorporate environmentally preferable products or services into its work performance wherever possible. "Environmentally preferable" means products or services that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product or service.
- 2.40 Packaging. (04/10) All packaging should be minimized to the maximum extent possible without compromising product quality. The City encourages packaging that is reusable, readily recyclable in local recycling programs, is made from recycled materials, and/or is collected by Contractor for reuse/recycling.
- 2.41 Permissive Cooperative Procurement. (04/10) Pursuant to ORS 279A.215, as additional consideration for this Contract, Contractor agrees to extend an option to purchase any Product, Equipment or Services covered under this Contract at the same prices as are specified in Exhibit G for purchase by the City, under the same terms and conditions to all regional public agencies. Each participating agency will execute its own Contract with the Contractor for its requirements.
- 2.42 News Releases and Public Announcements. (04/10) Contractor shall not use the City seal or other representations of the City in its external advertising, marketing, website, or other promotional efforts, nor shall Contractor issue any news release or public announcements pertaining to this Contract or the Project without the express written approval of the City. Such approval may be withheld in the City's sole discretion. If approval is not issued within ten (10) business days from receipt of the request, the request shall be deemed denied. Contractor shall not use the City seal without specific written permission from the Auditor.
- 2.43 Survival. (04/10) All obligations relating to confidentiality; indemnification; publicity; representations and warranties; proprietary rights; perpetual licenses, including licensing obligations as stated in this Contract or any applicable Task/Change Order; limitation of liability; and obligations to make payments of amounts that become due under this Contract or subsequent Task/Change Orders prior to termination or expiration (except that payments for Services not performed by the date of termination shall be prorated) shall survive the termination or expiration

of this Contract or any respective Task/Change Order and shall, to the extent applicable, remain binding and in full force and effect for the purposes of the ongoing business relationship by and between Contractor and the City. Nothing in this Contract shall alter, modify, or supersede the content and survival of such provisions, except as otherwise expressly agreed to in writing by the Parties and with the prior written approval of the City Attorney's office.

### SECTION 3 SOFTWARE LICENSE SPECIFIC PROVISIONS

3.1 Software License Definition. The "System" (as identified in Exhibit A), which is attached hereto and incorporated by reference. The System includes but is not limited to the compiled application including the application executables, extensions and any associated controls, the database schema, all interfaces, scripts and all documentation. The "System License" is defined, subject to, and in accordance with, the terms of this Agreement, as a personal, nonexclusive, and nontransferable license to install one system instance for production use and use for its intended purposes as stated in Section 3.5 Use Limitations, Paragraph 3.5.1, and solely for The City's governmental purposes.

3.2 Terms of Use of Software License HDS grants to the City and the City accepts from HDS a personal, nonexclusive, and nontransferable "System License" to install and use for its intended purposes as stated in Section 3.5 Use Limitations, Paragraph 3.5.1, on HDS' hosted computer equipment and solely for the City's internal business, one single production environment license for the operational object code, database schema, and related documentation identified in Exhibit "A." The System License shall be effective on the date the System is first installed on HDS' hosted computer equipment and the City has paid the full License Fee, and shall remain in force perpetually unless earlier terminated in accordance with this Agreement.

3.3 Only HDS authorized personnel are permitted to provide Implementation, Configuration and Training for the System.

#### 3.4 Software License Fees and Default

3.4.1 City will pay HDS the License Fee set forth in Exhibit "A." Any License Fee payment unpaid for sixty (60) days permits HDS in its sole discretion to terminate this Agreement, following written notice to the City and a fifteen (15) day opportunity for the City to cure. "In the event of partial payment or non-payment of any License Fee, HDS may terminate this Agreement and the Software License without any waiver of any legal rights or rights in equity that HDS may have under this Agreement. In the event the License under this Agreement is terminated for partial payment or non-payment, City shall immediately return the Software and all supporting documents to HDS and shall certify in writing, under oath that all copies, except those kept by the City as required by law, have been returned to HDS or destroyed. In the event that HDS terminates this agreement for partial payment or non-payment, any License Fees for certain software which has been paid in full by the City shall be deemed a perpetual license that may continue being used by the City."

3.4.2 HDS may terminate this Agreement in the event of (City's) default. Events of default include, but are not limited to: (a) (City's) failure to pay any fee within 60 days of being invoiced; (b) (City's) insolvency, dissolution, assignment for the benefit of creditors, or bankruptcy; or (c)

(City's) breach of any term or condition of this Agreement.

### 3.5 Software Proprietary Rights, User Limitations, and Confidentiality

3.5.1 The System, together with any other data and/or materials supplied by HDS, including, but not limited to, Training and Implementation information or documentation, enhancements, releases, or supplementary documents/materials, user manuals, data dictionaries and ERD's, or data (the "Materials"), to (City) pursuant to this Agreement, is the property of HDS and remains so even after delivery to (City);

3.5.2 The System contains valuable trade secrets of HDS, including the specific design, structure and logic of the individual programs, their interactions, and the programming techniques employed therewith, and (City) agrees not to, directly or indirectly, use or disclose such trade secrets, except as may be authorized herein or as is required by law.

3.5.3 The System and/or Materials, whether in machine readable form or not, are confidential and proprietary trade secrets of HDS, protected by law, and are of substantial value to HDS and, consequently, (City) acknowledges that the use of the System, License and/or Materials must be carefully and continuously controlled; and

3.5.4 The System is protected by the Copyright Laws of the United States, and (City) agrees to keep the HDS Solution and Materials free and clear of all claims, liens, and/or encumbrances.

### 3.6 Use Limitations: (City) acknowledges and agrees that:

3.6.1 The System licensed under this Agreement shall be used by the City and City-authorized users only to process its own data in one single production environment and shall not be used for, or on behalf of, others; The scope of use licensed under this Agreement will be for the use by the City and by users authorized by the City.

3.6.2 The System may not be installed or used on more than one production environment and/or its associated peripheral units, (excluding additional installs or databases for testing, backups, disaster recovery, or training), whether located on (City)'s premises or at more than one site; or hosted by HDS.

3.6.3 (City) shall not, directly or indirectly, or permit others to: access, copy, duplicate, or furnish to others any physical, electronic or other version (regardless of the form) of the System; loan, rent, lease, give, sublicense or otherwise transfer the HDS System (or any copy), in whole or in part, to any other person; remove any copyright or other notice contained or included in any Materials provided by HDS; create or attempt to create the source computer programs or any part of them from the operational object programs licensed under this Agreement; change or modify the HDS System or create derivative works from them; or reverse engineer or attempt to reverse engineer the HDS System.

3.6.4 (City) shall not, directly or indirectly, modify the HDS System to make it operate on incompatible hardware; permit anyone to modify the HDS System, or database to create "triggers" or program procedures within the database that execute, read or write in response to any interaction between HDS' Systems and any database ("Database Modifications").

3.6.5 (City) shall notify HDS immediately of the unauthorized possession, use, or knowledge of any Materials supplied to (City) pursuant to this Agreement.

3.6.6 (City) shall not challenge HDS' copyright, intellectual or property rights, or any other right, in and to the System (including any enhancements or Releases) or Materials provided under this Agreement.

3.7 Escrow of Source Code. (04/10\*) N/A

3.8 Substitution of Software at No Charge. (04/10) In the event that Contractor ceases to provide Maintenance for any standard Software, Contractor shall substitute functionally similar new Software, which shall conform in all aspects to the Acceptance Criteria and shall in no way degrade performance or functionality of the System, at no additional cost to the City.

3.9 Infringement Indemnity. (04/10) Contractor shall, at its own expense, hold harmless, indemnify, and defend the City, its directors, officers, employees, agents and Affiliates from and against any and all claims, demands, damages, liabilities, losses, and expenses (including reasonable attorney fees, whether or not at trial and/or on appeal), arising out of or in connection with any actual or alleged violation or infringement by the Software of any proprietary right of any person whatsoever, including any copyright, patent, trade name, trademark, or misappropriation of the trade secrets of any third party. The City agrees to notify Contractor of the claim and gives Contractor sole control of the defense of the claim and negotiations for its settlement or compromise. No settlement that prevents the City's continuing use of the Software/Products shall be made without the City's prior written consent. If any third party claim causes the City's use of the Software to be endangered, restricted or disrupted, Contractor shall (i) cause the Software to be replaced, at no additional charge, with a compatible functionally equivalent and non-infringing product; (ii) cause the Software to be modified to avoid the infringement; (iii) obtain a license for the City to continue using the Software and pay any additional fee required for such license; or (iv) if, after Contractor uses all due diligence or standard of care none of the foregoing alternatives is possible, Contractor will terminate the license and refund to the City license fees actually paid by the City and any direct damages documented by City for the affected Software and Documentation.

3.10 Security. (04/10) Contractor shall provide immediate notification to the City's Information Security Manager and the City's Project Manager of any online security breach that affects City systems. Contractor shall provide notification to the City's Project Manager of any incident relating to System integrity such as a computer virus.

3.10.1 (04/10) Contractor shall comply with City of Portland, Bureau of Technology Services Security Standards. Specifically Contractors must comply with Technology Services, Information Security Administrative Rules 2.01, 2.02, 2.08, 2.12 and 2.15. These rules are located at: <http://www.portlandonline.com/auditor/index.cfm?c=26821>.

3.10.2 (04/10) Contractors providing or having access to data containing City confidential or personally identifiable information (as defined in the Oregon Consumer Identity Theft Protection Act, ORS 646A.600 to 646A.628) must maintain and demonstrate compliance with the following:

Oregon Consumer Identity Theft Protection Act, ORS 646A.600 to 646A.628. Specifically Contractors must develop, implement and maintain reasonable safeguards to protect the security, confidentiality and integrity of the personal information, including disposal of the data. Contractors must also provide immediate notification to the City of a data security breach (as defined) and in cooperation with the City, provide notice to affected consumers. Any costs or fees incurred by the City due to Contractor's data breach, including but not limited to notification, consumer credit reports or fines by the Department of Consumer and Business Services, shall be reimbursed to the City by Contractor.

3.10.3 (04/10) Additionally, any Contractor who provides or has access to Software which processes and /or interacts with credit/debit card information must also be compliant with the following:

3.10.4 (04/10) Payment Card Industry - Data Security Standard (PCI-DSS). The most current version is 1.2. These standards are maintained at [www.pcisecuritystandards.org](http://www.pcisecuritystandards.org).

**SECTION 4 ANNUAL MAINTENANCE AND SUPPORT SPECIFIC PROVISIONS –**  
**(04/10)  Required  or Waived**

- 4.1 In addition to the General Provisions provided in Section 2, these provisions shall apply to all Maintenance and Repairs to the System, including any Software, Equipment, and Product(s). These provisions shall cover any Third Party Software supplied by Contractor as components of the System. Should any ambiguities or conflicts arise between this section and Section 2 General Provisions, this section shall prevail over Section 2 in matters of Maintenance and Support.
- 4.2 Term. (04/10) Contractor's obligations in connection with Maintenance and Support shall be for twelve months, commencing on the date as indicated in Exhibit A. The City shall have the option to renew Maintenance and support for 12-month periods as long as this Contract is in effect, at the price for annual Maintenance and Support set forth in this Contract.
- 4.3 Services Included. (04/10) During the Warranty Period and any period of Maintenance, Contractor shall provide solutions, changes and corrections to the System as required to keep the System conforming in all material respects to the Acceptance Criteria and all applicable Documentation, and to correct reported problems that are replicated and diagnosed by the City as defects or Errors in the System. Services shall include the following:
- 4.3.1 Preventative. (04/10) Maintenance shall include preventative services and tools for the System, performed at Contractor's location, such as, without limitation, (A) the development, release and assistance in installation of Updates and Upgrades which are designed to prevent operational errors, bugs, viruses, and the like; and (B) the monitoring, queue management, evaluation, or any other similar diagnostic applications or tools, and assistance in the installation and operation of same at Contractor's hosting location.
- 4.3.2 Repair. (04/10\*) Within the time specified herein, Contractor shall repair all Errors that

have been identified by Contractor or by the City in Maintenance and Support Requests, by providing reasonable workarounds to assist the City in reducing the impact of such failure to the City's operations. In the event that no Repair can be made, the remedies, as stated within this Contract, at the City's sole discretion shall apply. A work around or patch which temporarily eliminates the symptoms of the particular Error or failure reported, but impairs the efficiency of the City's operations, shall be deemed an "interim repair," not a Repair. An interim repair cannot last longer than seven (7) calendar days, unless otherwise mutually agreed in writing by both Parties.

4.3.3 Warranty\_HDS warrants that during the term of this Agreement that it will perform Technical Support or Services, if any, in connection with this Agreement in a good and workmanlike manner, provided that: (a) the HDS Solution or database has not been modified, changed, or altered by anyone other than HDS; (b) the operating environment, system, database or equipment meets HDS' required specifications; (c) the computer hardware is in good operational order and is installed in an environment acceptable to HDS; (d) the need for Technical Support or Service is not caused by (City) or its users, agents, servants, employees, or independent or contractors; (e) (City) promptly notifies HDS of its need for Technical Support and is not in default of this Agreement; and (f) all fees due to HDS are current and have been paid.

THERE ARE NO OTHER WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THIS AGREEMENT, THE MAINTENANCE, TECHNICAL SUPPORT OR SERVICES TO BE PROVIDED UNDER IT, OR ANY SYSTEM OR ENHANCEMENTS PROVIDED UNDER IT INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

4.3.4 Telephone Helpline/Staffing. (04/10) During the Coverage Hours Contractor shall maintain a no-cost telephone hotline. Contractor shall staff the hotline with competent technical consultants who shall be trained in and thoroughly familiar with the System and with the City's applicable configuration. Telephone support and all communication shall be delivered in English.

4.3.5 Additional Contractor Hosting Services. Contractor shall provide the additional hosting services as described in Exhibit H, HDS Hosting Services, which is attached hereto and made part of this Contract.

4.4 Response. (04/10) Contractor's support specialists shall respond to a Maintenance Request from City within the times specified in this Contract. Such response times shall be measured from the time a City contact requests support.

4.5 New Releases/Upgrades. (04/10) In the event the Software is upgraded, modified, or enhanced, including interim Updates, block releases, patches or fixes of major or minor bugs, Contractor shall automatically provide such Upgrades, Updates, changes, enhancements, or fixes to the City at no additional cost. The Maintenance and Support cost under this Contract is intended to include those Updates/Upgrades listed in the previous sentence and therefore will remain unchanged and will not be increased due to such Upgrades, Updates, enhancements, or fixes.

- 4.6 Training. (04/10) At the City’s request, Contractor shall provide the City Web-Based upgrade overviews in connection with Upgrades or major repairs that change the functional operation of the System or any Software or Equipment component whether repair or alteration is a permanent or interim modification. Training shall be provided at no cost to the City. HDS will provide alternate dates for the training in an attempt to set a time convenient to the City.
- 4.7 Version Support. (04/10) N/A
- 4.8 Redundant Systems. (04/10) Unless otherwise expressly stated in a Task/Change Order, Contractor shall provide Maintenance for a redundant System/Product on the exact same basis as for a primary System /Product. All rights, obligations, warranties, and other Services which apply and extend to a primary System/Product shall apply and extend to an equal extent to a redundant System/Product.
- 4.9 Other Standard Services. (04/10) Contractor shall, at no additional cost to the City, provide other standard services which Contractor offers to its customers at no additional cost or as otherwise described in this Contract or in a specific Task/Change Order.
- 4.10 Severity Level, Escalation, and Response Time. (04/10\*) Unless otherwise specified in a particular Task/Change Order, Contractor shall provide Maintenance and Support as outlined in this section under the response and resolution times set forth for specific severity levels in the table below. Regardless of Service specifications in a subsequent Task/Change Order, Contractor shall, at a minimum, respond timely to Support Requests by, depending upon the nature of the Error identified, diagnosing the problem on-line; assisting over the telephone; sending patches, code fixes or workarounds; replacing any defective Software or Product(s), installing and testing of the Software and Equipment; In the event of an Error, the City shall have direct access, without prior escalation, to competent technical consultants who shall be trained in and thoroughly familiar with the Software, or Product and with the City’s applicable configuration.

**Severity Levels of Errors or Defects/Production Environment**

<b>Level</b>	<b>Definition</b>	<b>Response Commitments</b>	<b>Resolution Commitments</b>
1	A critical function is inoperative, causing significant impact to City operations, and no work-around is available, or errors or defects that cause significant amount of data to be lost.	Response time shall not exceed four (4) business hours. Contractor shall submit progress reports outlining the status of resolution, at least once every two (2) hours thereafter, unless the Parties agree to written progress reports at some other interval.	Resolution time shall not exceed two weeks, assuming no unforeseen issues that may present themselves, or other situations outside of HDS’ control. Please note that resolution time may or may not include time for testing and deployment, depending on the particular issue.

2	A non-critical function or overall performance is materially impaired, or a critical function is impaired but temporary work-around is available.	Response time shall not exceed eight (8) business hours (counting hours around the clock). Contractor shall submit progress reports at least once every eight (8) hours thereafter, unless the Parties agree to progress reports at some other interval.	Resolution time will depend on scope, issue and ability to code and release solution. The resolution will be made available within the next available patch, not to exceed 30 days. For reference, HDS releases one to two patches each month.  Please note that resolution time may or may not include time for testing and deployment, depending on the particular issue.
3	A problem arises which does not materially impair the City's essential operations	Response time shall not exceed two (2) business days.	Resolution will be released in a future patch.  Please note that resolution time may or may not include time for testing and deployment, depending on the particular issue.
4	The City requires information or assistance about product capabilities or installation configuration.	Response time shall not exceed one (1) business day.	Resolution will include Contractor's technical support personnel providing assistance to City.

- 4.11 Access to City Facilities. (04/10) Contractor agrees that Contractor's physical or remote access to the City facilities shall be subject to the security interests and controls necessary to protect public property, and the City shall not be liable for any delays necessary in granting Contractor access to any portion of the facilities or systems.

## SECTION 5 ACCEPTANCE TESTING

5.1 User Acceptance Testing (UAT) - City is responsible for leading and executing UAT and for system sign-off and acceptance. City will develop UAT Plan utilizing the Final Functional Requirements document for defining acceptance criteria. City sign-off on UAT is a pre-requisite to Implementation. Critical deficiencies will be notified as required. City User Acceptance Testing during each phase cannot be completed prior to the completion of the Contractor's regression testing for that phase. During the Operations, Maintenance and Support period, the Contractor will perform regression testing for all upgrades and patches and City will perform User Acceptance Testing prior to any changes being implemented in the production environment.

Regression Testing. The Contractor will perform its own full regression testing on its base system and any Configurations made to the base system during system Configuration. This full regression testing must begin no later than the start of City's Acceptance Testing period. Based on the Contractor's implementation plan, regression testing may be conducted in phases. During the Operations, Maintenance and Support period, the Contractor will perform regression testing for all upgrades and patches and City will perform User Acceptance Testing prior to any changes being implemented in the production environment.

5.2 Procedure and Timetable. (04/10) Unless otherwise specified,

5.2.1 The City shall commence the Acceptance Test no later than ( 10 ) days after Delivery of the System;

5.2.3. Acceptance Testing shall not exceed thirty (30) days; and The City will make all reasonable efforts to complete the Acceptance Test within the time period specified. If the Acceptance Test is successful the City shall issue a Certificate of Acceptance, a sample of which is attached as Exhibit F.

5.3 Failure of Acceptance Test. (04/10) The City will notify Contractor if the System or a portion of the System, fails to pass an Acceptance Test and will specify in reasonable detail the identified failures and possible reasons for failure. After City's notification, Contractor shall correct the System, or the affected portion, within ten (10) days and notify the City that the Correction has been completed. After Contractor's Correction notification, the City shall perform a second Acceptance Test. If the System, or portion of the System, fails to pass the second Acceptance Test, the City shall notify Contractor in writing, and the City may, in its sole discretion: (a) terminate the Contract or Task/Change Order with no further liability; (b) request Contractor to replace the System or defective portion of the System at no additional cost to the City, c) request Contractor make further corrections to prepare for retesting again; (d) accept the System at a reduced cost to be negotiated between the Parties; or (e) issue an Acceptance Certificate entitled "Acceptance with Exception(s)."

5.3.1 (04/10) If the City issues an "Acceptance with Exception(s)" the City will list the exception(s) and the date for Contractor's correction. If exceptions are corrected by the listed date(s) the City agrees to commence further Acceptance Testing of the System or affected portion(s). If the System passes the Acceptance Tests, the City will issue a Certificate of Acceptance.

5.3.2 (04/10) If a System fails a second Acceptance Test (or in the event of a single Acceptance Test, the Acceptance Test) in no event shall there be an increase to the original price agreed to by the Parties for the System.

5.4 City Acceptance of Failure. (04/10) If the City elects to accept the HDS Software or any combination of Products even with the failure(s), then the City may request that Contractor issue a refund to the City in an amount equal to a percentage of the full fee value of the HDS Software that the Parties mutually determine represents the loss of functionality of the HDS Software.

5.5 Revocation of Acceptance. (04/10) The City shall have the right to revoke "Acceptance with Exception(s)" if the City granted an "Acceptance with Exception(s)" based on Contractor's commitment to correct the defect within a reasonable period of time, but the defect has not been so corrected.

5.6 Termination Based on Failure of Acceptance. (04/10) If the System fails to pass the Acceptance Test(s), the City may terminate this Contract for Material Breach. Contractor shall refund all costs paid for the HDS Software or any combination of Products in U.S. Dollars within fifteen (15) Days. The refund shall be in cash or its equivalent and not in the form of future credits from Contractor.

5.7 No Waiver. (04/10) Acceptance shall not relieve Contractor from its responsibility under any Warranty. Payment for Products or the System does not constitute Acceptance nor does it constitute a waiver of any Warranty applicable to the City.

## **SECTION 6 PUBLIC CONTRACTING**

6.1 Public Contracts. (04/10) Contractor shall observe all applicable state and local laws pertaining to public contracts. ORS Chapters 279A, 279B and 279C require every public contract to contain certain provisions. Pursuant to those chapters, the following provisions shall be a part of this Contract, as applicable:

6.1.1 (04/10) Pursuant to ORS 279B.220, on every public contract, Contractor shall make payment promptly, as due, to all persons supplying to Contractor labor or material for the performance of the work provided for in the Contract; not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished; and pay to the Department of Revenue all sums withheld from employees under ORS 316.167. Contractor does not participate in the Industrial Accident Fund and maintains ongoing worker's compensation insurance and employee health insurance. No hazardous work will be performed under this contract.

6.1.2 (04/10) Pursuant to ORS 279B.230(1), in every public contract, Contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of Contractor, of all sums that Contractor agrees to pay for the services and all moneys and sums that Contractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services.

6.1.3 (04/10) Pursuant to ORS 279B.230(2), in every public contract, all subject employers working under the Contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.

6.1.4 (04/10) Pursuant to ORS 279B.235(1), persons may not be employed for more than ten (10) hours in any one day, or forty (40) hours in any one week, except in cases of necessity, emergency or when the public policy absolutely requires it. In such cases, the employee shall be paid a) at least time and half pay for all overtime in excess of eight (8) hours in any one day or forty (40) hours in any one week when the work week is five (5) consecutive days, Monday through Friday; or b) for all overtime in excess of ten (10) hours in any one day or forty (40) hours in any one week when the work week is four (4) consecutive days, Monday through Friday; and c) for all work performed on Saturday and on any legal holiday specified in ORS 279B.020.

Pursuant to ORS 279B.235(3), when performing professional services, the employee shall be paid at least time and a half for all overtime worked in excess of forty (40) hours in any one week, except for individuals under personal services contracts who are excluded under ORS 653.010 to 653.261 or under 29 USC 201 to 209 from receiving overtime

**SECTION 7 TRAVEL -  Required  or Waived**

7.1 Reimbursement. (04/10) Contractor may be reimbursed, upon advance written approval by authorized City personnel, for certain expenses incurred in connection with personnel assigned to provide services for the City on the City's site. All invoices shall be accompanied by original receipts and any additional backup that may be appropriate, and required by any subsequent Task/Change Order. Reimbursement will be made based on the following guidelines:

7.1.1 Commercial Air Travel (04/10) Commercial air travel reservations are to be arranged based on the lowest coach fare available within a reasonable time frame surrounding the desired arrival or departure time. The City shall reimburse Contractor for one round trip to the subject work location, unless otherwise agreed to by the City in writing. When possible, air travel arrangements should be reserved at least seven (7) to fourteen (14) days in advance. Direct billing for commercial air travel is NOT permitted; however, City may elect to arrange travel reservations on behalf of Contractor personnel. Weekend travel is not reimbursable, unless otherwise agreed to by the City's Project Manager in writing. In the event weekend travel is reimbursed, such reimbursement shall be made based on an amount up to and in lieu of any authorized per diem amounts and, if applicable, any other daily expense reimbursement.

7.1.2 Rental Cars/Surface Transportation. (04/10) Contractor shall choose the most economical mode of transportation. Vehicle rental will be reimbursed based on a minimum ratio of one (1) compact auto per two (2) Contractor personnel. Reimbursement for vehicle rental will not be approved for Contractor personnel falling below that ratio. Cost for additional insurance is not reimbursable, nor will reimbursement be permitted for fuel obtained at a vehicle rental agency. City does not assume any liability of any type in connection with rental vehicles reserved or operated by Contractor personnel. Direct billing for rental vehicles is not permitted. If the City's Project Manager elects to provide a per diem for auto rental, such per diem shall be the same per diem as allowed for City employees. The City will reimburse Contractor personnel for surface transportation such as taxicabs, shuttles, and mass transit, at actual cost when reimbursement requests are accompanied by original receipts.

7.1.3 Lodging. (04/10) Contractor shall arrange for their own lodging. The City will reimburse Contractor per individual for a daily lodging expenses based on GSA per diem rates; such per diem shall be the same per diem as allowed for City employees. GSA lodging allowances can be found at the U.S. General Services Administration website:  
<http://www.gsa.gov/Portal/gsa/ep/home.do?tabId=0>

7.1.4 Meal and Incidental Expenses (M&IE) (04/10) The City will provide per diem for each full day (eight hours) worked for Contractor personnel assigned to deliver Services. The per diem rate will be the same as the one published on the U.S. General Services Administration website, identified as the Meal and Incidental Expenses (M&IE) for the Portland, Oregon area. GSA per diem rates can be found at the U.S. General Services Administration website:  
<http://www.gsa.gov/Portal/gsa/ep/home.do?tabId=0>

7.1.5 Personal Entertainment. (04/10) Expenses incurred for personal entertainment while traveling on the City business are not reimbursable. Personal entertainment includes items such as in-room movie charges, sightseeing, attendance at sporting events, reading materials, birthday gifts, haircuts, etc.

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**Exhibit A**  
**Contractor's Price and Payment Schedule**

**Software License / HDS Hosted Server**

<b>Module</b>	<b>Hosting No of Users</b>	<b>License Amount</b>	<b>Annual Maint - Year 1</b>	<b>Annual Maint - Year 2</b>	<b>Annual Maint - Year 3</b>	<b>Annual Maint - Year 4</b>	<b>Annual Maint - Year 5</b>
<b>Funds Management System</b>							
Funds Management Core (Allocation, Accounting, Project & Activity Tracking)	50	57,500.00	11,500.00	12,650.00	13,915.00	15,306.50	16,837.15
IDIS Interface	50	10,000.00	2,000.00	2,200.00	2,420.00	2,662.00	2,928.20
DST/IDIS Services	50	-	5,000.00	5,500.00	6,050.00	6,655.00	7,320.50
DST	50	12,500.00	2,500.00	2,750.00	3,025.00	3,327.50	3,660.25
FM Compliance	50	12,500.00	2,500.00	2,750.00	3,025.00	3,327.50	3,660.25
<b>Multifamily Management System</b>							
Multi-Family Compliance and Asset Management	50	32,500.00	6,500.00	7,150.00	7,865.00	8,651.50	9,516.65
Multi-Family Origination & Underwriting	50	32,500.00	6,500.00	7,150.00	7,865.00	8,651.50	9,516.65
Web Compliance Management	50	19,500.00	3,900.00	4,290.00	4,719.00	5,190.90	5,709.99
Web Asset Management	50	14,500.00	2,900.00	3,190.00	3,509.00	3,859.90	4,245.89
<b>Single Family Management System</b>							
Single Family Core (Program, Allotment, Loan Management)	50	74,500.00	14,900.00	16,390.00	18,029.00	19,831.90	21,815.09
<b>Loan Servicing Management System</b>							
Loan Servicing Portfolio Management	50	32,000.00	6,400.00	7,040.00	7,744.00	8,518.40	9,370.24
<b>System Software Subtotal</b>		<b>\$298,000.00</b>	<b>\$64,600.00</b>	<b>\$71,060.00</b>	<b>\$78,166.00</b>	<b>\$85,982.60</b>	<b>\$94,580.86</b>
<b>Other Software</b>							
Forms Generator	50						

		9,500.00	1,900.00	2,090.00	2,299.00	2,528.90	2,781.79
DART & Report Writer	50	12,500.00	2,500.00	2,750.00	3,025.00	3,327.50	3,660.25
DARM	50	32,500.00	6,500.00	7,150.00	7,865.00	8,651.50	9,516.65
Hardware/disk space	50	-	-	-	-	-	-
Hosting Services	50	\$60,000	\$60,000	\$60,000	\$60,000	\$60,000	\$60,000
Hosting Services – Complimentary/Courtesy discount	50	(\$60,000)	(\$60,000)	(\$60,000)	(\$60,000)	(\$60,000)	(\$60,000)
<b>Other Software Subtotal</b>		<b>\$54,500.00</b>	<b>\$10,900.00</b>	<b>\$11,990.00</b>	<b>\$13,189.00</b>	<b>\$14,507.90</b>	<b>\$15,958.69</b>
<b>System and Other Software Subtotal</b>		<b>\$352,500.00</b>	<b>\$75,500.00</b>	<b>\$83,050.00</b>	<b>\$91,355.00</b>	<b>\$100,490.50</b>	<b>\$110,539.55</b>
<b>Other/Miscellaneous Errors and Omissions Insurance</b>			<b>Amount – Year 1</b>	<b>Amount – Year 2</b>	<b>Amount – Year 3</b>	<b>Amount – Year 4</b>	<b>Amount – Year 5</b>
			\$10,800.00	\$10,800.00	\$10,800.00	\$10,800.00	\$10,800.00

Summary of System and Service Costs

Total HDS Solution License	\$352,500.00
Data Conversion Estimate**	\$92,375.00
SAP Interfaces Estimate**	\$39,000.00
Onsite Training Estimate**	\$47,400.00
Offsite Training Estimate**	\$21,600.00
Onsite Implementation Estimate**	\$30,675.00
Offsite Implementation Estimate**	\$71,400.00
Total Not to Exceed Amount	\$654,950.00

Summary of Maintenance Costs

Year One Maintenance	\$75,500.00
Year Two Maintenance	\$83,050.00
Year Three Maintenance	\$91,355.00
Year Four Maintenance	\$100,490.50
Year Five Maintenance	\$110,539.55
Five year total Maintenance NTE Amount	\$ 460,935.05

Staff Rates

Title	Rate (per hour, day, week, Project)
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HDS Trainer – Onsite	\$ 1,975 day
HDS Training – Offsite	\$ 1,200 day
HDS Implementer- Onsite	\$ 1,975 day
HDS Implementer- Offsite	\$ 150/hr
HDS Sr. Project manager & Business analyst offsite	\$175/hr
HDS Sr. Project manager & Business analyst On-site	\$2,150/day
HDS Programmer	\$ 125/hr
QC/QA Specialist	\$ 125/hr

This option includes all application use fees, hosting fees, and applicable maintenance for the modules proposed in the RFP and listed above. Specifically, pricing includes the following services: **Upgrades, Roll outs of NEW versions, back ups (multiple made daily), DBA work, Hardware, DR/BC, IT staff resources, and Windows/MS SQL/all communications and network peripherals included.**

\* Does not include 3rd party software such as MS Office (i.e. Word, Excel, Access), Crystal Reports etc. These 3rd party tools can be housed on the Agency users' own desktop. If PHB would like HDS to host any 3rd party software, we can evaluate the request and update the pricing.

\*\* Please refer to SOW section 13, HDS Data Conversion and Services Cost Estimates

Payment Terms: 50% of the license and hosting fees are due at contract signing, and the remaining 50% following Deliverable 2.1 "first look demonstrations".

The initial annual maintenance for each respective HDS Software System is due following acceptance and approval of Task 4, Configuration, Deliverable 4.1 HDS Software System Configuration.

In subsequent years, maintenance and the hosting fees are due on an annual basis, with the anniversary renewal date being the date the software is first placed into maintenance.

Modifications are billed only upon written approval from the client and completion and review of the particular work order or task order by HDS and typically invoiced one time per month. Implementation and training are billed upon delivery and typically invoiced one time per month. Other services are only billed as they are incurred.

All other payment terms referenced in the Contract Section 2.12 are in effect.

## Exhibit B

### Statement of Work

#### 1. Scope of Work

Contractor will provide its proposed HDS Software solution(s), hosting the HDS Software at its facility, whereby City users will be able to access the HDS Software via the internet. The ultimate objective of City is to implement a solution that will provide a single data repository for all the affordable housing programs administered by City.

Data from multiple disparate systems will be converted into this single data repository and the HDS Software solution will be utilized as the system of record for these programs.

The Contractor will provide the as-is HDS Software solution outlined in its offer and perform a specific set of activities to support configuration, data conversion, SAP interfaces, testing, training, implementation and maintenance of the HDS Software solution, as further outlined in its cost offer. Any additional scope will be outlined in an amended contract agreement.

At a minimum, the agency expects to manage these functions in the new Software:

- a) Administration of Single Family Housing programs
- b) Administration of Multi-Family Housing programs
- c) Administration of Asset Management Compliance programs
- d) Loan servicing portfolio management
- e) Interfaces with City of Portland's financial system - SAP
- f) Funds and Grants management
- g) Origination and Underwriting for public sector affordable housing loans
- h) Performance outcome reporting
- i) Contact management
- j) Workflow
- k) IDIS reporting with bi-directional electronic interfaces
- l) Integration with Oregon's Streamlining Compliance Project data submission process
- m) Role-based security
- n) Regulatory change support for programs
- o) Reporting

#### 2. SOW Definitions

**"As is"** means the functionality that the HDS Software has at the time of offering, as documented in version 10.0.0.

**Change Control Plan** – Document that will identify and approve any changes to proposed scope of project functional or technical requirements.

**Contractor** means entity awarded RFP # 112506

**City** means the City of Portland and their designated staff.

**CORE** System features means the 'As is' functionality offered by Contractor, inclusive of Exhibit A, Functional Requirements Response Form with a Contractor rating of 5. Items with a rating of 4 are included, but require setup and configuration to meet the requirement. Items with rating of 3 will be included as part of the core Software, but may be outside of the timeframe of this project. Additional features required by the users are considered enhancements or modifications and are managed under an executed Task Order.

**Final Data Conversion Plan** – Final Data conversion document will include database, size, method of conversion, data to be converted, data missing, etc. and related cost

**Final Functional Requirements Document** – Final Document that will incorporate the final scope of functional requirements, data conversion, interface development and any custom modifications associated with FIT/GAP findings.

**Final Interface Development Plan** – Document that will detail the custom interface to City's SAP system and related cost

**Fit/Gap Analysis Document** – analysis of City desired functionality vs. core HDS Software functionality. Specific items may/may not be included in the final Functional Requirements Document, along with any potential costs associated with them.

**Functional Requirements Response Form (Document)** – Contractor's response to the mandatory functionality requirements described in the RFP, based on current HDS Software functionality. Requirements that require modification, do not exist in part or in whole, or are unplanned will not be considered part of the functional core Software requirements. The Functional Requirements Response Form is attached as Exhibit I to the Contract.

**Hosted Solution or Hosting** means HDS provides the license to its software solution(s) via an application virtualization system accessed securely via the internet, for a maximum amount of licensed concurrent users. The hosted party is required to have the ability to access the Internet via Port 80 or 443 with a speed efficiency level required for optimal performance.

**Housing and Development Services, Inc. (HDS)** – Offeror/Contractor in the context of this statement of work, and its staff. (a/k/a/ Housing and Development Software, LLC)

**IDIS Bi-directional electronic interfaces** means the current functionality that HDS offers via its IDIS Interface Module and HOME and CDBG Data Synchronization Tool (DST) interfaces.

**Implementation Phase** means the period from commencement of project until Go-Live, where project is formally managed as required. After the final Go-Live, City will be in Production and will be supported under the maintenance and support guidelines.

**Install** refers to Contractor installing its applications, database and peripherals on its servers at the hosting location(s) to provide access to the HDS solution. There will be no physical installation at City premises or on City equipment by Contractor. Hosted installation requires that City install a small 'Client' application, which Contractor will provide, to access the Hosting Environment. Contractor will provide assistance to City Technical Staff as needed.

**Operations, Maintenance and Support** is the maintenance and support covered under the Contractor's License and Maintenance Agreement. "Maintenance" is defined as periodic enhancements (e.g., "Releases") made to the Software which HDS, in its sole discretion, elects to make to the Software, but that do not

constitute a new version, module or rewrite of the Software. Release includes modifications as the result of changes in Federal Government regulations. "Support or Technical Support" is defined as answers to prob questions directly related to the Software provided under this Agreement.

**Post-Implementation Phase** – means the period of time after the client has completed Go-Live activities and is now in a production environment. In this Phase the original project team is No longer involved, and client transitions to Business and Customer Support teams.

**Production** - means the environment where City will perform real work processes in the HDS Software solution, and the database becomes a system of record.

**Professional Services** are defined as any 'soft costs' associated with implementing this project, exclusive of the license and maintenance fees. They include On-Site and Off-Site Implementation and Training Full Days, and hourly rates for Project Management, Business Analysis, System Analysis, Programming, Data Conversion, Testing/QC, etc.

**System** – System refers to the proposed HDS modules that comprise an enterprise system in whole or in part, submitted in response to the RFP.

**Task Order** – Exhibit C of the contract means any written request or document issued by the City and signed by both Parties for additional Product(s) or Service(s) to be provided under the Contract that the City may require in conjunction with its use of the HDS Software. Task Orders shall document the description of goods and/or services, price, payment schedule, project and performance schedule, due dates, milestones and deliverables.

**User Acceptance Testing** – the testing or verification performed by City to verify that the HDS Software function delivered by the contractor is working in the manner it was approved and documented.

### **3. Deliverable Formats**

The Deliverables presented in this attachment are intended to define the deliverables needed for successful execution of the Project. However, the Contractor may propose alternative Deliverables and Deliverable outline structures if such items more closely conform to the Contractor's hosted Software life cycle.

- a) All Deliverables will be delivered and/or notified to the City Project Manager.
- b) All Deliverables required to be in writing will be delivered in electronic copy as set in the project plan schedule.
- c) All HDS Software & Upgrade/Maintenance Deliverables are complete when installed on the Hosted Solution after tested and accepted by City.
- d) All Data Conversion Deliverables are considered complete when each phase of the Data Conversion Plan is complete after tested and accepted by City.
- e) All Professional Services such as project management business analysis, any HDS Software modification analysis, testing/QC will be considered complete when each task or phase is completed and documented.
- f) All deliverables that require Software modification will be considered complete when such functionality is developed, tested and released to the version. Large modifications may be split into phases.

#### **4. Acceptance of Deliverables**

Upon receipt of a Deliverable, City will log the Deliverable and review the Deliverable. As necessary, the Contractor may be asked to provide a walkthrough of the Deliverable to aid City in understanding the document.

City shall review Deliverables to determine if they meet the Functional Requirements. City will complete its review and provide review results in writing to the Contractor within ten (10) business days of notification.

City will work with the Contractor to shorten City review times, while still allowing for City to complete a thorough, high quality review of each Deliverable. If City finds deficiencies in Deliverables, it will communicate them in writing to the Contractor within the ten (10) days. The Contractor shall correct deficiencies and resubmit corrected Deliverables based on the established correction schedule, which begins a new ten (10) business day City review cycle.

Deliverables shall be approved in writing by City within ten (10) days of submission/notification and will be considered final unless City notifies the contractor in writing within this period. Acceptance constitutes full acceptance of that particular deliverable.

Deliverable Acceptance Criteria will be defined and documented during the analysis phase of each module as needed.

Description	Version	Author
Project Plan		Contractor
Implementation Plan		Contractor
Training Plan		Contractor
Project Schedule		Contractor
Change Control Plan		City
Risk Plan		City
Fit/Gap Analysis Document		Contractor
Final Data Conversion Plan		Contractor
Final Interface Development Plan		Contractor
Final Functional Requirements Document		Contractor

#### **5. City General Responsibilities**

City's general responsibilities are:

- a) Review and approve Deliverables timely.
- b) Provide and coordinate City resources as needed to support the analysis, software configuration, user acceptance testing and implementation process.
- c) Provide information and answer questions at Contractor's request.
- d) Provide input to City on current and future business processes and policies that will feed into the definition of system based rules to support the Contractor's system build.
- e) Provide a Project Team consisting of a City Project Manager, Business Analyst, and Subject Matter Experts representing the business areas of City. In addition, part-time participation from other City staff will be available as deemed necessary by the City Project Manager.

- f) Monitor the Contractor's compliance with the Contract. The City Project Manager will consult with the City project sponsor on a continuing basis on every task of the Project. Correspondingly, the City Project Manager shall work closely with the Contractor's Project Manager on day-to-day project activities. This coordination by the City Project Manager will assist the Contractor to ensure that the solution is properly configured, tested and implemented, supports City's defined functional and technical requirements, and is properly documented.

## **6. Contractor General Responsibilities**

The general responsibilities of the Contractor are:

- a) Develop a detailed Project Plan and obtain written approval of the Plan before commencing work.
- b) Plan, configure and test a base system to meet the functional analysis and final functional requirements.
- c) Plan and provide implementation services to support the new system.
- d) Submit written status reports to the City Project Manager (Deliverable 1.3 - Project Status Reports).
- e) Ensure that Deliverables submitted to City meet the Deliverable requirements.
- f) Obtain approval from City Project Manager on Deliverables.
- g) Perform internal quality control on Deliverables before submission for City review.
- h) Attend meetings and present Project Status Reports as agreed in the Project Plan. Conference calls, Web Meetings and/or emails will be utilized as appropriate when agreed to by both parties. City reserves the right to request on-site meetings when deemed necessary. Any onsite visits will be at Contractor's rates as established in this Contract.

## **7. Project Staffing**

- a) A key success factor for the Project is the degree of collaboration between City participants and Contractor staff. The Contractor's Project Team will be responsible for performing and supporting the Project with quality-related activities described throughout this SOW. Contractor shall staff their Project Team with individuals who have expertise to perform or administer the described SOW activities.
- b) In addition, the Contractor must provide qualified, highly skilled Project Team members. Except as is provided under the Key Persons provision of the Contract, the composition of the Contractor's Project Team will be at the Contractor's discretion. However, the Contractor must ensure that their Project Team will meet and retain the performance standards defined in the Project Plan (Deliverables 1.1 and 1.2) by providing adequate and appropriately skilled staff to perform its tasks.
- c) City will be responsible for providing the agency resources, subject matter experts, and staff to carry out the planned activities as detailed in the Project Plan and related documents.

## **8. Requirements Management**

The HDS Software Solution is based on functionality as described in the proposed Functional Requirements Document. A detailed FIT/GAP Analysis will be performed to identify any changes or missing elements which may/may not be included in the final scope of the requirements (Final Functional Requirements Document).

Any changes to the scope of Contractor's solution will be controlled by the provisions of the change order process defined in the Change Control Plan and approved in writing by the City Change Control Board. Changes to scope must be approved by both parties.

Requirements Management activities include:

- a) Plan and control all project activities for which the Contractor is responsible.
- b) Work with City to reconcile the Final Functional Requirements and the Contractor's offered solution, as well as a plan for functionality gaps.
- c) Recommend the best practices and workflow procedures within its Software, and support City's continued operation of the HDS Software once fully implemented.
- d) Deliver and install the proposed Software as a hosted solution
- e) Provide professional services required to convert selected data for use in the HDS Software, as defined in the Final Data Conversion Plan)
- f) Provide professional services required to develop a custom interface into City's SAP System as defined in the Final Interface Development Plan)
- g) Provide professional services required to configure and test the HDS Software to fully meet City's functional and technical requirements.
- h) Provide professional services required to train selected staff.
- i) Provide on-going Maintenance of the Software, as defined in the HDS License & Maintenance Agreement

## **9. Facilities and Equipment**

In the Project Plan (Deliverable 1.1), the Contractor will identify the location of the work to be accomplished. For the purposes of clarification, the Contractor performs all development and technical work at its Weston, Florida facility. With the goal of maximizing budgets and implementing the project as efficiently as possible, the contractor will attempt to perform as many tasks off-site (Weston, FL) as feasible, via Conference Call, via email and via Web-Conference Meetings. Some of the Implementation, Business Analysis and Training activities will be conducted on-site at the City facilities.

### **Project Facilities and PCs**

- a) City will provide a work area for all Contractor staff working on-site on the Project. For any Contractor provided laptops that connect to the City LAN/WAN, the laptops will be at a minimum compliant with the City of Portland Bureau of Technology Services standards. The City Project Manager shall provide this information to the contractor prior to the commencement of the implementation
- b) All Contractor PCs that need to be connected to the City LAN/WAN will utilize the City of Portland Bureau of Technology Services process for obtaining connectivity to the City LAN/WAN and e-mail. The City Project Manager shall assist the contractor by coordinating with City Technology Services staff.
- c) City will provide a training room with appropriate equipment including Internet connection to access the hosted HDS Software for any on-site training activities.

## **10. Project Deliverables**

### **10.1. Task 1 - Project Management**

The Project Management Task is designed to ensure that the Project progresses according to the approved Implementation Plan and Project Schedule and that the HDS Software meets the requirements set forth in the Final Functional Requirements Document.

#### **Deliverable 1.1 & 1.2 – Project Plan & Updates**

The Contractor shall provide an initial Project Plan (Deliverable 1.1) and update the plan (Deliverable

1.2) with City input on a monthly basis or as needed. The Project Plan and Schedule will include the Contractor's proposed implementation strategy and recommended approach, based on requirements, budget and known constraints. The Contractor will maintain and modify the Project Plan throughout the Project, by updating it to reflect the evolving schedule, priorities, and resources.

### **Deliverable 1.3 – Project Status Reports**

Project Status Reports will be delivered monthly or as needed, and will include a status of project deliverables, milestones, schedule slippage, identified risks and other key information.

## **10.2. Task 2 – Detailed Requirements Analysis**

The Detailed Requirements Analysis Task is designed to analyze and finalize the requirements of the Project between the Contractor and City. The outcomes of this task will be the Final Functional Requirements Document, a Fit/GAP Analysis Document, a Data Conversion Plan and an Interface Development Plan.

### **Deliverable 2.1 – First Look Demonstrations**

Using their base system for each module being implemented, the Contractor will conduct an orientation level demonstration to appropriate City project staff to introduce the capabilities of the system module(s) and how it functions.

### **Deliverable 2.2 – Detailed Functional Requirements Log**

The Detailed Functional Requirements Document will itemize and describe in detail each requested mandatory functional and technical requirement.

### **Deliverable 2.3 – Fit/Gap Analysis**

The Contractor will identify and document the differences between their CORE system capabilities as responded in its offering, and the requirements defined in the Detailed Functional Requirements Log (Deliverable 2.2). The Contractor shall describe the modifications that will be needed to the CORE system solution to bring it into alignment with the Detailed Functional Requirements Log (Deliverable 2.2). It will include the following:

- a) A summary of deficiencies or limitations in the CORE system or situation for requirements where no fit is possible.
- b) Description of needed changes for requirements that require Configuration or Modification, and associated cost
- c) Assumptions and constraints - Description of the assumptions and constraints applicable to the changes identified in this Section.
- d) Changes considered but not included - Description of the changes considered but not included and rationale between the Contractor and City for not including them.

### **Deliverable 2.4 – Final Functional Requirements (FFR)**

The Contractor shall list the requirements approved in the Final Requirements Fit/Gap Analysis (Deliverable 2.3) in a format that allows traceability between the requirement development,

configuration, training, testing, and implementation. This document will define the FFR relevant to preceding and succeeding tasks in the SOW.

### **10.3. Task 3 – System Hardware and Software Preparation and Setup**

This task represents the work necessary to prepare and setup a hosting environment; this will include the testing, training (as needed), and configuration/production environments for City.

#### **Deliverable 3.1 – Test Environment**

The Contractor shall conduct all activities necessary to prepare and setup a testing environment for testing during User Acceptance Testing and any testing of upgrades and patches during the Operations, Maintenance and Support period.

#### **Deliverable 3.2 – Training Environment**

The Contractor shall conduct all activities necessary to prepare and setup a training environment for Training during implementation and the Operations, Maintenance and Support period. If agreed upon by City and the Contractor, the Test Environment can also act as the training environment. The Training Environment will be accepted at the conclusion of User Acceptance Testing.

#### **Deliverable 3.3 – Configuration/Production Environment**

The Contractor shall conduct all activities necessary to prepare and setup a production environment for the Implementation task.

### **10.4. Task 4 – Configuration (HDS Implementation)**

This task addresses HDS system reference tables and module configuration activities. The Contractor will have the best knowledge of their base system and the configuration steps necessary. City will have the best knowledge of business processes, roles, and reporting. Therefore, developing the system set-up and configurable tables will be a collaborative effort between the Contractor and City staff. City will provide the Contractor with any specific requirements related to compliance with city and federal regulations, and the contractor will include these in the configuration of the application.

#### **Deliverable 4.1 – System Configuration**

This Deliverable represents the definition, development, and input of business and system rules necessary to configure the HDS hosted system tables and module set-up. The outcome of this deliverable will be a fully configured system tables and module(s) set up ready for User Acceptance Testing.

#### **Deliverable 4.2 – User Security Roles Definition and Setup**

This Deliverable represents the definition, development, and input of role-based access as identified during the Security analysis period. The outcome of this deliverable will be fully configured system access security roles structure ready for User Acceptance Testing.

## 10.5. Task 5 - SAP Interface Development

This Deliverable represents the design and development of necessary SAP interfaces from system data that meet the functions described in the Final Interface Development Plan.

### Deliverable 5.1 - GL Interface

This deliverable represents a General Ledger Journal Entry interface, from HDS to SAP based on specifications documented in the Interface Development Plan, ready for User Acceptance Testing

### Deliverable 5.2 - AP Interface

This deliverable represents an Accounts Payable interface from SAP to HDS, based on specifications documented in the Interface Development Plan, ready for User Acceptance Testing.

## 10.6. Task 6 – Data Conversion and Migration

This task addresses conversion and migration of existing City data from other systems into the HDS database. The Contractor will have the best knowledge of their base system data structures. City will have the best knowledge of existing data sources and their related structures. Effective collaboration between City project staff and the Contractor will be necessary to correctly migrate existing data. City, with the assistance of the Contractor (if needed), will be responsible for insuring the completeness and quality of data to be migrated into the new system. Contractor will detail plan in the Final Conversion Plan Document.

- a. City will be responsible for providing detailed information related to each source of data (6.1, 6.2, 6.3, 6.4, 6.5, 6.6), including but not limited to system or origin of data, business areas that generate that data, structure of file, layout, size, type of data, relationships, and explanation of what the data mean in that system.
- b. City will be responsible for identifying the system of record where duplicity in databases exists. This information will be used by Contractor to map to HDS system tables, estimate cost of converting such data, and to identify any missing elements required by the HDS System.
- c. City will identify any data that may not be needed or is no longer used. Where proprietary third party systems are being used, City will provide Contractor this information safeguarding any proprietary information of that vendor. No third party vendor technical information should be provided to Contractor unless City has the authority to provide such information, and for the exclusive purpose of converting the data. Alternative 'exports' of data available from these third party systems should be explored as potential sources of data to convert. This may save time and costs, while also protecting proprietary third party information.

### Deliverable 6.1 – Current Loan Servicing System Data Map

This Deliverable represents the design and development of necessary data mapping between data currently stored in the database used by the current Loan Servicing system module(s) and the HDS database. It will also identify any data items that may be missing from the existing system that would negatively impact the functionality of the HDS system module(s). In addition, any issues related to data quality will be identified and proposed solutions to address the identified data quality issues will be provided. The outcome of this deliverable will be existing data migrated into the configured system ready for User Acceptance Testing.

**Deliverable 6.2 – IDIS Import**

This Deliverable represents the design and development of necessary data mapping between data currently stored in the HUD IDIS system and the HDS database. It will also identify any data items that may be missing from the existing system that would negatively impact the functionality of the HDS system module(s). In addition, any issues related to data quality will be identified and proposed solutions to address the identified data quality issues will be provided. The outcome of this deliverable will be existing data migrated into the configured system ready for User Acceptance Testing.

**Deliverable 6.3 – AMANDA/TRACS Data Map**

This Deliverable represents the design and development of necessary data mapping between data currently stored in the database used by the AMANDA/TRACS system module(s) and the HDS database. It will also identify any data items that may be missing from the existing system that would negatively impact the functionality of the HDS system module(s). In addition, any issues related to data quality will be identified and proposed solutions to address the identified data quality issues will be provided. The outcome of this deliverable will be existing data migrated into the configured system ready for User Acceptance Testing.

**Deliverable 6.4 – Indirect Access Database Data Map**

This Deliverable represents the design and development of necessary data mapping between data currently stored in one identified Access database and the HDS database. This data represents various tax credits (LTE, SDC and MCC programs) provided to developers. It will also identify any data items that may be missing from the existing system that would negatively impact the functionality of the HDS system module(s). In addition, any issues related to data quality will be identified and proposed solutions to address the identified data quality issues will be provided. The outcome of this deliverable will be existing data migrated into the configured system ready for User Acceptance Testing.

**Deliverable 6.5 – Lead Based Paint Access Database Data Map**

This Deliverable represents the design and development of necessary data mapping between the current Lead Access database and the HDS database. It will also identify any data items that may be missing from the existing system that would negatively impact the functionality of the HDS system module(s). In addition, any issues related to data quality will be identified and proposed solutions to address the identified data quality issues will be provided. The outcome of this deliverable will be existing data migrated into the configured system ready for User Acceptance Testing.

**Deliverable 6.6 – Asset Management Access Database Data Map**

This Deliverable represents the design and development of necessary data mapping between the current Asset Management Access database(s) and applicable HDS module(s). It will also identify any data items that may be missing from the existing system that would negatively impact the functionality of the HDS system module(s). In addition, any issues related to data quality will be identified and proposed solutions to address the identified data quality issues will be provided. The outcome of this deliverable will be existing data migrated into the configured system ready for User Acceptance Testing.

**10.7. Task 7 – Testing**

**User Acceptance Testing (UAT)** - City is responsible for leading and executing UAT and for system sign-off and acceptance. City sign-off on UAT is a pre-requisite to Implementation. Critical deficiencies will be notified as required. City User Acceptance Testing during each phase cannot be completed prior to the completion of the Contractor's regression testing for that phase. During the Operations, Maintenance and Support period, the Contractor will perform regression testing for all upgrades and patches and City will perform User Acceptance Testing prior to any changes being implemented in the production environment.

### **Deliverable 7.1 - Regression Testing**

The Contractor will perform its own full regression testing on its base system and any Configurations made to the base system during system Configuration. This full regression testing must begin no later than the start of City's Acceptance Testing period. Based on the Contractor's implementation plan, regression testing may be conducted in phases. During the Operations, Maintenance and Support period, the Contractor will perform regression testing for all upgrades and patches and City will perform User Acceptance Testing prior to any changes being implemented in the production environment.

## **10.8. Task 8 – Training**

Training ensures that City staff receives the appropriate level of knowledge to efficiently utilize and maintain the HDS hosted system solution in order to do their jobs. Based on the Contractor's Implementation Plan, training may be conducted in phases. If conducted in phases, trainings in each phase should be relevant to the functionality and capabilities of the applicable HDS hosted system module(s) being implemented in that phase. User training will be provided in designated City-provided locations, and/or via internet.

The Contractor will plan for training and group participants based on its proposed method of implementing the project. The contractor will take into account City's identified groups for its training schedule as follows:

- a) Technical Support – City/BTS personnel responsible for supporting the system. The Contractor shall provide specialized training to business and systems analysts that will conduct City support responsibilities.
- b) Report Writing – City personnel responsible for producing reports using the reporting tools for the system will receive training on the reporting tools.
- c) End Users – City End User Training will be conducted by Contractor Trainers and will include a basic HDS system overview and detailed training for applicable staff for each module(s) being trained.

The Contractor can provide additional training on a need-basis, both on-site or via web conference any time after the implementation period. Trainings are scheduled through the Contractor's business group, and are on a time and material basis.

### **Deliverable 8.1 – Training Plan**

The Training Plan will describe the Contractor's plan for identifying and meeting training requirements for each City User group. The Training Plan will describe the methods proposed to develop and deliver both training and related documentation, and proposed schedule, groups and approach.

### **Deliverable 8.2 – Training Results**

This Deliverable requires execution of related Contractor and City Training activities prior to Implementation and describes the results of that training. This deliverable will be used as part of the Readiness Assessment.

### **10.9. Task 9 – Production Go-Live Implementation**

The Project Plan addresses the Contractor's Implementation approach, which includes the final roll-out and go live plan, which can happen in phases. This plan, once discussed between Contractor and City and approved, will have specific roll-out activities.

This task assumes that all relevant Tasks have been completed and accepted prior to Go-Live, and that City and the Contractor are ready. The overall project goals will be considered when making the decision to Go-Live. However, both City and the Contractor each will ensure that they are ready and that all related activities for which each is responsible will be completed or accounted for.

#### **Deliverable 9.1 - Readiness Assessment**

This Deliverable is a checkpoint prior to Go-Live, and assessment of readiness by each group. The Deliverable will include documented completion of tasks, readiness of data, status of system related transition activities including trained City staff, identification of risk or unprepared areas, and other project issues which may impact the successful roll-out.

#### **Deliverable 9.2 – Go-Live**

Go-Live is the activation of agreed to services and system operation in a production environment. This Deliverable is the final acceptance of Go-live.

### **10.10. Task 10 - Security**

The objective of the security task is to address access control, including network access and data access; environmental controls (power, air conditioning, etc.) and off-line storage of City data. Contractor is not responsible for the City's internal operations or security.

#### **Deliverable 10.1 – Security Policies and Procedures**

The Contractor shall have in place the policies, procedures and identified security related documentation. These policies, procedures and documentation must be in place and adhered to for the life of the Contract.

#### **Deliverable 10.2 – Security Configuration**

This Deliverable requires approval of the security configuration:

- a) Contractor will provide written description of its Hosting Security
- b) Contractor will provide written description of its Database
- c) Contractor will not be responsible for internal security, firewalls, and protocols used by the City of Portland.

## 10.11.Task 11 – Systems Operations and Maintenance and Support

Contractor's proposed solution is based on a license and annual maintenance and support contract. Both the license and maintenance period begin at the point of contract and software release, and are further defined in the contract.

The Contractor will support its systems, and the Hosting environment, based on its documented lifecycle and support schedule. The Contractor provides a variety of tools for the system users to ensure they maximize its features, network with other system users, and have direct access to reporting any issues.

### Deliverable 11.1 – Client Portal Roll-Out

- a) Contractor will schedule an overview of its client portal with each Implementation Group, and review each of the features available on this site.
- b) Contractor will set up all authorized users for each group and train them on how to report deficiencies, ask questions, search for FAQ's, find system documentation, including release notes, participate in Blogs and Forums, etc.

### Deliverable 11.2 – Business Continuity Plan

The Business Continuity Plan encompasses the processes, policies and procedures related to preparing for a natural or human-induced disaster by planning for the recovery of the HDS hosted system. The contractor will provide City with a copy of its Disaster Recovery Plan.

### Deliverable 11.3 – System Documentation Updates

The contractor updates the system functionalities in the On-Line HELP and via Release Notes for each released version. The release notes are written in detail allowing a user to understand how functionality has changed and/or new functionalities of the most immediate release, and subsequently the On-Line HELP is updated.

The on-Line HELP can be printed and is easily navigated as with any Windows© product.

- Contractor provides detailed release notes with each upgrade or major release which explain which system features may have changed.
- Contractor further provides a client portal, MyHDS, where City staff can find useful information, Forums, Blog, and FAQ's and have access to a Client Support CHAT feature.
- HDS Systems have on-line Help Manuals easily accessible to any user. On-Line HELP is maintained to the release, and together with the most recent release notes provide the most updated system functionality overview.

Any changes to the Hosting Solution, database Management, Disaster Recovery or other related documentation will always be released with the version being changed. For hosting solutions, any required upgrades will be notified in advance and coordinated to ensure minimal impact to the day to day operations of City. The contractor will attempt to coordinate all of these activities on weekends and/or after hours.

## 10.12. Task 12 – Project Close-Out

As with any project, the implementation of the software phase will come to an end. The Contractor will implement the software solution in phases, and as such, when the last phase is completed the project will close out. The contractor refers to this phase as post-implementation phase, when the client is now in production. City and Contractor's Project Managers will review and close out the project, and City will officially turn over to Customer Support and Maintenance.

### Deliverable 12.1 - Final Project Report

Contractor will provide a final updated project report, including updated timelines, identified issues and other reported items identified during the project that were not part of the project scope.

### Deliverable 12.2 - Transition

Contractor will coordinate a joint call with City to officially transition the working teams to established processes, on-going support, and schedule any required post-implementation activities.

## 11. Summary of Contractor Deliverables

Task	Deliverable
1	Project Management
	1.1/1.2 Project Plan and Updates
	1.3 Project Status Reports
2	Detailed Requirements Analysis
	2.1 First Look Demonstrations
	2.2 Detailed Functional Requirements Log
	2.3 Fit/Gap Analysis
	2.4 Final Functional Requirements
3	System Hardware and Software Preparation and Setup
	3.1 Test Environment
	3.2 Training Environment
	3.3 Configuration/Production Environment
4	Configuration
	4.1 System Configuration
	4.2 User Security Roles Definition and Setup
5	SAP Interface Development
	5.1 GL Interface
	5.2 AP Interface
6	Data Conversion and Migration
	6.1 Current Loan Servicing System Data Map
	6.2 IDIS Import
	6.3 AMANDA/TRACS Data Map

- 6.4 Indirect Access Database Data Map
- 6.5 Lead Based Paint Access Database Data Map
- 6.6 Asset Management Access Database Data Map
- 7 Testing
  - 7.1 Regression Testing
- 8 Training
  - 8.1 Training Plan
  - 8.2 Training Results
- 9 Production Go-Live Implementation
  - 9.1 Readiness Assessment
  - 9.2 Go-Live Acceptance
- 10 Security
  - 10.1 Security Policies and Procedures
  - 10.2 Security Configuration
- 11 Systems Operations & Maintenance & Support
  - 11.1 Client Portal Roll-out
  - 11.2 Business Continuity Plan
  - 11.3 System Documentation Updates
- 12 Project Close-out
  - 12.1 Final Project Report
  - 12.2 Transition

## HDS Data Conversion & Services Estimates

These are tentative hours for the various data conversions based on the information provided to us by the City through written or verbal communication. The hours and days provided are only estimates and may change as we gather more information. As specific Task Orders are executed, we strongly recommend an unplanned  $\pm 20\%$  threshold be included in the total hours/cost. These estimates assume that the conversions are to the existing HDS database schema (i.e. there will be no changes to the HDS schema), and that the data required by the HDS systems exists minimally in PHB's current Systems or Access Databases. Some data entry will be manual where possible to cut time, costs, effort, etc.

### Current Loan Servicing System Data Map

HDS will covert data from PHB's current Loan Servicing System to the appropriate tables in the HDS database. This will include loan servicing transaction data. Additional data may need to be manually entered. At the time of estimate, HDS has no knowledge of any data anomalies or completeness of data.

In providing an estimate for this conversion, we will make the following assumptions:

- The fields related to LS Payment Controls are those provided to us by PHB in the spreadsheet titled 'LS-Payment Controls Export Field List'
- The fields related to LS Account Balances are those provided to us by PHB in the spreadsheet titled 'LS-Account Balances Export Field List'
- The fields related to LS Disbursement Control are those provided to us by PHB in the spreadsheet titled 'LS-Disbursement Control Export Field List'
- The fields related to LS Account Activity are those provided to us by PHB in the spreadsheet titled 'LS-Account Activity Export Field List'
- The fields related to LS Delinquency are those provided to us by PHB in the spreadsheet titled 'LS-Delinquency Export Field List'
- The fields related to Single Family data are those provided to us by PHB in the spreadsheet titled 'SF Data'

More analysis will be required on the current Loan Servicing System database tables in order to provide a more accurate quote. A preliminary level of estimate is as follows:

Development – 300+ hours

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**Total Estimated Hours – 300 – 500 hours**

This is only an estimate and may not include additional hours needed for analysis, development, testing, etc. as we gather more information.

## Asset Management Access Database Data Map

HDS will provide a conversion program for the PHB Asset Management Database migration into the HDS Database tables based on the information provided by the City of Portland. The Asset Management Database is a Microsoft Access 2007 database and is currently used for collecting Compliance and Project data for PHB's Asset Management Program. There are 10 tables, and a total of 7,315 records.

As specific Task Orders are executed, we strongly recommend an unplanned  $\pm 20\%$  threshold be included in the total hours/cost. At the time of estimate, HDS has no knowledge of any data anomalies or completeness of data.

In providing an estimate for this conversion, we will make the following assumptions:

- The level of effort (LOE) does not account for functionality that is not currently on the system, so it does not include schema changes, logic, and adding validation to the conversion or GUI changes.
- Based on the name of the fields, we are assuming that they will equate to existing fields in the HDS database. These fields have no comment.
- The fields that require an explanation / further analysis have been noted on the comment section. These fields are not included on the LOE.
- The LOE includes a limited number of conversion passes.
- The data required by the system exists minimally in the City's databases or systems.

More analysis will be required on the Access database tables in order to provide a more accurate quote. A preliminary level of estimate is as follows:

Development – 104 hours

Database maintenance & development – 4 hours

Packaging & Deployment – 2 hours

Documentation – 1 hour

---

**Total Estimated Hours - 111**

Please note this is only an estimate and may not include additional hours needed for analysis, development, testing, etc. as we gather more information.

## **IDIS Import/Data Download and AMANDA (Partial) Data Map**

HDS will import the IDIS data to the HDS System through a combination of importing the data from HUD IDIS and a partial conversion of PHB's AMANDA database. This will be a more accurate and cost effective approach. We will start with a data import of five years of IDIS data from HUD into the HDS Funds Management Tables. As specific Task Orders are executed, we strongly recommend an unplanned  $\pm 20\%$  threshold be included in the total hours/cost. At the time of estimate, HDS has no knowledge of any data anomalies or completeness of data.

The IDIS import will include the following:

- Business and System Analysis
  - a. Review the HUD new IDIS export files format. (PR01, PR02, etc)
  - b. IDIS new data files analysis.
- Development:
  - a. Database Setup (Backup / Restore)
  - b. Import IDIS file into database.
  - c. Run the process to Import the Data.
  - d. Imported Data review and cleanup.
- Documentation, QA & QC Testing.
  - a. Test Initial Import application to assure a reliable data import.

After the initial import, HDS and PHB will review the data and decide whether it is necessary to partial convert data in the AMANDA database. The work to be completed in a potential AMANDA conversion includes:

1. Reviewing and Analyzing PHB Tables that would not be brought via IDIS Initial Import.
  - a. Organization Folder.
  - b. Contract Folder.
  - c. Activity Info Folder.
2. HDS Initial Import Tool set up to import PHB Tables.
  - a. Database backup and restore.
  - b. Initial Import Process Run.
  - c. Custom data migration (for non IDIS related data like Activity Types, Census Data, etc.)
  - d. Data cleanup procedures writing and running.
3. Documentation, QA & QC Testing.

The following assumptions will be made:

- The level of effort does not account for functionality that is not currently in the HDS system, so it does not include schema changes, logic, and adding validation to the conversion or GUI changes.
- Based on the name of the fields, we assume certain fields will equate to existing fields in the HDS database.
- Fields that require an explanation / further analysis are not included in the level of effort estimate
- The LOE includes two conversion passes and one final pass
- The data required by the system exists minimally in the City's databases or systems.
- From the document we are assuming that PHB is tracking all IDIS Programs, there might be some additional tables that were not referenced here that captured more accomplishment data. Based on

the data presented, however, it appears that the agency data is more high level, and all detail data related to accomplishments might be only in IDIS.

More analysis will be required on the AMANDA database tables in order to provide a more accurate quote. A preliminary level of estimate for the IDIS import and (partial) AMANDA conversion is as follows:

IDIS Initial Import – 40 hours  
System Analysis – 20 hours  
Development – 37 hours  
Packaging & Deployment – 4 hours  
Testing – 16 hours  
Documentation – 3 hours

---

**Total Hours – 120**

Please note this is only an estimate and may not include additional hours needed for analysis, development, testing, etc. as we gather more information.

## SAP Interface – HDS to SAP and SAP to HDS

### GL Interface from HDS to SAP

A new interface will be developed to export a file (XML or comma delimited text) from the HDS system to the SAP system. The file will contain certain payment allocation and payment allocation corrections to be sent to the SAP system.

- The system will automatically create the first payment allocation after the loan has been closed /disbursed
- A screen will be created to help reconcile the payment allocation.

The draft layout (more details are needed for the final layout) will be:

- Batch date
- Batch number
- Posting Date
- Header, constant value
- Batch type, constant value
- Bus Area, constant value
- Grant number, constant value
- Account
- Sub-account
- Cost center, new field to be added to the GL accounts.
- Debit/Credit
- Check Number (may need additional clarification on this)
- Amount

The payment allocation data will include one or more entries in the SAP GL Interface and one or more entries in the loan servicing transactions.

### AP Interface from SAP to HDS

A new interface will be created to import a file (comma delimited text) from the SAP system to HDS system. The file will update certain loan servicing transaction payment that was created during the purchase of the loan.

The draft layout (more details are needed for the final layout) will be:

- Transaction number
- SAP document number
- Invoice amount
- Vendor number
- Loan number
- Check/wire number
- Payment date

As specific Task Orders are executed, we strongly recommend an unplanned  $\pm 20\%$  threshold be included in the total hours/cost. At the time of estimate, HDS has no knowledge of any data anomalies or completeness of data.

More analysis will be required on the SAP Interface in order to provide a more accurate quote. A preliminary level of estimate is as follows:

- System Analysis – 40 hours
  - Development – 192 hours
  - Database maintenance & development – 12 hours
  - Packaging & Deployment – 8 hours
  - Testing – 32 hours
  - Documentation – 12 hours
- 
- Total Hours – 296**

## **Additional Databases**

### **Encompass Data Map**

At this point we don't believe data in the Encompass database will need to be converted. At some point in the future if it is decided the data needs to be converted we can provide an estimate of hours to PHB.

### **Indirect Access Database Data Map**

Based on the data in this database, PHB may want to consider keeping the database until after the City goes live with the HDS systems. At that point we can make a better determination of where this data may best fit in the HDS system(s) which would save the City time and costs of the conversion effort and allow us to determine the best approach after understanding the City's processes and workflow.

If it is determined that the Indirect Database needs to be converted, we can provide an estimate of hours to PHB. This will be moved to the end of the project schedule.

### **Lead Based Paint Access Database Data Map**

Based on information gathered from PHB, HDS still has many unknowns about the data in the Lead Based Paint Database. From a conversion standpoint, it would be most efficient to start with the Current Loan Servicing System and IDIS data efforts and revisit the need for converting the Lead Based Paint data at a later time.

If it is determined that the Lead Based Paint Database needs to be converted, we can provide an estimate of hours to PHB.

## Business Analysis

Analysis will include two layers – 1. Business Process Analysis and 2. Data/Systems Analysis. After analysis is completed, the implementation plan will be updated and HDS can recommend the HDS System order for implementation. The primary purpose of this analysis is to identify gaps and better implement “as-is” system functions based on PHB’s programs and processes with the goal of avoiding unnecessary modifications. Additional Business Analysis can be added via a task order should PHB require additional analysis after the HDS Systems have been implemented.

Business Analysis is designed to ensure HDS works with PHB staff to analyze business processes and current use of the Bureau’s varying systems in order to determine the best approach for the data conversions and to understand PHB’s program workflow. This will include detailed requirements analysis to update the requirements of the Project between HDS and PHB. The deliverables of this task will be the Final Functional Requirements (FFR) Document, a Fit/GAP Analysis Document, a Data Conversion Plan and a Specifications Document.

HDS will conduct first look, orientation-level demos for PHB staff, using the base system for each module being implemented to introduce the capabilities of the system module(s) and how it functions.

HDS will conduct a Fit/Gap Analysis. This will include identifying and documenting the differences between the HDS CORE system capabilities, and the requirements defined in the Detailed Functional Requirements Log. The Contractor shall describe the modifications that will be needed to the CORE system solution. Any item(s) identified as a gap in the Fit/Gap analysis will be presented to PHB and the City may determine if it wants to include the item(s) as part of the Final Functional Requirements, potentially at an added cost if the item is out of project scope. This will include the following:

- e) A summary of deficiencies or limitations in the CORE system or situation for requirements where no fit is possible.
- f) Description of needed changes for requirements that require Configuration or Modification, and associated cost
- g) Assumptions and constraints - Description of the assumptions and constraints applicable to the changes identified in this Section.
- h) Changes considered but not included - Description of the changes considered but not included and rationale between the Contractor and PHB for not including them.

HDS will create a document with the Final Function Requirements. The Contractor shall list the requirements approved in the Final Requirements Fit/Gap Analysis in a format that allows traceability between the requirement, development, configuration, training, testing, and implementation.

HDS can provide additional Analysis on a need-basis, both on-site or offsite via conference calls and/or emails, any time after the implementation period. Business Analysis is on a time and material basis and are only billed as they are used, and not before. As specific Task Orders are executed, we strongly recommend an unplanned  $\pm 20\%$  threshold be included in the total hours/cost.

The estimated number of days for business analysis, based on our current knowledge of the project and the information provided to us by PHB, are as follows:

Onsite Business Analysis – 6 days

Offsite Business Analysis – 6 days

**Total BA days – 12**

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## Project Management

The Project Management Task is designed to ensure that the Project progresses according to the approved Implementation Plan and Project Schedule and that the HDS System meets the requirements set forth in the Final Functional Requirements Document.

Project Management deliverables provided will include an initial Project Plan which will be updated with PHB input on a monthly basis or as needed. This plan, along with the project timeline, will include HDS' proposed implementation strategy and approach based on past experience, PHB's Final Functional Requirements, budget, and known constraints. HDS will maintain and modify the Project Plan throughout the project by updating it to reflect the evolving schedule, project priorities, and available PHB resources.

The HDS Project Manager will create and deliver to PHB monthly Project Status Reports which will include a status of project deliverables, milestones, schedule slippage, identified risks and other key information.

The Contractor can provide additional Project Management on a need-basis, both on-site or offsite via conference calls and/or emails, any time after the implementation period. Project Management is on a time and material basis. Project Management services are only billed as they are used, and not before.

The following estimated days for Project Management services will be provided to PHB on a monthly basis during the implementation phase of the project. Additional Project Management can be added via a separate task order should PHB require ongoing Project Management after the HDS Systems have been implemented. As specific Task Orders are executed, we strongly recommend an unplanned  $\pm 20\%$  threshold be included in the total hours/cost.

Offsite Project Management – 52 hours/month for 6 months

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**Total Offsite Project Management – 312 hours**

## Training & (System Setup) Implementation

Training ensures that PHB staff receives the appropriate level of knowledge to efficiently utilize and maintain the HDS hosted system solution in order to do their jobs. Based on the Contractor's Implementation Plan, training may be conducted in phases. If conducted in phases, trainings in each phase should be relevant to the functionality and capabilities of the applicable HDS hosted system module(s) being implemented in that phase. User training will be provided in designated PHB-provided locations, and/or offsite via internet.

The Contractor will plan for training and group participants based on its proposed method of implementing the project. The contractor will take into account PHB's identified groups for its training schedule as follows:

- d) Technical Support – PHB/BTS personnel responsible for supporting the system. The Contractor shall provide specialized training to business and systems analysts that will conduct PHB support responsibilities.
- e) End Users –PHB End User Training will be conducted by Contractor Trainers and will include a basic HDS system overview and detailed training for applicable staff for each module(s) being trained.

HDS will provide a Training Plan describing the plan for identifying and meeting training requirements for each PHB User group. The Training Plan will describe the methods proposed to develop and deliver both training and related documentation, and proposed schedule, groups and approach.

The Contractor can provide additional training on a need-basis, both on-site or via web conference any time after the implementation period. Trainings are scheduled through the Contractor's business group, and are on a time and material basis. Training and Implementation services are only billed as they are used, and not before. As specific Task Orders are executed, we strongly recommend an unplanned  $\pm 20\%$  threshold be included in the total hours/cost.

The following estimated days for training and implementation services will be provided to PHB for each of the HDS modules licensed by PHB. Please note this estimate does not include training days for custom reports, forms, modifications, etc. that may be developed for PHB. Where possible, HDS may combine training trips or perform training offsite to reduce the cost to the City. The estimated days for training are as follows:

### Onsite Training

Single Family System Suite Core, including Allotment, Program, and Loan Management - 7 Days Onsite  
 Loan Servicing Portfolio Management - 6 Days Onsite  
 Funds Management Core, including Accounting, Allocation, and Project & Activity Tracking - 6 Days Onsite  
 Multifamily Origination & Underwriting - 3 Days Onsite  
 Multifamily Asset Management - 2 Days Onsite

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**Total Onsite Training - 24 Days Onsite**

### Offsite Training

Funds Management Accounting, Project & Activity Tracking, and IDIS Interface/DSTs - 6 Days Offsite  
 Funds Management Compliance Module - 2 Days Offsite  
 Multifamily Compliance - 2 Days Offsite  
 Web Compliance Management System (WCMS) and Web Asset Management - 2 Days Offsite  
 Forms Generator (FG) - 1 Day Offsite  
 Report Writer (RW) - 2 Days Offsite

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Data Analysis and Reporting Tool (DART) - 1 Day Offsite  
Data Analysis and Reporting Module (DARM) - 2 Days Offsite

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**Total Offsite Training - 18 Days Offsite**

**Onsite Implementation**

Single Family System - 2 Days Onsite  
Loan Servicing Portfolio Management - 2 Days Onsite  
Funds Management System - 3 Days Onsite  
Multifamily Origination, Compliance, and Asset Management - 2 Days Onsite

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**Total Onsite Implementation - 9 Days Onsite**

**Offsite Implementation**

Loan Servicing Portfolio Management - 1 Day Offsite  
Funds Management System - 3 Days Offsite  
Multifamily WCMS and Web Asset Management - 1 Day Offsite  
Reporting Tools, including RW, FG, DART, and DARM - 2 Days Offsite

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**Total Offsite Implementation - 7 Days Offsite**

Sample Task Order

<p><b>Task Order No.</b> _____</p> <p><b>DPO No.</b> _____</p> <p>(Leave blank - to be completed by Procurement Services)</p>
---

The Contract No. \_\_\_\_\_, between the **City of Portland** and \_\_\_\_\_ (name of firm)

- 1) **CITY PROJECT MANAGER** (For this Task Order)
  - a. Bureau:
  - b. Name:
  - c. Phone Number:
- 2) **PROJECT BACKGROUND:** (Information may be provided in an attachment)
- 3) **SPECIFIC SERVICES** - This Task Order identifies the following specific services to be provided by Contractor:
- 4) **DELIVERABLES** - The Contractor shall provide the following:
- 5) **SCHEDULE** - All tasks to be completed by (date)
- 6) **COMPENSATION** - The maximum compensation relating to these services shall not exceed \$\_\_\_\_\_ without written authorization by the Project Manager. Pricing shall be as indicated in the Contract.

SAP Cost Object:

**(Include the hourly compensation rate for all Contractor personnel for this task order as well as the total task order not-to-exceed sum)** The hourly rate for services delivered under this Task Order is \$\_\_\_\_\_ per hour.

7) **Contractor Personnel**

Contractor shall assign the following personnel to do the work in the capacities designated, including all subcontractors.

Name	Role on project


8) **SUBMIT INVOICES TO:**

**Name** \_\_\_\_\_  
**Address** \_\_\_\_\_  
**City, Zip, State** \_\_\_\_\_

Electronic submittal is acceptable.

**ALL OTHER TERMS AND CONDITIONS OF THE CONTRACT SHALL REMAIN IN FULL FORCE AND EFFECT.** Changes to this Task Order must be made via a Change Order.

In witness hereof, the parties have duly agreed to this Task Order as of the date written below.

**CONTRACTOR:**

Name:  
Title:  
Phone:  
Fax:  
Email:

**CITY OF PORTLAND**  
(Task Order Project Manager)

Bureau:

BY: \_\_\_\_\_

BY: \_\_\_\_\_

DATE \_\_\_\_\_

DATE \_\_\_\_\_

**Exhibit D**

**Sample Change Order**

CHANGE ORDER No.: \_\_\_\_\_  
to  
TASK ORDER No.: \_\_\_\_\_  
DPO No. \_\_\_\_\_  
Contract No. \_\_\_\_\_  
for \_\_\_\_\_

*The following are typical Task Order amendment options. Please select and complete the applicable options.*

1. Additional time is necessary and the Task Order identified above is hereby extended through \* *(insert new end date)*.
2. Additional work is necessary as described in the Scope of Work and deliverables as follows *(identify changes to the scope of work and deliverables)*:
3. Additional compensation is necessary and shall not exceed \$XXX *(the amount of this task order amendment)* for a total task order value of \$XXX *(insert the new Not to Exceed amount)*.

All other terms and conditions of the Task Order shall remain unchanged and in full force and effect.

**CONTRACTOR**

**CITY OF PORTLAND**

BY: \_\_\_\_\_  
Name & Title

DATE \_\_\_\_\_

BY: \_\_\_\_\_  
Project Manager (Name & Title)

DATE \_\_\_\_\_

**Exhibit E**

**Sample Status Report for Services Provided by Contractor**

**STATUS REPORT FOR SERVICES PROVIDED BY CONTRACTOR**

Week Ending \_\_\_\_\_ Contract No. \_\_\_\_\_  
 Contractor \_\_\_\_\_ Name and Title \_\_\_\_\_

**1. Key Status Indicators:**

<i>Description</i>	<i>No</i>	<i>Yes</i>	<i>Explanation</i>
Has scope changed?			
Will target dates slip?			
Are there resource problems?			
Any other issues?			

**2. Major Activities Completed For Reporting Week (Key Accomplishments):**

Activity	Comment(s)

**3. Major Activities Planned For Reporting Week and Not Completed:**

Activity	Comment(s)

**4. Major Activities Planned For Next Week:**

Activity	Comment(s)

**5. Status of Key Team Deliverables:**

Activity	Comment(s)

**6. Major Issues Requiring Immediate Attention:**

Issue	Resolution

**7. Weekly Summary of Performance**

Individual:

Scheduled Activities	complete	incomplete	Comment(s)

Individual:

Scheduled Activities	complete	incomplete	Comment(s)

Individual:

Scheduled Activities	complete	incomplete	Comment(s)

Individual:

Scheduled Activities	complete	incomplete	Comment(s)

**Exhibit F**

**Sample Certificate of Acceptance**

**CERTIFICATE OF ACCEPTANCE**

(0-4/10)

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the City certifies Acceptance of (name of System: \_\_\_\_\_ state combination of Products therefore, if applicable), in accordance with that certain Contract for Procurement of a System dated as of \_\_\_\_\_ ("the Contract"). This Certificate of Acceptance is issued subject to and in accordance with the Contract, all defined terms having the meanings as set forth in the Contract, and without prejudice to any claims which subsequently may arise in connection with defects in the System (*or combination of Products therefore*) described herein.

*The City of Portland,  
Oregon*

Signature: \_\_\_\_\_

Name  
(printed): \_\_\_\_\_

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

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

**Exhibit G****HDS APPLICATION SERVICE PROVIDER AGREEMENT**

1. THESE TERMS FOR THE HDS SOLUTION ARE PART OF THE CONTRACT BETWEEN HOUSING AND DEVELOPMENT SERVICES, INC AND THE CITY, CONTRACT NO. XXXXXXXXX WHICH INCORPORATES THEM BY REFERENCE (THE "CONTRACT").
  - 1.1 HDS hereby grants to the City a sub-license for the number of Users to use Third Party Software, where applicable; provided, however, Client agrees to execute any License Agreements required by any Third Party Providers when requested. The City will be responsible for meeting and maintaining the Terms of any License Agreements required by Third Party Providers, and will hold HDS harmless from any Defaults by The City under the terms of any such License Agreements.
  - 1.2 The City shall not use an HDS Solution, including any Third Party Software, in the operation of a Service Bureau or timesharing arrangement or for or on behalf of any other entity, organization or person; and shall not modify, assign, sub-license, sell, rent or otherwise transfer any part of the HDS Solution.<sup>1</sup>
2. **Fee:** The City is obligated to pay the fees set forth in Exhibit "A" as compensation for the services provided and the license of the HDS Solution in a hosted environment, as specified.
3. **Term; Default for non-payment:** The initial term of this Agreement shall be one (1) year, and shall thereafter automatically renew each year for an additional one year term until such time as either HDS or The City has given the other at least sixty (60) days prior written notice not to renew, in which case this Agreement shall terminate at the end of the then-current term unless earlier terminated by HDS pursuant to the terms herein.
  - 3.1 All compensation is to be paid as set forth in Exhibit "A." All payments hereunder shall be paid in U.S. dollars within forty five (45) days of their due date, any unpaid amount will be deemed a default under this Agreement, for which HDS may at its sole discretion terminate this Agreement.
  - 3.2 Events of default include, but are not limited to: (a) (City's) failure to pay any fee within 60 days of being invoiced; (b) (City's) insolvency, dissolution, assignment for the benefit of creditors, or bankruptcy; or (c) (City's) breach of any term or condition of this Agreement.

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<sup>1</sup> Client expressly agrees not to, either directly or indirectly, to exceed the number of licensed users or to permit others to: (i) access, copy, duplicate, or furnish to others any physical, electronic or other version (regardless of the form) of the HDS Software; (ii) loan, rent, lease, give, sublicense or otherwise transfer or grant access to the HDS Software (or any copy) that constitutes the HDS Solution, in whole or in part, to any other person; (iii) remove any copyright or other notice contained or included in any Materials provided by HDS; (iv) create or attempt to create the source computer programs for the items identified in Exhibit A or any part of them from the operational object programs licensed under this Agreement; (v) change or modify the HDS Software or create derivative works from them; or (vi) reverse engineer or attempt to reverse engineer the HDS Software; or (vii) modify the HDS Software to make it operate on incompatible hardware; permit anyone to modify the HDS Software to create "triggers" or program procedures within the database that execute, read or write in response to any interaction between HDS' Software and any database ("Database Modifications").

- 3.3 All unpaid amounts due to HDS hereunder and unpaid for a period of forty five (45) days shall bear interest from the original due date at the rate of 1½% per month (18% annually), or maximum rate allowed by law, whichever is less.
- 3.4 HDS shall not be held responsible for any loss of business or damages suffered by The City as a consequence of The City's default under this Agreement and any consequent termination of services or hosting license.

4 Warranties, and The City Representations & Remedies:

- 4.1 Performance Warranty: HDS warrants that: (a) work performed will be performed by qualified personnel in a professional, workmanlike manner, consistent with the prevailing standards of the industry; and (b) it will use commercially reasonable efforts to perform under this Agreement.
- 4.2 HDS shall not be held responsible for carrier, telecommunications, long distance or Internet access outages, nor shall HDS' performance or service level exceed that of commercial telecommunications carriers contracted to provide such services. Down-time will not exceed 48 hours, not considering acts of force majeure.
- 4.3 Limitation: Unless otherwise expressly provided herein, neither HDS nor any of its service providers, licensors, employees or agents warrant (a) that the functions contained in the HDS Solution provided hereunder will meet The City's requirements or (b) that the operation of the HDS Solution will be uninterrupted or error free or (c) that HDS will have the capacity to meet the demand during specific hours.
- 4.3.1 HDS will not be liable for any damages that The City may suffer arising out of use, or inability to use, the products or services provided hereunder.
- 4.3.2 HDS will not be liable for unauthorized access to or alteration, theft or destruction of The City's data files, programs, procedures or information through accident, fraudulent conduct, or any other method, unless such access, alteration, theft or destruction is caused as a result of HDS' gross negligence or intentional misconduct.
- 4.3.3 HDS shall not be held responsible for the breach of any warranty or indemnification provided by Third Party Software Licensors, however, HDS agrees it shall attempt to enforce all warranties and indemnifications provided by Third Party Software Providers. HDS shall not be held responsible for and does not warrant the functionality of any City programs or modifications not originated by HDS.
- 4.4 THERE ARE NO OTHER WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THIS AGREEMENT AND THE HDS SOLUTION PROVIDED OR ANY MAINTENANCE, TECHNICAL SUPPORT OR SERVICES TO BE PROVIDED OR ANY SYSTEM OR SYSTEM ENHANCEMENTS PROVIDED INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

5 Proprietary Rights & Use Limitations:

5.1 Proprietary Rights: The City agree and recognizes that: (a) the applications, which constitute the HDS Solution and that are licensed under this hosting agreement, together with any other data and materials supplied by HDS to The City pursuant to this Agreement, is the property of HDS and remains so even after delivery to The City; (b) the applications and any other data and materials supplied by HDS to The City, in machine readable form or otherwise, are confidential and proprietary trade secrets of HDS, protected by law, and of substantial value to HDS, and their use must be carefully and continuously controlled; and (c) the System or Software (or that provided as part of the HDS Solution) is protected by the Copyright Laws of the United States. The City agrees to keep all property of HDS free and clear of all claims, liens, and encumbrances.

5.2 Use Limitations: The applications licensed and hosted under this Agreement shall be used by The City for the express number of licensed users, in accordance with this Agreement, only to process its own data and shall not be used for, or on behalf of, others.

6 Return of Content: In the event HDS terminates this Agreement by reason of The City's default, or because a party has given notice of termination in accordance with Section 3 above, HDS shall deliver to The City within forty-five (45) days any City proprietary data in HDS' care, custody and control. HDS shall deliver any such City proprietary data in Microsoft SQL database format.

7 Confidential Information; Nondisclosure:

7.1 Confidential Information: Confidential information includes any information, not generally known in the relevant trade or industry, obtained from HDS or City or their vendors or licensors or which falls within any of the following general categories: (a) information relating to trade secrets of HDS or City or their vendors or licensors; (b) information relating to existing or contemplated products, services, technology, designs, processes, formulae, computer systems, computer software, reports, algorithms in research or developments of HDS or City or their vendors or licensors; (c) information related to the business of HDS or City or that of their vendors or licensors, including but not limited to business forms, handbooks, policies, documents, business plans, business processes and procedures, sales or marketing methods, methods of doing business, customer lists, customer usage and/or requirements, its supplier information of HDS or City or their vendor or licensors; (d) information marked "Confidential" or "Proprietary."

7.2 Duty to Maintain Confidentiality: Each party, on behalf of itself, its employees, agents and representatives, agrees to keep the confidential information of the other party in the strictest confidence, in the manner set forth below:

7.2.1 Neither party shall copy, modify, enhance, compile or assemble (or reverse compile or disassemble), or reverse engineer confidential information or anything containing or embodying such confidential information of the other party (except in performance of services by HDS) and shall not directly or indirectly, disclose, divulge, reveal, report or transfer such confidential information of the other to any party other than as a Permitted Party may in accordance with Section 7.2.6 below.

7.2.2 Neither party shall use any confidential information of the other or the concepts therein for its own benefits or for the benefit of a third party or for any purpose other than the purpose for which such confidential information is being disclosed.

- 7.2.3 Neither party shall remove any proprietary legends or notices, including copyright notices, appearing on or in the confidential information of the other.
- 7.2.4 Each party shall take appropriate action with respect to each and every person who is permitted access to any confidential information of the other to insure that each such person complies with the confidentiality provisions hereof. Each party shall use its best efforts to enforce the proprietary rights of the other party and the other party's vendors, licensors and suppliers (including but not limited to seeking injunctive relief or reasonably necessary) against any person who has possession of or discloses confidential information in a manner not permitted by this Agreement.
- 7.2.5 Any materials which are, or which relate to or derive from any confidential information of the other party shall be kept confidential, and all such materials shall be returned to the disclosing party (or destroyed, if return is not possible or economically feasible) upon satisfaction of the purpose for the disclosure of such information.
- 7.2.6 The City shall not be prohibited from disclosing confidential information of HDS to any of its officers, directors, managers, administrators and employees who have a need to know such confidential information and who are directly involved in the business relationship established under this Agreement (collectively referred to as the "Permitted Parties"); provided The City informs such Permitted Parties who receive any of the confidential information of the existence of this Agreement in its binding nature on such Permitted Party, and directs each such Permitted Party to treat such information with strict confidence.
- 7.2.7 The parties may disclose confidential information to their attorneys in the course of representation on a matter reasonably requiring the attorneys to receive the confidential information and may also disclose confidential information to their certified public accountants and to the extent necessary to enable those accountants to prepare financial statements or reports required by law.

7.3 **Alternative Sources:** The party disclosing confidential information pursuant to this Agreement, agrees that the receiving party ("Recipient") shall have no obligation with respect to any information which the Recipient can establish that, through no wrongful act of Recipient, such information: (a) was of public knowledge or in public literature generally available to the public at the time of disclosure to the Recipient; (b) was available to the Recipient prior to its disclosure hereunder; (c) becomes generally available to the public other than as a result of the disclosure by the Recipient or its employees or agents in breach of this Agreement; (d) becomes available to Recipient from a source other than the other party hereto or its representatives; or (e) was developed by the Recipient independent of the confidential information.

## 8 General:

8.1 **Non-solicitation:** The City and HDS agree that during the term of this Agreement and for one (1) year thereafter, they will not without prior written consent of the other, employ or offer employment to any employee of the other who has worked to a material extent on matters related to this Agreement or the provision by HDS of services hereunder.

- 8.2 Section Headings: The paragraph headings in this Agreement are for convenience only, and form no part of this Agreement and shall not affect its interpretation.
- 8.3 Force Majeure: In the event that HDS is unable to provide Services because of any cause outside of its reasonable control, HDS' obligation to provide Services shall be suspended for the duration of the cause of the inability to perform.
- 8.4 Severability of Provisions: If any provision of this Agreement shall be illegal, void, or unenforceable, the remaining portion shall remain in full force and effect.
- 8.5 No Waiver: No delay or failure of HDS in exercising any right under this Agreement and no partial or single exercise of any right by HDS shall be deemed to constitute a waiver of that right or any other right under this Agreement.
- 8.6 No Assignment: The City's rights under this Agreement shall not be assigned, transferred, or sub-licensed without HDS' express written consent.

## Exhibit H

### HDS Hosting Services

The HDS hosting service includes the following:

- Licenses for Windows, Terminal Services, 2X Client, hardware maintenance, backups, software upgrades and releases, etc.
- HDS sets up the production environment, and hosts the application so that the Agency has remote access via 2X Client
- HDS maintains the database and applications
- HDS maintains an upgraded testing environment
- HDS backs up the Agency's database pre-release, patch, or script
- Upgrades are coordinated to be during the Agency's non-peak periods
- HDS maintains backups on- and off-site; HDS performs a minimum of 4 backups daily and maintains the last one each day at both locations

#### Backups

Application data is backed up every 30 minutes and mirrored to a backup server in our data center. The data is then zipped up/encrypted and sent to our main office once a day. Databases are backed up (both data and transaction logs), zipped and encrypted in full twice a day with differential backups occurring every 15 minutes, these backups reside on our backup server in the data center, and once a day a full zipped/encrypted backup is sent to our main office via a VPN link.

#### Application Bugs & HDS Business Process

We have a standard business and development process in place that notifies HDS users of software bugs. HDS clients are provided Ticket Access into our CRM System where issues are reported – these can vary from just user support on a functionality that you are not familiar with, or trouble you are having. Our technical support group has specialists for each system and they will go over the scenario reported with you to identify if there is in fact a defect in the system, or missing functionality. In case of a defect, the ticket becomes a work order.

HDS does not have a typical Vendor Help Desk. Issues are reported into our Ticket System, CHAT, email or direct call methods. The City is handled by our Technical Support staff first, which are specific individuals by system area. These individuals test the reported issues and work directly with product managers to identify what the problems are. They also provide support or best practice help features when a user is unsure of how to do something in the system. Additionally there are business contacts that are assigned to the agency for additional support. The typical escalation goes from TS/Business Group Contact/VP of Business and/or VP Development.

Our internal philosophy is that we will address critical bugs immediately. A critical bug is one that has no work around and has stopped the agency from doing business. Because of how we develop, a patch is easily put out. In cases of clients who have data specific issues, typically we have released scripts for them within the day, but more complex items may require a patch. For our clients where HDS hosts the application, the HDS Network Administrator will install all fixes, patches, releases, etc., saving the agency time and staff resources.

Our technical support reports the critical defect to the product manager and a potential patch is discussed at the HDS morning meetings. Again, depending on the item, a patch may be planned. Also there are cases

where another patch may be in the works and an important defect (not critical) can be easily added. Our production team makes that determination and a decision is made to release a few defects at the same time. This is typically done so that the users having to update can benefit from the items in that patch. The City is advised by the Tech Support Representative of the upcoming release.

Once complete, the Work order goes through internal testing/QC and is eventually released. Releases are pre-announced to clients with documentation of what will be released, and at the time of release, there will be release notes as to what the patch is covering. All release related emails are sent out through our internal CRM system which gives us the ability to manage contact groups for each of our systems and modules, and ensure that all clients receive emails on any releases or support related communications.

Occasionally when the defect is closely related to the client's data and/or cannot be recreated, HDS development support may ask the client's permission to access a backup of its database so that we can attempt to recreate the error and identify where it comes from.

### **Response time**

HDS provides ongoing maintenance for all HDS Systems as part of the annual software fees. There is no additional charge for support and maintenance outside of the annual software fees. Support includes general support for the system, general enhancements made to the system, regulatory changes or modifications, and any other changes HDS elects to make in its own discretion. HDS provides support through phone, email, or web meetings, Monday through Friday, 8:30AM – 6:00PM EST. We provide a toll-free number for application support – (888) 326-7680 – and we also have an online CHAT feature on our website for external users to connect with our Technical Support Representatives, Business Staff, and Marketing Staff.

Support requests typically come in through an email, phone call or ticket request from the City. We have a standard business and development process in place where HDS clients are provided Ticket Access into our CRM System where issues are reported; these can vary from just user support on a functionality that you are not familiar with to trouble you are having. Our technical support group has specialists for each system and they will go through the scenario reported with you to identify if there is in fact a defect in the system, or missing functionality. In case of a defect, the ticket becomes a work order. If a City requests support through our online ticket system, they will receive an automated response immediately confirming that HDS has received the request and is reviewing it. For all support issues our technical support staff typically contacts the City by phone or email within 48 hours.

Our web-based ticket system is a part of our MYHDS User Support Portal which is protected by a username and password and provides forums, blogs, release notes, application releases, patches, system FAQs, critical reported items, and much more. Users are also able to search the knowledge base within the user portal to find reported issues and best practice solutions. The portal is available 24/7/365.

## APPENDIX C

### Terms and Conditions

Contractor shall observe all applicable state and local laws pertaining to public contracts including the City's Equal Benefits Ordinance and its administrative rules, all of which are incorporated by this reference. Failure to comply with the Ordinance permits the City to impose sanctions or require remedial actions as stated in Section 13.1 of the rules, ORS Chapters 279A, 279B and 279C require every public contract to contain certain provisions. Pursuant to those chapters, the following provisions shall be a part of this contract, as applicable.

Pursuant to ORS 279B.220, on every public contract, the contractor shall make payment promptly, as due, to all persons supplying to the contractor labor or material for the performance of the work provided for in the contract; shall pay all contributions or amounts due the Industrial Accident Fund from the contractor or subcontractor incurred in the performance of the contract; not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished, and; pay to the Department of Revenue all sums withheld from employees under ORS 316.167.

- Pursuant to ORS 279C.505, on public improvement contracts, the contractor shall make payments promptly, as due, to all persons supplying to such contractor labor or material for the prosecution of the work provided for in such contract. The contractor shall pay all contributions or amounts due the Industrial Accident Fund from such contractor or subcontractor incurred in the performance of the contract. The contractor shall not permit any lien or claim to be filed or prosecuted against the state, county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished. The contractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. Contractor shall demonstrate that an employee drug-testing program is in place.
- Pursuant to ORS 279C.510 (1), in every public contract for demolition the contractor shall salvage or recycle construction and demolition debris, if feasible and cost-effective. Pursuant to ORS 279B.225 and 279C.510 (3) in every public contract and every public improvement contract for lawn and landscape maintenance, the contractor shall compost or mulch yard waste material at an approved site, if feasible and cost-effective.
- Pursuant to ORS 279B.230(1), in every public contract, the contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the contractor, of all sums that the contractor agrees to pay for the services and all moneys and sums that the contractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services.
- Pursuant to ORS 279B.230(2), in every public contract, all subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.
- Pursuant to ORS 279B.235(1), persons may not be employed for more than 10 hours in any one day, or 40 hours in any one week, except cases of necessity, emergency or when the public policy absolutely requires it. In such cases, the employee shall be paid a) at least time and half pay, for all overtime in excess of 8 hours in any one day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or b) for all overtime in excess of 10 hours in any one day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and c) for all work performed on Saturday and on any legal holiday specified in ORS 279B.020.
- Pursuant to ORS 279C.515(1), on public improvement contracts, if the contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the contractor or a subcontractor by any person in connection with the public contract as such claim becomes due, the proper officer or officers representing the state, county, school district, municipality, municipal corporation or subdivision thereof, as the case may be, may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the contractor by reason of such contract. The payment of a claim in the manner authorized by ORS 279C.515 shall not relieve the contractor or the contractor's surety from obligation with respect to any unpaid claims.
- Pursuant to ORS 279C.515(2), on public improvement contracts, if the contractor or a first-tier subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the public improvement contract within 30 days after receipt of payment from the contract agency or a contractor, the contractor or first-tier subcontractor shall owe the person the amount due plus interest charges commencing at the end of the 10-day period that payment is due under ORS 279C.580(4) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest charged to the contractor or first-tier subcontractor on the amount due shall equal three times the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district that includes Oregon on the date that is 30 days after the date when payment was received from the contracting agency or from the contractor, but the rate of interest may not exceed 30 percent. The amount of interest may not be waived.
- Pursuant to ORS 279C.515 (3), in every public improvement contract and every contract related to the public improvement contractor, if the contractor or subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the public improvement contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580.
- Pursuant to ORS 279C.520, no person shall be employed for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or where the public policy absolutely requires it, and in such cases, except in cases of contracts for personal services as defined in ORS 279C.100, the employee shall be paid at least time and a half pay for all overtime in excess of eight hours a day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or for all overtime in excess of 10 hours a day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and for all work performed on Saturday and on any legal holiday specified in ORS 279C.540. The contractor shall give notice to employees who work on a public contract in writing, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work. In the case of contracts for personal services as defined in ORS 279C.100, an employee shall be paid at least time and a half for all overtime worked in excess of 40 hours in any one week, except for individuals under these contracts who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. sections 201 to 209 from receiving overtime. Persons employed under contracts for services shall receive at least time and a half pay for work performed on the legal holidays specified in a collective bargaining agreement or in ORS

279C.540 (1) (b)(B) to (G) and for all time worked in excess of 10 hours a day or in excess of 40 hours in a week, whichever is greater. The contractor shall give notice to employees who work on a contract for services in writing, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

▪ Pursuant to ORS 279C.530(1), in every public improvement contract, the contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to the employees of such contractor, of all sums which the contractor agrees to pay for such services and all monies and sums which the contractor collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service. In every public contract, subject to ORS 279C, all employers working under the contract are subject employers that shall comply with ORS 656.017.

▪ Pursuant to ORS 279C.580(3)(a), the contractor shall include in each public improvement subcontract for property or services entered into by the contractor and a subcontractor, including a material supplier, for the purpose of performing a construction contract, a payment clause that obligates the contractor to pay the subcontractor for satisfactory performance under its subcontract within 10 days out of such amounts as are paid to the contractor by the public contracting agency under such contract, and an interest penalty clause that obligates the contractor to pay to the subcontractor an interest penalty on amounts due in the case of each payment not made in accordance with the payment clause included in the subcontract pursuant to ORS 279C.580 (3), for the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made, and computed at the rate specified in ORS 279C.515 (2).

▪ Pursuant to ORS 279C.580(4), the contractor shall include in each of its subcontracts for a public improvement, for the purpose of performance of such contract condition, a provision requiring the subcontractor to include a payment clause and an interest penalty clause conforming to the standards of ORS 279C.580 (B) (4) in each of its subcontracts and to require each of its subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or supplier.

▪ Pursuant to ORS 279C.830(1)(a) workers shall be paid not less than the specified minimum hourly rate of wage in accordance with ORS 279C.838 and 279C.840.

July 25, 2008

184871

**BUSINESS DETAIL FOR:  
STANLEY AVENUE TUB CO  
License: 108406**

The business detail record includes business contact information and information about the business' bond, liability insurance, worker's compensation insurance, licensing category, business entity and other associated CCB licenses.

**License Number:** 108406

Click [HERE](#) for associated Records

**License Status:** Active

**Date First Licensed:** 10/4/1995

**Expiration:** 10/4/2011

**Name:** STANLEY AVENUE TUB CO

**Address:** 12205 NE 50TH AVE VANCOUVER WA 98686

**Work Phone:** (360) 397-1742

**Entity Type:** Corporation

**Class of Independent Contractor:** Exempt

**License Endorsement:** Residential: RSC - Specialty Contractor

**BUSINESS LICENSES & CERTIFICATIONS**

**CERTIFIED LEAD-BASED PAINT RENOVATION CONTRACTOR (LBPR) LICENSE  
(IMPORTANT INFO)**

**NO LEAD BASED PAINT RENOVATORS LICENSE**

All contractors must have an active "License Status" for their CCB license to legally offer or perform any type of work on any structure. An active "LBPR Status" allows contractors with an active "License Status" to renovate specific structures that may contain lead-based paint. Click on the IMPORTANT INFO link above for more detail.

**ENERGY EFFICIENCY AND SUSTAINABLE TECHNOLOGY (EEAST) CERTIFICATION  
(IMPORTANT INFO)**

**NO EEAST CERTIFICATION**

All contractors must have an active "License Status" for their CCB license to legally offer or perform any type of work on any structure. An active "EEAST Status" indicates the contractor has met specific requirements to work on projects funded through the Energy Efficiency and Sustainable Technology program. Click on the IMPORTANT INFO link above for more detail.

**OTHER BUSINESS INFORMATION**