RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN RAFAEL
WAIVING COMPETITIVE BIDDING AND APPROVING AND
AUTHORIZING THE CITY MANAGER TO EXECUTE A NEW
AGREEMENT FOR BUSINESS LICENSE SERVICES WITH HDL
SOFTWARE, LLC, SUPERSEADING TWO PREVIOUS AGREEMENTS.

RECOMMENDATION:      Adopt Resolution

BACKGROUND:

The Finance Department uses software provided by HdL Software, LLC to administer
its business license program. HdL Software, LLC has released a major upgrade to the
software, which includes numerous enhancements that will increase staff productivity.

ANALYSIS:

The most significant enhancement to the software is the facilitation of online business
renewals by the 20% of taxpayers whose tax rates are too complex for the current
online system. Enabling taxpayers to renew online saves considerable data entry time
by Department staff and eliminates the possibility for transcription errors that can occur
with paper documents. Since the software only allows taxpayers to pay the exact
amount of tax commensurate with their reported gross receipts, it will rarely be
necessary to issue balance due letters (or refund checks in the case of overpayments)
to taxpayers who pay online.

As the software upgrade from HdL Software, LLC has been beta-tested by Department
staff and is similar in appearance and function to the software already in use, the
upgrade will not require as much training and possible procedural revisions as migrating
to a competing software product would. The Department therefore believes the HdL
upgrade should be purchased without competitive bidding.
Staff requests the City Council to waive competitive bidding for the foregoing services for the reasons stated as authorized by San Rafael Municipal Code Section 2.55.070 (D).

**FISCAL IMPACT:**

There will be a $10,882.20 initial outlay for purchase of the HdL software upgrade, including a one-time $382.20 adjustment to the annual software use fee for the business license module, which will increase to a total of $8,572.20, adjustable annually by the increase in the Consumer Price Index.

Processing more renewals online will reduce the number of hours of temp/seasonal help utilized during the business license renewal period. Regular employees will have additional time available for auditing renewals and discovering unlicensed businesses.

**OPTIONS:**

The City Council could:
- a. Adopt the attached Resolution;
- b. Ask staff for additional information and a subsequent report; or
- c. Reject staff’s recommendation.

**ACTION REQUIRED:**

Staff recommends City Council adoption of the attached Resolution.

ATTACHMENTS
RESOLUTION NO. _________

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN RAFAEL WAIVING COMPETITIVE BIDDING AND APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE A NEW AGREEMENT FOR BUSINESS LICENSE SERVICES WITH HDL SOFTWARE, LLC, SUPERSEeding THE TWO PREVIOUS AGREEMENTS.

The City Council of the City of San Rafael resolves as follows:

WHEREAS, the City previously entered into an Agreement with HdL Software, LLC, dated July 19, 1999, whereby HdL agreed to provide HdL’s Business License Software System and related services; and

WHEREAS, the City entered into an Agreement with HdL Software, LLC, dated June 24, 2008, whereby HdL agreed to install HdL’s Business License Web Renewal System; and

WHEREAS, the City and HdL now desire to enter into a new Agreement for Business License Services to include HdL’s new HdL Prime Business License and Web Renewal Software System and related services, to add additional functionalities to the City’s business license system, and to supersede the previous two agreements; and

WHEREAS, the City Council finds that the waiver of competitive bidding pursuant to San Rafael Municipal Code Section 2.55.070 (D) is appropriate in order to continue
with current efficiencies provided by the HdLSoftware, LLC business license software system.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN RAFAEL HEREBY approves and authorizes the City Manager to execute the Agreement with HdL Software, LLC, in the form attached to the staff report and on file with the City Clerk.

I, ESTHER BEIRNE, Clerk of the City of San Rafael, hereby certify that the foregoing resolution was duly and regularly introduced and adopted at a regular meeting of the City Council of said City held on Monday, the 18th day of June, 2012, by the following vote, to wit:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:

ESTHER BEIRNE, City Clerk
AGREEMENT FOR BUSINESS LICENSE SERVICES

This Agreement is made and entered into as of the ____ day of ___________ 2012 (Agreement Date"), by and between the City of San Rafael, a municipal corporation, hereinafter referred to as City, and HdL Software, LLC, a California company, hereinafter referred to as HdL.

RECITALS

WHEREAS, HdL and City entered into that certain Agreement for Business License Services dated July 19, 1999, whereby HdL agreed to provide HdL’s Business License Software System and related services; and

WHEREAS, HdL and City entered into an Agreement for Business License Services dated June 24, 2008, whereby HdL agreed to install HdL’s Business License Web Renewal System; and

WHEREAS, HdL and City now desire to enter into a new Agreement for Business License Services to include HdL’s new HdL Prime Business License and Web Renewal Software System and related services, to add additional functionalities to City’s business license system, and supersede the previous two agreements;

AGREEMENT

THEREFORE, it is agreed by City and HdL that to the parties enter into a new Agreement for Business License Services, which shall supersede all previous Agreements and provide as follows:

I. SCOPE OF SERVICES:

1. Summary
   HdL will assist City in migrating from HdL Business License v4.x ("Classic Business License"), including the Web Renewal System, to HdL’s new enterprise system, HdL Prime Business License ("Prime"). HdL will provide expert guidance from start to finish as needed; including evaluation of current system configuration, data, reports, and processes, technical support and training.

2. Data Migration
   HdL will migrate City’s existing data under City’s project manager’s guidance. As part of the data migration, HdL will verify the integrity of all converted data. As such, HdL may recommend certain data transformations in order to improve the integrity of the migrated data. HdL may also recommend that certain records not be converted, due to age of the data, condition of the data, or a combination of various factors. These recommendations will be submitted to City’s project manager for approval prior to final conversion.

3. Implementation
   a. HdL’s responsibilities
      Project Manager - HdL will provide a project manager (PM) to guide the software implementation process. The primary responsibility for the HdL PM is to ensure successful and timely completion of each step of the software implementation schedule. The HdL PM will work closely with City’s designated project manager to define the software implementation schedule, identify City needs and configure the software accordingly,
validate the data migration, provide user training, and generally shepherd City through the software implementation process.

**IT Support** - HdL will provide a dedicated IT staff member to provide IT support during the software implementation process. This individual will provide the necessary instruction and assistance in order to install the software in City’s computing environment, and will provide any needed technical support.

**Training** - HdL will provide software training as defined in the agreed upon software implementation schedule. One day of training is required. Additional training may be scheduled upon request. The length and number of participants of each training session will be determined by the HdL PM and City’s designated PM.

**Help System** - HdL will provide access to a digital copy of the software user manual (“Help System”). City may use the Help System as needed for internal use by City staff. The Help System contains proprietary and confidential information, and as such is bound by the confidentiality portion of this agreement. The Help System may not in any circumstances be distributed to any 3rd party or any individual that is not a current City staff member responsible for using or maintaining the software.

**b. City’s responsibilities**

**Project Manager** - The City will designate a staff member to serve as City’s project manager (PM). This individual must be intimately involved in the daily business processes which the software will automate, and be empowered to make, or quickly secure from management, decisions required for the implementation of the software. The primary responsibility for City PM is to ensure that all City responsibilities during the software implementation are met according to the agreed upon software implementation schedule. City PM will be instrumental in the successful implementation of the software; working closely with the HdL PM to verify data migration, report migration, and configure all aspects of the software.

**IT Support** - City will designate an IT staff member to work with HdL staff throughout the software implementation process. This individual must be knowledgeable about City’s computing environment and be authorized to manage the SQL Server database and install and configure software on the network server and workstations. The primary responsibility of City’s IT designee is to provide data to HdL for conversion, install the SQL Server database, and install the software in City’s computing environment.
SCHEDULE OF SERVICES:

1. The default timeline for complete implementation (including “Go Live”) of the software is approximately 45 days from the start of implementation. When the Agreement is signed by all parties, HdL will immediately work with City to establish a specific implementation schedule. The final timeline may range from 14 to 60 days. However, City understands that this timeline will be conditional upon meeting the requirements of the implementation schedule. A sample implementation schedule is shown below.

<table>
<thead>
<tr>
<th>Day</th>
<th>Date</th>
<th>Assigned</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>HdL/Client</td>
<td>Contract signed &amp; received by HdL</td>
</tr>
<tr>
<td></td>
<td></td>
<td>HdL</td>
<td>Provide client IT with FTP account information.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>HdL/Client</td>
<td>Set date to begin implementation schedule.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>HdL/Client</td>
<td>Receive Client forms, ordinances, fee resolutions, business rules / contact info city staff &amp; IT etc.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Client IT</td>
<td>Upload client data and logo to FTP server.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>HdL/Client</td>
<td>1st Process Meeting/Optional</td>
</tr>
<tr>
<td></td>
<td></td>
<td>HdL/Client</td>
<td>HdL IT &amp; Client IT do preinstall setup</td>
</tr>
<tr>
<td></td>
<td></td>
<td>HdL</td>
<td>Data conversion programming</td>
</tr>
<tr>
<td></td>
<td></td>
<td>HdL</td>
<td>Report development</td>
</tr>
<tr>
<td></td>
<td></td>
<td>HdL</td>
<td>HdL Acc Mgr build tables, fee, messages, etc.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>HdL</td>
<td>Forms sent to client for approval/edits</td>
</tr>
<tr>
<td></td>
<td></td>
<td>HdL</td>
<td>HdL Acc Mgr review &amp; convert conversion</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Client</td>
<td>Forms returned to HdL approved or with edits</td>
</tr>
<tr>
<td></td>
<td></td>
<td>HdL/Client</td>
<td>Any needed form changes</td>
</tr>
<tr>
<td></td>
<td></td>
<td>HdL</td>
<td>Acc Mgr test conversion with forms</td>
</tr>
<tr>
<td></td>
<td></td>
<td>HdL</td>
<td>1st conversion data to City for use in installation</td>
</tr>
<tr>
<td></td>
<td></td>
<td>HdL/Client</td>
<td>Pre install training at client with edited forms</td>
</tr>
<tr>
<td></td>
<td></td>
<td>HdL/Client</td>
<td>Client verify conversion and final forms during pre-install training day</td>
</tr>
<tr>
<td></td>
<td></td>
<td>HdL</td>
<td>HdL make final conversion adjustments and form edits</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Client IT</td>
<td>Client send 2nd dataset for final conversion</td>
</tr>
<tr>
<td></td>
<td></td>
<td>HdL</td>
<td>HdL Acc Mgr test final conversion for install</td>
</tr>
<tr>
<td></td>
<td></td>
<td>HdL/Client</td>
<td>HdL &amp; Client IT install final dataset</td>
</tr>
<tr>
<td></td>
<td></td>
<td>HdL/Client</td>
<td>HdL at client to assist/train</td>
</tr>
</tbody>
</table>
II. COMPENSATION:

City agrees to compensate HdL for services under this Agreement as described below:

<table>
<thead>
<tr>
<th>SERVICES AND FEES</th>
<th>Price</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prime Migration</td>
<td>$9,844.00</td>
<td></td>
</tr>
<tr>
<td>Professional</td>
<td></td>
<td>Includes in-depth best practices review of system configuration.</td>
</tr>
<tr>
<td>Services</td>
<td></td>
<td>Includes integrity check of data and data transformation as needed.</td>
</tr>
<tr>
<td>Report Migration</td>
<td></td>
<td>All standard reports.</td>
</tr>
<tr>
<td>Fire Fees Rate</td>
<td>$656.00</td>
<td>6 hours.</td>
</tr>
<tr>
<td>Training</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Annual Use Fee Adjustment - 8%</td>
<td>$382.20</td>
<td>(Unknown) Based on actual costs</td>
</tr>
<tr>
<td>Travel Expenses</td>
<td></td>
<td></td>
</tr>
<tr>
<td>TOTAL</td>
<td>$10,882.20</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>SOFTWARE USE FEES</th>
<th>Price</th>
<th>Renewal Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>HdL Prime - Business License</td>
<td>$8,572.20</td>
<td>December 1, 2012</td>
</tr>
<tr>
<td>HdL Web Renewal Module</td>
<td>$1,609.13</td>
<td>December 1, 2012</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Optional Services</th>
<th>Price</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Additional Department - Implementation</td>
<td>2,500.00</td>
<td>Per Department</td>
</tr>
<tr>
<td>Additional Training</td>
<td>250.00</td>
<td>Per Hour</td>
</tr>
<tr>
<td>Additional User Licenses</td>
<td>1,500.00</td>
<td>Per user license - $400 Software Use Fee</td>
</tr>
<tr>
<td>Additional Reports and Letters</td>
<td>210.00</td>
<td>Per hour</td>
</tr>
</tbody>
</table>

1. **Prime Migration.** The Prime Migration fee covers all efforts involved for installation and configuration of the software, and migration of existing data, reports, and system configuration. This includes a best practices review of system configuration, data integrity check, and six (6) hours of training.

2. **Annual Software Use Fee.** The annual software use fee provides for use of the software by the specified number of named users, access to the Help System, all standard forms and reports, and customer support as specified in Section IV. The annual software use fee for the HdL Prime Business License application shall be $8,572.20. The annual software use fee for the HdL Web Renewal Module is currently $1,609.13 and shall remain in effect until its annual renewal date. The annual software use fees for both applications shall be adjusted at the beginning of each anniversary year following the first year of service. The adjustment shall be the greater of 2% or the increase in the Consumer Price Index (as published by the Bureau of Labor Statistics in December of the prior year) for the surrounding statistical metropolitan area (San Francisco-Oakland-San Jose), all urban consumers. Each adjustment shall not be greater than 10%.

3. **Travel Expenses.** Travel and lodging expenses are billed at cost and apply to all meetings; including process, pre-installation, installation, training, and support. HdL is dedicated to conserving public funds, and ensures any travel costs are indeed required and reasonable.

4. **Additional Department (optional).** The Additional Department Fee provides for the extra migration work that is required when dealing with multiple departments.
5. **Training (optional).** The cost for additional training is:
   - On-site at City - $250 per hour
   - Remote support, or at HdL’s offices in Southern California - $210 per hour

6. **Customizing Services**
   The software is a table-driven system and has been developed to meet almost all of the needs of a City. However, should the need occur, HdL is available to provide custom enhancements to the software on a pre-determined time and material basis. No work shall be performed without prior written approval of City.

7. **Payment Schedule** – Compensation for the contract amount shall be as follows:
   
   i. **Migration Fees.** 100% of the migration fees shall be due and payable within 30 days of the effective date of this Agreement.
      Traveling Expenses. Travel and lodging expenses are billed at cost as they are incurred. Travel expenses shall be due and payable within 30 days of the billing date.
   
   ii. **Annual Software Use Fee.** The annual software use fee will continue to be invoiced each year according to its established schedule, and shall be due and payable within 30 days of the invoice date. The HdL Prime adjustment to the use fee is applied on the effective “go live” date.

8. **Pricing Adjustments**
   All pricing listed in this contract will be honored throughout implementation of the project. Any additional/optional services needed after the “go-live” date will be provided using the pricing currently established at the time the service is requested.

III. **MAINTENANCE AND SUPPORT:**

HdL will provide customer support by telephone, email and the web as needed by City as follows:

**Customer Support**
HdL will provide customer support by telephone, email and the web as needed by City during the term of this Agreement. In the United States, no charge support from HdL Software is available as follows:

For customer support between the hours of 8:00 am and 5:00 pm Pacific time, Monday through Friday, email help@hdlcompanies.com or call HdL offices and ask for software application support. For technical support before 8:00 am or after 5:00 pm Pacific Time, Monday through Friday (or anytime Saturday), email 911@hdlcompanies.com and an HdL staff member will be paged. Please only include your name, agency and contact # in emails to 911@hdlcompanies.com. You will be contacted as soon as possible.

**Support policy regarding reports**
HdL provides a number of reports with the installation of the software. These reports are developed using Crystal Reports and fall into one of two categories, standard or HdL custom developed. HdL provides support on standard and HdL custom developed reports, provided that the reports have not been modified by the client or other third party. As part of support, HdL will make minor modifications to reports as needed by City. This includes change of logo, phone #, address, signatures, and minor text edits. Other report edits and modifications requested by City are not covered under the Annual Software Use Fee, and will be developed on a time and material basis at the current rate.
Software Upgrades
Except to the extent that upgrades of the software include new modules or features not previously offered as part of the software as of the date hereof, City is entitled to upgrades of the software within the terms of this Agreement. Though rare, additional costs may apply depending on the extent of the upgrade. Potential additional costs include training, consulting, configuration, or other requested services.

Outside Connections to Hdl database
Hdl programs rely on the integrity of the database to operate properly. As such, it is critical that any outside connection to the database be implemented with Hdl’s full knowledge and participation.

- Only “read only” connections will be established to the Hdl database.
- No modifications will be made to the Hdl database, including database/table design and data content.
- Any repair work necessary due to violations of the above items will not be covered by the Annual Software Use Fee, and as such will be billable to the client on a time and material basis.

City shall contact Hdl for instructions if any added functionality is required, including reading additional data or writing to the Hdl database.

IV. SYSTEM REQUIREMENTS:

The software and database will be installed on City’s network on hardware supplied by City. Any specifications provided below indicate minimum requirements. It is City’s responsibility to ensure that any hardware used to host the software/database or run the client application meets the specifications dictated by the operating system and any software/services hosted by the hardware. For example, minimum operating system specifications will not be sufficient if the file server is also hosting City’s email system.

Application Server Specifications: The application server will host the Hdl Prime web service, which serves as the Hdl Prime business layer.

- IIS v6.0 or later
- .NET Framework 4.0
- 1 gigabyte disk space

Web Server Specifications: The web server will host the public accessible website.

- IIS v6.0 or later
- .NET Framework 4.0
- 1 gigabyte disk space
- SSL certificate

Database Server Specifications: The database server will host all application data. The database server should be dedicated to server related functions. Using a client’s PC as the database server in a multi-user environment is not supported.
- MS SQL Server 2005, 2008, 2008 R2, 2012 (Express variants also supported)
- 15 gigabytes disk space to allow for initial database and growth
- Any Windows Server version that supports the selected SQL Server version is supported; provided it meets the hardware specifications indicated by both the operating system and the version of SQL Server.

**Workstation Specifications:** The software will be run on the client workstation. The hardware recommendations below are based on user feedback regarding performance levels.

- CPU – Intel Pentium IV or higher rated
- Memory – 2 GB (4 GB recommended)
- Video – 1024x768, 16 bit color
- Operating System – Windows XP Pro, Vista, 7 or 8

**Network Specifications:** The software communicates via web services and is designed to operate efficiently over the network. High-speed local area network connections will provide the best system response, but Prime will also run over slower WAN connections such as T1 or mobile broadband.

**Printer Specifications:** The software is designed to work with laser printers. A PCL compliant laser printer is recommended. Each make and model of printer has different drivers and therefore has slightly different results when printing. We design forms/reports using HP LaserJet printers.

V. **TERM OF AGREEMENT:**
The term of this Agreement shall commence on the above written date (the “Agreement Date”) and shall continue each year thereafter until terminated as provided in Section VII.

VI. **GENERAL TERMS AND CONDITIONS:**

**A. OWNERSHIP OF MATERIALS, CONFIDENTIALITY.**

1. **Software License.** Hdl hereby provides a license to City to use HdL’s Software. The software shall only be used by City. City shall not sublet, duplicate, modify, decompile, reverse engineer, disassemble, or attempt to derive the source code of said software. The license granted hereunder shall not imply ownership by City of said software, rights of City to sell said software, or rights to use said software for the benefits of others. This license is not transferable. City shall not create any derivative work or product based on or derived from the Software or documentation, or modify the Software or documentation without the prior written consent of HdL. In the event of a breach of this provision (And without limiting HdL’s remedies), said modification, derivative work or product based on the Software or documentation is hereby deemed assigned to HdL. Upon termination, the software license shall expire, all copies of the software shall be removed from City’s computers and network and all digital copies deleted or otherwise destroyed.

2. **City Data.** Hdl acknowledges that the account data generated by City during the course of City operations is the property of City. At the termination of this Agreement City data will be made available to City in a format acceptable to both City and HdL.

3. **Proprietary Information.** As used herein, the term “proprietary information” means any information which relates to HdL’s computer or data processing programs; data processing
applications, routines, subroutines, techniques or systems; or business processes. City shall hold in confidence and shall not disclose to any other party any HdL proprietary information in connection with this Agreement, or otherwise learned or obtained by City in connection with this Agreement. The obligations imposed by this Paragraph shall survive any expiration or termination of this Agreement. The terms of this section shall not apply to any information that is public information.

B. CITY BUSINESS LICENSE/OTHER TAXES. HdL shall obtain and maintain during the duration of this Agreement, a City business license as required by the San Rafael Municipal Code. HdL shall pay any and all state and federal taxes and any other applicable taxes. City shall not be required to pay for any work performed under this Agreement, until HdL has provided City with a completed Internal Revenue Service Form W-9 (Request for Taxpayer Identification Number and Certification).

C. INSURANCE REQUIREMENTS. HdL shall maintain the policies set out below, and in amounts of coverage not less than those indicated herein. HdL shall provide City with a Certificate of Insurance indicating the following coverages, and an endorsement naming City as an additional insured on the Comprehensive General Liability and Comprehensive Automobile Liability policies:

1. Worker’s Compensation and Employer’s Liability. In accordance with applicable law.
2. Comprehensive General Liability. Bodily injury liability in the amount of $1,000,000 for each person in any one accident, and $1,000,000 for injuries sustained by two or more persons in any one accident. Property damage liability in the amount of $1,000,000 for each accident, and $2,000,000 aggregate for each year of the policy period.
3. Comprehensive Automobile Liability. Bodily injury liability coverage of $1,000,000 for each accident.
4. Errors and Omissions. In addition to any other insurance required by this Agreement, HdL shall provide and maintain, during the term of this Agreement, professional liability insurance in the amount of $1,000,000 as evidenced by a Certificate of Insurance.

D. TERMINATION. This Agreement may terminate each year by either party upon written notice 90 days prior to the anniversary date of the Agreement. Upon termination, the software license shall expire and City will immediately remove the software from City’s server, thereby making any software on individual computers unusable, and will confirm removal of the software from City’s server by signing and returning to HdL an “Affidavit” in the form attached hereto as Exhibit A. Upon City’s request, HdL will assist in extracting City data in a format acceptable to both City and HdL.

E. INDEPENDENT CONTRACTOR. HdL shall perform the services hereunder as an independent contractor. No agent, representative or employee of HdL shall be considered an employee of City.

F. NON-ASSIGNMENT. This Agreement is not assignable either in whole or in part by HdL or City without the written consent of the other party.

G. GOVERNING LAW. The laws of the State of California shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and shall also govern the interpretation of this Agreement.
H. INDEMNIFICATION. HDL shall indemnify, release, defend and hold harmless City, its officers, agents, employees, and volunteers, against any claim, demand, suit, judgment, loss, liability or expense of any kind, including attorney's fees and administrative costs, arising out of or resulting in any way, in whole or in part, from any acts or omissions, intentional or negligent, of HDL or HDL's officers, agents and employees in the performance of their duties and obligations under this Agreement, including any liability for infringement of any copyrights, trademarks or other intellectual property rights due to City's use of the software licensed by HDL to City hereunder.

I. COMPLIANCE WITH ALL LAWS. HDL shall observe and comply with all applicable federal, state and local laws, ordinances, codes and regulations, in the performance of its duties and obligations under this Agreement. HDL shall perform all services under this Agreement in accordance with these laws, ordinances, codes and regulations. HDL shall release, defend, indemnify and hold harmless City, its officers, agents and employees from any and all damages, liabilities, penalties, fines and all other consequences from any noncompliance or violation of any laws, ordinances, codes or regulations.

J. NO THIRD PARTY BENEFICIARIES. City and HDL do not intend, by any provision of this Agreement, to create in any third party, any benefit or right owed by one party, under the terms and conditions of this Agreement, to the other party.

K. ENTIRE AGREEMENT -- AMENDMENTS.

1. The terms and conditions of this Agreement, all exhibits attached, and all documents expressly incorporated by reference, represent the entire Agreement of the parties with respect to the subject matter of this Agreement.
2. This written Agreement shall supersede any and all prior agreements, oral or written, regarding the subject matter between HDL and City.
3. No other agreement, promise or statement, written or oral, relating to the subject matter of this Agreement, shall be valid or binding, except by way of a written amendment to this Agreement.
4. The terms and conditions of this Agreement shall not be altered or modified except by a written amendment to this Agreement signed by HDL and City.
5. If any conflicts arise between the terms and conditions of this Agreement, and the terms and conditions of the attached exhibits or the documents expressly incorporated by reference, the terms and conditions of this Agreement shall control.

L. WAIVERS. The waiver by either party of any breach or violation of any term, covenant or condition of this Agreement, or of any ordinance, law or regulation, shall not be deemed to be a waiver of any other term, covenant, condition, ordinance, law or regulation, or of any subsequent breach or violation of the same or other term, covenant, condition, ordinance, law or regulation. The subsequent acceptance by either party of any fee, performance, or other consideration which may become due or owing under this Agreement, shall not be deemed to be a waiver of any preceding breach or violation by the other party of any term, condition, covenant of this Agreement or any applicable law, ordinance or regulation.

M. COSTS AND ATTORNEY'S FEES. The prevailing party in any action brought to enforce the terms and conditions of this Agreement, or arising out of the performance of this Agreement, may recover its reasonable costs (including claims administration) and attorney's fees expended in connection with such action.
N. NOTICES. All notices and other communications required or permitted to be given under this Agreement, including any notice of change of address, shall be in writing and given by personal delivery, or deposited with the United States Postal Service, postage prepaid, addressed to the parties intended to be notified. Notice shall be deemed given as of the date of personal delivery, or if mailed, upon the date of deposit with the United States Postal Service. Notice shall be given as follows:

City of San Rafael  
Attn: Finance Department  
1400 Fifth Ave  
San Rafael, CA 94901  

HdL SOFTWARE, LLC  
1340 Valley Vista Drive, Suite 200  
Diamond Bar, California 91765  

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day, month and year first above written.

CITY OF SAN RAFAEL  
NANCY MACKLE, City Manager  

HdL SOFTWARE, LLC  
ROBERT GRAY, President  

ATTEST:  
ESTHER C. BEIRNE, City Clerk  

APPROVED AS TO FORM:

ROBERT F. EPTSTEIN, City Attorney
EXHIBIT A

AFFIDAVIT OF DESTRUCTION

Upon termination of this Agreement, the software license shall expire. City hereby acknowledges and certifies that it has removed the software from City’s server, thereby making any software on individual computers unusable.

HdL software system: ___________________________________________ Version: __________________________

Authorized signature: __________________________________________ Date: __________________________

Print Name and Title: __________________________________________ Title: __________________________

Mail:  HdL Software LLC
       1340 Valley Vista Drive, #200
       Diamond Bar, CA  91765