

Daniel "Danny" Mayfield
Commissioner, District 1

Virginia Vigil
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

July 12, 2013

Chief Operating Officer
Yardi Systems, Inc.
430 S. Fairview Avenue
Goleta, California 93117

Re: Confirmation of Yardi Software License and Service Agreement Renewal

To Whom It May Concern:

Santa Fe County is in receipt of an invoice dated May 1, 2013 from Yardi System, Inc. for the annual fee for the Voyager License and 4 Designated Users. According to the invoice, the charges are for the annual Voyager PHA Support and Upgrades for the period of July 1, 2013 June 30, 2014. The Effective Date of the Yardi Software License and Service Agreement is October 17, 2011. According to Article 3 of the Agreement on the second anniversary date of the Agreement (October 17, 2013), the term of the Agreement will automatically renew for one (1) year.

This letter is to confirm with Yardi Systems, Inc. that Santa Fe County's payment of the invoice will license the County's (4 Designated Users) use of the Yardi software and provide Voyager PHA Support and Upgrades from July 1, 2013 through June 30, 2014. In addition, on October 17, 2013, absent an earlier termination for cause, Santa Fe County agrees that the term of the Software License Agreement will renew for one (1) year and terminate on October 17, 2014.

Please confirm that this is the current status of the agreement between Yardi Systems, Inc. and Santa Fe County.

Sincerely,


Katherine Miller
Santa Fe County Manager

SOFTWARE LICENSE AND SERVICE AGREEMENT

Yardi Systems, Inc., a California corporation headquartered at 430 South Fairview Avenue, Goleta, CA 93117 ("Yardi"), and

County of Santa Fe Housing Authority ("Client")
52 Camino de Jacobo
Santa Fe, NM 87507

enter into this agreement including any schedules, exhibits or other attachments (this "Agreement") effective as of the Effective Date [defined in section 1 (definitions), below].

RECITAL

Yardi has developed certain real property and asset management application software for use in conjunction with an associated database. Client desires to license certain Yardi software pursuant to this Agreement's terms.

In consideration of their respective rights and obligations as set forth in this Agreement, the parties agree as follows:

AGREEMENT

1. Definitions.

a. "Anniversary Date" means the date that is 365 days after the Initiation Date, and each anniversary thereafter of the date that is 365 days after the Initiation Date, during this Agreement's Term.

b. "Business Purpose" means use of the Licensed Programs to manage Client's real property portfolio for Client's accounting, property management and related business purposes.

c. "Client Data" means the data that Designated Users transmit and/or enter into the database associated with the Licensed Programs in connection with their Use of the Licensed Programs pursuant to this Agreement.

d. "Contractor" means a contractor who is neither a provider, nor an affiliate of a provider, of real property management and accounting software and associated services.

e. "Deliverable" means any deliverable or intellectual property delivered to Client as part of Programming Services [defined in section 13 (Programming Services)] or other services provided pursuant to this Agreement.

f. "Designated User" means a Client employee or Contractor designated by Client to Use the Licensed Programs for Business Purposes.

g. "Effective Date" means the date of the last party signature on this Agreement.

h. "Fees" means the fees identified in Schedule A (Fee Schedule), and any other fees that may become due under this Agreement.

i. "Force Majeure Event" means any event beyond the reasonable control of the party affected by such event, including without limitation fire, storm, weather, earthquakes, explosion, casualty, strike, war, riot, civil disturbance, act of God, acts or omission of any third party, any state or national law, decree or ordinance, or any executive or judicial order, which event causes a party to delay or fail to perform under this Agreement.

j. "Initiation Date" means July 1, 2011.

k. "Licensed Programs" means the software programs identified in Schedule A (Fee Schedule).

l. "Licensed Programs Documentation" means the user manuals and documentation for the Licensed Programs.

m. "Password" means the unique user name and password assigned by Client to each Designated User as more fully described in section 6 (Users and Passwords).

n. "POCs" means the person(s) Client identifies to Yardi as points of contact for application support services and other account management purposes.

o. "Software Error" means a reproducible failure of the Licensed Programs to materially perform as specified in the Licensed Programs Documentation.

p. "Undisputed Fees" means all Fees due from Client under this Agreement which Client does not reasonably and in good faith dispute - and provide notice of such dispute in accord with section 16(f) (Notice) - within 30 days of invoice.

q. "Use" means authorized use of the Licensed Programs and Licensed Programs Documentation by Designated Users solely for Business Purposes.

2. License Grant Restrictions.

a. Licenses. Yardi grants to Client a non-exclusive, non-transferable (except as expressly provided in this Agreement), limited license for Designated Users to: (i) access the Site and Use the Licensed Programs and Licensed Programs Documentation (which Yardi shall provide in electronic format) solely for Business Purposes; and (ii) access the content on Yardi's Client Central website solely for Business Purposes and subject to the terms of use then presented on Client Central.

b. Restrictions. Client may only exercise the license granted in section 2(a) (Licenses) through its Designated Users. Client may not rent, lease, sell, transfer (by sublicense, assignment or otherwise except as expressly provided by this Agreement), time share, modify, reproduce, copy, make derivative works from, distribute, publish, use to provide service bureau services, or publicly display the Licensed Programs. Client may only Use the Licensed Programs for Business Purposes. Client may not reverse engineer, decompile or otherwise attempt to discover the source code for the Licensed Programs. Client may not permit any

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person or entity to breach the restrictions in this section 2(b) (Restrictions).

3. Term and Termination.

a. Term. This Agreement will commence on the Effective Date and shall remain in full force until Client's 2nd Anniversary Date (the "Initial Term") unless earlier terminated in accord with section 3(c) (Termination for Cause). Upon expiration of the Initial Term, subject to mutual written agreement of the parties, this Agreement shall automatically renew for successive 1-year terms (each a "Renewal Term"). The Initial Term and Renewal Term(s) shall be collectively referred to as the "Term." Except upon written agreement of the parties, the Term of this Agreement shall not exceed 4 years.

b. Intentionally Omitted.

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

d. Termination for Non-Appropriation. Client may terminate this Agreement upon 90 days written notice if Client's Board of County Commissioners or, if state funds are involved, the Legislature of the State of New Mexico, fails to appropriate sufficient funds for the Licensed Programs. Notwithstanding the above, Client agrees to pay all Fees incurred prior to the effective date of any such termination due to non-appropriation of funds and shall not be entitled to a refund of any Fees.

e. Effect of Termination.

(i) License Termination. Upon the effective date of this Agreement's termination or expiration, (A) the license for the Licensed Programs and Licensed Programs Documentation will terminate, (B) Client will cease Use of the Licensed Programs and Licensed Programs Documentation, and (C) Client shall pay any Undisputed Fees to Yardl.

(ii) Return of Confidential Information. Upon this Agreement's termination or expiration effective date, the parties shall comply with section 8(d) (Return of Confidential Information).

f. Survival. The parties' obligations under, and the provisions of, sections 4 (License Fees), 8 (Confidentiality), 9 (Warranties), 10 (Damage Limitations), 12 (Indemnification), 14 (Assignment) and 16 (General Provisions) shall survive this Agreement's termination or expiration.

4. License Fees.

a. Fees. Client agrees to pay Yardl the Fees in accordance with the payment terms set forth in Schedule A (Fee Schedule).

b. Failure to Pay. Client's failure to timely pay any Undisputed Fee when due is a material breach subject to the

terms of section 3(c) (Termination for Cause). Additionally, Undisputed Fees shall accrue interest from their due date until paid at the rate of 1.5% per month or the maximum rate allowed under applicable law whichever is less.

c. Taxes. The Fees are exclusive of any tariff, duty, or tax, however designated, levied, or based including, without limitation, any taxes based on (i) this Agreement, (ii) the Licensed Programs or Deliverables, (iii) Client's Use of the Licensed Programs, (iv) the Licensed Programs Documentation, or (v) any materials or supplies furnished by Yardl per this Agreement. Client is responsible for all applicable tariffs, duties or taxes (exclusive of taxes based on Yardl's net income) applicable to this Agreement.

d. Partial Fee Disputes. If Client reasonably and in good faith disputes any Fees, and provides notice in accord with section 16(f) (Notices) of such dispute, Client agrees that any undisputed portion of such Fees are Undisputed Fees and Client agrees to timely pay any such Undisputed Fees.

5. Implementation and Training.

a. Location. Implementation and training may (at Client's election) take place at a location specified by Client or via telecommunications. Yardl will bill Client for initial implementation/training services as indicated in Schedule A (Fee Schedule). Client may request additional on-site implementation/training services (i.e., in addition to the on-site implementation/training services set forth in Schedule A (Fee Schedule)) at any time and Yardl will make commercially reasonable efforts to timely accommodate Client's request. Additional on-site implementation/training services are subject to the parties' mutual agreement on: (i) the schedule for performance of the additional services, and (ii) Yardl's Fees for the additional services.

b. On-Sites. Client acknowledges that in-person implementation/training service visits at a Client location require a minimum visit of 8 hours per visit. Client agrees to pay all reasonable expenses associated with on-site visits including, but not limited to, travel to and from the site, lodging, meals, etc. Client acknowledges that training services for more than 12 Client trainees require Client to pay for 1 additional Yardl trainer for each 12 Client trainees in excess of 12. Client agrees that Client must pay for any implementation/training services cancelled less than 6 business days prior to their scheduled date.

c. Data Conversion. Yardl will bill Client for electronic data conversion services, if initially ordered, at the rate stated in Schedule A (Fee Schedule). Client acknowledges that data preparation and post conversion data clean-up is inherent in any data conversion, and such additional efforts associated with a Client data conversion - if performed by Yardl - will be debited against Client's application support service allotment. Absent an agreement to the contrary, Client shall otherwise be solely responsible for data conversion, data preparation, data entry and data verification, and any post-conversion clean-up. Additional Yardl data conversion services (i.e., in addition to any initial data conversion services set forth in Schedule A (Fee Schedule)) are subject to the parties' mutual agreement on: (i) the schedule for performance of the additional services, and (ii) Yardl's Fees for the additional services.

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d. **Testing.** Client shall have 90 days commencing upon the Effective Date (the "Testing Period") to test the Licensed Programs. At any time during the Testing Period, Client may elect to cease Use of the Licensed Programs and cancel this Agreement, in which event Yardi will refund to Client all amounts paid by Client to Yardi pursuant to this Agreement less reasonable amounts (determined by reference to the Fees/rates indicated in Schedule A (Fee Schedule)) for initial set-up, implementation, training and support of the Licensed Programs provided prior to Client's notice of cancellation pursuant to this section 5(d) (Testing).

6. **Users and Passwords.**

a. **Designated Users.** Client agrees that its exercise of the license granted by this Agreement shall only be through its Designated Users. Client agrees that it may assign Passwords to a fixed maximum number of Designated Users, and may have only a fixed maximum number of Properties (as identified in Schedule A (Fee Schedule)). The maximum number of Designated Users is the total aggregate number of Designated Users licensed to Use the Licensed Programs. The maximum number of Properties is the maximum number of Properties that Designated Users may manage and account for in connection with Client's Use of the Licensed Programs. The agreed maximum Designated User and Property numbers are set forth in Schedule A (Fee Schedule).

b. **Designated User Changes.** Yardi agrees that Client may replace Designated Users as Client sees fit and at no additional cost provided: (i) there is no net increase in Client's maximum number of Designated Users, and (ii) each Designated User has a unique Password.

c. **Additional Designated Users.** Subject to: (i) at least 5 business days prior written notice from Client, (ii) Client's execution of an amendment to this Agreement, and (iii) subject to payment of additional Fees, Yardi will increase Client's licensed maximum number of Designated Users.

d. **Password Assignment.** Client's application support POC will be a Designated User, will designate the other Designated Users, and will provide each other Designated Users with a Password. Each Password shall be personal and unique to the applicable Designated User, and may not be used by anyone other than such Designated User. Each Password may only be used from 1 computer at any given time. Client shall be responsible for maintaining Designated User Password security.

e. **Client Obligations with Respect to Designated Users.** Client shall inform each Designated User of this Agreement's license terms and restrictions and shall enforce such restrictions. Client agrees to notify Yardi if Client becomes aware of any failure of a Designated User to adhere to the license terms and restrictions in this Agreement. Client acknowledges that each time a Designated User accesses the Licensed Programs the Designated User will be presented with a splash screen welcoming the Designated User and requesting that the Designated User enter his/her unique Password.

7. **Application Support & Upgrades.**

a. **Application Support Service.** Yardi will provide

application support and upgrades for the Licensed Programs as set forth in this section 7 (Application Support & Upgrades).

b. **Client Contacts.** Client agrees to appoint an application support POC. Client may change the application support POC upon advance written notice to Yardi. Yardi shall have no obligation to contact, or communicate with, anyone regarding application support and maintenance issues except Client's application support POC. Client acknowledges that it is Client's responsibility to keep Client's application support POC current, and to notify Yardi of any changes.

c. **Yardi Contacts.** During initial implementation, Yardi shall appoint an account manager to Client's account. After initial implementation, Yardi will either assign Client to an account manager or an application support team. Yardi may change the identity of individual account managers from time to time upon notice to client. Client's application support records relating to Client will be available to Yardi's entire application support team at all times.

d. **Application Support Services.** Yardi shall provide application support for the Licensed Programs through its account managers and technical staff to Client's application support POC. Application support does not include on-site installation, implementation, training, or testing of the Licensed Programs, nor does it include data conversion. Those services, if initially ordered, are specified in Schedule A (Fee Schedule). Yardi's application support service team will use commercially reasonable efforts to address and solve Client's issues but cannot guarantee satisfaction in every case.

e. **Total Hours Included.** Client's annual application support allotment is specified in Schedule A (Fee Schedule). Notwithstanding the multi-year Term set forth in section 3(a) (Term), Client's annual Fees and included annual application support allotment apply for annual periods ending on each Anniversary Date, and shall not include unused application support time from prior annual periods. If Client needs additional application support hours at any time, Client may purchase additional hours at Yardi's then-current prevailing application support rate at the time Client needs the hours.

f. **Application Support Hours.** Yardi's application support hours are from 8:00 am to 5:00 pm (Pacific Time) Monday through Friday (excluding holidays).

g. **Priority.**

(i) Yardi shall have the right to prioritize application support requests according to the application support issue's impact on Client. Yardi will prioritize application support requests in the following order:

Priority 1: Business halted (total inability to perform normal operation)

- Client will submit support requests by telephone to Yardi's application support number.
- Response as rapid as reasonably feasible - generally within 2 business hours.

Priority 2: Business Impacted (severe restriction of Client's Use of the Licensed Programs - a potentially critical problem)

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- Client will submit support requests by telephone to Yardl's application support number.
- Prompt response subject only to delays for priority 1 issues, generally within 4 business hours.

Priority 3: Non-critical service requests (any issue that is not a Priority 1 or Priority 2 issue)

- Client will submit support request by telecommunication to Yardl application support.
- Response subject to delays for priority 1 and 2 issues, generally within 1 business day.

(ii) Yardl will work on Priority 1 and 2 issues with continuous focus, and with Client's cooperation, through resolution.

h. **Software Upgrades.** Yardl will periodically make available to Client (at no additional cost to Client) updates, upgrades and current versions of the Licensed Programs which will include corrections, enhancements, and/or improvements. Client reserves the right to refuse updates and upgrades of the Licensed Programs; provided, however, that Yardl reserves the right to cease application support services for versions of the Licensed Programs more than 2 years older than the latest version of the Licensed Programs generally released to Yardl's clients.

i. **Standard Term.** Application support services are subject to this Agreement's terms and timely payment of all Undisputed Fees. Subject to the section 3(c) (Termination for Cause) notice and cure provisions, Yardl may suspend application support services if Client fails to timely make any Undisputed Fee payment.

j. **Obsolescence.** Yardl reserves the right to cease providing application support service for Licensed Programs on the later of: (i) 3 years from the date on which Yardl ceases to license the Licensed Programs, or (ii) 5 years from the Effective Date, whichever is later. Yardl agrees to notify Client if and when Yardl will cease application support services in accord with this section 7(j) (Obsolescence).

8. Confidentiality.

a. **Confidential Information Definition.** "Confidential Information" means all technical and non-technical information including: (i) Client Data, (ii) patent, copyright, trade secret, and other proprietary information, (iii) inventions, know-how, processes, or algorithms, (iv) software programs, software source documents, object code, source code, database dictionaries, network diagrams, UML diagrams, Licensed Programs, Licensed Programs Documentation, (v) development, design details and specifications, (vi) a party's financial information, (vii) customer lists, business forecasts, sales and marketing plans and information, (viii) the prices offered or paid per this Agreement for Yardl's products and services, (ix) SAS70 reports and any information related to SAS70 reports, (x) this Agreement's terms, and (xi) any other information disclosed by a party, or to which a party is exposed because of this Agreement, that the disclosing party identifies as confidential at the time of disclosure or which - by its nature - reasonably should be regarded as confidential.

b. **Nondisclosure and Nonuse Obligations.** Each

party (the "Receiving Party") agrees that it will not disseminate, distribute, expose, or in any way disclose any Confidential Information of the other party (the "Disclosing Party"), to any third party. The Receiving Party may use the Disclosing Party's Confidential Information to the extent necessary to perform its obligations under this Agreement. The Receiving Party's employees and Contractors may use Confidential Information only for the specific business purpose for which it was made available and not for any other purpose. The Receiving Party's employees and Contractors may not use Confidential Information in any way that may compete with Disclosing Party. The Receiving Party may not disclose Confidential Information to its employees and Contractors for the purpose of enabling any such employees or Contractors to service, maintain, or modify the Licensed Programs. The Receiving Party agrees that it will treat all Confidential Information with the same degree of care as the Receiving Party accords its own Confidential Information, but in no event less than reasonable care. The Receiving Party agrees that it shall disclose Confidential Information only to those of its employees and Contractors who need to know such information, and the Receiving Party certifies that such employees and Contractors have previously agreed, either as a condition to employment or in order to obtain the Confidential Information, to be bound by terms and conditions applicable to the Receiving Party under this Agreement. The Receiving Party shall immediately give notice to the Disclosing Party of any unauthorized use or disclosure of the Disclosing Party's Confidential Information. The Receiving Party agrees to assist the Disclosing Party in remedying any such unauthorized use or disclosure of Disclosing Party's Confidential Information.

c. **Exclusions from Nondisclosure and Nonuse Obligations.** The Receiving Party's obligations per section 8(b) (Nondisclosure and Nonuse Obligations) shall not apply to Confidential Information that the Receiving Party can document: (i) was (through no fault of the Receiving Party) in the public domain at or subsequent to the time the Disclosing Party disclosed the information to the Receiving Party, (ii) was rightfully in the Receiving Party's possession free of any confidentiality obligation at or subsequent to the time the Disclosing Party disclosed it to the Receiving Party, or (iii) was developed by the Receiving Party's employees or agents independent of, and without reference to, any information communicated to the Receiving Party by the Disclosing Party. A Confidential Information disclosure by the Receiving Party either (A) in response to an enforceable order by a court or other governmental body, (B) as otherwise required by law, or (C) necessary to establish the rights of either party under this Agreement, shall not be a breach of this Agreement by the Receiving Party or a waiver of confidentiality for other purposes; provided, however, the Receiving Party shall provide prompt prior written notice of any such Confidential Information disclosure to the Disclosing Party (to the extent allowed by applicable law) to enable the Disclosing Party to seek a protective order or otherwise prevent such disclosure.

d. **Ownership and Return of Confidential Information and Other Materials.** The Disclosing Party's Confidential Information is and shall remain the Disclosing Party's property, and this Agreement does not grant or imply any license or other rights to the Disclosing Party's Confidential Information except as expressly set forth in this Agreement.

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Within 5 business days after the Disclosing Party's request, the Receiving Party will promptly either (at the Disclosing Party's election) destroy or deliver to the Disclosing Party all Confidential information and materials furnished to the Receiving Party, and the Receiving Party agrees to provide a written officer's certification of the Receiving Party's compliance with the foregoing obligation.

e. **Third Party Information Disclosure.** The Disclosing Party shall not communicate any information to the Receiving Party in violation of the proprietary rights of any third party.

9. Warranties.

a. **Limited Warranty.** Yardi warrants that the Licensed Programs will perform substantially as specified in the Licensed Programs Documentation. Yardi does not warrant that the Licensed Programs will meet Client's requirements and expectations.

b. **Remedy for Limited Warranty Breach.** If Yardi breaches the warranty set forth in section 9(a) (Limited Warranty), Yardi agrees to use commercially reasonable efforts to modify the Licensed Programs so that they conform to that warranty. If such modification is not commercially reasonable, then Yardi will notify Client and Client may terminate this Agreement. In the event Client terminates this Agreement per this section 9(b) (Remedy for Limited Warranty Breach), Yardi will refund to Client, on a pro-rata basis, the annual Fees paid by Client to Yardi within the year prior to the effective date of Client's termination. **THE FOREGOING REMEDY IS CLIENT'S SOLE REMEDY IN THE EVENT OF A BREACH OF THE WARRANTY SET FORTH IN SECTION 9(a) (Limited Warranty).**

c. **Warranty Disclaimer.** EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, AND TO THE FULLEST EXTENT ALLOWED UNDER APPLICABLE LAW, YARDI DISCLAIMS ALL EXPRESS, IMPLIED AND STATUTORY WARRANTIES WITH REGARD TO THE LICENSED PROGRAMS INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

10. Damage Limitations.

a. **Damage Waiver.** REGARDLESS OF ANY OTHER PROVISION IN THIS AGREEMENT, AND TO THE FULLEST EXTENT ALLOWED BY APPLICABLE LAW, YARDI DISCLAIMS ALL OBLIGATIONS AND LIABILITIES FOR SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY, PUNITIVE AND CONSEQUENTIAL DAMAGES, ATTORNEYS' AND EXPERTS' FEES, AND COURT COSTS (EVEN IF YARDI HAS BEEN ADVISED OF THE POSSIBILITY OF THESE DAMAGES), ARISING FROM OR IN CONNECTION WITH THIS AGREEMENT.

b. **Liability Limit.** IN ADDITION TO THE LIMITATIONS OTHERWISE SET FORTH IN THIS AGREEMENT, AND TO THE FULLEST EXTENT ALLOWED BY APPLICABLE LAW, CLIENT AGREES THAT IN THE EVENT OF ANY CLAIM OR CAUSE OF ACTION BY CLIENT ARISING OUT OF OR CONNECTED WITH THIS AGREEMENT, YARDI'S MAXIMUM LIABILITY TO CLIENT, REGARDLESS OF THE AMOUNT OF LOSS CLIENT MAY HAVE SUFFERED, SHALL NOT EXCEED THE FEES PAID BY

CLIENT TO YARDI PURSUANT TO THIS AGREEMENT WITHIN THE YEAR PRIOR TO THE EVENT GIVING RISE TO THE LIABILITY.

11. Ownership.

a. **Yardi's Ownership.** Client agrees that, as between Yardi and Client, Yardi is and shall remain the sole and exclusive owner of all right, title and interest in and to the Licensed Programs, Deliverables, and Licensed Programs Documentation, and to all intellectual property rights in the foregoing. The only rights Client obtains in the Licensed Programs and Licensed Programs Documentation are the licenses granted to Client in this Agreement.

b. **Client's Ownership.** Yardi agrees that, as between Yardi and Client, Client is and shall remain the sole and exclusive owner of all right, title and interest in and to Client Data.

12. Indemnification.

a. **Indemnity.** Yardi agrees to defend, indemnify and hold Client harmless from and against any third party claims, actions or demands alleging that Client's Use of the Licensed Programs, Licensed Programs Documentation, and Deliverables in accordance with this Agreement's terms infringes on a third party's proprietary information, trademark, copyright, patent rights or intellectual property rights, or misappropriates a third party's trade secrets.

b. **Indemnity Conditions.** Yardi's defense and indemnification obligation per section 12(a) (Indemnity) is conditioned upon the following: (i) Client providing Yardi with prompt written notice of any claim for which indemnification is sought; (ii) Yardi having sole control of the defense and settlement of such claim, provided, however, that Client shall have the right to have any suit or proceeding monitored by counsel of Client's choice and at its expense; and (iii) Client's reasonable cooperation with Yardi in the defense and settlement of the claim.

c. **Injunction.** If the Licensed Programs become the subject of a patent, trademark, copyright, or trade secret misappropriation or infringement claim, and such claim results - or is reasonably likely to result - in an injunction against Client's continued Use of the Licensed Programs, Yardi will (i) replace or modify the Licensed Programs to avoid the misappropriation/infringement claim, (ii) secure Client's right to continue Use of the Licensed Programs, or (iii) if neither (i) or (ii) is commercially practicable, either party may terminate this Agreement upon written notice to the other party.

13. Programming Services.

a. **Programming Services.** Yardi provides programming services including, without limitation, database customizations, user interface customizations, database reports, database scripts and other programming services (collectively, "Programming Services").

b. **Programming Services Terms.** The Fees for Programming Services, if initially ordered, are set forth in Schedule A (Fee Schedule). Client will otherwise initiate Programming Service requests by providing written notice of the desired services to Yardi, and Yardi will advise Client of Yardi's availability and schedule for performing the Pro-

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programming Services. Programming Services are subject to Client's written acceptance of: (i) Yardi's schedule for meeting Client's Programming Service request, and (ii) Yardi's Fees for such Programming Services.

c. **Deliverables License.** Subject to Client's full payment of all Undisputed Fees related to Programming Services, Yardi grants to Client a non-exclusive, non-transferable (except as expressly provided in this Agreement), limited license for Designated Users to Use the Deliverables in connection with their Use of the Licensed Programs.

14. Assignment.

a. **Assignment Limitation.** Except for the exceptions specified in section 14(b) (the "Permitted Exceptions"), Client shall not (either directly or indirectly) assign, sell, convey, pledge, or otherwise transfer this Agreement without first obtaining Yardi's express written consent, which Yardi shall not unreasonably withhold. Except for the Permitted Exceptions, any attempted assignment made without Yardi's prior express written consent is void and a material breach of this Agreement.

b. **Permitted Exceptions.** Subject to the conditions precedent set forth in this section 14(b) (Permitted Exceptions), Client may assign this Agreement without Yardi's prior consent and upon notice: (i) to a wholly owned subsidiary, or (ii) in connection with any merger, acquisition, or reorganization involving Client. Any assignment is subject to the following conditions: (A) Client, or Client's successor, continuing in the same type of business that Client was conducting at the time of this Agreement's execution, and (B) Client or Client's successor providing to Yardi a written ratification and assumption of this Agreement (in a form reasonably satisfactory to Yardi) concurrent with the assignment.

15. Mediation.

a. **Mediation Request; Condition Precedent.** In the event of a dispute arising out of or related to this Agreement which the parties are unable to resolve through direct negotiation, either party may serve upon the other at its principal place of business a request for mediation. Neither party may file an action against the other in any court, or initiate any other legal proceeding, unless and until the party seeking to do so has first requested a mediation hearing and made a good faith effort to complete the mediation process provided in this Agreement.

b. **Mediation Process.** The parties will mutually agree upon a neutral, independent mediator with experience in the relevant subject matter, and if the parties cannot mutually agree upon a mediator, the mediator will be selected in accordance with the rules of the office of the Judicial Arbitration and Mediation Service (JAMS) closest to the mediation venue. The parties shall conduct the mediation not less than 10 or more than 60 days from the date the party requesting mediation gives notice of the request for mediation to the other party. The parties shall conduct the mediation in Santa Fe, New Mexico. The parties shall equally bear the mediation costs.

c. **Mediation Confidentiality.** The parties shall maintain the mediation proceedings in confidence and shall not disclose to third persons the statements made in mediation by the other parties or the mediator. The mediation confiden-

tiality provisions of Section 44-7B-4 (NMSA 1978) of the New Mexico Mediation Procedures Act shall apply to the mediation proceedings.

d. **Mediation Statements; Attendee Authority.** At least 5 days before the date of the mediation, each party shall provide the mediator and the other party with a statement of its position and copies of supporting documents. Each party shall send to the mediation a person who has authority to bind the party.

e. **Non-Binding.** If a party participates in good faith in a mediation and is dissatisfied with the outcome, that party may then invoke all legal rights and remedies available to the party at law or in equity.

16. General Provisions.

a. **Independent Contractor Status.** The parties agree that they are independent contractors and nothing in this Agreement is intended to make the parties partners, agents, joint venturers, or any other form of joint enterprise, or to make the employees, agents, or representatives of one of the parties into employees, agents, or representatives of the other party. No party to this Agreement shall have any express or implied right or authority to assume or create any obligations on behalf of the other party or to bind the other party to any contract, agreement, or undertaking with any third party.

b. **Governing Law.** This Agreement shall be governed and determined by the laws of the United States and the State of New Mexico as such laws are applied to agreements made and performed entirely within the State of New Mexico.

c. **Venue.**

(i) **Action Initiated by Client.** Any action or proceeding related to or arising out of this Agreement initiated by Client shall be resolved only in a court of competent jurisdiction in the City of Santa Barbara, State of California (or the court of competent jurisdiction closest to the City of Santa Barbara, CA if no court of competent jurisdiction resides in the City of Santa Barbara, CA), and the parties consent to the personal jurisdiction of such courts and expressly waive any right they may otherwise have to cause any such action or proceeding to be brought or tried elsewhere.

(ii) **Action Initiated by Yardi.** Any action or proceeding related to or arising out of this Agreement initiated by Yardi shall be resolved only in a court of competent jurisdiction in the City of Santa Fe, State of New Mexico (or the court of competent jurisdiction closest to the City of Santa Fe, NM) if no court of competent jurisdiction resides in Santa Fe, NM, and the parties consent to the personal jurisdiction of such courts and expressly waive any right they may otherwise have to cause any such action or proceeding to be brought or tried elsewhere.

d. **Injunctive Relief.**

(i) The parties acknowledge and agree that, if Client breaches any of its obligations under sections 2(a) (Licenses), 2(b) (Restrictions), 8 (Confidentiality) or 14 (Assignment), Yardi might incur irreparable harm and damage that might not be fully compensated with monetary damages. Accordingly, if Client breaches any provision of sections 2(a) (Licenses), 2(b) (Restrictions), 8 (Confidentiality), or 14 (As-

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signment) Yardi may seek specific performance of Client's obligations under those sections and injunctive relief against any further violations of those sections.

(i) The parties acknowledge and agree that, if Yardi breaches any of its obligations under section 8 (Confidentiality) Client might incur irreparable harm and damage that might not be fully compensated with monetary damages. Accordingly, if Yardi breaches any provision of section 8 (Confidentiality) Client may seek specific performance of Yardi's obligations under that section and injunctive relief against any further violations of that section.

e. Binding Effect. This Agreement is binding on and inures to the benefit of the parties and their permitted assigns, successors, and legal representatives.

f. Notices.

(i) The parties shall deliver any notice required by this Agreement by personal delivery, certified U.S. Mail return receipt requested, or established, reputable expedited delivery carrier providing proof of delivery service, and will be deemed given upon confirmed delivery to the party to whom it is intended at its record address. The record addresses of the parties are set forth below.

(ii) If to Client:

Attn: Katherine Miller
Santa Fe County Manager
102 Grant Avenue
P.O. Box 278
Santa Fe, NM 87504-0278

With a copy to:

Attn: Dodi Salazar, Executive Director
SFC HOUSING AUTHORITY
52 Camino de Jacobo
Santa Fe, NM 87507

(iii) If to Yardi:

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

With a copy to:

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

(iv) Either party may change its record address by giving written notice of such change to the other party.

g. Waiver. The waiver of a party's breach of this Agreement shall not operate or be construed as a waiver of any other or subsequent breach.

h. Severability. If a court or other body of competent jurisdiction determines that any part of this Agreement is unenforceable, the remainder of this Agreement shall nevertheless remain enforceable.

l. Headings. This Agreement's section headings and captions are inserted for convenience only and are not intended to form a material part of this Agreement.

j. Entire Agreement. This Agreement constitutes the final, complete, and exclusive statement of the agreement between the parties pertaining to this Agreement's subject matter and supersedes all prior and contemporaneous understandings or agreements of the parties. No party has been induced to enter into this Agreement by, nor is any party relying on, any representation or warranty except those inducements, representations and warranties expressly set forth in this Agreement.

k. Non-Solicit/Non-Hire. The parties agree not to solicit (other than a general solicitation to the public) the employment of, engage as an independent contractor, or hire, any employee of the other party while such person is an employee of the other party and until such person has not been an employee of the other party for 6 months.

l. Modification. The parties may only modify or amend this Agreement by a writing signed by both parties.

m. Force Majeure. Neither party shall be liable under this Agreement for failure or delay in performance caused by a Force Majeure Event. If a Force Majeure Event occurs, the party affected shall use commercially reasonable efforts to resume the performance excused by the Force Majeure Event.

n. Signature; Counterparts. This Agreement is not binding on the parties until both parties have signed it and have received a copy signed by the other party. However, both signatures need not appear on the same copy of this Agreement, so long as both signed copies have identical contents. The parties may transmit signatures on this Agreement by electronic transmission, which shall be binding upon the parties. Counterparts with original signatures shall be provided to the other party within 5 days of electronic transmission; however, the failure to provide the original counterpart shall have no effect on this Agreement's enforceability or binding nature. If executed in counterparts, this Agreement will be as effective as if simultaneously executed.

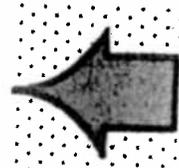
COUNTY OF SANTA FE ("Client")

By: Katherine Miller

Print Name: Katherine Miller

Title: SF County Manager

Date: 10-17-11



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Approved as to form
Santa Fe County Attorney
By: [Signature]
Date: October 5, 2011
JMM

YARDI SYSTEMS, INC. ("Yardi")

By: [Signature]

BRPC

Print Name: _____

Title: VP

Date: 10/12/11

Rev. 033111

Yardi [Signature] Client
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SCHEDULE A

Fee Schedule

Yardi Pin #: 100033208

Yardi Order #: 393753

Voyager Software License and Application Support

1)	Annual License Fee:	For 493 Units ("Units") ¹	
	a) Modules included:		
		PHA Property Management and Accounting- 493 Units @ \$10/Unit Including: GL/AP, Maintenance/Work Order, Electronic Banking, ACH for AP, and Construction	\$4,930.00
	b) Additional Designated Users ("DUs"):		
		Additional DUs- 4 DUs @ \$250/DU	\$1,000.00
	c) Annual Courtesy Concession		
		Annual Courtesy Concession ²	<716.60>
	Total Annual Fee ³		\$5,213.40
	Prorated Annual Fee- September 1, 2011 to June 30, 2012		\$4,344.50

¹ Client may change the licensed Units number only in 25-Unit increments.

² Annual Courtesy Concession contingent upon Client's licensing of 493 Units and 4 Additional Designated Users.

³ Total Annual Fee

⁴ Notwithstanding the multi-year Term set forth in section 3(a) (Term), Client agrees to pay Client's annual Fee annually in accord with this Schedule A (Fee Schedule). Client's Total Annual Fee includes license Fees, updates/upgrades, up to 1 Designated User ("DU") per 100 Units, and 12 application support hours/year. Yardi will debit all application support services (in 1/2-hour increments with a 1/2-hour minimum) against Client's above-noted application support allotment except when the services relate to a Software Error. Client's Total Annual Fee is subject to increase on each Anniversary Date; such increases shall not exceed the percentage increase in the U.S. Department of Labor, Bureau of Labor Statistics' Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W): Los Angeles Region for the preceding year. Current Yardi Voyager client.

Year 1 setup application support hours (25 hours)

⁴ Yardi recommends 25 additional support hours for year one only. Client declines additional support at this time with the option to purchase on an as needed basis at a later date.

client declined⁴

Training, Implementation, and Other Services

2)	Implementation/training		not included ⁴
	⁴ Client has requested that Yardi not be responsible for implementation or training. Client understands that if Yardi conducts implementation or training at Client's request in the future, the charge will be the then-current prevailing implementation/training rate, plus reasonable expenses, with a minimum of 8 hours per day. Current Yardi Voyager client.		
3)	Data Conversion (subject to Yardi data conversion guidelines)		not included
4)	Programming Services		not included
5)	Sub-Total		\$4,344.50
6)	Sales Tax		as applicable
7)	Prorated Credit for Fees Paid Per Previous Agreement- September 1, 2011 to June 30, 2012		<4,344.50>
8)	Total Fee		\$0.00

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- 9) Subject to Client's prior written approval, Client agrees to participate (at no cost to Client) in Yardi's marketing efforts.
- 10) Client acknowledges that additional DUs, Units and/or Licensed Programs (i.e., in addition to those initially set forth in this Schedule A (Fee Schedule)) require additional Fees at Yardi's then-current prevailing rate for the additional DUs or Licensed Programs at the time of Client's request.
- 11) Application hosting, database administration, and network administration associated with the Licensed Programs are Client's responsibility.
- 12) PAYMENT TERMS: 100% payable upon execution of this Agreement.

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