

AGREEMENT FOR BUSINESS LICENSE SOFTWARE AND SERVICES

This Agreement is made and entered into as of the 23 day of August 2017 (the "Agreement Date"), by and between the **CITY OF MILPITAS**, a municipal corporation hereinafter referred to as CITY, and **HDL SOFTWARE LLC**, a California limited liability company, hereinafter referred to as HDL

WHEREAS, CITY desires to enforce its business license ordinance to ensure that all persons and organizations doing business within the City are licensed; and

WHEREAS, HDL has the programs, equipment and personnel required to deliver the services referenced herein,

THEREFORE, it is agreed by CITY and HDL as follows

1. SCOPE OF SERVICES; STANDARD OF CARE; COMPLIANCE WITH LAWS

Specific services to be performed by HDL are as described in **Exhibit A**. Includes scope, schedule, support, and system requirements

HDL's services will be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions

HDL shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local government, including applicable laws protecting the privacy of personal information

HDL warrants that the services and the software will materially conform to the specifications and documentation

2. COMPENSATION

City agrees to compensate HDL for services under this Agreement as described in **Exhibit B**

3. TERM OF AGREEMENT

The term of this Agreement shall commence on the Agreement Date and shall continue for five years unless earlier termination is requested. The process for termination can be found in **Exhibit C**

4. GENERAL TERMS AND CONDITIONS

The General Terms and Conditions for this Agreement are as described in **Exhibit C**

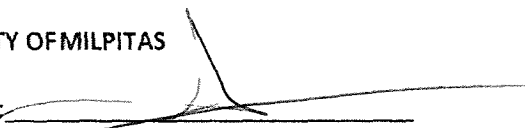
5. NOTICE

All notices required by this Agreement shall be given to the City and to HDL in writing, by personal delivery or first class mail postage prepaid, addressed as follows:

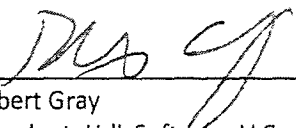
City	<u>City of Milpitas</u> <u>Attn: Director of Financial Services</u> <u>455 E Calaveras Blvd</u> <u>Milpitas, CA 95035</u>
HDL	HdL SOFTWARE, LLC 160 Via Verde Drive, Suite 150 San Dimas, California 91773

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the date first above written by their respective officers duly authorized in that behalf

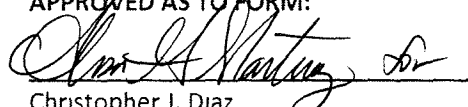
CITY OF MILPITAS

By: 
Steve J. Pangelinan
Acting City Manager, City of Milpitas

HDL

By: 
Robert Gray
President, HdL Software LLC

APPROVED AS TO FORM:


Christopher J. Diaz
City Attorney

ATTEST: *City Manager's signature*


City Clerk

EXHIBIT A - SCOPE OF SERVICE

HdL Prime Business License Software System – General overview

HdL's Prime Business License software 4th generation licensing platform demonstrates our commitment to advancing California business licensing, combining the latest technological advancements with best practices gleaned from years of serving in and providing services to California local government

HdL Prime is built using the latest technologies HTML5, JAVA, ASP NET, NET 4, WPF, WCF, C#, SQL Server, IIS Based on a fresh technology base, HdL Prime is ready to keep pace with the blistering speed of technology improvements In addition to the hundreds of enhancements included in our initial release of HdL Prime, a small sample of recent enhancements include online applications, online business registry (searchable listing of licensed businesses in the City), online customer profiles (allows an owner with multiple businesses, or an individual responsible for reporting for multiple businesses, to keep track of the license status of all businesses from a central profile, and submit renewals for those businesses through a single process and payment transaction), inspection central (for scheduling and tracking inspection results), and improved department approval process using the new department central and automated email notifications

1. Prime Software System

- 1.1 **City Management Support** - HdL will assist the City in evaluating current policies and procedures in order to enhance operational efficiency This may include suggestions to redesign forms/reports, implement new processes, or adopt new strategies for improving communication with the business community and other City departments
- 1.2 **Data Conversion** - HdL will convert the City's existing data If City is migrating from HdL "Classic" Business License, City will provide a current backup of the existing Microsoft Access or Microsoft SQL Server HdL database If City is converting from another vendor's software, the City agrees to provide its current data in ASCII delimited file format, SQL Server backup, or another format agreed upon between HdL and the City, along with a file layout detailing the content of the file This data will be required a minimum of two times during the conversion process The City understands that the second (and any subsequent) data set must be provided in the same format and layout as the first data set Any inconsistencies between the first and second data sets will result in a delayed installation date and additional charges for conversion
- 1.3 **Implementation**
 - 1.3.1 **HdL's responsibilities**
 - 1.3.1.1 **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 the City's designated project manager to define the software implementation schedule, identify City needs and configure the software accordingly, validate the data conversion, provide user training, and generally shepherd the City through the software implementation process
 - 1.3.1.2 **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 the City's computing environment, and will provide any needed technical support
 - 1.3.1.3 **Training** - HdL will provide software training as defined in the agreed upon software implementation schedule This generally consists of two separate training sessions The size and participants of each training session will be determined by the HdL PM and the City's designated project manager
 - 1.3.1.4 **User manual** - HdL will provide access to a digital copy of the software user manual The City may use the manual as needed for internal use by City staff The user manual contains proprietary and confidential information, and as such is bound by the confidentiality portion of this agreement The user manual may not in any circumstances be distributed to any ^{third}

party or any individual that is not a current City staff member responsible for using or maintaining the software

1.3.2 City's responsibilities

1.3.2.1 Project manager - The City will designate a staff member to serve as the 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 the City PM is to ensure that all City responsibilities during the software implementation are met according to the agreed upon software implementation schedule. The City PM will be instrumental in the successful implementation of the software, working closely with the HdL PM to verify data conversion, review and approve reports, establish business rules, and configure all aspects of the software.

1.3.2.2 IT support - The City will designate an IT staff member to work with HdL staff throughout the software implementation process. This individual must be knowledgeable about the 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 the City's IT designee is to provide data to HdL for conversion (if required), install the SQL Server database, and install the software in the City's computing environment.

1.3.3 Schedule – The default timeline for complete implementation (including "Go Live") of the software is approximately sixty (60) days from the start of implementation. When the Agreement is signed by all parties, HdL will immediately work with the City to establish a specific implementation schedule.

1.4 Payment Gateway - For online payment functionality HdL's solutions include built in payment gateway services supporting both credit card and eCheck transactions. If a different payment gateway is required, there will be a \$5,000.00 development cost to establish the custom payment gateway integration. HdL is responsible for maintaining PCI DSS compliance of the Payment Gateway. HdL shall manage all payment card (PCI) data securely and in compliance with current PCI DSS, the Agreement and all applicable laws.

1.5 Maintenance and Support

1.5.1 Customer Support - HdL will provide customer support by telephone, email, and the web during the term of this Agreement. In the United States, no charge support is available as follows: For customer support between the hours of 8:00 a.m. and 5:00 p.m. Pacific time, Monday through Friday, email support@hdlcompanies.com or call the HdL offices at (909) 861-4335 and ask for software support. For technical support before 8:00 a.m. or after 5:00 p.m. 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 information in emails to 911@hdlcompanies.com. You will be contacted as soon as possible.

1.5.2 Support Policy Regarding Reports - HdL will assist with modifications to reports as needed during the term of this agreement. Typical report modifications require seven (7) to ten (10) business days to complete. Very complex reports or reports required in a very short time frame may incur development costs, in which case an estimate will be provided for written approval by the City before the work is begun.

1.5.3 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.

1.5.4 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 Software Use Fee, and as such will be billable to the client on a time and material basis. The City shall contact HdL for instructions if any added functionality is required, including reading additional data or writing to the HdL database.

- 1.6 **System Requirements** – These system requirements are only applicable if the HdL system will be deployed directly on the City's equipment. If the City opts to utilize HdL's hosting services, see the hosting services section for system requirements.
 - 1.6.1 **On site deployment** – The software and database will be installed on the City's network on hardware supplied by the City. Any specifications provided below indicate minimum requirements. It is the 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 the City's email system.
 - 1.6.1.1 **Application Server Specifications** - The application server will host the HdL Prime web service, which serves as the HdL Prime business layer. The HdL Prime web service uses the Microsoft Windows Server with IIS platform. The following versions are supported: MS Windows Server 2008 or later, with IIS v7.0 or later. The application server should have at least 200 megabytes of space available.
 - 1.6.1.2 **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. HdL Software systems use the Microsoft SQL Server database platform. The following versions are supported: MS SQL Server 2008 R2 or later (SQL Express variants also supported). Any server operating system supported by the selected version of SQL Server is supported as a database server, provided it meets the hardware specifications indicated by both the operating system and the version of SQL Server. The database server should have at least 50 gigabytes of space available to allow for the initial database and growth.
 - 1.6.1.3 **Workstation Specifications** - The software will be run on the client workstation. HdL Prime is deployed to the workstation via a click-once installer. The Crystal Reports and .NET 4.x runtimes will also need to be installed on the workstation. The following hardware recommendations are based on user feedback regarding performance levels: Intel Core i3 or equivalent CPU, 4+GB Memory, 1280x1024 screen resolution, MS Windows 7/8/10 operating system.
 - 1.6.1.4 **Network Specifications** - The software communicates via web services, and is designed to operate efficiently over the network. High-speed local area network connections are always helpful, but Prime will also run without difficulty over slower WAN connections such as T1 or mobile broadband.
 - 1.6.1.5 **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.
2. **Hosting Services** – HdL's hosting services offload the majority of IT concerns to HdL's hosting team, including system upgrades, hardware and software maintenance, database management, and disaster recovery. The City will be responsible for maintaining its workstations and a reliable internet connection. HdL will handle the rest. Website functionality will be hosted using a City-specific sub-domain on HdL's special purpose hdlgov.com domain.
 - 2.1 **System Requirements**
 - 2.1.1 **Workstation Specifications** – Workstations will access the software through a remote application session with HdL's hosting service. All workstations require 4+GB Memory, 1280x1024 screen resolution, and Microsoft Windows 7/8/10 operating system.
 - 2.1.2 **Network Specifications** – HdL's hosted service requires reliable, high-speed internet connectivity. High-speed local area network connections are always helpful, but Prime will also run without difficulty over slower WAN connections such as T1 or mobile broadband.
 - 2.1.3 **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.
 - 2.2 **Agency Data**
 - 2.2.1 **Data Security** – HdL will maintain safety and security procedures with respect to its access and maintenance of Agency Data, which provide reasonably appropriate technical and organizational

safeguards against accidental or unlawful destruction, loss, alteration or unauthorized disclosure of or access to Agency Data. All Agency Data will be stored in a physically and logically secure environment that protects it from unauthorized access, modification, theft, misuse, and destruction. If a breach of security or confidentiality occurs, and it requires notification to the City's users/customers under any privacy law, then the City shall have sole control over the timing, content, and method of such notification. If HdL or its subcontractor/vendor is responsible for the breach, then HdL shall reimburse the City for its reasonable costs in providing the notification.

2.2.2 Disaster Recovery

2.2.2.1 Agency Data Backups – HdL shall perform regular backups of Agency Data according to HdL's most recently published hosted environment backup policy. As of the date of this Agreement, the backup policy is as follows:

2.2.2.1.1 Cloud System Backup – Hourly incremental backups, with a full backup nightly.

2.2.2.1.2 Offsite Backup – Nightly full backups are copied each day from the cloud environment to HdL's offsite backup.

2.2.2.1.3 Retention Policy – Cloud system backups are retained for 30 days. Offsite backups are retained for 1 year.

2.2.3 Data Access – Agency data is at all times owned by the City, and can be accessed by the City through HdL's built-in data export capabilities.

3. Payment Processing Services

3.1 Payment Processing - HdL shall provide its Services to support payments remitted to City. HdL shall transmit transactions for authorization and settlement through HdL's certified payment processor. Funds for transactions processed by HdL hereunder shall be submitted to City's designated bank account as follows: (i) no more than two (2) business banking days after all Transactions (other than electronic Check Transactions) that are successfully processed prior to 5:00 p.m. Eastern time on each business banking day (e.g., a Transaction authorized at 2:00 p.m. Eastern time on Monday will be submitted on Wednesday, a Transaction successfully processed at 8:00 p.m. Eastern time on Monday will be submitted on Thursday), and (ii) no more than five (5) business banking days for all electronic Check Transactions that are successfully processed prior to 5:00 p.m. Eastern time on each business banking day. HdL makes no representation or warranty as to when funds will be made available by Client's bank.

3.2 Support - HdL shall provide City with payment processing related customer service as needed. City shall timely report any problems encountered with the service. HdL shall promptly respond to each report problem based on its severity, the impact on City's operations and the effect on the service. HdL shall either resolve the problem or provide City with the information needed to enable the City to resolve it.

3.3 Transaction Errors - HdL's sole responsibility for any Transaction error or reversed Transaction is to determine whether the result indicates a problem with HdL's service and, if necessary, reprocess and resubmit the Transaction without additional charge. In the event that a Transaction is reversed or refunded to any Customer of City, for any reason, HdL may offset such amount against funds remitted to City, or invoice City for such amount, at HdL's discretion. City shall pay any such invoice within 30 days of receipt.

3.4 Electronic Check Authorization - If City elects to accept electronic Checks as a form of payment, the following subsections apply. For the purpose of this section, "checks" means checks drawn on accounts held in the U.S. ("Check(s)")

3.4.1 As part of the implementation plan, City shall select risk management controls governing Check acceptance and assumes sole responsibility for the choice of controls.

3.4.2 HdL shall provide confirmation on a submitted ABA number as part of the Service to assist Client with the decision whether to accept a Check and shall route accepted Checks.

3.4.3 City hereby authorizes HdL to debit the City's financial institution account in the amount of any returned item that is received by HdL.

3.5 City Responsibilities

3.5.1 As a condition to its receipt of the Service, City shall execute and deliver any and all applications, agreements, certifications or other documents required by Networks or other third parties whose consent or approval is necessary for the processing of Transactions. "Network" is an entity or association that operates, under a common service mark, a system which permits participants to

- authorize, route, and settle Transactions among themselves, including, for example, networks operated by VISA USA and Mastercard, Inc , NYCE Corporation, American Express, and Discover
- 3 5 2 City and HdL each represents, warrants, and agrees that it does and will comply with applicable Laws and regulations and Network rules, regulations or operating guidelines Each party shall notify the other in writing as soon as possible in the event a claim is either threatened or filed against City by any governmental organization having jurisdiction over City or a Customer related to the Service Each party shall also notify the other party in writing as soon as possible in the event a claim is either threatened or filed against City or HdL in connection with this Agreement relating to Transactions or the Services or a fine or other penalty is assessed or threatened relating to Transactions or the Services
- 3 5 3 City and HdL each represents, warrants and agrees that it is and will continue to be in full compliance with all applicable requirements of the Client Information Security Program of VISA, the Site Data Protection Program of MasterCard, and similar programs of other Networks, and any modifications to such programs that may occur from time to time Each party shall upon request provide the other party with documentation reasonably satisfactory to the requesting party verifying compliance with this Section
- 3 5 4 City hereby grants HdL the full right, power and authority to request, receive and review any Data or records reflected in a Transaction report City represents and warrants that it has the full right and authority to grant these rights
- 3 6 Fees
- 3 6 1 If a convenience fee will be charged, the City authorizes HdL to collect each convenience fee
- 3 6 2 The fees set forth in Exhibit B Payment Schedule do not include expenses, late fees or charges, or taxes, all of which shall be the responsibility of City In addition to the charges specified in Exhibit B Payment Schedule, City shall be responsible for (a) all interchange and network provider fees, (b) all dues, fees, fines and assessments established and owed by City to Visa and/or Mastercard, (c) for all costs and fees associated with changes to ATM protocol caused by City's conversion to the Services, and (d) any increase in postage charges, provided that any increase in charges resulting from (a) through (d) shall not exceed the actual increase incurred by HdL Except HdL shall pay any fines, fees, assessments, penalties or other charges imposed on the City caused by HdL's failure (or its vendor/subcontractor's failure) to comply with PCI DSS, applicable laws and/or Network rules
- 3 6 3 HdL reserves the right to review and adjust all City and convenience fee pricing on an annual basis in June This adjustment may be consistent with the then most recent ECI adjustment or three percent (3%) whichever is greater Items that will be considered in the review of fees may include, but are not limited to regulatory changes, card association rate adjustments, card association category changes, bank/processor dues and assessments, average consumer payment amounts, and card type utilization
- 3 6 4 City agrees to maintain a depository account with a financial institution reasonably acceptable to HdL for the payment of amounts payable hereunder, and hereby authorizes HdL to initiate debit entries to such account for the payment of amounts payable hereunder City agrees to provide HdL with any and all information necessary for HdL to initiate such debit entries via the Automated Clearing House (ACH) system For any amount that is not paid within thirty (30) days after its due date, City shall pay a late fee equal to the lesser of one and one-half percent (1 ½%) per month of the unpaid amount or the maximum interest rate allowed by law

EXHIBIT B - COMPENSATION

1. Prime Software System

One Time Project Costs

Item	Price	Comments
Prime Business License - Software License Fee	\$10,000	3 named users
Prime Web Module	Included	Must use HdL supported gateway, FIS Global (no charge) Non-supported gateways require a customizing charge of \$5,000 00
Finance System Integration	\$3,000 00	Basic Finance File Transfer - Statement of Work required
HdL hosted FIS payment website	\$500 00	
Transient Occupancy Tax Tracking	\$3,000 00	Configuration, Implementation, 1 Report
Stored Procedure Function	\$3,000 00	Pending Specification Discussion
Implementation	Included	Project management, installation, configuration, report design, training, etc
Data Conversion	Included	Up to 30 hours of data conversion work
Travel Expenses	At Cost	At Cost
Training 1 Day	Included	Included Additional days available at \$2,000 00/day
TOTAL	\$19,500 00	Total one-time costs

Recurring Costs

Item	Price	Comments
Annual Software Use Fee	\$13,159 98	Due at "Go Live" of core Prime System Renewed annually + CPI

- 1 1 **Software License Fee** - The license fee includes the use of the software by the specified number of users, software user manual in digital format, and all standard forms and reports. Additional user licenses are available for \$2,000 license fee plus \$600 annual software use fee.
- 1 2 **Annual Software Use Fee** - The software use fee is billed annually, and provides for ongoing customer support and updates to the software. The software use fee shall be adjusted at the beginning of each calendar year by the change in the Consumer Price Index – West Urban (CPI-WU) as reported by the Bureau of Labor Statistics. Each CPI adjustment will not be less than two percent (2%) or greater than Ten percent (10%).
- 1 3 **Implementation** - The implementation fee covers all efforts involved for installation and configuration of the software. This includes one session of pre-installation and process evaluation, one session of "go live" training, installation support, design and programming of standard forms and reports, and configuration of the software.
- 1 4 **Data Conversion** – Data will be converted from the City provided source files. Includes one (1) conversion when migrating from an HdL system, and two (2) conversions when migrating from another vendor's system. Additional conversions of the same source data can be performed, upon request, at a

cost of \$500 per conversion. The source files must be provided in the same format for all conversions, otherwise custom programming costs will apply in order to accommodate the varying data formats. Data conversion includes up to thirty (30) hours of developer time. Any work above thirty (30) hours will be charged at the current developer hourly rate.

- 1.5 **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.
- 1.6 **Parcel Data** - HdL Prime includes comprehensive land management functionality. There are three ways to acquire the parcel data:
 - 1.6.1 If the City is a client for HdL property tax services, the parcel data will be provided at no cost.
 - 1.6.2 If the City is not a client for HdL property tax services, the parcel data may be purchased from HdL.
 - 1.6.3 If the City wishes to use any other source of parcel data, HdL can work with the City to create a re-useable import utility. The development of this utility will be billed on a time and material basis. Once the source data has been reviewed, a statement of work will be provided including a cost estimate.
- 1.7 **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 the City project manager.
- 1.8 **Payment Schedule** - Compensation for the contract amount shall be as follows:
 - 1.8.1 One time project costs and the first year Software Use Fee. Sixty percent (60%) shall be due and payable within thirty (30) days of the effective date of the Agreement. Thirty percent (30%) within sixty (60) days of the effective date of the Agreement. Ten percent (10%) within thirty (30) days of full system delivery or first production use of the system, whichever comes first.
 - 1.8.2 Travel Expenses. Travel and lodging expenses are billed at cost as they are incurred. Travel expenses shall be due and payable within thirty (30) days of the billing date.
 - 1.8.3 Annual Software Use Fee. The software use fee will be invoiced each year on the anniversary of sixty (60) days after the effective date of the Agreement, and shall be due and payable within thirty (30) days of the invoice date. The software use fee billing cycle can be prorated as needed should the City desire an alternative billing cycle.

2. **Hosting Services** - hosting services are billed quarterly in advance. Includes software and data hosting and disaster recovery services. Hosting fee may be revised with three (3) months advance notice to account for changes in market costs related to hosting, such as internet bandwidth, power, and related equipment or service costs. The base fee provides for three (3) named user connections to the system.

Service	Compensation
Monthly Hosting (includes 3 named user connections)	\$250.00/month
Additional Named User Connections	\$15.00/month/user

3. **Payment Processing Services** - HdL will provide City with eCheck, credit and debit card payment processing (merchant) services under an Agency Funded Interchange Pass-through pricing model. HdL reserves the right to not accept any payment type in situations where doing so may be in violation of the rules and regulations governing that payment type.

Service (Agency Funded Model)	Compensation
Credit and Debit Cards processing	2.9% + \$0.30 per transaction
ACH/eCheck processing	\$0.50 per transaction
Monthly Reporting and Statement Fee	Waived
Monthly Hosting and Maintenance	\$30.00 per month
ACH and eCheck Returns	\$10.00 per event
Chargebacks	\$25.00 per event

4. Payment

HdL will provide detailed invoices for all work completed. City will submit payment to HdL within thirty (30) days of receiving the invoice. Provided City continues to timely make all undisputed payments, HdL warrants that during the Term of this Agreement it will not withhold services provided hereunder, for any reason, including but not limited to a dispute between the parties arising under this Agreement, except as may be specifically authorized herein.

EXHIBIT C
GENERAL TERMS AND CONDITIONS

1 OWNERSHIP OF MATERIALS, AGENCY DATA; CONFIDENTIALITY.

1.1 Software License HdL hereby provides a license to the City to use HdL's software while the associated service is in effect through this Agreement. The software shall only be used by the City. The 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 the 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 the City's computers and network and all digital copies deleted or otherwise destroyed.

1.2. Agency Data HdL acknowledges that the data provided by the City ("Agency Data") during the course of this Agreement is the property of the City. City authorizes HdL to access, import, process and generate reports from the Agency Data with its various proprietary systems. No confidential or otherwise sensitive information will be released. At the termination of this Agreement the Agency Data shall be made available or returned to the City in a format acceptable to both the City and HdL. HdL shall maintain the confidentiality of the Agency Data and shall not use Agency Data except to perform the services under this Agreement. HdL shall collect, process, store, and transfer Personally-Identifiable Information ("PII") only in a manner that is consistent with applicable federal, state and local laws including, but not limited to, privacy laws applicable to PII. Any right of HdL to use the Agency Data as provided herein shall terminate upon termination of this Agreement and HdL shall destroy all copies of Agency Data. HdL's obligation to hold Agency Data confidential shall survive termination of this Agreement.

No Agency Data shall be exported to foreign countries, and the data center (including the hosted software, infrastructure and data) will be located and the services shall be performed in the United States, and no Agency Data shall be made available to those located outside the United States.

1.3 Subcontractors If HdL utilizes a third-party subcontractor or other vendor to provide the services under this Agreement, HdL shall ensure that such subcontractor(s) or vendor(s) complies with the terms of this Agreement, and shall be jointly and severally liable with the subcontractor/vendor for any breach by the subcontractor/vendor.

1.4 HdL Proprietary Information As used herein, the term "proprietary information" means any information which relates to HdL's software systems, audit processes or related services, techniques, or general 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 from the HdL 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. In addition, HdL expressly understands that City is a public agency subject to the California Public Records Act (Cal. Government Code § 6250 et seq.). In the event that City receives a public records request seeking the disclosure of information that HdL has designated as its "proprietary information", City shall notify HdL, and HdL shall be allowed to take any reasonable action to preserve the confidentiality of such information. City's obligation pursuant to this section shall only extend to notifying HdL of the request, and City shall have no obligation to preserve the confidentiality unless doing so is in full compliance with the law.

2 **OPTIONAL SERVICES.** Optional services beyond the scope of this Agreement are available at HdL's hourly rates in effect at the time service is requested. HdL will provide City a Statement of Work specifying the scope, timeline, and cost for the requested service. Depending on the personnel assigned to perform the work, HdL's standard hourly rates range between \$75.00 and \$275.00 per hour. No optional services shall be performed or compensated unless authorized in writing by City in advance.

3 **MISCELLANEOUS EXPENSES.** HdL will notify the City of any miscellaneous expenses and request authorization to proceed. HdL will not be reimbursed for any miscellaneous expenses unless authorized by the City. Miscellaneous expenses may include travel, lodging and meal expenses, and other expenses which are above and beyond the ordinary expenses associated with performance of this Agreement.

4 **PRICING ADJUSTMENTS.** All pricing listed in this Agreement will be honored during initial implementation of the services. Any additional/optional services needed after services are active will be provided using the pricing currently established at the time the service is requested.

5 **LICENSE, PERMITS, FEES AND ASSESSMENTS.** HdL shall obtain such licenses, permits, and approvals (collectively the "Permits") as may be required by law for the performance of the services required by this Agreement. City shall provide

- reasonable assistance to HdL in obtaining such Permits required by the City. If City requires payment for such Permits, the associated costs will be included with the next invoice.
- 6 **INSURANCE REQUIREMENTS.** HdL shall maintain the policies set out below, and in amounts of coverage not less than those indicated herein and as further specified in Exhibit D, attached hereto and incorporated herein by this reference. Additionally, where required by City, HdL shall name the City as an additional insured and provide a Certificate of Insurance.
- 6.1 Worker's Compensation and Employer's Liability - In accordance with applicable law.
- 6.2 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.
- 6.3 Comprehensive Automobile Liability - Bodily injury liability coverage of \$1,000,000 for each accident.
- 6.4 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.
- 7 **TERMINATION.** This Agreement, or individual services provided by this Agreement, may be terminated as follows:
- 7.1 Software - Software services may be terminated by either party upon written notice at least ninety (90) days prior to the end of the established annual billing cycle. Software services are provided on an annual basis. No credit will be provided for any unused portion of the annual term, except in the case of a termination by City for breach by HdL. Upon termination, the software license shall expire and (a) City will immediately remove the software from computers, servers and network, and destroy or erase all copies of the software and any Proprietary Information and confirm destruction of same by signing and returning to HdL an "Affidavit of Destruction" acceptable to HdL, and (b) upon City's request, HdL will assist, at no cost to the City, in extracting the City data in a format acceptable to both the City and HdL. HdL shall not withhold or refuse the return of City data for any reason.
- 7.2 Services - City may discontinue a service by sending a letter of intent to HdL at least ninety (90) days prior to desired last date of service.
- 7.3 City Termination for Breach - City may immediately terminate the Software and/or the services, and shall receive a credit for any unused portion of the annual term of the Software, if the foregoing do not conform to the terms of this Agreement or in the case of breach by HdL, which breach is not cured in a reasonable time not to exceed thirty (30) days following written notice from City.
- 7.4 Non-Appropriation - City's funding of this Agreement shall be on a fiscal year basis (July 1 to June 30) and is subject to annual appropriations. HdL acknowledges that the City is a municipal corporation and is precluded by the California Constitution and other laws from entering into obligations that financially bind future governing bodies. Nothing in this Agreement shall constitute an obligation of future governing bodies to appropriate funds for the purposes of this Agreement. The parties agree that the Term is contingent upon the appropriation of funds by the City. This Agreement will terminate immediately if funds necessary to continue the Agreement are not appropriated. City shall pay HdL for any services performed in accordance with this Agreement up to the date of termination.
- 8 **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 the City.
- 9 **NON-ASSIGNMENT.** This Agreement is not assignable either in whole or in part by HdL or the City without the written consent of the other party.
- 10 **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. Venue shall be in Santa Clara County, California.
- 11 **INDEMNIFICATION.** HdL shall indemnify and hold harmless City and its officers, officials and employees ("Indemnified Parties") from any liability for damage or claims for personal injury, including death, as well as from claims for breach of confidentiality or property damage, including attorney fees, which may arise out of the performance of the work described herein, caused in whole or in part by any negligent act or omission of HdL, its officers, agents and employees under this Agreement.
- 12 **NON-INFRINGEMENT WARRANTY; INFRINGEMENT INDEMNIFICATION.** HdL warrants that the software licensed hereunder does not infringe on any existing property rights of any third party. If a third party claims that the software does so infringe, HdL shall secure for the City the right to continue use of the software, or modify the software so that it is non-infringing. Without limiting the generality of Section 11, HdL shall indemnify, defend and hold harmless the Indemnified Parties against any and all claims and damages (including costs) arising out of any legal action alleging that the normal operation, possession or use of the software by the City infringes the patent, copyright, registered design, trademark rights or moral rights of said third party.
- 13 **PCI DSS WARRANTY AND INDEMNIFICATION.** HdL warrants that the Software and/or Payment Processing Services meet PA-DSS (Payment Application Data Security Standard) requirements, and that HdL will deploy and maintain the Software and Payment Processing Services according to PCI DSS (Payment Card Industry Data Security Standard) requirements. Without limiting the generality of Section 11, HdL agrees to indemnify, defend and hold the Indemnified Parties harmless from any claims, damages, causes of action, costs and expenses arising out of or related to any breach of the warranty set

forth in this paragraph In the event that security vulnerabilities are identified on HdL's software or system, HdL will immediately notify City and will promptly provide instructions and take all actions necessary to mitigate the risk of that vulnerability being exploited, including providing a security update or patch release



EXHIBIT D - INSURANCE REQUIREMENTS - GENERAL

Definition:

For purposes of this contract, the following definition applies: City of Milpitas includes the duly elected or appointed officers, agents, employees and volunteers of the City of Milpitas, individually or collectively.

Insurance Required:

No work shall be done under this Contract unless there is in effect insurance required by the Contract and under this section, and such insurance has been approved by the City, nor shall the Contractor allow any subcontractor to commence work on their subcontract until all insurance required of the subcontractor has been so obtained and approved. The Contractor shall maintain or cause to be maintained adequate workers' compensation insurance as required under the laws of the State of California, for all labor employed by the Contractor or by any subcontractor under the Contractor who may come within the protection of such worker's compensation laws of the State of California and shall provide or cause to be provided employer's liability insurance for the benefit of the Contractor's employees.

Minimum Scope of Insurance: (Check Mark Indicates Required)

Coverage must be *at least as broad as*

☒ Insurance Services Office Commercial General Liability coverage (occurrence Form CG0001).

☐ Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto).

☒ Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

☒ Professional Liability or Errors & Omissions Liability insurance appropriate to the contractor's profession.

☐ Architects' and Engineers' coverage is to be endorsed to include contractual liability.

Minimum Limits of Insurance:

Contractor must maintain limits no less than:

1. General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability insurance with a general aggregate limit is used, either the general aggregate limit must apply separately to this project/location or the general aggregate limit must be twice the required occurrence limit.
(Including operations, products and completed operations, as applicable.)
2. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.

3. Workers' Compensation Statutory
Employer's Liability: \$1,000,000 each accident
\$1,000,000 disease-policy limit
\$1,000,000 disease-each employee
4. Professional Liability or \$1,000,000 each occurrence
Errors & Omissions \$1,000,000 policy aggregate
Liability:

Deductibles and Self-Insured Retentions:

Any deductibles or self-insured retentions must be declared to and approved by the City. The City may require the Contractor to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

Other Insurance Provisions:

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The City of Milpitas, its officers, officials, employees, and volunteers are to be covered as insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the contractor; and with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85), or as a separate owner's policy. General Liability endorsements for "Scheduled Person or Organization" and "Complete Operations" are required
2. For any claims related to this project, the Contractor's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
3. The Insurance Company agrees to waive all rights of subrogation against the City, its elected or appointed officers, officials, agents and employees for losses paid under the terms of any policy which arise from work performed by the Named Insured for the City. This provision also applies to the Contractor's Workers' Compensation policy.
4. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days' prior written notice (10 days for non-payment) by certified mail, return receipt requested, has been given to the City. If Contractor's insurer refuses to provide this endorsement, Contractor shall be responsible for providing written notice to the City that coverage will be canceled thirty (30) days after the date of the notice or ten (10) days for non-payment.

Acceptability of Insurers:

Insurance is to be placed with licensed insurers admitted to transact business in the State of California with a current A.M. Best's rating of no less than A-VII. If insurance is placed with a surplus lines insurer, insurer must be listed on the State of California List of Eligible Surplus Lines Insurers (LESLI) with a current A.M. Best's rating of no less than A-X. Exception may be made for the State Compensation Fund when not specifically rated.

Verification of Coverage:

Contractor shall furnish the City with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on insurance industry forms, provided those endorsements or policies conform to the contract requirements. All certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require, at any time, complete, certified copies of all required insurance policies, including endorsements evidencing the coverage required by these specifications.

The Certificate with endorsements and notices shall be mailed to:

**City of Milpitas
Attention: Purchasing Division
455 E. Calaveras Boulevard
Milpitas, California 95035-5411**

Subcontractors:

Contractors must include all sub-contractors as insureds under its policies or furnish separate certificates and endorsements for each sub-contractor. All coverage for sub-contractors are subject to all of the requirements included in these specifications.

Absence of Insurance:

If the Contractor allows the insurance to lapse, be cancelled, or be reduced below the limits specified in this article, the Contractor shall cause all work in the Project to cease and any delays or expenses caused due to stopping of work and change of insurance shall be considered Contractor's delay and shall not be considered to increase cost to the City or increase time in which the Project shall be completed.

Contractor agrees that if it does not keep the aforesaid insurance in full force and effect, City may immediately terminate this Agreement

6/29/17



CITY OF MILPITAS SOLE SOURCE/BRAND REQUEST

THIS FORM MUST BE COMPLETED AND APPROVED PRIOR TO ANY PROCUREMENT

When a request is made for a non-competitive procurement and the specification limits the bidding to one source and/or one brand or trade name, the requesting department must complete the following. Please answer in the space provided, or in an attachment address by specific reference, each question listed below (1-5) in your justification. ***Be sure to answer each part of each question. Failure to respond fully to any of the questions could result in delay or rejection of your request due to inadequate justification.***

1. Using appropriate detail, including brand name and model number, briefly describe the product you wish to procure. In the case of a service use enough detail to clearly describe to someone not familiar with the process what you are procuring.

HdL currently provides the City of Milpitas with its HdL Classic software for business license processing and payments. Due to current PCI requirements for online payments, migration to the HdL Prime system is required.

2. Please check one:

Cost: \$21,441 51

- a) ☒ **SOLE SOURCE:** Item is available from one source only.

If it is your assertion that the manufacturer or distributor is the only authorized source in the Bay Area, Northern California; or whatever the claim is, please substantiate that with a letter from the manufacturer or distributor. The letter must be on their stationary, but can be sent via email. Attach a copy to this form.

- b) ☐ **SOLE BRAND:** Various sources can supply the specified model and brand; competitive bids will be solicited for the requested brand only. Meets form, fit and function - nothing else will do.
- c) ☐ **STANDARDIZATION REQUEST:** The Department requires the item to standardize parts, design, quality etc. (This requires further discussion with the Purchasing Agent.)

3. What are the unique performance features of the product/brand requested that are not available in any other product/brand? (For services: What unique qualifications, rights, degrees, certifications, licenses and/or experience does this vendor possess?)

HdL currently provides our HdL Classic business licensing software. If we do not migrate to HdL Prime by September 1, we will not be able to take online payments for business licensing anymore. There are other business license software manufacturers in the field,

how long? April 2007

but HdL is a leader in that field and we have been very satisfied with their services. In addition, conversion to another vendor would be a very time intensive and costly process. Given the September 1 deadline to convert, we do not have sufficient time to use another vendor or undergo an RFP process.

4. What other products/services have been examined and rejected, and why? *(Please provide a specific meaningful explanation, one vendor and one feature at a time. For products be sure to clearly identify the product by name and model number and include the name, address, and telephone number of the company representative who's product you tested.)*

There are again other vendors in this field such as MuniServices, full fledged ERP solutions, etc, but none could be installed in the tight timeframe needed.

5. If justification is based on matching and/or intermixing with existing equipment (refer to 2.c.), list the quantity, manufacturer, brand, and model of the existing equipment, and why the matching is required not simply preferred.

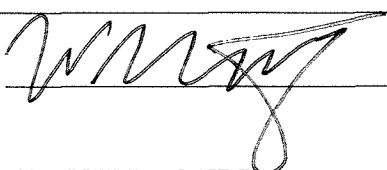
N/A

I HEREBY CERTIFY THAT:

- 1. I am an approved department representative, and am aware of the City's requirements for competitive bidding, as well as the criteria for justification for sole source/brand procurements.
- 2. I have gathered the required technical information and have made a concentrated effort to review comparable and/or equal equipment/service.
- 3. There is validity as to the information contained herein justifying my request for sole source/brand procurement and meeting the City's criteria.
- 4. A sole source/brand procurement in this case would withstand a possible audit or a vendor's protest.

REQUESTOR _____


DATE: ____/____/____

DEPT./DIV. HEAD:  _____

DATE: 6/29/17

PURCHASING DIVISION USE ONLY:

APPROVED: yes
NOT APPROVED: _____

PURCHASING AGENT: 
DATE: 6/29/17

COMMENTS:



Delivering Revenue,
Insight and Efficiency
To Local Government

1340 Valley Vista Drive
Suite 200
Diamond Bar, CA 91765

Fax 909.861.7726
888.861.0220
www.hdlcompanies.com

July 13, 2017

Mr Christopher Schroeder C P.M , A P P.
City of Milpitas
Purchasing Agent
455 E Calaveras Blvd
Milpitas, CA 95035-5411

Re HdL Prime Business License Software System with Web Module

Dear Christopher,

This letter serves as a sole source document for products developed by HdL Software, LLC HdL Prime Business License Software with Web Module was developed by HdL Software, LLC and are distributed solely by HdL Software, LLC No other vendor develops and distributes the HdL Prime Business License Software System with Web Module

Please call or email if I be be of further assisance.

Best regards,

A handwritten signature in black ink, appearing to read 'George Bonnin', is written over a horizontal line.

George Bonnin
Sales and Marketing Manager
gbonnin@hdlcompanies.com