



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Richard Doyle  
City Attorney

**SUBJECT:** City of San Jose v. Housing &  
Development Software, LLC

**DATE:** June 11, 2009

## RECOMMENDATION

Approve settlement and authorize City Attorney to execute a Settlement Agreement and Release with Housing and Development Software, Inc., providing for settlement payment to the City of San Jose in the total amount of \$80,000 to be made in installments over five years and secured by a Stipulated Judgment in order to resolve lawsuit regarding software installation dispute, as considered by the City Council during Closed Session held on December 9, 2008. (City Attorney's Office)

## OUTCOME

To settle a lawsuit between the City of San Jose and Housing and Development Software, Inc. ("HDS"), regarding disputes that arose from a 2001 software installation and implementation agreement involving the Housing Department.

## BACKGROUND

In 2001, the City and HDS, a Florida limited liability company, entered into an agreement in which HDS was required to perform software installation and implementation services for the City's Housing Department in exchange for progress payments totaling approximately \$137,500. The Agreement was later amended such that the contract amount was increased to \$191,000. In August 2003 the City, dissatisfied with the software system provided by HDS, demanded a refund of the \$147,322.79 paid to date. HDS responded that the City had breached the Agreement.

The City subsequently filed a lawsuit, claiming that HDS breached the Agreement. HDS filed a counterclaim against the City. The case is currently pending in federal court with a scheduled trial date of August 28, 2009.

## ANALYSIS

The parties have agreed to settle this matter. Under the terms of the proposed settlement, HDS would pay a total of \$80,000 to the City over time. The first payment of

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\$5,000 would be due upon execution of the agreement. HDS would then make installment payments of \$500 per month, with a balloon payment of \$45,000 after five years. Should HDS fail to make the required payments, the City will have the right to obtain in federal court a stipulated judgment for the unpaid balance, which amount will then accrue interest at the statutory rate.

The settlement is reasonable in light of the inherent risks and costs of litigation as well as the range of results likely to result from a jury trial. This settlement is made as a compromise of a disputed claim.

**PUBLIC OUTREACH/INTEREST**

This memorandum and settlement agreement in substantially-completed form are posted on the City's website for the June 23, 2009 agenda.

**COORDINATION**

This settlement has been coordinated with the Housing Department.

**CEQA**

Not a Project.

RICHARD DOYLE  
City Attorney

By   
ROBERT FABELA  
Sr. deputy city attorney

cc: Debra Figone, City Manager

For questions please contact RICHARD DOYLE, City Attorney, at (408) 535-1900.