D-FAST® Software

License Agreement
Client Server Model

The Parties to this D-FAST® Software License Agreement ("Agreement") are as follows:

NBS:
NBS Government Finance Group, DBA **NBS**
32605 Highway 79 South, Suite 100
Temecula, CA 92592
Facsimile No.: (951) 296-1998
Attention: Mike Rentner, President

USER AGENCY:
City of Rapid City
Attn: Coleen Schmidt, Assistant Finance Officer
300 Sixth Street
Rapid City, SD 57701

Effective Date: **March 20, 2006**
This Agreement shall become effective on the above date.

Attachments:
D-FAST Standard Terms and Conditions
D-FAST Pricing Exhibit ("Exhibit A")

This Cover-Signature page and the Attachments comprise the entire Agreement between the parties and may be amended or modified only by an agreement in writing. The undersigned parties agree to the Agreement by signing below

NBS Government Finance Group, DBA **NBS:**

Signature: _____

Printed Name: **Mike Rentner**

Title: **President**

Date: _____

Mayor:

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Finance Officer:

Signature: _____

Printed Name: _____

Title: _____

Date: _____

D-FAST® Software
Standard Terms and Conditions
Client Server Model

These Standard Terms and Conditions ("Standard Terms") are for the use of the D-FAST® software program as licensed by the **NBS** Government Finance Group, a California Corporation, ("**NBS**") to the User Agency ("User"). These Standard Terms, Cover-Signature Page, and Pricing Exhibit ("Exhibit A") form the entire Agreement ("Agreement"). The User and **NBS** in consideration of the following mutual promises and conditions agree:

1. DEFINITION OF SOFTWARE

    1.1   "Software" shall mean the **NBS** D-FAST® software program ("D-FAST") that includes the Tvalue.DLL software licensed by **NBS** and any subsequent program maintenance releases in machine readable or interpreted form. Maintenance releases are defined as updates and/or replacements to the D-FAST software program for the purpose of fixing known bugs and issues in the version of D-FAST licensed by the User. Maintenance releases do not include new features and/or modules that may be added to later versions of the D-FAST software program. "Documentation" shall mean all material other than the licensed software furnished by **NBS** and including, for example, operating instructions, program specifications, instructional and other documentation including all guides and manuals, and further shall include all permitted copies of related materials made by the User.

2. LICENSE AGREEMENT

    2.1   **NBS** grants to the User and the User accepts, a non-exclusive, non-transferable license to use the Software and all Documentation furnished to the User for use in conjunction with the Software subject to the payment of all necessary Fees as set forth in Section 4 - Fees. The Software and Documentation are the sole property of **NBS** and are licensed to the User for use under the terms and conditions contained herein.

    2.2   The User may use the Software and Documentation only on User-owned computers located on User premises, and only to process User-related work. The User may not use Software and Documentation as part of a commercial time-sharing or service bureau operation or in any other resale capacity except as specifically allowed under Section 2.3.

    2.3   The situation may arise where the User might be forced to, or desire to, provide district administrative services for a related entity using **NBS**'s software to provide such services. In this regard, a related entity would have some immediate and direct connection to the User, such as a shared oversight board, a shared controller, a shared joint powers agreement, or a special district agreement. Under these conditions, the User shall notify **NBS** that the User desires to use the Software to provide administrative services to such closely related entity. In all such cases, the User and **NBS** shall negotiate the terms and conditions of such use of the software by the User, including additional fees payable by the User.

    2.4   Software and Documentation is proprietary and trade secret information of **NBS** and is copyrighted by **NBS,** which retains all rights of ownership to the Software and Documentation. Nothing in this Agreement constitutes a waiver of **NBS**'s rights under the U.S. copyright laws or any other federal or state law.

3. SCOPE OF PRODUCTS AND SERVICES

    3.1   D-FAST Software and Documentation. **NBS** will provide the User with the Software and Documentation.

    3.2   Data Conversion. **NBS** will convert data from existing applications to the Software on an hourly basis as directed by the User.

    3.3   Installation and Training. **NBS** staff will install the required D-FAST local software on User workstations. After installation, **NBS** will provide a training class for User staff in accordance with Section 4 - Fees.

    3.4   Technical Support, **NBS** will provide the User with ongoing technical support in accordance with Section 4 – Fees. The User will be responsible for supporting the additional hardware and software required.

    3.5   Additional Consulting Services. **NBS** is available to provide additional Consulting Services not specifically listed in Section 3 - Scope of Products and Services. Upon authorization, **NBS** shall perform such services on a time and materials basis in accordance with **NBS**'s then current hourly fee schedule. **NBS**'s current hourly fee schedule is included in Exhibit A.

    3.6   Any proposed additions, changes or deletions to the Scope of Products and Services shall be submitted to the other party hereto, and any such changes mutually agreed to shall be added as an amendment to Section 3 - Scope of Products and Services.

4. FEES

    4.1   **NBS** agrees to provide the products and services specified in Section 3 of this Agreement, and the User agrees to compensate **NBS** for such products and services in the amount and manner specified in Exhibit A.

    4.2   Initial Costs. The Initial License Fee will be billed upon acceptance of this Agreement, and the Initial Costs as listed in Exhibit A will be billed upon setup and installation of the Software at the User. The User will be responsible for the installation and configuration of any additional hardware and software.

The Initial License Fee may be subject to applicable sales tax and/or use tax, which shall be paid by User.

4.3   Annual Maintenance Fee. The Annual Maintenance Fee will be billed upon set up and installation of the Software at the User and will be prorated from that date through the end of the calendar year. In subsequent calendar years, this fee will be billed on an annual basis to the User each January. The Annual Maintenance Fee is subject to increases annually based on annual increases to the Consumer Price Index. The Annual Maintenance Fee may be subject to sales or use tax, which shall be paid by User.

4.4   Increased Usage. Increased Usage will be billed if the User requires the installation of additional accounts/districts beyond what their current Usage Code allows.

4.5   Add-on Modules/Data Updates.   Add-on Modules will be available to the User for an additional cost. Data Update Services (annual or more frequent updates of property or payment data) are also available to the User for an additional cost.

5.   PERMITTED USES

5.1   Use of the Software on any User workstations in accordance with the terms of this Agreement.

5.2   Software furnished by **NBS** may be copied in whole or in part by the User for User use only. However, only the number of actual copies required to serve the User's actual needs on the designated computers shall be made. The User agrees that the original copy of the Software furnished by **NBS** and all copies thereof made by the User are and shall remain the sole property of **NBS**.

5.3   NBS shall provide a single copy of the Software source code without charge to the User upon any of the following events: NBS becomes insolvent or files a petition for bankruptcy, NBS ceases to conduct business, or NBS discontinues support of the Software. In the event of the release of the Software source code, User shall have the right to use the Software source code under license from NBS solely for the purpose of maintaining the Software for the use of the Software by User as allowed under this Agreement.

6.   PROHIBITED USES BY LICENSEE

6.1   Make copies of the Software program media or Documentation except as described above and without the express written consent of **NBS**. Disclose, publish, release, transfer, or otherwise make available the Software (in any form), Documentation to any person other than User's or **NBS**'s employees without prior written consent from **NBS**. The User also agrees to protect the Software or any part thereof from unauthorized disclosure by its agents, employees or customers.

6.2   Loan, rent, sublicense, or otherwise transfer the Software and Documentation except as expressly permitted in this Agreement. Alter, modify, reverse engineer, or adapt the Software and Documentation including, but not limited to, translating, decompiling, disassembling, or creating derivative works.

7.   RESPONSIBILITY OF PARTIES

7.1   **NBS** is and shall be deemed to be for all purposes, an independent contractor (and not an agent, officer, employee or representative of the User) under any and all laws, whether existing or future. **NBS** is not authorized to make any representation, contract or commitment on behalf of the User and is not authorized to make any decisions on the User's behalf.

7.2   The User agrees to comply with all reasonable requests by **NBS** for information and documentation required by **NBS** and necessary for the performance of **NBS**'s duties under this Agreement. **NBS** will use and rely upon information provided in the installation and conversion of data for the Software and in providing any other Consulting Services pursuant to this Agreement. **NBS** shall not be obligated to establish or verify the accuracy of the information furnished by the User, nor shall **NBS** be responsible for the impact or effect on its Software and the other Consulting Services of the information furnished by the User, in the event that such information is in error.

7.3   **NBS** provides support only when the Software is used with hardware and operating software meeting **NBS**'s specifications and maintained in good operating order. **NBS**'s services under this Agreement do not include program development, coding, isolation of coding problems, consulting, implementation assistance or hardware malfunctions. The User will be responsible for the installation and configuration of the additional hardware and software required.

8.   LICENSEE RESPONSIBILITY

8.1   Following routine operating procedures for the Software and for maintaining computer hardware in good operating condition and in accordance with system and operating requirements.

8.2   Implementing the temporary measures recommended by **NBS** while it works on any problem.

8.3   Maintaining the security of its confidential information.

8.4   Knowing and obtaining legal advice concerning the laws governing the administration of the districts.

9.   WARRANTIES AND LIMITATIONS

9.1   **NBS** warrants it has the right to license the Software and Documentation in accordance with the terms of the Agreement.

9.2   Should a problem with the Software arise, the User shall notify **NBS** immediately. **NBS** will use its best effort to resolve the problem or to develop a work around so that the User work can continue.

9.3   In no event (including without limitation, the failure of the essential purpose of any remedy) shall **NBS** be liable to the User for any consequential, special, incidental or indirect damages, including lost revenues, arising out of the use of the Software, even if

the User has been advised of the possibility of such damages. In no event shall **NBS**'s liability for any claim, whether in contract, tort or any other theory, exceed the aggregate amount of fees paid by the User to NBS under this Agreement or the policy limits of any NBS insurance coverage, whichever is greater. This provision shall survive termination of this Agreement.

10.   TERMINATION

10.1   Either party may voluntarily terminate this Agreement upon thirty (30) days written notice to the other party.

10.2   This Agreement is subject to automatic termination by **NBS** if the User violates any of the terms and conditions of this Agreement.

10.3   Upon termination of this Agreement for any reason, the User must return the original and all copies of the Software, Documentation and any other related materials to **NBS** within five days thereafter.

10.4   In the event the User terminates this Agreement, the User shall pay **NBS** for Consulting Services provided and incidental expenses incurred, up to the date of termination, including any costs associated with data conversion and in preparation of the Software installation. The amount of the payment shall be determined by using the **NBS** schedule of hourly fees in effect at the time of such termination, plus reimbursement for all usual and customary out-of-pocket expenses. The User agrees to pay the Total Initial Costs (including Initial License Fee) after setup and installation has been performed.

11.   GENERAL PROVISIONS

11.1   Both parties to this Agreement acknowledge that this Agreement, including any exhibits, and amendments hereto, supersede any and all agreements, either written or oral, between the parties hereto with respect to the subject matter of this Agreement and contains all covenants and agreements between the parties with respect to the subject matter hereof.

11.2   This Agreement sets forth the full understanding between the parties and may only be modified in writing signed by both parties.

11.3   This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota.

11.4   In the event that any provision hereof or any obligation or grant of rights hereunder is found invalid or unenforceable, any such provision or grant of rights shall be deemed to extend only to the maximum extent permitted by law, and the remainder of this Agreement shall remain valid and enforceable according to its terms.

11.5   Any dispute concerning this agreement shall be venued in the Circuit Court for the Seventh Judicial Circuit, Rapid City, Pennington County, State of South Dakota.

11.6   In the event of any legal action, including arbitration, to construe or enforce the provisions of this Agreement, the prevailing party shall be entitled to recover costs and reasonable attorneys' fees, whether or not the matter proceeds to final judgment or arbitration award.

11.7   The waiver by either party of any right hereunder or with respect to any failure to perform shall not constitute or be deemed a waiver of any other rights hereunder or of any other failure to perform.

11.8   It is expressly understood that this Agreement is not construed as requiring **NBS** to perform any services that constitute the practice of law. Any Consulting Services performed by **NBS** shall be in an advisory and administration capacity only.

11.9   This Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of **NBS** and User. However, neither this Agreement, nor any license which it grants, nor any of the Software or Documentation may be transferred, sold, assigned or sublicensed by User without the prior written consent of **NBS**. All User questions and notices pertaining to this Agreement shall be referred and/or given to the person named in the License Agreement, or the representative's appointee.

11.10   All notices, requests, demands, and other communications required to or permitted to be given under this Agreement shall be in writing.

Each party shall make an ordinary, good faith effort to ensure that it will accept or receive notices that are given in accordance with this Section. A party may change or supplement the addresses given, or designate additional addresses.

D-FAST® Software
Exhibit A - Pricing
Client Server Model

D-FAST® License	Initial License Fee
# of Districts: **25**	
# of Accounts: **500**	
# of authorized users: **10**	**$16,750[1]**
D-FAST will be used for the following: • Certificates: Approx. 319 Accounts in 61 projects. The projects will be consolidated by year issued and term into approx. 21 Districts • Business Improvement District: Approx. 50 Accounts in one District • Deferred Assessments: Approx. 35 Accounts; will grow as the parcels subject to the deferred assessment develop and subdivide. Will be consolidated into one District since there is no accrual on the assessment amounts.	

Initial Costs	One-Time Fees
Initial installation and training fee[2]	**$6,000[2]**
Data Conversion services[2]	**Not-to-Exceed $2,700[2]**
Initial Costs (one-time fees)	**Not-to-Exceed $8,700[2]**

Annual Maintenance Fee	Annual Fee
Annual Maintenance and Support	**$3,350**

Optional Modules	Initial/Annual Fee	
Web Access Module	**$3,350/$670**	**Acceptance:** _____ (Initial)
Delinquency Management Module	**$3,350/$670**	**Acceptance:** _____ (Initial)
Both Modules	**$5,025/$1,005**	**Acceptance:** _____ (Initial)

Additional Services	Fee	
Process Consulting Review of agency special assessment/charge procedures for accuracy, efficiency, and appropriate control. Report includes findings, workflow diagrams and recommendations.	**Not-to-Exceed $3,000[3]**	**Acceptance:** _____ (Initial)
Arbitrage Rebate **Base Fees (min. 5 bond issues)** Commitment Fee: Waived Annual Report Base Fee (per report): $1,500 Five Year Report Base Fee (per report): $2,250 **Additional Service Fees** Computation Periods in Excess of 18 Months (per year): $500-1,000 Commingled Funds Analysis (as appropriate): $500-1,000 Transferred Proceeds Analysis (as appropriate): $500-1,000 Variable Rate Issues: $500-1,000	**Bond Issues:** _____ _____ _____ _____ _____ _____ _____	**Acceptance:** _____ (Initial)

Continuing Disclosure
Report Fee (per report, based on Certificate): $1,250-2,750
Significant Event Notification: hourly or $100/event
Dissemination Services
  Report Dissemination (per recipient): $25
  Significant Event Dissemination (per recipient): $25
Posting to NBS website: No charge
	Bond Issues:
	_____
	_____
	_____
	_____
	_____
	_____
	_____
	_____
		Acceptance: _____ (Initial)

Increased Licensing. Each additional Unit of licensing is **$900**. A Unit is defined as three Districts or 60 Accounts. Fees for increased licensing apply from the date the new licensing key is issued.

Additional Services. **NBS** is available to provide additional services and consulting, including process engineering and management consulting. Upon authorization, **NBS** shall perform such services on a time and materials basis in accordance with **NBS**'s then-current hourly fee schedule. Current hourly rates are as follows:

Director	$190.00
Engineer/Programmer	150.00
Senior Consultant	140.00
Consultant	130.00
Analyst	100.00
Clerical	55.00

Expenses. The User agrees to reimburse **NBS** for all customary, out-of-pocket expenses for all services provided under this Agreement including in connection with installation and training. These expenses include, but are not limited to; postage, travel, mileage reimbursements, telephone expenses, data conversion fees, and any other reasonable expenses needed to perform **NBS**'s work. Any out-of-pocket expenses will be itemized on our invoices as they occur.

Invoices. The User shall pay all invoices submitted pursuant to this Agreement within thirty (30) days of receipt. All late invoices are subject to a 1.5% per month late fee.

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1. The pricing above assumes up to one hour of support per year for each $1,000 of Initial License Fee; additional time will be billed hourly.
2. Pursuant to the Implementation Plan.
3. Pursuant to the Process Consulting scope.