

**(Exhibit B)**  
**Software Maintenance and Support Agreement**

This Software Maintenance and Support Agreement ("M&S Agreement") is part of, and subject to, the terms of the Master Software License Agreement and Professional Services Agreement ("Third Master") as executed by and between Integrated Software Specialists, Inc. ("ISS"), and the City of Toledo, ("Customer") on \_\_\_\_\_ pursuant to Ord. \_\_\_\_\_.

**1. CERTAIN DEFINITIONS**

1.1 [LEFT INTENTIONALLY BLANK]

1.2. "Business Day" means Monday through Friday, excluding ISS Holidays.

1.3. "Business Hours" means 7:00 a.m. to 4:30 p.m., Central Time during Business Days.

1.4. "Workaround or Workaround Procedures" means, as applied to a Documented Defect, a bypass of a recognized problem with the Licensed Software by any means including a change in operating procedures whereby Customer can reasonably avoid any deleterious effects of such Documented Defect. If a Workaround Procedure is not acceptable to Customer, Customer may escalate this Defect as set forth in Section 3.6.

1.5. "Defect" means any bug, error, malfunction, or other defect in the Licensed Software caused by, arising from, or emanating from the reasonable control of ISS that renders the Licensed Software in substantial nonconformance with ISS then current published specifications or as defined on Schedule A.

1.6. "Documented Defect" means a Defect that Customer documents for ISS pursuant to Section 2.3.

1.7. "Essential Functionality" means any operational aspect of the Licensed Software that is required for immediate and ongoing business continuity by one or more users and which adversely impacts business in a crucial or critical manner.

1.8. "Non-Essential Functionality" means any operational aspect of the Licensed Software that will not interrupt business continuity or which will not adversely impact business in a crucial or critical manner.

1.9. "Effective Date" has the meaning set forth in Section 8.1.

1.10. "Incident Report" means an electronic report and notification of a suspected Defect by Customer to ISS containing details and documentation of the Defect, including examples and instructions to replicate and correct the suspected Defect, and as further defined in Section 2.3.

1.11. "Service Level 1 Defect" means a Documented Defect that causes complete application failure or application unavailability (down condition) in a production environment affecting multiple users and no Workaround exists.

- 1.12. "Service Level 2 Defect" means a Documented Defect that causes (a) repeated, consistent failure of Essential Functionality affecting more than one user or (b) loss or corruption of data and no Workaround exists.
- 1.13. "Service Level 3 Defect" means a Service Level 1 Defect with an existing Workaround Procedure, or a Service Level 2 Defect that affects only one user or for which there is an existing Workaround Procedure.
- 1.14. "Service Level 4 Defect" means a Documented Defect that is of minor nature and does not substantially affect the use of the Licensed Software, or a Documented Defect that causes failure of Non-Essential Licensed Software functionality or a cosmetic or other Documented Defect that does not qualify as any other Service Level Defect.
- 1.15. "Third Party Software" means all third party software required for the operation and use by Customer of the Licensed Software consistent with the license granted to Customer.
- 1.16. "Version Release" means new versions of the Licensed Software that contain technical improvements, functional enhancements, updates, extensions, and/or maintenance changes to the Licensed Software.
- 1.17. "ISS Holidays" means one (1) day for a New Year's Day Holiday, Memorial Day, a one (1) day holiday for Independence Day, Labor Day, Thanksgiving Day and the day after, and two (2) days during Christmas time and four (4) floating Holidays. The exact date for all floating and any rolling holiday will be published on the ISS website in advance of the date.

## **2. CUSTOMER RESPONSIBILITIES**

- 2.1. Customer understands that service level response and resolution times will be dependent upon Customer providing quality Defect information and reasonable cooperation.
- 2.2. Customer Liaison Officer. Customer will assign and provide a person to interface and work ("Customer Liaison Officer") with an assigned ISS person that supports such work and interface ("ISS Support Liaison Officer"). The Customer Liaison Officer will be responsible to filter and document all requests and reported issues, follow the escalation process defined herein or as adjusted by ISS from time to time, submit electronic Incident Reports to ISS as required, participate in and coordinate Customer activities and resources to help troubleshoot and verify problems, establish and communicate priorities, and perform and coordinate Customer testing and ISS implementation of new fixes, patches, or releases.
- 2.3. Cooperation. Customer will provide ISS support team with reasonable access to and cooperation from Customer personnel, as required, such as the Users of the system.
- 2.4. Documenting Defects. Customer must document all defects in writing via an Incident Report with sufficient information to recreate the defect or otherwise clearly document or evidence its occurrence, including, but not limited to, the operating environment, data set, user, or any other such information that ISS may reasonably request. Customer shall deliver such information to ISS concurrently with its notification to ISS of a Defect. Customer shall use all reasonable efforts to eliminate any non-application related issues prior to its notification to ISS of such Defect, including,

but not limited to, issues related to the network, user training, Customer produced extensions, and data problems not caused by the Licensed Software. Any technical or other issue for which Customer requests services, but which is not a Documented Defect, shall be treated as a request for other services and governed by Section 4.

2.5. Reasonable Effort to Stay Current. Customer will make reasonable efforts to stay current with the latest versions of the software, including, timely production implementation of ISS supplied Version Releases.

2.6. Other Customer Responsibilities. Customer shall:

- (a) maintain all required Third Party Software to the release level compatible with the installed version(s) of the Licensed Software unless otherwise agreed by Parties;
- (b) establish and maintain an internal help desk to be the central point of contact for the Customers End User(s) and in the event that the Customer help desk is unable to resolve a reported issue, they may contact ISS help desk in accordance with Section 2.3;
- (c) provide training on the Licensed Software to its employees;
- (d) allow ISS to install and/or implement patches and other maintenance releases provided by ISS;
- (e) allow remote access by ISS to Customer's servers and data via a Microsoft VPN connection or CISCO VPN client or other mutually agreeable protocol, provided, however, that Customer acknowledges that failure to provide a timely and practical remote access method may negatively impact ISS ability to perform its responsibilities under this M&S Agreement;
- (f) perform appropriate data backup and data recovery procedures related to the Licensed Software; provided that ISS shall not be held liable for any loss or other damage associated with the loss or destruction of any data related to the Licensed Software that is attributable to Customer's failure to perform such procedures on a timely and regular basis; and
- (g) provide onsite installation, new integration, training, and other responsibilities with respect to Version Releases as set forth in Section 5.

### **3. ISS RESPONSIBILITIES – SUPPORT SERVICES**

3.1. General Services for Reporting Production Documented Defects.

- (a) ISS shall provide Customer with procedures for contacting support staff during normal Business Hours on normal Business Days, excluding ISS Holidays) for reporting Documented Defects. ISS shall assist Customer in the diagnosis of any Documented Defect, including the assigned Service Level and ISS tracking number.
- (b) For each reported Documented Defect, ISS shall assign appropriate personnel to diagnose and correct the Documented Defect, and where appropriate, identify Workaround Procedures. ISS initial response shall include an acknowledgement of notice of the Documented Defect

and confirmation that ISS has received sufficient information concerning the Documented Defect.

- 3.2. Service Level 1 Defects. ISS shall provide an initial acknowledgement to Service Level 1 Defects within one (1) Business Hour of receipt of the Documented Defect. Both Customer and ISS will actively engage their resources to remedy the Documented Defect as expeditiously as possible. ISS shall use commercially reasonable efforts to resolve such Documented Defects or provide a Workaround Procedure within one (1) Business Day. ISS responsibility for loss or corrupted data is limited to assisting Customer in restoring its database to a known, accurate state.
- 3.3. Service Level 2 Defects. ISS shall provide an initial acknowledgement to Service Level 2 Defects within four (4) Business Hours of receipt of the Documented Defect. ISS shall use commercially reasonable efforts to resolve such Documented Defects or provide a Workaround Procedure within five (5) Business Days. ISS responsibility for loss or corrupted data is limited to assisting Customer in restoring its database to a known, accurate state.
- 3.4. Service Level 3 Defects. ISS shall provide an initial acknowledgement to Service Level 3 Defects within one (1) Business Day of receipt of the Documented Defect. ISS shall use commercially reasonable efforts to resolve such Documented Defect without the need for a Workaround Procedure with the next published maintenance update or service pack. ISS responsibility for lost or corrupted data is limited to assisting Customer in restoring its database to a known, accurate state.
- 3.5. Service Level 4 Defects. ISS shall provide an initial acknowledgement to Service Level 4 Defects within two (2) Business Days. ISS shall use commercially reasonable efforts to resolve such Non-Essential Documented Defect based upon a mutually agreed upon priority list within two version release cycles and a cosmetic or other Documented Defect that does not qualify as any other Service Level Defect with a future Version Release.
- 3.6. Escalation Procedure. If ISS is unable to resolve any Service Level 1 or Service Level 2 Defect as provided in this Section 3, Customer may immediately escalate the issue. ISS and Customer will use good faith reasonable efforts to meet, discuss, and agree upon a resolution plan. If Customer or ISS cannot agree upon an acceptable resolution plan within 24 hours of such initial escalation, or such other reasonable time as the Parties may agree, Customer may further escalate the issue to Customer and ISS next administrative Level, including but not limited to ISS Division Chief Operating Officer, Division President or any other person with final authority to negotiate an acceptable resolution plan.

#### 4. **ADDITIONAL SUPPORT SERVICES**

Customer may request support services in addition to the standard maintenance offering (a "Service Request"). Such other support services may include, without limitation, services related to: (a) change orders, (b) additional training; (c) technical assistance; (d) programming services; (e) installation of add-on components; and/or (f) business analysis. ISS shall provide to Customer a written response to the request which describes in detail the anticipated impact of the request on the existing Licensed Software, the time required to perform such services, an implementation plan, and a schedule of the fees related thereto. Fees for additional support services shall be billed by ISS

directly to Customer and shall be invoiced semi- monthly, which shall be due and payable in accordance with Section 7.2.

## **5. VERSION RELEASES**

ISS shall notify Customer of the occurrence of a new Version Release and shall provide Customer with such Version Releases for the Licensed Software. The delivery of each Version Release shall include a complete, installable copy of the Licensed Software, together with release notes and other appropriate documentation. ISS will provide installation software and instruction for use by Customer in installing new Version Releases provided, however, if ISS does not provide installation software and instructions, then ISS shall provide installation and configuration assistance to Customer at no additional cost.

## **6. THIRD PARTY SOFTWARE**

- 6.1. Notice of New Third Party Software. ISS shall provide Customer with advanced notice of any mandated new Third Party Software revision that shall be required to load a Version Release. ISS shall use commercially reasonable efforts to minimize the need for Customer to rely upon updates of Third Party Software.
- 6.2. ISS Certification. At ISS expense, ISS shall certify the compatibility of Third Party Software components used by the Licensed Software and maintain a list of supported Third Party Software release levels. Version Releases shall be certified to supported versions of all required Third Party Software. ISS shall certify new releases of Third Party Software within a reasonable timeframe.
- 6.3. Costs. Customer is responsible for all costs associated with installing and maintaining Third Party Software versions
- 6.4. Maintenance. Customer is responsible for maintaining software maintenance/update agreements with Third Party Software vendors at Customer's expense.

## **7. FEES**

- 7.1. Annual Maintenance Fee. Customer shall pay the annual maintenance and support fees as set forth on and in accordance with the timetables of Schedule A (the "Annual Maintenance and Support Fees").
- 7.2. Invoice and Payment. Maintenance and Support Fees shall be invoiced annually in advance as set forth below:
  - (a) ISS shall invoice Customer for maintenance and support fees incurred by Customer in accordance with the terms of this M&S Agreement. ISS shall use reasonable efforts to submit such invoices to Customer sixty (60) days prior to the initial term of the M&S Agreement or the anniversary thereof, as applicable.
  - (b) ISS reserves the right to cease work without prejudice if undisputed amounts are not paid within forty-five (45) days of the date that such amounts are due.

- 7.3. Maintenance on Customer-Specific Customer Enhancements. The annual Maintenance and Support Fee may be further increased by agreement of the Parties with respect to (a) maintenance and support of Customer- Specific Customer Enhancements requested by Customer and (b) material functional enhancements contained in new Version Releases that are not merely technical improvements, updates, extensions and/or maintenance changes to the Licensed Software. Customer will have the option to accept or decline any such material functional enhancement that would result in an increase in the Maintenance and Support Fee without affecting Customer's entitlement to receive the remainder of any Version Release in which such enhancement is offered.

## **8. TERM AND TERMINATION**

- 8.1. Term. This M&S Agreement shall commence in accordance with Schedule A hereof (the "Maintenance Effective Date") and shall continue in effect for a period of five (5) years as defined on Schedule A ("Initial M&S Term"), unless earlier terminated by a party as provided in this Section 8.
- 8.2. Termination by Customer for Cause. Customer may terminate this M&S Agreement for "cause" in accordance with this Section 8.2. For purposes of this Section, "cause" means a continuous or repeated failure to cure Documented Defects timely as provided in Section 3. In such event, Customer shall deliver written notice of its intent to terminate along with a description in reasonable detail of the problems for which Customer is invoking its right to terminate. Following such notice, ISS shall have sixty (60) days to cure such problems. Following such sixty (60) day period, ISS and Customer shall meet to discuss any outstanding issues. In the event that "cause" still exists at the end of such period, then Customer may terminate this Agreement. In the event of a termination under this subsection, ISS shall return all monies paid to ISS by Customer under this M&S Agreement for the remainder of the then current maintenance period as calculated from the date of Customer's original written notice to ISS of the uncured Documented Defect(s).
- 8.3. Termination of Convenience. City may terminate this Agreement for its convenience, after issuing sixty (60) days written notice to ISS. Should City terminate without cause and for its own convenience, an equitable adjustment in the payment to ISS shall be made, which shall provide for payment to ISS of reasonable expenses incurred before the termination, including but not limited to, costs ISS reasonably incurs relating to commitments which had become firm before the termination, except that no amount shall be allowed for anticipated profit or fees on unperformed services.
- 8.4. Reinstatement. Customer may, at its option, reinstate maintenance by providing notice to ISS and making payment of fifty percent (50%) of each year's Maintenance and Support Fees that would have been owed by Customer during the lapsed period plus the Maintenance and Support Fees for the then upcoming maintenance year.

## **9. WARRANTY AND LIMITATION OF LIABILITY**

- 9.1. ISS will commence and complete the maintenance obligations under this Agreement in a good and workmanlike manner, consistent with the practice and standards of care generally accepted within and expected of ISS industry and this Agreement, to ensure that the operation of the maintained software products does not materially differ from documented specifications.

- 9.2. EXCEPT AS OTHERWISE SET FORTH HEREIN, IN NO EVENT SHALL ISS OR CUSTOMER BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, ECONOMIC, OR SPECIAL DAMAGES ARISING OUT OF THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED UNDER M&S AGREEMENT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING. IN NO EVENT SHALL EITHER CUSTOMER'S OR ISS LIABILITY ARISING UNDER M&S AGREEMENT EXCEED THE FEE PAID BY CUSTOMER TO ISS UNDER THIS AGREEMENT. NOTWITHSTANDING THE FOREGOING, THE LIMITATION OF DAMAGES PROVISIONS SET FORTH IN THIS SECTION 9 SHALL NOT BE APPLICABLE TO ANY DAMAGES RESULTING FROM INFRINGEMENT OF THE INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY, ANY INDEMNITY OBLIGATIONS HEREUNDER OR UNDER THE LICENSE AGREEMENT, OR VIOLATIONS OF THE SYSTEM SECURITY OR CONFIDENTIALITY PROVISIONS OF THIS AGREEMENT OR THE LICENSE.

**10. DISPUTE RESOLUTION**

The parties agree to use good faith, reasonable efforts to meet, discuss, and try to resolve any disputes arising out of, or relating to, this M&S Agreement for a period of sixty (60) days. The parties shall include in any such informal meetings persons with appropriate knowledge and authority, including, without limitation, Customer's Information Technology Manager and ISS Support Manager. Any negotiations pursuant to this Section 10 may be confidential and may be treated as compromise and settlement negotiations for purposes of any applicable rules of evidence.