

SUPPORT AND MAINTENANCE AGREEMENT

THIS AGREEMENT made as of the ____ day of April, 2018.

BETWEEN:

**ADVANCED UTILITY SYSTEMS, A DIVISION OF
N. HARRIS COMPUTER CORPORATION**
("Harris")

- and -

**CITY OF LAWRENCE, KS,
A MUNICIPAL CORPORATION UNDER THE LAWS OF
THE STATE OF KANSAS**
("Organization")

RECITALS

1. Harris owns the Software which has been licensed to Organization pursuant to a Software License Agreement;
2. The Organization wishes to receive support and maintenance services related to the Software;
3. Harris shall provide the support and maintenance services related to the Software;
4. The Organization and Harris are entering into three (3) separate agreements with each dealing with a separate aspect of the Software: a Software License Agreement, a Support and Maintenance Agreement and a Software Implementation Services Agreement.

NOW THEREFORE, in consideration of the mutual covenants set out in this support and maintenance agreement (the "Support and Maintenance Agreement") and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the parties agree as follows:

1. Unless otherwise defined herein, all defined terms used herein shall have the meaning ascribed to them in the Software License Agreement (the "License Agreement").
2. This Support and Maintenance Agreement is the exclusive statement of the entire support and maintenance agreement between Harris and Organization.
3. Harris shall provide software support primarily via telephone and electronic mail in addition to site visits only when necessary. The support services will be

provided only during the hours of operation as described in Exhibit 2 hereto and which are in effect as of the Start Date (as defined below), as such services may, at Harris's sole discretion, be modified or supplemented from time to time. To enable Harris to provide effective support, the Organization will establish auto remote access procedures compatible with Harris's then current practices which may be revised over time.

4. This Support and Maintenance Agreement becomes effective the date the City goes live ("Start Date"). See Exhibit 1 for pricing and schedule
5. In consideration for the support services specified in Section 2, Organization shall pay the "Support and Maintenance Fee" as detailed in Exhibit 1 below. The Year 1 Support and Maintenance Fee will be prorated and billed in advance beginning on the Start Date through December 31st of the same year. Thereafter Organization will be billed annually in advance on January 1st. Following Year 5, Harris may increase the Support and Maintenance Fee for the next renewal term upon no less than ninety (90) days written notice to Organization prior to the end of the current term. Organization shall only be billed once per year.
6. In addition to the Support and Maintenance Fee, Organization shall reimburse Harris for its reasonable direct expenses in providing support services ("Billable Fees") pursuant to this Support and Maintenance Agreement which include as of the Start Date:
 - (a) all usual and customary direct travel expenses including, but not limited to hotel, airfare, car rental, tolls, parking and airline and travel agent fees, provided such hotel, airfare, car rental, parking, airline, and travel agent fees are economical, and government rates; a per diem rate of \$70.00 for week days and a \$125.00 for weekends and statutory holidays that includes all meal, food and telecommunications expenses (no receipts will be provided); and a mileage charge consistent with the Internal Revenue Service recommended rate per mile,
 - (b) and all other reasonable expenses incurred in the performance of Harris's duties hereunder, subject to preapproval in writing by the City.

Harris may update its reimbursement policies upon no less than ninety (90) days written notice, in which case such updated policies shall apply for purposes of this Support and Maintenance Agreement, provided that such updated reimbursement policies must generally apply to all clients of Harris.

7. Harris shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Harris shall allow a representative of Organization, during normal business hours, to examine, audit, and make transcripts or copies of such records and any other documents created, pursuant to the Agreement. Harris shall allow inspection of all work, data, documents, proceedings, and activities related to the

agreement for a period of two (2) years from the date of final payment under this Agreement unless Harris is required to maintain such records pursuant to any law or regulation.

8. Harris shall supply all Upgrades to Organization at no additional charge other than the payment of the Support and Maintenance Fee. Upgrades may require additional services to be performed by Harris outside of the scope of those services provided by Harris as described in Section 8 including additional training not covered by the Software Implementation Services Agreement and professional services for the installation and implementation of the Upgrade that will be subject to the Harris's then-prevailing policies, terms and Billable Fees related to pricing and hourly rates.
9. All Updates of the Software and all those services listed in Exhibit 2 which are included as part of Organization's Software support will be made available to Organization at no additional charge other than the payment of the Support and Maintenance Fee.
10. All payments hereunder shall be in U.S. dollars and shall be net of any taxes, tariffs or other governmental charges. Harris shall be responsible for paying all taxes, fees, assessments and premiums of any kind payable on its employees and operations. Organization shall provide Harris a tax exemption certificate to evidence Organization is exempt from taxation and thereafter shall not be charged taxes on the sale, use or delivery of the support and maintenance services described in this Support and Maintenance Agreement so long as Organization maintains its exemption status.
11. The initial term of this Support and Maintenance Agreement shall begin on the Start Date and end on December 31st of the same year. Thereafter, this Support and Maintenance Agreement shall automatically renew on an annual basis, unless terminated by either party upon giving to the other not less than 90 days' notice in writing prior to the end of the initial term or any subsequent anniversary of such date. Organization shall pay the then prevailing Support and Maintenance Fee in advance for each term of the Support and Maintenance Agreement and where the notice of non-renewal has not been provided in accordance with these terms, the Organization is obliged to pay the Support and Maintenance Fee for the then applicable term. The termination of this Support and Maintenance Agreement by Organization shall not affect the License or the Software License Agreement. Harris shall neither refund any Support and Maintenance Fees nor any Billable Fees if this Support and Maintenance Agreement is terminated. Organization acknowledges that if this Support and Maintenance Agreement is terminated, then it will not be eligible to receive the benefits of this Support and Maintenance Agreement including the right to Releases or to access the source code in escrow upon the occurrence of any Event of Default.

12. Title to and ownership of all proprietary rights in the Releases and all related proprietary information supplied by Harris in providing the services pursuant to this Support and Maintenance Agreement shall at all times remain with Harris, and Organization shall acquire no proprietary rights by virtue of this Support and Maintenance Agreement.
13. Harris shall have the right to terminate this Support and Maintenance Agreement immediately if:
 - (a) Organization attempts to assign this Support and Maintenance Agreement or any of its rights hereunder, or undergoes a Reorganization, without complying with the License Agreement; or
 - (b) Organization has not paid an invoice within ninety (90) days of the start of a renewal term.
14. Unless otherwise agreed to by the parties, all notices required hereunder shall be made in accordance with the provisions of the License Agreement.
15. Either party's lack of enforcement of any provision in this Support and Maintenance Agreement in the event of a breach by the other shall not be construed to be a waiver of any such provision and the non-breaching party may elect to enforce any such provision in the event of any repeated or continuing breach by the other.
16. The parties agree that the terms and conditions contained herein shall prevail notwithstanding any variations on any orders, e-mails or other correspondence submitted by Organization.
17.
 - (a) Termination of this Support and Maintenance Agreement shall not affect any right of action of either party arising from anything which was done or not done, as the case may be, prior to the termination taking effect.
 - (b) The Organization and Harris recognize that circumstances may arise entitling the Organization to damages for breach or other fault on the part of Harris arising from this Support and Maintenance Agreement. The parties agree that in all such circumstances the Organization's remedies and Harris's liabilities will be limited as set forth below and that these provisions will survive notwithstanding the termination or other discharge of the obligations of the parties under this Support and Maintenance Agreement.
 - (c) EXCEPT FOR DAMAGES ARISING OUT OF (a) DAMAGE TO TANGIBLE PROPERTY (b) INJURY OR DEATH TO PERSONS, or (c) HARRIS'S INTENTIONAL MISREPRESENTATION, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, THE AGGREGATE LIABILITY OF HARRIS TO ORGANIZATION FOR ALL CLAIMS, SUITS, ACTIONS AND PROCEEDINGS HOWSOEVER ARISING, DIRECTLY OR INDIRECTLY,

UNDER OR RELATING TO THIS SUPPORT AND MAINTENANCE AGREEMENT OR ITS SUBJECT MATTER, INCLUDING THOSE BASED ON BREACH OR RESCISSION OF CONTRACT, TORT, BREACH OF TRUST, OR BREACH OF FIDUCIARY DUTY SHALL NOT EXCEED, IN THE AGGREGATE, THE AMOUNT OF FEES ACTUALLY PAID BY THE ORGANIZATION TO HARRIS UNDER THIS SUPPORT AND MAINTENANCE AGREEMENT DURING THE THEN-CURRENT TERM (AND IN NO EVENT BEING GREATER THAN 12 MONTHS) OF THE SUPPORT AND MAINTENANCE AGREEMENT UP TO AND INCLUDING THE DATE OF TERMINATION.

- (d) IN ADDITION TO THE FOREGOING, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY CLAIMS FOR CONSEQUENTIAL DAMAGES, INCIDENTAL DAMAGES, INDIRECT DAMAGES, SPECIAL DAMAGES, AGGRAVATED DAMAGES, LOSS OF REVENUE, LOSS OF PROFITS, FAILURE TO REALIZE EXPECTED SAVINGS, LOSS OF DATA, LOSS OF BUSINESS OPPORTUNITY EITHER UNDER OR RELATING TO THIS SUPPORT AND MAINTENANCE AGREEMENT OR ITS SUBJECT MATTER, WHETHER BASED ON BREACH OF RESCISSION OF CONTRACT, TORT, BREACH OF TRUST, OR BREACH OF FIDUCIARY DUTY EVEN IF SUCH OTHER PARTY HAS BEEN ADVISED OF THE LIKELIHOOD OF THE OCCURRENCE OF SUCH DAMAGES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.
17. The parties hereby confirm that the waivers and disclaimers of liability, releases from liability, limitations and apportionments of liability, and exclusive remedy provisions expressed throughout this Support and Maintenance Agreement shall apply even in the event of default, negligence (in whole or in part), strict liability or breach of contract of the person released or whose liability is waived, disclaimed, limited, apportioned or fixed by such remedy provision, and shall extend to such person's affiliates and to its shareholders, directors, officers, employees and affiliates.
18. Where remedies are expressly afforded by this Support and Maintenance Agreement, such remedies are intended by the parties to be the sole and exclusive remedies of the Organization for liabilities of the Harris arising out of or in connection with this Support and Maintenance Agreement, notwithstanding any remedy otherwise available at law or in equity.
19. The Organization may, at Organization's option, enter into an escrow arrangement with Harris. Upon the Organization's request:
- (i) Organization shall be presented with the standard escrow beneficiary enrolment document for participation in Harris's source code escrow arrangement with an escrow agent (the "**Escrow Arrangement**").
 - (ii) By entering into this Escrow Arrangement, the Organization shall have all the rights as stipulated in the escrow agreement together with those rights

which are more specifically outlined in Schedule "A", Escrow Terms, which shall form part of this Support and Maintenance Agreement in accordance with the terms of Schedule "A".

20. This Support and Maintenance Agreement shall be governed by the laws of the State of Kansas, United States.
21. This Support and Maintenance Agreement may not be assigned by the Organization unless, concurrently with any such assignment, the Organization assigns its rights under, and complies with the provisions of the License Agreement.
22. This Support and Maintenance Agreement shall be binding upon the successors and assigns of the parties and enure to the benefit of the successors and permitted assigns of the parties.
23. The invalidity or unenforceability of any provision or covenant contained in this Support and Maintenance Agreement shall not affect the validity or enforceability of any other provision or covenant herein contained and any such invalid provision or covenant shall be deemed to be severable.
24. This Support and Maintenance Agreement may be executed in counterparts (whether by facsimile signature or in PDF format via e-mail or otherwise), each of which when so executed shall constitute an original and all of which together shall constitute one and the same agreement.

[Signatures on Following Page]

IN WITNESS WHEREOF, the Parties have executed this Support and Maintenance Agreement to be effective as of the date first written above.

**ADVANCED UTILITY SYSTEMS,
A DIVISION OF N. HARRIS
COMPUTER CORPORATION**

Per: _____



Name: Todd Richardson
Title: CFO

CITY OF LAWRENCE

Per: _____

Name: Thomas M. Markus
Title: City Manager

Schedule "A"

Escrow Terms

Where the Organization has agreed to be a beneficiary of the Escrow Agreement (as defined below) by entering into the Escrow Arrangement, the following sections shall apply to the Support and Maintenance Agreement upon the execution of the Escrow Arrangement.

- (a) Harris and Lincoln-Parry (the "**Escrow Agent**") have entered into an escrow agreement (the "**Escrow Agreement**"). The Source Code is provided by Harris to the Escrow Agent pursuant to the terms of this Agreement. The Organization has a right to the Source Code pursuant to the provisions of this Schedule and the Escrow Agreement as it has agreed to participate in the Escrow Arrangement and is a beneficiary because the Organization has completed the Escrow Arrangement document. Harris agrees that if an "Event of Default" occurs, then the Organization shall have the right to one copy of the most current version of the Source Code for the affected Software and associated Documentation.
- (b) An **Event of Default** is defined as and shall be deemed to have occurred if Harris: (1) ceases to market or make available maintenance or support services for the Software during a period in which the Organization is entitled to receive or to purchase, or is receiving or purchasing, such maintenance and support and Harris has not promptly cured such failure despite the Organization's demand that Harris make available or perform such maintenance and support, (2) becomes insolvent, executes an assignment for the benefit of creditors, or becomes subject to bankruptcy or receivership proceedings, and it continues to be subject to bankruptcy proceedings ninety (90) days following either its application into bankruptcy protection or the commencement of such proceedings, or (3) has transferred all or substantially all of its assets or obligations set forth in this Agreement to a third party which has not assumed all of the obligations of Harris set forth in this Agreement.
- (c) Harris will promptly and continuously update and supplement the Source Code as necessary with all corrections, improvements, updates, releases, or other changes developed for the Software and Documentation. Such Source Code shall be in a form suitable for reproduction and use and shall consist of a full source language statement of the program or programs comprising the Software.
- (d) The governing License for the Software includes the right to use Source Code received under this Schedule as necessary to modify, maintain, and update the Software but for no other purposes outside the normal business operations of the Organization.
- (e) The termination of the Support and Maintenance Agreement shall immediately end the Organization's rights as a beneficiary under the Escrow Agreement and Escrow Arrangement, as applicable.
- (f) This Schedule "A" shall form part of the Support and Maintenance Agreement only

where an Escrow Arrangement is entered into by the parties. The Escrow Agreement provides that either the Escrow Agent or Harris will annually send notices to the Organization of the Escrow Agent's continued possession of the Source Code and will also state the activity related to the Source Code provided to the Escrow Agent by Harris for the previous year. The Escrow Agreement cannot be terminated without the consent of each beneficiary (licensee) of the Escrow Agreement.

Exhibit 1
Annual Support and Maintenance Fee

Support and Maintenance Fees Year(s) 1 to 5:

Annual Maintenance and Support begins at the date of go live (Start Date) and will be prorated to include the remainder of 2019 using the Year 1 rates cited below. For the purposes of the Annual Maintenance and Support, Year 1 begins Jan 1, 2020. Annual increases will be governed as follows:

Year 1: 2.5% maximum increase

Year 2: 2.5% maximum increase

Year 3: 2.5% maximum increase

Year 4: 3.0% maximum increase

Year 5: 3.0% maximum increase

	YEAR 1		YEAR 2		YEAR 3		YEAR 4		YEAR 5	
CIS Infinity	\$	71,094	\$	72,871	\$	74,693	\$	76,934	\$	79,242
Infinity.Link	\$	12,500	\$	12,813	\$	13,133	\$	13,527	\$	13,933
Infinity.Mobile	\$	12,500	\$	12,813	\$	13,133	\$	13,527	\$	13,933
Infinity.BI	\$	12,000	\$	12,300	\$	12,608	\$	12,986	\$	13,375
Total	\$	108,094	\$	110,796	\$	113,566	116,973		\$	120,482

Exhibit 2
Standard Support and Maintenance Services – Standard Guidelines

The purpose of this Exhibit 2 is to provide our customers with information on our standard coverage, the services which are included as part of your annual software support, a listing of call priorities, an outline of our escalation procedures and other important details.

Harris reserves the right to make modifications to this document as required; provided, however, Harris shall not reduce the scope of support provided hereunder without the prior consent of the Organization.

The services listed below are services that are included as part of your software support.

- 800 Toll Free Telephone support
- Software for Life
 - Guaranteed Support on your existing applications for life
 - Scheduled assistance for installations, upgrades and other special projects (there may be charges depending on the scope of work)
- Technical troubleshooting and issue resolution
- E-mail support call logging and notification
- eSupport access 24 x 7 with the following on-line benefits:
 - Log and close calls
 - View and update calls
 - Update contact information
 - Access published documentation
 - Access available downloads
 - Access Support knowledge base
 - Participate in Discussion Forums
- Standard software releases and updates
 - Defect corrections (as warranted)
 - Planned enhancements
 - State and/or Federal mandated changes (charges may exist depending on scope)
 - Participation in beta program
 - Release notes
- Customer Care Program
 - Quarterly News Letter with support tips
 - Technical support bulletins
 - Communication on new products and services
 - On-site visits (as required)
- Design review for potential enhancements or custom modifications
- Ability to attend the annual customer conference (attendance fees apply)

Help Desk Hours

Our standard hours of support are from 8:00 a.m. EST to 8:00 p.m. EST, Monday to Friday, excluding designated statutory holidays. After hours telephone support is available from 8:00 p.m. EST through to 8:00 a.m. EST. Weekend and holiday assistance is available and must be scheduled in advance and in most cases is billable.

Response Times

Response times will vary and are dependent on the priority of the call. We do our best to ensure that we deal with incoming calls in the order that they are received, however calls will be escalated based on the urgency of the issue reported. Our response time guidelines are as follows:

Priority 1: 1 - 4 hours

Priority 2: 1 - 8 hours

Priority 3: 1 - 24 hours

Call Priorities

In an effort to assign our resources to incoming calls as effectively as possible, we have identified three types of call priorities, 1, 2 and 3. A Priority 1 call is deemed by our support staff to be an Urgent or High Priority call, Priority 2 is classified as a Medium Priority and Priority 3 is deemed to be a Low Priority. The criteria used to establish guidelines for these calls are as follows:

Priority 1 – High

- System Down (Software Application, Hardware, Operating System, Database)
- Inability to process bills
- Program errors without workarounds
- Aborted postings or error messages preventing data integration and update
- Performance issues of severe nature impacting critical processes

Priority 2 - Medium

- System errors that have workarounds
- Reports calculation issues
- Printer related issues (related to interfaces with our software and not the printer itself)
- Security issues
- Hand-held issues not preventing billing
- Performance issues not impacting critical processes
- Usability issues
- Workstation connectivity issues (Workstation specific)

Priority 3 - Low

- Report formatting issues
- Training questions, how to, or implementing new processes
- Aesthetic issues
- Issues with workarounds
- Recommendations for enhancements on system changes
- Questions on documentation

Call Process

All issues or questions reported to support are tracked via a support call, our support analysts cannot provide assistance unless a support call is logged. Our current process for logging calls includes the following: eSupport (via website), email, phone and fax.

- Your call must contain at a minimum: your organization name, contact person, software product and version, module and/or menu selection, nature of issue, detailed description of your question or issue and any other information you believe pertinent.
- Our support system or one of our support analysts will provide you with a call ID to track your issue and your call will be logged into our support tracking database.
- Your call will be stored in a queue and the first available support representative will be assigned to deal with your issue.
- As the support representative assigned to your call investigates your issue, you will be contacted and advised as to where the issue stands and the course of action that will be taken for resolution. If we require additional information, you will be contacted by the assigned support representative to supply the information required.
- All correspondence and actions associated with your call will be tracked against your call in our support database. At any time, if available to you, you may log onto our website to see the status of your call.
- Once your call has been resolved, you will receive an automated notification by email that your call has been closed. This email will contain the entire event history of the call from the time the call was created and leading up to the resolution of the call. You also have the option of viewing both your open and closed calls, if available to you, via our website.
- If your issue needs to be escalated to a development resource or programmer for resolution, your issue will be logged into our development tracking database and you will be provided with a separate ID number to track the progress of the issue. At this time, your support call will be closed and replaced by the development ID number. The development ID number will remain open until your issue has been completely resolved. Issues escalated to development will be scheduled for resolution and may not be resolved

immediately depending on the nature and complexity of the issue.

- Contact the support department at your convenience for a status update on your development issues, or log onto our website (if available to you) to view your issues on-line.

Escalation Process

Our escalation process is defined below. This process has been put in place to ensure that issues are being dealt with appropriately. If at any time you are not completely satisfied with the resolution of your issue, you are encouraged to escalate with the support department as follows:

Level 1: Contact the support representative working on your issue

Level 2: Contact the support supervisor or group lead

Level 3: Contact the Director of Support

Level 4: Contact the Vice President of Operations

Level 5: Contact the Executive Vice President

Holiday Schedule

Below is a listing of statutory holidays. Please note that support services will be closed on designated days as outlined below.

New Year's Day	Closed
President's Day	Closed
Memorial Day	Closed
Independence Day	Closed
Labor Day	Closed
Thanksgiving	Closed
Christmas Eve	Early Closure
Christmas Day	Closed
New Year's Eve	Early Closure

Billable Support Services

The services listed below are services that are out of scope of your support and maintenance agreement and are therefore considered billable services. No billable services will be undertaken without approval by the City.

- Extended telephone training
- Forms redesign or creation (includes Bill Prints, Notice Prints and Letters)
- Setup and changes to interfaces or creation of new interface
- Setup of new services or changes to services (PAP, ACH, etc.)
- File imports/exports
- Custom modifications (reports, bills, forms, reversal of customizations)
- Setting up additional companies / agencies / tokens / general ledgers
- Data conversions / global modification to setup table data
- Database maintenance, repairs and optimization
- Installations / re-installations (workstations, servers)

Test Databases and Environments

We support customers in the maintenance of independent test environments for testing purposes. This allows customers the opportunity to test fixes, modifications, new business processes and/or scenarios without risking any potentially unwanted changes to the live environment.

Connection Methods

To ensure we can effectively support our clients, we require that a communication link is established and maintained between our two sites. It is the Organization's responsibility to ensure the connection is valid at your location so that we can connect to your site and resolve any issues. Our supported methods of connection are: Direct internet, Virtual Private Network (VPN), Remote Access Server (RAS), and Terminal Services (a backup connection may be required for file transfers) however; Harris will work with the client to establish a mutually agreeable remote connection policy.