

33558

SUPPORT AND MAINTENANCE AGREEMENT

THIS AGREEMENT made as of the 1 day of September, 2014.

BETWEEN:

N. HARRIS COMPUTER CORPORATION
("Harris")

- and -

CITY OF LONG BEACH
("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 sixty (60) calendar days after the installation of the Software as defined in the Software Implementation Services Agreement Scope of Work (the "Start Date").
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 Support and Maintenance Fee will be billed annually in advance beginning on the Start Date and thereafter on the anniversary of the Start Date or on an alternative date mutually agreed to by both parties. If the Organization would like to match the annual invoicing of the Support and Maintenance Fee to its fiscal year or any other period it may request, during the initial term of this Support and Maintenance Agreement, that Harris issue a prorated invoice for the portion of the year remaining during the initial term. Harris may change the Support and Maintenance Fee from time to time in relation to each renewal term but Organization shall only be billed once per year.
6. In addition to the Support and Maintenance Fee, Organization shall reimburse Harris for its direct expenses in providing support services ("Billable Fees") pursuant to this Support and Maintenance Agreement which include as of the Start Date:
 - (a) Provided that Harris obtains pre-approval from the Organization for travel, all direct travel expenses including, but not limited to hotel, airfare, car rental, tolls, parking and airline and travel agent fees; each individual's travel time billing rate of \$75.00/hour; 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,

Harris may update its reimbursement policies from time to time, 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 and Harris has provided notice of said update.
7. 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.
8. 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.
9. 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. Any tax Harris may be required to collect or pay upon the sale, use or delivery of the support and maintenance services described in this Support and Maintenance Agreement shall be paid by Organization and such sums shall be due and payable to Harris upon receipt of an invoice therefore. Any taxes levied in relation to the services required for a Release shall be paid by Organization. The Organization shall be responsible for the payment of any applicable duties and sales/consumption taxes.

10. The initial term of this Support and Maintenance Agreement shall be for one year beginning on the Start Date or as the initial term has been modified pursuant to Section 5. 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 690 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.
11. 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.
12. 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.
13. Unless otherwise agreed to by the parties, all notices required hereunder shall be made in accordance with the provisions of the License Agreement.
14. 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

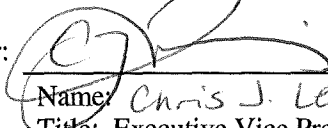
in the event of any repeated or continuing breach by the other.

15. 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.
16. [Intentionally Omitted].
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) 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 OR 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 enrollment 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 California applicable therein.
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.

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

N. HARRIS COMPUTER CORPORATION

Per: 
Name: Chris J. Lewis
Title: Executive Vice President

CITY OF LONG BEACH

Per:  Assistant City Manager
Name: Patrick H. West
Title: City Manager

EXECUTED PURSUANT TO SECTION 301 OF THE CITY CHARTER.

Per: _____
Name:
Title:

APPROVED AS TO FORM

10-9, 2017
CHARLES PARKIN, City Attorney

By 
RICHARD ANTHONY
DEPUTY CITY ATTORNEY

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

| Product | Amount |
|---|-----------------|
| SmartWorks Modules (MeterSense + Compass) | \$55,500 |
| CustomerConnect Modules (HomeConnect + BizConnect) | \$16,940 |
| Annual Software Escrow Fee | \$1,500 |
| Total: | \$73,940 |
| <i>Note= no greater than a 3% increase over CLB's previous annual payment, without prior approval of CLB.</i> | |
| <i>Note= Annual Fees are due two months after software installation on CLB designated servers and every year thereafter</i> | |

Exhibit 2
Standard Support and Maintenance Services – Standard Guidelines

Exhibit 2



Software Support Agreement Standard Guidelines Harris Utilities, SmartWorks Products

The purpose of this Exhibit 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.

Standard Support and Maintenance Services – Standard Guidelines

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

- 800 Toll Free Telephone support
- Scheduled application of new versions of the MeterSense software (there may be charges depending on the scope of work)
- Technical troubleshooting & issue resolution
- E-mail support call logging and notification
- eSupport access 24 x 7 with the following on-line benefits:
 - Log & close calls
 - View & update calls
 - Update contact information
 - Access published documentation
 - Access available downloads
 - Access Support knowledge base
 - Participate in Discussion Forums
 - Report on metrics
- Standard software releases and updates
 - Defect corrections (as warranted)
 - Planned enhancements
 - State and/or Federal mandated changes (charges may exist depending on scope)
 - Payroll regulated changes
 - Participation in BETA program
 - Release notes
- Limited training questions (15 minute guideline)
- Customer Care Program
 - Technical support bulletins
 - Communication on new products and services
 - On-site visits (as required)
- Design review for potential enhancements or custom modifications
- Outstanding Calls Report with conference call (as required)
- Ability to attend the annual customer conference (attendance fees apply)
- Support for the MeterSense solution as implemented by our Professional Services group includes:
 - The core MeterSense product and all default functionality
 - The MDM side of the interfaces with other 3rd party systems, as implemented by MeterSense Solutions consultants
 - Customized rules developed by MeterSense Solutions staff. Rules developed or modified by Organization are not supported through the standard Support and Maintenance agreement
 - The integrity of the data within MeterSense, to the extent that the MeterSense product has manipulated it. MeterSense Solutions is not responsible for the completeness or accuracy of the data originating in 3rd party systems ie. CIS, AMI etc.
 - Advice on VEE parameter settings and processes, however the VEE settings themselves are the responsibility of Organization

Organization Responsibilities

- Organization shall notify Consultant of suspected defects in any of the Software supplied by Consultant. Organization shall provide, upon Consultant request, additional data deemed necessary or desirable by Consultant to reproduce the environment in which such defect occurred.
- Organization shall allow the use of online diagnostics on the Software supplied by Consultant to Organization, if required by Consultant during problem diagnosis. Organization shall provide to Consultant, at Organization's expense, access to the Designated Computer System via the Organization's firewall to communications software (e.g. PC Anywhere, WebEx, Web Demo).
- Organization shall ensure that its personnel are, at relevant stages of the project, educated and trained in the proper use of the Software in accordance with applicable Consultant manuals and instructions. If Organization's personnel are not properly trained as mutually determined by Consultant and Organization, Organization agrees that such personnel will be trained by Consultant or Organization within fifteen (15) days of determination. If Organization desires Consultant to perform the required training then Consultant shall be compensated in accordance with this Agreement.
- Organization shall establish proper backup procedures necessary to replace critical Organizational data in the event of loss or damage to such data from any cause. Organization shall provide Consultant with access to qualified functional or technical personnel to aid in diagnosis and to assist in repair of the Software in the event of error, defect or malfunction.
- Organization shall have the sole responsibility for:
 - The performance of any tests it deems necessary prior to the use of the Software.
 - Assuring proper Designated Computer System installation, configuration, verification, audit controls and operating methods.
 - Implementing proper procedures to assure security and accuracy of input and output and restart and recovery in the event of malfunction.
 - Timely upgrade and keeping current all third party license releases and/or Software products to meet the requirements of the Consultant Software.
- Organization is responsible for the data quality, completeness, and availability from 3rd party applications on which MeterSense MDMS relies
- Organization shall be responsible for rules created and/or edited by Organization staff
- Organization shall be solely responsible for all VEE parameters settings, the regular monitoring of validation failures, and the rectification of any validation failures

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.

- Extended training
- New interfaces to other applications
- Refreshes, backups, restores, setting up test areas
- Custom modifications (reports, bills, forms, reversal of customizations)
- Data conversions / global modification to setup table data
- Database maintenance, repairs & optimization
- Extended Hardware & Operating System support
- Upgrades & support of third party software (ie. Database software, OS, Web Server etc.)
- Installations / re-installations of software solution
- Support for rules developed by, or modified by, the Organization
- New customization of the solution, including new rules development
- Cleansing or re-processing of data originating for a 3rd party system ie. AMI or CIS
- New Interfaces to 3rd party applications

Test Databases & 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. The creation of Test Databases & Environments is a billable service, quotations & incremental maintenance rates will be provided on request.

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. Support is available from 8:00 p.m. EST through to 8:00 a.m. EST and is billable on an hourly basis. Support hours may vary by specific product line. Weekend assistance is available and must be scheduled in advance and in most cases is billable.

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 Eve | Early Closure |
| New Year's Day | Closed |
| Presidents Day / Family Day | Closed |
| Labor Day | Closed |
| Christmas Eve | Early Closure |
| Christmas Day | Closed |
| Boxing Day | Early Closure |

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 all 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.

Call Priorities

In an effort to assign our resources to incoming calls as effectively as possible, Harris has identified three types of call priorities, 1(high), 2(media) & 3(low). The criteria used to establish guidelines for these calls are as follows:

| Priority Level | Description |
|-----------------|--|
| <p>1</p> | <ul style="list-style-type: none"> • <i>System Down (Software Application, Hardware, Operating System, Database)</i> • <i>Program errors without workarounds</i> • <i>Incorrect calculation errors impacting one-third of records</i> • <i>Error messages preventing data integration and update</i> • <i>Performance issues of severe nature impacting critical processes</i> • <i>Security Issues</i> <p><i>Note: in most cases issues affecting a test environment only will not be considered P1</i></p> |
| <p>2</p> | <ul style="list-style-type: none"> • <i>System errors that have workarounds</i> • <i>Calculation errors impacting less than one-third of records</i> • <i>Reports calculation issues</i> • <i>Performance issues not impacting critical processes</i> • <i>Usability issues</i> • <i>Workstation connectivity issues (Workstation specific)</i> |
| <p>3</p> | <ul style="list-style-type: none"> • <i>Training questions, how to, or implementing new processes</i> • <i>Aesthetic issues</i> • <i>Issues where a workaround is available for a large majority of cases</i> • <i>Recommendations for enhancements on system changes</i> • <i>Questions on documentation</i> |

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. If a support call is logged during stanrard operating hours, our response times are as follows:

- Priority 1: Initial response within 4 hours
- Priority 2: Initial response within 8 hours
- Priority 3: Initial response within 24 hours

Escalation Process

We strive to provide a satisfying and positive support experience. However, if at any time you are not completely satisfied with the resolution of your issue, you are encouraged to escalate within Support Services, as follows:

Level 1: Team Manager

Level 2: Director, Operations

Level 3: Executive Vice President, SmartWorks

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 client'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), Direct Connection (modem) and Terminal Services (a backup connection may be required for file transfers).