

SOFTWARE SUPPORT AGREEMENT

35423

THIS AGREEMENT is made and entered, in duplicate, as of November 12, 2019, pursuant to a minute order adopted by the City Council of the City of Long Beach at its meeting on September 17, 2019, by and between Infor Public Sector, Inc., a corporation ("Consultant"), and the CITY OF LONG BEACH, a municipal corporation ("City").

WHEREAS, City requires specialized services requiring unique skills to be performed in connection with the Support of the Component Systems contained in Exhibit B ("Project"); and

WHEREAS, City has selected Consultant in accordance with City's administrative procedures and City has determined that Consultant and its employees are qualified, licensed, if so required, and experienced in performing these specialized services; and

WHEREAS, City desires to have Consultant perform these specialized services, and Consultant is willing and able to do so on the terms and conditions in this Agreement;

NOW, THEREFORE, in consideration of the mutual terms, covenants, and conditions in this Agreement, the parties agree as follows:

1. SCOPE OF WORK OR SERVICES.

A. Consultant shall furnish specialized services more particularly described in Exhibit "B", attached to this Agreement and incorporated by this reference, in accordance with Exhibit "A", attached to this Agreement and incorporated by this reference, at the rates or charges shown in Exhibit "B".

B. The City's obligation to pay the sum stated above for any one fiscal year shall be contingent upon the City Council of the City appropriating the necessary funds for such payment by the City in each fiscal year during the term of this Agreement. For the purposes of this Section, a fiscal year commences on October 1 of the year and continues through September 30 of the following year. In the event that the City Council of the City fails to appropriate the necessary funds for any fiscal year, then, and in that event, the Agreement will terminate effective on the last day of the period for which payment was received. In the event sufficient funds are not appropriated, Customer will immediately

notify Infor of such occurrence. During the term of this Agreement, City will exert all reasonable, good faith efforts, and do all things lawfully necessary and proper to obtain sufficient funding from which payments may be made.

C. Access to City documents, records and the like, if needed by Consultant, shall be available only during City's normal business hours.

D. Consultant has requested to receive regular payments. City shall pay Consultant net thirty (30) days from the date of invoice and in event before the beginning of the applicable Support Term.

2. TERM. The initial term of this Agreement shall commence on November 1, 2019 and end on October 31, 2020. This Agreement will terminate, unless the City renews this Agreement at least 90-days before the end of initial term. In the event that City fails to timely renew this Agreement, Consultant shall have no obligation to provide Support beyond October 31, 2020. City acknowledges that City may be subject to increased pricing and reinstatement fees, if City needs to reinstate Support.

3. INDEPENDENT CONTRACTOR. In performing its services, Consultant is and shall act as an independent contractor and not an employee, representative or agent of City. Consultant shall have control of Consultant's work and the manner in which it is performed. Consultant shall be free to contract for similar services to be performed for others during this Agreement; provided, however, that Consultant acts in accordance with Sections 10 and 11 of this Agreement. Consultant acknowledges and agrees that (a) City will not withhold taxes of any kind from Consultant's compensation; (b) City will not secure workers' compensation or pay unemployment insurance to, for or on Consultant's behalf; and (c) City will not provide and Consultant is not entitled to any of the usual and customary rights, benefits or privileges of City employees. Consultant expressly warrants that neither Consultant nor any of Consultant's employees or agents shall represent themselves to be employees or agents of City.

4. INSURANCE.

A. As a condition precedent to the effectiveness of this Agreement, Consultant shall procure and maintain, at Consultant's expense for the duration of this Agreement, from insurance companies that are admitted to write insurance in California

and have ratings of or equivalent to A:V by A.M. Best Company or from authorized non-admitted insurance companies subject to Section 1763 of the California Insurance Code and that have ratings of or equivalent to A:VIII by A.M. Best Company, the following insurance:

i. Commercial general liability insurance (equivalent in scope to ISO form CG 00 01 04 13) in an amount not less than \$1,000,000 per each occurrence and \$2,000,000 general aggregate. This coverage shall include but not be limited to broad form contractual liability, cross liability, independent contractor liability, and products and completed operations liability. City, its boards and commissions, and their officials, employees and agents shall be named as additional insureds by endorsement (on City's endorsement form or on an endorsement equivalent in scope to ISO form CG 20 10 11 85 or CG 20 26 11 85 or both CG 20 10 07 04 and CG 20 37 07 04 or both CG 20 33 07 04 and CG 20 37 07 04) . This policy shall state that the insurer waives its right of subrogation against City, its boards and commissions, and their officials, employees and agents.

ii. Workers' Compensation insurance as required by the California Labor Code and employer's liability insurance in an amount not less than \$1,000,000. This policy shall state that the insurer waives its right of subrogation against City, its boards and commissions, and their officials, employees and agents.

iii. Professional liability or errors and omissions insurance in an amount not less than \$1,000,000 per claim.

iv. Commercial automobile liability insurance (equivalent in scope to ISO form CA 00 01 10 13), covering Auto Symbol 1 (Any Auto) in an amount not less than \$500,000 combined single limit per accident.

B. Any self-insurance program, self-insured retention, or deductible must be separately approved in writing by City's Risk Manager or designee and shall protect City, its officials, employees and agents in the same manner and to the same extent as they would have been protected had the policy or policies not contained retention or deductible provisions.

C. Each insurance policy shall be endorsed to state that coverage shall not be canceled except after thirty (30) days prior written notice to City, shall be primary and not contributing to any other insurance or self-insurance maintained by City, and shall be endorsed to state that coverage maintained by City shall be excess to and shall not contribute to insurance or self-insurance maintained by Consultant. Consultant shall notify City in writing within five (5) days after any insurance has been voided by the insurer or cancelled by the insured.

D. If this coverage is written on a "claims made" basis, it must provide for an extended reporting period of not less than one hundred eighty (180) days, commencing on the date this Agreement expires or is terminated, unless Consultant guarantees that Consultant will provide to City evidence of uninterrupted, continuing coverage for a period of not less than three (3) years, commencing on the date this Agreement expires or is terminated.

E. Consultant shall require that all subconsultants or contractors that Consultant uses in the performance of these services maintain insurance in compliance with this Section unless otherwise agreed in writing by City's Risk Manager or designee.

F. Prior to the start of performance, Consultant shall deliver to City certificates of insurance and the endorsements for approval as to sufficiency and form. In addition, Consultant shall, within fifteen (15) days after expiration of the insurance, furnish to City certificates of insurance and endorsements evidencing renewal of the insurance.

G. Any modification or waiver of these insurance requirements shall only be made with the approval of City's Risk Manager or designee. Not more frequently than once a year, City's Risk Manager or designee may require that Consultant, Consultant's subconsultants and contractors change the amount, scope or types of coverages required in this Section if, in his or her reasonable opinion, the amount, scope or types of coverages are not adequate.

H. The procuring or existence of insurance shall not be construed or deemed as a limitation on liability relating to Consultant's performance or as full performance of or compliance with the indemnification provisions of this Agreement.

5. ASSIGNMENT AND SUBCONTRACTING. This Agreement contemplates the personal services of Consultant and Consultant's employees. Neither party shall assign its rights or delegate its duties under this Agreement, or any interest in this Agreement, or any portion of it, without the prior approval of the non-assigning party, except that Consultant may with the prior approval of the City Manager of City, assign any moneys due or to become due Consultant under this Agreement. Any attempted assignment or delegation, without a required approval of the non-assigning party, shall be void, and any assignee or delegate shall acquire no right or interest by reason of an attempted assignment or delegation. Notwithstanding the foregoing, however, Consultant may assign this Agreement in the event of merger, acquisition, or change in corporate structure without City approval. Nothing stated in this Section shall prevent Consultant from employing as many employees as Consultant deems necessary for performance of this Agreement.

6. CONFLICT OF INTEREST. Consultant, by executing this Agreement, certifies that, at the time Consultant executes this Agreement and for its duration, Consultant does not and will not perform services for any other client which would create a conflict, whether monetary or otherwise, as between the interests of City and the interests of that other client.

7. MATERIALS. Consultant shall furnish all labor and supervision, supplies, materials, tools, machinery, equipment, appliances, transportation and services necessary to or used in the performance of Consultant's obligations under this Agreement.

8. OWNERSHIP OF DATA. Consultant owns and will own all right, title, and interest to any work product generated from services. Please note, however, Consultant will grant Customer a perpetual, non-exclusive, non-transferable license (without the right to sublease or sublicense) to use and copy for use the work product created by the data generated, prepared or assembled in relation to this Agreement for Customer's own internal computing operations.

9. TERMINATION. If either party materially breaches any material obligation in this Agreement (including, without limitation, any obligation to pay fees hereunder), and fails to remedy such breach (if such breach can be remedied) within thirty (30) days of receipt of written notice of such breach, the other party may terminate this Support Agreement. Notwithstanding the foregoing, to the extent such material breach cannot be remedied through efforts of the

breaching party, the other party has the right to terminate this Agreement on less than thirty days' written notice. Notice to Consultant of a suspected documented defect will not constitute a notice of termination of this Agreement. Termination of this Agreement will be without prejudice to the terminating party's other rights and remedies hereunder. Termination of this Agreement will not relieve either party from making payments which may be owing to the other party hereunder.

10. CONFIDENTIALITY. For purposes of this Agreement, "Confidential Information" means all non-public information of a party to this Agreement that is identified as or would be reasonably understood to be confidential and/or proprietary. Confidential Information includes, without limitation, data, the Documentation, the Component Systems, and all algorithms, methods, techniques, code and processes revealed or utilized therein.

Except as otherwise permitted under this Agreement, the receiving party will not disclose to any third party, or make any use of the disclosing party's Confidential Information. The receiving party will use at least the same standard of care to maintain the confidentiality of the disclosing party's Confidential Information that it uses to maintain the confidentiality of its own Confidential Information, but in no event less than reasonable care. Except in connection with the Component Systems and any software programs provided with the Component Systems, the non-disclosure and non-use obligations of this Agreement will remain in full force with respect to each item of Confidential Information for a period of ten (10) years after receiving party's receipt of that item. However, City's obligations to maintain both the Component Systems and any software programs provided with the Component Systems, including all algorithms, methods, techniques, code and processes revealed therein, as confidential will survive in perpetuity. Confidential Information does not include information that: (i) is or becomes known to the public without fault or breach of Recipient; (ii) Discloser regularly discloses to third parties without restriction on disclosure; (iii) Recipient obtains from a third party without restriction on disclosure and without breach of a non-disclosure obligation; or (iv) is independently developed by Recipient without access to Confidential Information.

11. BREACH OF CONFIDENTIALITY. Neither party shall be liable for a breach of confidentiality with respect to Confidential Information that: (a) The receiving party can demonstrate known prior to the time City disclosed it; or (b) is or becomes publicly available

without breach of this Agreement; or (c) was independently developed by employees of receiving party, independently of and without reference to, the disclosing party's Confidential Information (for which the receiving party shall have the burden of proof); or (d) must be disclosed pursuant to subpoena or court order. In the event that receiving party is required by judicial or administrative process to disclose the Confidential Information, the receiving party shall promptly notify the disclosing party in order to enable the disclosing party reasonable time to oppose such process. The receiving party will not oppose any action by the disclosing party to seek a protective order or other remedy. If, failing the obtaining of a protective order or other remedy and such disclosure is required, then receiving party shall use its best effort to obtain reliable assurances that the disclosure will be afforded confidential treatment

12. AMENDMENT. This Agreement, including all Exhibit(s), shall not be amended, except in a writing signed by the authorized representatives of both parties, which expressly refers to this Agreement.

13. LAW. This Agreement shall be construed in accordance with the laws of the State of California, and the venue for any legal actions brought by any party with respect to this Agreement shall be the County of Los Angeles, State of California for state actions and the Central District of California for any federal actions. Consultant shall cause all work performed in connection with construction of the Project to be performed in compliance with (1) all applicable laws, ordinances, rules and regulations of federal, state, county or municipal governments or agencies (including, without limitation, all applicable federal and state labor standards, including the prevailing wage provisions of sections 1770 *et seq.* of the California Labor Code).

14. PREVAILING WAGES.

A. Consultant agrees that all public work (as defined in California Labor Code section 1720) performed pursuant to this Agreement (the "Public Work"), if any, shall comply with the requirements of California Labor Code sections 1770 *et seq.* City makes no representation or statement that the Project, or any portion thereof, is or is not a "public work" as defined in California Labor Code section 1720.

B. In all bid specifications, contracts and subcontracts for any such Public Work, Consultant shall obtain the general prevailing rate of per diem wages and the general

prevailing rate for holiday and overtime work in this locality for each craft, classification or type of worker needed to perform the Public Work, and shall include such rates in the bid specifications, contract or subcontract. Such bid specifications, contract or subcontract must contain the following provision: "It shall be mandatory for the contractor to pay not less than the said prevailing rate of wages to all workers employed by the contractor in the execution of this contract. The contractor expressly agrees to comply with the penalty provisions of California Labor Code section 1775 and the payroll record keeping requirements of California Labor Code section 1771."

15. ENTIRE AGREEMENT. This Agreement, including all Exhibits, constitutes the entire understanding between the parties and supersedes all other agreements, oral or written, with respect to the subject matter in this Agreement.

16. INDEMNITY. Consultant will indemnify, defend and hold harmless City, its Boards, Commissions, and their officials, employees and agents from and against any and all liability, loss, expense related to third party claims of bodily injury and damage to real and tangible personal property arising out of the performance of this Agreement, but only in proportion to and to the extent such liability, loss, expense, and claims for bodily injury or damage to real and tangible personal property is caused by or results from the grossly negligent or intentional acts or omissions of Consultant, its trustees, officers, agents or employees.

17. AMBIGUITY. In the event of any conflict or ambiguity between this Agreement and any Exhibit, the provisions of this Agreement shall govern.

18. NONDISCRIMINATION.

A. In connection with performance of this Agreement and subject to applicable rules and regulations, Consultant shall not discriminate against any employee or applicant for employment because of race, religion, national origin, color, age, sex, sexual orientation, gender identity, AIDS, HIV status, handicap or disability. Consultant shall ensure that applicants are employed, and that employees are treated during their employment, without regard to these bases. These actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and

selection for training, including apprenticeship.

B. It is the policy of City to encourage the participation of Disadvantaged, Minority and Women-Owned Business Enterprises in City's procurement process. Consultant may rely on written representations by subconsultants and contractors regarding their status.

19. EQUAL BENEFITS ORDINANCE. Unless otherwise exempted in accordance with the provisions of the Ordinance, this Agreement is subject to the applicable provisions of the Equal Benefits Ordinance (EBO), section 2.73 et seq. of the Long Beach Municipal Code, as amended from time to time.

A. During the performance of this Agreement, the Consultant certifies and represents that the Consultant will comply with the applicable provisions of the EBO.

B. If the Consultant fails to comply with the EBO, the City may pursue any and all remedies at law or in equity for any breach of the EBO.

C. As a point of clarification, Consultant is committed to equal opportunity employment. All persons who are employed by Consultant have equal employment benefits with Consultant, regardless of their marital or domestic partnership status.

20. NOTICES. Any notice or approval required by this Agreement shall be in writing and personally delivered or deposited in the U.S. Postal Service, first class, postage prepaid, addressed to Consultant at the address first stated above and [Infor, Attention: General Counsel, 40 General Warren Blvd., Suite # 110, Malvern, PA 19355], and to City at 411 West Ocean Boulevard, Long Beach, California 90802, Attn: City Manager, with a copy to the City Engineer at the same address. Notice of change of address shall be given in the same manner as stated for other notices. Notice shall be deemed given on the date deposited in the mail or on the date personal delivery is made, whichever occurs first.

21. COVENANT AGAINST CONTINGENT FEES. Consultant warrants that Consultant has not employed or retained any entity or person to solicit or obtain this Agreement and that Consultant has not paid or agreed to pay any entity or person any fee, commission or other monies based on or from the award of this Agreement.

22. WAIVER. The acceptance of any services or the payment of any money by

City shall not operate as a waiver of any provision of this Agreement or of any right to damages or indemnity stated in this Agreement. The waiver of any breach of this Agreement by either party shall not constitute a waiver of any other or subsequent breach of this Agreement.

23. CONTINUATION. Any provision of this Agreement that by its nature is intended to survive termination of Agreement shall survive termination of the Agreement.

24. TAX REPORTING. As required by federal and state law, City is obligated to and will report the payment of compensation to Consultant on Form 1099-Misc. Consultant shall be solely responsible for payment of all federal and state taxes resulting from payments under this Agreement. Consultant shall submit Consultant's Employer Identification Number (EIN), or Consultant's Social Security Number if Consultant does not have an EIN, in writing to City's Accounts Payable, Department of Financial Management. Consultant acknowledges and agrees that City has no obligation to pay Consultant until Consultant provides one of these numbers.

25. ADVERTISING. Consultant shall not use the name of City, its officials or employees in any advertising or solicitation for business or as a reference, without the prior approval of the City Manager or designee. Consultant may use City's name in customer lists with the advance written permission of the City.

26. AUDIT. City shall have the right at all reasonable times during the term of this Agreement and for a period of three (3) years after termination or expiration of this Agreement to examine, audit, inspect, review, extract information from and copy all books, records, accounts and other documents of Consultant relating to payments under this Agreement.

27. THIRD PARTY BENEFICIARY. This Agreement is not intended or designed to or entered for the purpose of creating any benefit or right for any person or entity of any kind that is not a party to this Agreement. However, should the City purchase Support for any third-party software, that third-party software provider may be considered a third-party beneficiary to this Agreement, to the extent that said third-party software provider needs to enforce any of the City's obligations as a licensee of the aforementioned third-party software.

IN WITNESS WHEREOF, the parties have caused this document to be duly executed with all formalities required by law as of the date first stated above.

(NAME OF CONSULTANT)

November 14, 2019

By Infor Public Sector, Inc.

Name [Signature]

Director & President

Title [Signature]

Name Bud He

Secretary, SVP & Deputy General Counsel

Title _____

"Consultant"

CITY OF LONG BEACH, a municipal corporation

Nov-20, 2019

By Rebecca G. Garner

EXECUTED PURSUANT TO SECTION 301 OF THE CITY CHARTER

"City"

This Agreement is approved as to form on November 19, 2017.

CHARLES PARKIN, City Attorney

By [Signature]

Deputy



EXHIBIT A TO SOFTWARE SUPPORT AGREEMENT: Infor Standard Support Agreement

THIS SOFTWARE SUPPORT AGREEMENT (the "Support Agreement") is made between Infor Public Sector, Inc. ("Infor") and The City of Long Beach ("Licensee") as of November ___, 2019 (the "Effective Date"). The parties agree as follows:

1. Definitions.

(a) "**Component System**" means any one of the computer software programs which is identified in the applicable Support Order Form as a Component System.

(b) "**Confidential Information**" means non-public information of a party to this Support Agreement that is identified as or would be reasonably understood to be confidential and/or proprietary. Confidential Information of Infor includes, without limitation, the Documentation, the Component Systems, and all algorithms, methods, techniques, code and processes revealed or utilized therein. Confidential Information does not include information that: (i) is or becomes known to the public without fault or breach of Recipient; (ii) Discloser regularly discloses to third parties without restriction on disclosure; (iii) Recipient obtains from a third party without restriction on disclosure and without breach of a non-disclosure obligation; or (iv) is independently developed by Recipient without access to Confidential Information.

(c) "**Contract Period**" means, as applicable, the Initial Term or the Renewal Period for which Licensee has paid the applicable fee for Support.

(d) "**Discloser**" means the party providing Confidential Information hereunder.

(e) "**Documentation**" means the then-current Infor-provided operating and technical documentation relating to the features, functions and operation of a Component System.

(f) "**Documented Defect**" means a material deviation between the then-current, general release version of the Component System and its Documentation, for which Documented Defect Licensee has given Infor enough information for Infor to replicate the deviation on a computer configuration which is both substantially similar to the Equipment and is under Infor's control.

(g) "**Equipment**" means the hardware and/or systems software configuration (e.g., the computer, computer platform, operating systems and/or data base management

system) specified in the Support Order Form, or, in the absence of any such specification in the Support Order Form, the hardware and/or systems software configuration on which Infor generally supports use of the Component System.

(h) "**Initial Term**" means, with respect to the Component Systems specified in an Order Form, the twelve-month period beginning on the Support Order Form Date, unless otherwise specified in the Order Form.

(i) "**License Agreement**" means the software license agreement pursuant to which Licensee has licensed the Component Systems.

(j) "**Recipient**" means the party receiving Confidential Information hereunder.

(k) "**Renewal Period**" means, as applicable, each successive twelve-month period following the Initial Term.

(l) "**Support Order Form**" means each order form or similar ordering document between the parties incorporating the terms of this Support Agreement and setting forth the Component Systems subject to Support and associated fees.

(m) "**Support Order Form Date**" means the date identified on the applicable Order Form as the Support Order Form Date.

(n) "**Third Party Licensor**" means a third party whose software products ("**Third Party Products**") have been made available to Infor for distribution and licensing under the terms of its agreement with Infor (a "**Third Party Agreement**").

(o) "**User Restriction**" means any restriction on use applicable to the Component Systems (for example, and without limitation, number of named or concurrent users).

2. Services.

(a) Types of Services. Subject to Licensee paying the

applicable fee for Support hereunder for a particular Component System, Infor shall (a) provide Licensee with access (via the Internet, telephone or other means established by Infor) to Infor's support helpline, (b) provide, when and if generally available, updates, enhancements or modifications, in object code format, to the then-current, general release version of such Component System that are not separately priced or licensed as new products; and (c) use reasonable efforts to correct or circumvent Documented Defects (the foregoing referred to collectively as "Support").

(b) Third Party Products. With respect to Third Party Products, Infor's provision of Support will be limited to providing Licensee with the support that the Third Party Licensor provides to Infor for such Third Party Products.

(c) Restrictions. Infor shall have no obligation to provide Support if Licensee fails to pay the applicable fees hereunder or is otherwise in breach of this Support Agreement. Infor shall have no obligation to provide Support for any Component System on any hardware or systems software configuration other than the Equipment, or if the Component System has been modified other than in accordance with this Support Agreement. In addition, Licensee agrees to provide Infor with access to such facilities and equipment as are reasonably necessary for Infor to perform its obligations hereunder, including remote access to the Equipment. Support provided hereunder does not include related services, if any, required by Licensee, including, without limitation, installation or implementation of the Component System or any updates, enhancements or modifications thereto. Licensee's use of any update, enhancement or modification provided as part of Support is subject to applicable User Restrictions and the terms of the License Agreement.

3. Payment and Taxes.

(a) Support Fees. For annual Support of the Component Systems specified on an Order Form, Licensee will pay Infor the Support Fee specified in the Order Form, which will be subject to successive increases on an annual basis (starting with the first Renewal Period) not to exceed the "Annual Escalation Percentage Cap" (as specified in the Order Form). If the Initial Term is less than 12 months, the fee for the Initial Term of Support will be prorated accordingly. Payment of the applicable fee for any Renewal Period of Support is due prior to the commencement of such Renewal Period. All payments hereunder are non-refundable.

(b) Additional Costs. Licensee will reimburse Infor for actual travel and living expenses that Infor incurs in providing Licensee with Support, with reimbursement to be on an as-incurred basis. Licensee will also reimburse Infor for charges incurred in connection with accessing Equipment, if any.

(c) Taxes. Licensee is responsible for paying all taxes (except for taxes based on Infor's net income or capital stock) relating to this Support Agreement or the services or payments provided for hereunder. Applicable tax amounts (if any) are not included in the fees set forth in this Support Agreement or the applicable Support Order Form. Infor will invoice Licensee for any applicable tax amounts.

(d) Invoices and Late Charges. Licensee will pay each

Infor invoice within fifteen (15) days of the date of invoice and in any event, on or before the dates specified in this Support Agreement or the applicable Support Order Form. Late payments are subject to a late charge equal to the lesser of: (i) one and one-half percent (1½%) per month; and (ii) the highest rate permitted by applicable law.

4. Term. With respect to each Component System specified on a Support Order Form, the term of this Support Agreement shall begin on the Support Order Form Date and end on the last day of the Initial Term, and automatically renew for successive Renewal Periods, unless either party provides written notice to the other party of non-renewal at least ninety (90) days prior to the commencement of the Renewal Period.

5. Disclaimer of Warranties. Licensee acknowledges and agrees that **INFOR MAKES NO WARRANTIES WHATSOEVER, EXPRESSED OR IMPLIED, WITH REGARD TO ANY SUPPORT AND/OR ANY OTHER MATTER RELATING TO THIS SUPPORT AGREEMENT, AND THAT INFOR EXPLICITLY DISCLAIMS ALL WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. FURTHER, INFOR EXPRESSLY DOES NOT WARRANT THAT A COMPONENT SYSTEM OR ANY SUPPORT WILL BE USABLE BY LICENSEE IF THE COMPONENT SYSTEM HAS BEEN MODIFIED, OR WILL BE ERROR FREE, WILL OPERATE WITHOUT INTERRUPTION OR WILL BE COMPATIBLE WITH ANY HARDWARE OR SYSTEMS SOFTWARE CONFIGURATION OTHER THAN THE EQUIPMENT.**

6. Confidential Information. Except as otherwise permitted under this Support Agreement, the Recipient will not disclose to any third party, or make any use of the Discloser's Confidential Information. The Recipient will use at least the same standard of care to maintain the confidentiality of the Discloser's Confidential Information that it uses to maintain the confidentiality of its own Confidential Information, but in no event less than reasonable care. Except in connection with the Component Systems and any software programs provided with the Component Systems, the non-disclosure and non-use obligations of this Support Agreement will remain in full force with respect to each item of Confidential Information for a period of ten (10) years after Recipient's receipt of that item. However, Licensee's obligations to maintain both the Component Systems and any software programs provided with the Component Systems, including all algorithms, methods, techniques, code and processes revealed therein, as confidential will survive in perpetuity.

7. Termination. If either party materially breaches any material obligation in this Support Agreement (including, without limitation, any obligation to pay fees hereunder), and fails to remedy such breach (if such breach can be remedied) within thirty (30) days of receipt of written notice of such breach, the other party may terminate this Support Agreement. Notwithstanding the foregoing, to the extent such material breach cannot be remedied through efforts of the breaching party, the other party has the right to terminate this Support Agreement on less than thirty days' written notice. Notice to Infor of a suspected Documented Defect will not constitute a notice of termination of this

Support Agreement. Termination of this Support Agreement will be without prejudice to the terminating party's other rights and remedies hereunder. Termination of this Support Agreement shall also terminate all Support Order Forms hereunder. Termination of this Support Agreement will not relieve either party from making payments which may be owing to the other party hereunder.

8. LIMITATIONS OF LIABILITY.

(a) **LIMITED LIABILITY OF INFOR.** THE TOTAL LIABILITY OF INFOR, ITS AFFILIATES AND THIRD PARTY LICENSORS IN CONNECTION WITH SUPPORT OR ANY OTHER MATTER RELATING TO THIS SUPPORT AGREEMENT (WHATEVER THE BASIS FOR THE CAUSE OF ACTION) SHALL NOT EXCEED THE FEE THAT LICENSEE ACTUALLY PAID TO INFOR FOR SUPPORT FOR THE TWELVE-MONTH CONTRACT PERIOD IN WHICH SUCH LIABILITY FIRST AROSE.

(b) **EXCLUSION OF DAMAGES.** IN NO EVENT SHALL INFOR, ITS AFFILIATES OR THIRD PARTIES BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES OR DAMAGES FOR LOST PROFITS, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, OR OTHERWISE, AND REGARDLESS OF WHETHER INFOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR WHETHER ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE.

9. **Notices.** All notices and other communications required or permitted under this Support Agreement or required by law must be in writing and will be deemed given when: delivered personally; sent by registered or certified mail, return receipt requested; transmitted by facsimile confirmed by first class mail; or sent by overnight courier. Notices must be sent to a party at its address shown on the signature page of this Support Agreement, or to such other place as the party may subsequently designate for its receipt of notices in accordance with this Section. Licensee must promptly send copies of any notice of material breach and/or termination of the Support Agreement to Infor, Attention: General Counsel, 40 General Warren Blvd Suite # 110, Malvern, PA 19355, USA, FAX number 678-319-8949, or to such other place as Infor may subsequently designate for its receipt of notices.

10. **Force Majeure.** Except with respect to the payment of fees hereunder, neither party will be liable to the other for any failure or delay in performance under this Support Agreement due to circumstances beyond its reasonable control, including acts of war, terrorist acts, natural disasters, accident, labor disruption, acts, omissions and defaults of third parties and official, governmental and judicial action not the fault of the party failing or delaying in performance, or the threat of any of the foregoing.

11. **Assignment.** Licensee may not assign or otherwise transfer any of its rights or obligations under this Support Agreement, whether by law or otherwise, and any attempt at such assignment will be void without the prior written consent of Infor. For purposes of this Support Agreement, "assignment" shall include use of the Component Systems for benefit of any third party to a merger, acquisition and/or

other consolidation by, with or of Licensee, including any new or surviving entity that results from such merger, acquisition and/or other consolidation.

12. **No Waiver.** A party's failure to enforce its rights with respect to any single or continuing breach of this Support Agreement will not act as a waiver of the right of that party to later enforce any such rights or to enforce any other or any subsequent breach.

13. **Choice of Law; Severability.** This Support Agreement will be governed by and construed under the laws of the State of New York, as applicable to agreements executed and wholly performed therein, but without regard to the choice of law provisions thereof. This Support Agreement is originally written in the English language and the English language version shall control over any translations. If any

provision of this Support Agreement is illegal or unenforceable, it will be deemed stricken from the Support Agreement and the remaining provisions of the Support Agreement will remain in full force and effect. The United Nations Convention on the International Sale of Goods (CISG) shall not apply to the interpretation or enforcement of this Support Agreement.

14. **Audit Rights.** No more than once in any twelve-month period, Infor (including any third party auditor retained by Infor) may audit the records and systems of Licensee to ensure compliance with the terms of this Support Agreement. Infor will notify Licensee in writing at least ten (10) business days prior to any such audit. Any such audit will be conducted during Licensee's regular business hours and will not interfere unreasonably with Licensee's business activities.

15. **Miscellaneous.** Infor and Licensee are independent contractors, and nothing herein will be construed to create a partnership, joint venture or agency relationship between them. This Support Agreement shall be construed as if drafted by both parties and shall not be strictly construed against either party. Infor is an Equal Employment Opportunity employer. As such, 41 CFR 60-1.4(a), 60-250.5, & 60-741.5 are herein incorporated by reference.

16. **Entire Agreement.** This Support Agreement contains the entire understanding of the parties with respect to its subject matter, and supersedes and extinguishes all prior oral and written communications between the parties about its subject matter. Any purchase order or similar document, which may be issued by Licensee in connection with this Support Agreement does not modify this Support Agreement. No modification of this Support Agreement will be effective unless it is in writing, is signed by each party, and expressly provides that it amends this Support Agreement; provided, however, that a modification mutually agreed to pursuant to a click-thru or click-wrap agreement delivered by Infor will be effective. This Support Agreement and any signed agreement or instrument entered into in connection herewith or contemplated hereby, and any amendments hereto or thereto, to the extent signed and delivered by means of digital imaging, electronic mail or a facsimile machine, shall be treated in all manner and respects as an original Support Agreement or instrument and shall be considered to have the same binding legal effect as if it were the original signed version thereof

delivered in person. This Support Agreement and all Support Order Forms entered into pursuant hereto may be signed in counterparts.

[Signatures follow on the next page.]

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
411 West Ocean Boulevard, 9th Floor
Lana Beach, CA 90802-4664

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THE PARTIES have executed this Support Agreement through the signatures of their respective authorized representatives.

Infor Public Sector, INC.

Signature: Brad Steiner

Printed Name: Brad Steiner
Title: Secretary, SVP & Deputy General Counsel

Signature Date: 11/13/2019

Licensee: City of Long Beach

Signature: Rebecca G. Garner

Printed Name: Rebecca G. Garner
Title: Acting Asst. City Manager

Signature Date: Nov. 27, 2019

**EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER**



EXHIBIT B TO SOFTWARE SUPPORT AGREEMENT:
Support Commitment Addendum

As it relates to the Component Systems specified herein, this Addendum is subject to the terms of the Software Support Agreement between Infor Public Sector, Inc. ("Infor") and City of Long Beach ("Licensee") effective as of November __, 2019 (the "Agreement"). All terms of the Agreement are incorporated herein by reference. Capitalized terms not defined in this Addendum are defined in the Agreement. In the event of a conflict, the terms of this Addendum control over the terms of the Agreement.

In the event the capitalized terms in this Addendum differ from the terminology used in the Agreement, references herein to: "Component Systems" means the software products that are being licensed (and may be referred to in the Agreement as Products, Software Products, Software, Programs or Licensed Programs); "Support" means Infor's current standard maintenance and support services (and may be referred to in an Agreement as Maintenance and Support, Annual Support, Support Services, On-Going Support or One Point Support); "Order Form" means a mutually agreed upon ordering document (and may be referred to in an Agreement as Schedule, Supplement or Supplemental Schedule); "Annual Escalation Percentage Cap" means the maximum percentage increase in an annual Support Fee on an annual basis. In addition, based on the applicable Agreement, listed Component Systems herein owned by a third party may also be referred to in the Agreement as "Additional Software" or "Third Party Software".

Effective date of the Addendum: November __, 2019

I. Component Systems: Previously licensed Component Systems for which Licensee is purchasing Support. No delivery necessary.

Table with 6 columns: SKU, Component System, License Restriction, Quantity, Type, Support Level**. It lists 9 items including H8GGS, H8CDR, H8CS, H8CM, HDYP-CS, HDYP-P, HDYP-L, and HAN-MOBILE-CDR.

Support Level: Infor Xtreme ("XT") Support unless otherwise indicated.
"XT" = Infor Essential (24x5)/ "XTP" = Infor Premium (24x7)/"XTE"= Infor Customer Success Plus program
**Support Level: Descriptions of the XT and XTP Support plans can be found at
http://www.infor.com/content/brochures/inforxtremesupportplanfeatures.pdf/. A description of the XTE / Customer Success program can be found at https://www.infor.com/support/customer-success-plus/

II. Support Services

Total Support Fee**: \$260,999.48

** The Total Support Fee specified above has been calculated to align the Support End Dates of all Component Systems listed.

Annual Escalation Percentage Cap: For this Support Term, the Annual Escalation Percentage increase of 6% is included in the annual payment amounts set forth below. Following this Support Term, the Annual Escalation Percentage cap shall be 6% or the then-current year-over-year increase in the Consumer Price Index (CPI) whichever is the greater.

Support Term: November 1, 2019 ("Start date") to October 31, 2020

Support Commitment:

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
411 West Ocean Boulevard, 9th Floor
Long Beach, CA 90802-4664

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Long Beach, CA 90802-4664

1 The Support Term specified herein is a binding term, and neither party may exercise any rights of non-renewal or
2 cancellation for convenience so as to terminate Support prior to the end of such Support Term. If Licensee fails to pay
3 Infor any portion of the Total Support Fee when due, then, in addition to other remedies Infor may exercise, Licensee
4 shall immediately be invoiced for, and shall be obligated to pay to Infor, as liquidated damages, the Total Support Fee,
as increased by the Annual Escalation Percentage Cap, less any portion of the Total Support Fee previously paid (the
"Damages"). If such amount is not paid within fifteen (15) days of invoice, Infor shall have no further obligation to
provide Support, and the Licensee shall remain fully obligated to pay the Damages.

5 On the last day of the Support Term, Support will automatically renew for successive twelve-month periods (the
6 "Renewal Period") unless either party provides written notice to the other party of non-renewal at least ninety (90) days
prior to the commencement of the Renewal Period.

Other fees: NA
Total Amount Due (before applicable taxes): \$260,999.48
Currency: USD

7 This Addendum is subject to the Infor General Lifecycle Policy. As described therein, additional fees may apply if
8 Mainstream Maintenance is no longer available for a Component System during the Support Term The policy can be
found at <https://www.infor.com/content/analyst/Infor-General-Lifecycle-Policy.pdf/>.

9 **Payment Schedule:**
\$260,999.48 (plus applicable taxes) is due no later than October 1, 2019

10 **Invoice Address: 333 West Ocean Blvd.**
11 **Long Beach, CA 90802**
12 **Contact name: Vanessa Llanes**
13 **Contact Title: Business Info. Systems Officer**
14 **Contact Tel: 562-570-5090**
15 **Contact Email: Vanessa.Llanes@longbeach.gov**
16 **Account ID: 372433**

17 PARTIES have executed this Addendum through the signatures of their respective authorized representatives.

18 **Infor Public Sector, Inc.**

Signature



19 Name: Brad Steiner

20 Title: Secretary, SVP & Deputy General Counsel

21 Date: 11/13/2019

City of Long Beach

Signature



22 Name: Rebecca G. Garner

23 Title: Acting Assistant City Manager

24 Date: Nov. 20, 2019

25 EXECUTED PURSUANT
26 TO SECTION 301 OF
27 THE CITY CHARTER
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