

## Software Maintenance Agreement Terms and Conditions

This Agreement is made between Victor S. Teglesi ("Contractor") and Lake County, Illinois ("County") for the maintenance and improvement of the Software and Related Documentation comprised of the following:

### 1. FEE

The annual maintenance fees and schedule for contractor are as follows:

<b>Year 1:</b>	<b><i>\$8,750 (50 hours support included)</i></b>
<b>Year 2:</b>	<b><i>\$9,000 (50 hours support included)</i></b>
<b>Year 3:</b>	<b><i>\$9,250 (50 hours support included)</i></b>
<b>Year 4:</b>	<b><i>\$9,500 (50 hours support included)</i></b>
<b>Year 5:</b>	<b><i>\$9,750 (50 hours support included)</i></b>

Beginning upon final acceptance.

Support in excess of the number of hours specified shall not be undertaken without prior authorization to proceed from Lake County and shall be billed at the rate of ***\$95 per hour*** for all years covered under this agreement.

### 2. COVERAGE

This Agreement covers all ongoing support and training which include, but are not limited to, phone conversation, site visits (if deemed necessary), and periodic updates to the software, with accompanying updates to the user manual and technical documentation.

During the term of this Agreement, the Contractor will correct or replace software and/or provide services necessary to remedy any programming error that is attributed to the Contractor and which significantly affects use of this software. Such corrections, replacement or services will be promptly accomplished after the County has identified and notified the Contractor of such error.

The County shall inform the Contractor in writing of any modifications made by the County to the software. The Contractor shall not be responsible for maintaining County-modified portions of the software.

Corrections for difficulties or defects traceable to County errors or system changes will be billed at the Contractor's standard rate of \$95 per hour.

Any corrections or alterations to, or new versions of, the software that the Contractor may deliver to the County under this Agreement shall be limited to one copy of such software and documentation delivered to the County.

Any changes, additions, and enhancements in the form of new or partial software or documentation as may be provided under this Agreement, shall remain the proprietary property of the Contractor. The software programs specified above will include, under its proprietary restrictions, any such additional programming and documentation provided under this Agreement.

Contractor agrees to provide telephone support to the County during Contractor's normal business hours. These services include answering questions, providing technical guidance with regard to the Programs, receiving trouble reports, troubleshooting system problems and other investigative services relative to the Programs. County shall inform Contractor of critical production periods in advance and arrange for standby emergency support as needed during non-business hours. All support services shall be billed in 15 minute increments in accordance with the Fee Schedule described in Section 1.

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### **3. TRAVEL EXPENSE**

If the services performed in accordance with this Agreement require travel to the County's location, the County agrees to pay Contractor's associated travel and per diem expenses. Contractor agrees to obtain the County's prior approval before making any trips to the County's location.

### **4. THIRD PARTY SOFTWARE MAINTENANCE**

Charges for Third Party Software Systems Maintenance which are approved in writing by the County shall be billed by Contractor as incurred and shall be paid by the County within thirty (30) days of the invoice date.

### **5. TERMS**

This Agreement includes automatic renewal on an annual basis with annual fees. Services under this Agreement shall commence on the first day of the month following installation of the software.

### **6. TERMINATION**

In the event of termination of the Software License Agreement, through default by the County, the Contractor's obligations under this Software Maintenance Agreement shall immediately end. The Contractor may terminate this Agreement in the event of default by the County. Default by the County includes County's failure to pay the annual maintenance within 30 days notice that the same is thirty days or more delinquent.

This Agreement shall continue in effect until terminated by Contractor or the County in the manner specified herein.

a) Either the County or Contractor may terminate this Agreement only by giving written notice to the other that this Agreement will terminate on the next succeeding anniversary date. Such notice shall be given on or before the anniversary date.

b) In the event of termination of this Agreement, Contractor will provide County with any enhancements to the Programs which are released within the ninety (90) day period before the effective date of termination, and Contractor will complete corrective services which have not been completed on the effective date of termination and the County shall pay for such corrective services in the same manner as if termination of this Agreement had not occurred.

### **7. LIMITATION OF WARRANTY**

Contractor warrants that it will maintain the software so that it will be free from defects in workmanship and materials and shall conform to the performance capabilities, specifications, functions and other descriptions and standards applicable thereto as set forth in the License Agreement and so that the software will operate in conformity with all improvements, additions, or modifications of the software installed at the County's site. Maintenance for the custom interfaces includes issues encountered running the interfaces using the identical system configuration under which the interfaces were originally developed, tested, and implemented. Any support incidents for which the Contractor provides a support response which are the result of changes to versions of operating systems, versions of application software, file name changes, file location changes, server configurations or any other changes in the original system configuration will be provided on a time and materials basis. Charges for these types of incidents will be incurred by Lake County at the current published rates at the time of the incident. This maintenance fee does not include modifications to the interfaces that may be necessary due to changes in the originating or receiving system (e.g., new fields to be exported or imported) or interface transaction specification changes. The services will be performed in a timely and professional manner by qualified maintenance technicians familiar with the software and its operation, and the services shall conform to the standards generally observed in the industry for similar services.

The performance of the services by the Contractor will not in any way constitute infringement or other violation of any copyright, trade secret, trademark, patent, invention, proprietary information or nondisclosure rights of any third party.

Services provided by the Contractor will be in compliance with all applicable laws, rules and regulations.

In no event will the Contractor be liable for the County's lost profits, lost savings or other consequential damages, even if Licensor has been advised of the possibility of such damages.

**8. ENHANCEMENT LICENSE AND CONDITIONS**

County's license to use enhancements provided by Contractor under this Agreement, Contractor's right, title and interest in and to all enhancements, whether provided by Contractor, the County, the County's employees, or any third party, and County's duty to safeguard enhancements shall be controlled by all and each of the terms and conditions set forth in the applicable Software License Agreement made and executed by Contractor and the County and in effect on the date of execution of this Agreement, which terms and conditions are adopted and incorporated herein by this reference the same as if set forth verbatim herein.

**9. GENERAL CONDITIONS**

- a) This Agreement is binding when accepted by the Contractor and the County, indicated by the authorized signatures below.
- b) The heading of any paragraph contained in this Agreement is for convenience only and shall not be deemed a part of this Agreement nor a representation as to the contents thereof.
- c) This Agreement may not be modified or changed orally, but only in writing, signed by both parties.
- d) Charges specified herein do not include taxes, and the County pays, or reimburses Contractor, for all applicable federal, state and local taxes including but not limited to sales, use or occupation taxes (but exclusive of income and corporate franchise taxes).
- e) Contractor shall not be liable for failure or delay in providing any enhancement or service specified herein due to fire, riot, war, labor disputes, acts of God, or causes or conditions beyond its reasonable control. In no event is Contractor liable for any consequential damages.
- f) This Agreement will be governed by the laws of the State of Illinois.

IN WITNESS WHEREOF, Contractor's and the County's authorized representatives execute this Agreement as follows:

**Contractor**

Victor S. Teglas, P.E.  
4726 Independence Ave  
Riverdale, NY 10471

By \_\_\_\_\_

Name Printed Victor S. Teglas

Title: Principal, Capital Program Management

Date \_\_\_\_\_

**County**

Lake County Division of Transportation  
600 W Winchester Rd  
Libertyville, IL 60048

By \_\_\_\_\_

Name Printed Martin G. Buehler

Title County Engineer/Director of Transportation

Date \_\_\_\_\_