

**EXHIBIT A TO AMENDED AND RESTATED SOFTWARE LICENSE, IMPLEMENTATION AND SUPPORT AND
MAINTENANCE AGREEMENT**

SCHEDULE “D” SUPPORT AND MAINTENANCE AGREEMENT

This Support and Maintenance Agreement (hereinafter “Support and Maintenance Agreement”) between N. Harris Computer Corporation, through Advanced Utility Systems, its’ duly authorized division (hereinafter “Consultant”) and the City of Lee’s Summit, Missouri (hereinafter “Organization”) becomes effective as of the date of execution of the Amended and Restated Software License, Implementation and Support and Maintenance Agreement. This date becomes anniversary date of the Support and Maintenance Agreement.

Unless otherwise defined herein, all defined terms used herein shall have the meaning ascribed to them in the Software License, Implementation, and Support and Maintenance Agreement (hereinafter “Original Agreement.”)

1. Subject to the terms and conditions of this Support and Maintenance Agreement, Consultant shall provide support and maintenance services which include revisions, updates and enhancements to the Software and related materials under the Original Agreement.
2. Subject to the terms and conditions of this Support and Maintenance Agreement, Consultant shall provide software support via telephone and electronic mail, and site visits when necessary consistent with the hours of operation, all as described in Exhibit 1 hereto and in effect as of the date hereof, as such services may, at the discretion of Consultant, be modified or supplemented from time to time (provided that any changes generally apply to all licensees of Consultant.) To enable Consultant to provide effective support, the Organization will establish auto remote access based on remote access procedures compatible with Consultant’s practices with the Organization’s consent.
3. In consideration for the support services specified in Section 2, Organization shall pay an Annual Support and Maintenance Fee in accordance with the following schedule:

Year	Maintenance Term	Annual Maintenance Price
1	January 1, 2017 to December 31, 2017	\$54,800.40
2	January 1, 2018 to December 31, 2018	\$56,170.41
3	January 1, 2019 to December 31, 2019	\$57,574.67
4	January 1, 2020 to December 31, 2020	\$59,014.04
5	January 1, 2021 to December 31, 2021	\$60,489.39

Annual Support and Maintenance Fees as described above will be billed annually in advance beginning on the anniversary of the Support and Maintenance Agreement or on an alternative date mutually agreed to by the both parties. In addition to the Annual Support and Maintenance

Fee, Organization shall reimburse Consultant for its direct expenses in providing support services pursuant to this Agreement, including, but not limited to:

- (a) Courier services, photocopying, faxing and reproduction services, all reasonable travel costs, meal expenses of not more than \$50.00 per diem, and a \$100.00 per diem for weekend days (no receipts provided) and a mileage charge consistent with the Internal Revenue Service published guidelines, long distance telephone calls and all other reasonable expenses incurred in the performance of Consultant's duties hereunder.
 - (b) Consultant may update its reimbursement policies to maintain compliance with the Internal Revenue Service's recommended rates for per diem and mileage reimbursement.
4. All support services provided by Consultant to Organization other than those specified in Section 2 (such as, but not limited to, on-site support), shall be provided to Organization by Consultant at Consultant's then current proposed rates, policies and terms for a period of three years. For certainty, any updates of, or enhancements to, the Software will be made available to the Organization free of charge (with respect to the actual updates or enhancements), but all services provided by Consultant with respect to such updates or enhancements will be subject to the Consultant's then-prevailing prices, hourly rates, policies and terms, meaning that such then-prevailing prices will apply to matters such as set-up and training relating to such updates or enhancements.
5. All payments hereunder shall be in U.S. dollars and shall be net of any taxes, tariffs, or other governmental charges.
6. The initial term of this Support and Maintenance Agreement shall be for one year beginning on the anniversary date as described herein. The Support and Maintenance Agreement shall thereafter automatically renew at the rates set forth herein for an additional four (4) one year (1 year) renewal periods, unless terminated by either party by giving the other not less than ninety (90) days advance written notice prior to the end of the first year or any subsequent anniversary of such date. If the Support and Maintenance Agreement is terminated by Organization, it shall be entitled to retain the Software licensed to it as at the date of such termination, but it will relinquish its rights to receive upgrades of, or enhancements to, the Software, services for the Software, or access to the Source in escrow upon the occurrence of any event specified in Section 2.6(d) of the Original Agreement. For certainty, and without mitigating the application of the Agreement during the term of this Support and Maintenance Agreement, the terms and conditions of the Agreement relating to the license of the Software and the Documentation and the rights and obligations of the parties with respect thereto will continue to apply to Organization following the termination of this Support and Maintenance Agreement.
7. Title to and ownership of all proprietary rights in the Software and all related proprietary information shall at all times remain with Consultant, and Organization shall acquire no proprietary rights by virtue hereof.
8. Unless terminated pursuant to Paragraph 6 hereof, this Support and Maintenance Agreement shall remain in full force and effect except as terminated as follows:
 - (a) If either party neglects or fails to perform, observe or cure within ninety (90) days of written notice of such failure to perform any of its existing or future obligations.

(b) If Organization attempts to assign this Agreement or any of its rights hereunder, or undergoes a Reorganization, without complying with the Agreement.

9. Unless otherwise agreed to by the parties, all notices required hereunder shall be made in accordance with the provisions of the Agreement.
10. 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.
11. A valid contract binding the parties hereto shall come into being only upon execution of this Support and Maintenance Agreement by a duly authorized agent, officer, or representative of both parties.
12. This Support and Maintenance Agreement is the exclusive statement of the entire support and maintenance agreement between Consultant and Organization. No change, termination or attempted waiver of any of the provisions hereof shall be binding unless in writing and signed by the party against whom the same is sought to be enforced.
13. The parties hereto agree that the terms and conditions contained herein shall prevail notwithstanding any variations on any orders submitted by Organization.
14. The particular provisions of this Support and Maintenance Agreement shall be deemed confidential in nature and neither Organization nor Consultant shall divulge any of its provisions as set forth herein to any third party except as may be required by law.
15. Termination.
 - (a) The 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 Consultant recognize that circumstances may arise entitling the Organization to damages for breach or other fault on the part of the Consultant arising from this Support and Maintenance Agreement. The parties agree that in all such circumstances the Organization's remedies and the Consultant'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.
 - (i) FOR BREACH OR DEFAULT BY THE CONSULTANT OR OTHERWISE IN CONNECTION WITH HIS SUPPORT AND MAINTENANCE AGREEMENT, INCLUDING A BREACH OR DEFAULT ENTITLING THE ORGANIZATION TO RESCIND OR BE DISCHARGED FROM THE PROVISIONS OF THIS SUPPORT AND MAINTENANCE AGREEMENT AND WHETHER IN THE NATURE OF A BREACH OF CONDITION OR A FUNDAMENTAL BREACH, THE ORGANIZATION'S EXCLUSIVE REMEDY, IN ADDITION TO ELECTING IF SO ENTITLED TO RESCIND OR BE DISCHARGED FROM THE PROVISIONS OF THIS SUPPORT AND MAINTENANCE AGREEMENT, SHALL BE PAYMENT BY THE CONSULTANT OF THE ORGANIZATION'S DIRECT DAMAGES TO A MAXIMUM AMOUNT EQUAL TO, AND THE CONSULTANT SHALL IN NO EVENT BE LIABLE IN

EXCESS OF, THE AMOUNT OF FEES ACTUALLY PAID BY THE ORGANIZATION TO THE CONSULTANT UNDER THIS SUPPORT AND MAINTENANCE AGREEMENT DURING THE THEN-CURRENT TERM OF THE SUPPORT AND MAINTENANCE AGREEMENT UP TO AND INCLUDING THE DATE OF TERMINATION.

- (ii) IN NO EVENT SHALL ANY DAMAGES INCLUDE, NOR SHALL THE CONSULTANT BE LIABLE FOR, ANY SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES EVEN IF THE CONSULTANT HAS BEEN ADVISED OF THE POSSIBILITY THEREOF. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE CONSULTANT SHALL NOT BE LIABLE FOR LOST PROFITS, LOST BUSINESS REVENUE, FAILURE TO REALIZE EXPECTED SAVINGS, OTHER COMMERCIAL OR ECONOMIC LOSS OF ANY KIND, OR FOR ANY CLAIM WHATSOEVER AGAINST THE ORGANIZATION BY ANY OTHER PARTY.
- (iii) CLAUSES (i) AND (ii) SHALL APPLY IN RESPECT OF ANY CLAIM, DEMAND, OR ACTION BY THE ORGANIZATION IRRESPECTIVE OF THE NATURE OF THE CAUSE OF ACTION UNDERLYING SUCH CLAIM, DEMAND, OR ACTION, INCLUDING, BUT NOT LIMITED TO, BREACH OF CONTRACT OR TORT.

16. 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.
17. 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 Consultant arising out of or in connection with this Support and Maintenance Agreement, notwithstanding any remedy otherwise available at law or equity.
18. This Support and Maintenance Agreement shall be governed by the laws of the State of Missouri and venue shall be proper in Jackson County, Missouri.
19. 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 Agreement.
20. This Support and Maintenance Agreement shall be binding upon the successors and assigns of the parties and inure to the benefit of the successors and permitted assigns of the parties.
21. Time shall be of the essence of this Support and Maintenance Agreement.
22. 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.
23. The parties shall do all such things and provide all such reasonable assurances as may be required to consummate the transactions contemplated hereby, and each party shall provide such further documents or instruments required by any other party as may be reasonably

necessary or desirable to effect the purposes of this Support and Maintenance Agreement and carry out its provisions.

24. This Support and Maintenance Agreement may be executed in counterparts, (whether by facsimile signature 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,
THROUGH ADVANCED UTILITY SYSTEMS

By: _____

Title: _____

THE CITY OF LEE'S SUMMIT, MISSOURI

Stephen A. Arbo
City Manager

APPROVED AS TO FORM:

Office of the City Attorney