

SOFTWARE MAINTENANCE AGREEMENT

FOR AND IN CONSIDERATION of the mutual benefits accruing and expected to accrue hereunder, this Software Maintenance Agreement ("Agreement"), is made as of the 1st day of January, 2018 ("Effective Date") by and between AssetWorks, with offices at 998 Old Eagle School Road, Suite 1215, Wayne, PA19087 ("AssetWorks"), and the City of Corpus Christi, with offices at PO Box 9722 Corpus Christi, TX 78469-927 ("CUSTOMER"). Intending to be legally bound, the parties hereby mutually agree to the following terms and conditions:

A. BACKGROUND

1. AssetWorks and CUSTOMER are parties to a Software License Agreement, Number CC01012018, and dated January 1, 2018 pursuant to which CUSTOMER has licensed certain software products ("Software" or "Product") from AssetWorks.
2. The Software paid-up license fee includes a warranty without charge as set forth in the Software License Agreement. In addition, support and maintenance ("Maintenance") for the Software is available as an option. Maintenance includes bug fixes and telephone support and may include, if they are made available by AssetWorks, Software updates and enhancements.
3. The purpose of this Agreement is to set forth the terms and conditions upon which CUSTOMER has agreed, at its option, to subscribe to Maintenance from AssetWorks.

B. TERMS AND CONDITIONS

1. Term

Maintenance shall commence immediately upon the Effective Date and shall have a term of five (5) years.

2. Correction of Deviations

In the event that the CUSTOMER encounters an error and/or malfunction ("Deviation") in the Software, it shall communicate the circumstances and any supporting information to AssetWorks. Upon receipt, AssetWorks will respond as follows:

- a. In the event that, in the mutual and reasonable opinion of AssetWorks and the CUSTOMER, there exists a Deviation that does not constitute a serious impediment to the normal intended use of the Software, AssetWorks will correct the Deviation and distribute the correction to the CUSTOMER in accordance with AssetWorks' normal Software revision schedule.
- b. In the event that, in the mutual and reasonable opinion of AssetWorks and the CUSTOMER, there exists a Deviation that does constitute a serious impediment to the normal intended use of the Software, AssetWorks will take such steps as are reasonably required to correct the Deviation with all due dispatch.

3. Software Revisions and New Versions

- a. The Software may be revised by AssetWorks as a result of the correction of Deviations and/or the release of upgrades or improvements or modifications designed to improve the performance of the Software and/or to increase the capabilities of the Software (hereafter "Revisions"). Revisions shall be of two kinds:
 - i. Revisions that the CUSTOMER is obliged to implement ("Mandatory Revisions");
 - ii. Revisions that may be implemented by the CUSTOMER at its option ("Optional Revisions").
 - iii. No charge shall be made to the CUSTOMER for either Mandatory Revisions or Optional Revisions.
- b. New versions ("New Versions") of the Software may be issued by AssetWorks from time to time. Compared to a Revision, a New Version substantially improves the performance of the Software and/or substantially increases its functionality and capability. AssetWorks, in its sole discretion, shall decide which upgrades and improvements will be issued as Revisions without charge and which shall be issued as New Versions for which there may be a charge.

4. Telephone Hotline Assistance

AssetWorks, at its expense, shall make available technically qualified personnel to respond to all reasonable telephone requests, Monday through Friday, excluding State holidays, during normal business hours, that may be made by the CUSTOMER relating to the application and operation of the Software. At other times such personnel are available for emergencies.

5. Technical Literature

AssetWorks shall make available to the CUSTOMER all technical literature that is considered by AssetWorks to be relevant to the Software and its use within the scope of CUSTOMER's operations.

6. Transmission

All Revisions and New Versions will be transmitted to the CUSTOMER on magnetic tape, magnetic disk or other suitable media, at the option of AssetWorks. The CUSTOMER shall be solely responsible for mounting the media and executing the appropriate instructions in order to transfer the Revisions or New Versions onto its system.

7. Remote Diagnostic Access

With the permission of the CUSTOMER, AssetWorks may remotely access the Software for the purpose of remote diagnostics and support.

8. Proper Use

- a. The CUSTOMER agrees that all reasonable effort shall be taken to ensure that neither the Software nor data files are misused.
- b. In the event that the CUSTOMER, or its agents, misuses the Software or data files, including, but not limited to, inserting, updating, deleting or otherwise modifying data through a means other than the Software, although AssetWorks is not obligated to correct such misuse,

AssetWorks shall be entitled to attempt to correct the situation, if possible, at CUSTOMER'S Expense.

- c. In the event that diagnostic assistance is provided by AssetWorks, which, in the reasonable opinion of AssetWorks and the CUSTOMER, relates to problems not caused by a Deviation in the Software, such assistance shall be at the CUSTOMER's expense.

9. Software Maintenance Fee – Paid Up License

In consideration of the Maintenance services to be provided by AssetWorks for each twelve-month period hereunder, CUSTOMER shall pay to AssetWorks the amounts listed in Schedule 1.

10. Additional Software Maintenance Fee – Paid Up License

In the event the CUSTOMER acquires Software in addition to that indicated in Schedule 1 of the Software License Agreement (the "Additional Software"), the Maintenance shall automatically be extended to cover the Additional Software, and the CUSTOMER shall pay an additional annual Maintenance fee in an amount equal to twenty percent (20%) of the then current license fee for the Additional Software starting with the next renewal date unless otherwise agreed by the parties in writing.

11. Other Fees and Expenses

If onsite maintenance is required, CUSTOMER will pay reasonable travel and living expenses of AssetWorks' employees or agents, which shall be billed and paid as the expenses are incurred.

12. Payment Terms

- a. Annual payments for Maintenance will be due in advance of the commencement of the initial one-year period of the Maintenance and each anniversary thereafter.
- b. CUSTOMER shall pay the Maintenance fees listed in Schedule 1.
- c. AssetWorks reserves the right to apply a late payment charge of 1.5% per month to amounts outstanding more than thirty (30) days after the date of the invoice.

13. Default and Termination

- a. The CUSTOMER shall have the right to terminate this Agreement upon delivery of written notice at least ninety (90) days prior to any scheduled renewal date.
- b. AssetWorks may cancel this Agreement in the event that the CUSTOMER does not implement a Mandatory Revision within sixty (60) days of receipt thereof or such longer period as AssetWorks may consent to in writing. In the event that CUSTOMER does not implement a Mandatory Revision within thirty (30) days following receipt of written notice from AssetWorks of CUSTOMER's failure to implement a Mandatory Revision, AssetWorks may then cancel this Agreement, effective immediately, by notice in writing to the CUSTOMER.
- c. In the event of any breach of the terms and conditions of this Agreement by the CUSTOMER, AssetWorks will, by written notice to the CUSTOMER, give the CUSTOMER a period of thirty (30) days within which to institute remedies to correct such breach. In the event that such breach has not been corrected to AssetWorks' satisfaction within said thirty (30) day period,

AssetWorks may then cancel Maintenance, effective immediately, by notice in writing to the CUSTOMER.

- d. In the event that this Agreement is terminated by AssetWorks, AssetWorks shall have no continuing obligations to the CUSTOMER of any nature whatsoever with respect to this Agreement. Furthermore, termination by AssetWorks pursuant to the provisions hereof shall be without prejudice to any right or recourse available to AssetWorks, and without prejudice to AssetWorks' right to collect any amounts, which remain due to it hereunder.
- e. Customer may terminate this agreement at any time upon thirty (30) days written notice for non-appropriation of Customer funds for this Agreement during the Customer's annual budget process. In the event of termination by the Customer due to non-appropriation of funds, the Customer shall only be responsible for payment of annual fees through the end of the fiscal year for which funds were appropriated by the Customer for this Agreement.

14. Limitation of Liability

- a. In the event of any claim brought by one party against another hereunder, a party will be liable only for actual, direct losses or damages incurred (including cost of cover), limited to the amount of fees paid to AssetWorks for maintenance services; provided, the claiming party shall be obliged to take reasonable steps to mitigate its losses or damages.
- b. Irrespective of the basis or theory of the claim, neither party will be liable for any special, punitive, exemplary, indirect, incidental or consequential damages of any kind, including, without limitation, lost profits or loss of data, even if it has been advised of the possibility of such damages.

15. General Terms

- a. Neither AssetWorks nor CUSTOMER will assign or transfer its interest in this Agreement or any Attachment without the prior written consent of the other party.
- b. All provisions of this Agreement, which by their nature should survive termination of this Agreement, will so survive.
- c. No delay or failure by either party to exercise any right hereunder, or to enforce any provision of this Agreement will be considered a waiver thereof. No single waiver will constitute a continuing or subsequent waiver. To be valid, a waiver must be in writing, but need not be supported by consideration.
- d. If any provision of this Agreement is held to be illegal, invalid or unenforceable, in whole or in part, such provision will be modified to the minimum extent necessary to make it legal, valid and enforceable, and the remaining provisions of this Agreement will not be affected.
- e. This Agreement, including its interpretation and enforcement, will be governed by the substantive laws of the State of Texas excluding its conflict of laws rules.
- f. Any communication or notice hereunder must be in writing, and will be deemed given and effective: (i) when delivered personally with proof of receipt;; (ii) when delivered by overnight express; or (iii) three (3) days after the postmark date when mailed by certified or registered mail, postage prepaid, return receipt requested and addressed to a party at its address for notices. Each party's address for notices is stated below. Such address may be changed by a notice delivered to the other party in accordance with the provisions of this Section.

AssetWorks LLC
998 Old Eagle School Rd. - Suite 1215
Wayne, PA 19087

CUSTOMER:
City of Corpus Christi
1201 Leopard St
Corpus Christi, TX 78401

Attn.: John Hines

Attn.: Tandra Milot, Asset Management

Copy to:

Director of Contracts
AssetWorks LLC
998 Old Eagle School Rd. - Suite 1215
Wayne, PA 19087
Attn: Legal Department

Copy to:

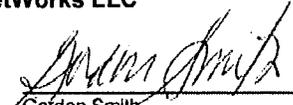
Jim Davis
City of Corpus Christi
1201 Leopard St
Corpus Christi, TX 78401

- g. In the event of any dispute arising in the performance of this Agreement or any Attachment, AssetWorks and the CUSTOMER will seek to resolve such dispute through good faith, amicable discussions and negotiations. Any specific agreed upon problem escalation procedure will be stated in the related Attachment. In the event of a conflict between the terms of an Attachment and this Agreement, the Attachment shall control unless otherwise provided in the Attachment. In any action at law or in equity to enforce or interpret the terms of this Agreement, the prevailing party will be entitled to recover its reasonable attorneys' fees and costs, in addition to any other relief ordered by the court. Such fees and costs will include those incurred in connection with the enforcement of any resulting judgment or order, and any post judgment order will provide for the right to receive such attorneys' fees and costs.
- h. Neither party will be liable for any failure to perform or any delay in performing any of its obligations hereunder when such failure or delay is due to circumstances beyond its reasonable control and without its fault (Force Majeure), including, without limitation, any natural catastrophe, fire, war, riot, strike, or any general shortage or unavailability of materials, components or transportation facilities, or any governmental action or inaction. Upon the occurrence of such event of Force Majeure, the affected party will immediately give notice to the other party with relevant details, and will keep the other party informed of related developments.
- i. This Agreement constitutes the entire agreement between the parties and supersedes all prior or contemporaneous oral, and all prior written, negotiations, commitments and understandings of the parties relating to the subject matter hereof. This Agreement may not be modified except by a writing executed by both parties.
- j. In accordance with Chapter 2270, Texas Government Code, the CUSTOMER may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. The signatory executing this Agreement on behalf of AssetWorks verifies that the company does not boycott Israel and will not boycott Israel during the term of this Agreement.
- k. AssetWorks will complete the submit a completed Disclosure of Interests form.
- l. AssetWorks will provide insurance in accordance with the attached Attachment 1 – Insurance Requirements.

IN WITNESS WHEREOF, the parties hereto, intending to be liable bound, have entered into this Agreement, effective as of the Effective Date.

AssetWorks LLC

CUSTOMER

By: 
Gordon Smith

By: _____

Title: Portfolio Manager

Title: _____

Date: 10/29/2018

Date:

EXHIBIT

INSURANCE REQUIREMENTS

I. CONTRACTOR'S LIABILITY INSURANCE

- A. Contractor must not commence work under this agreement until all insurance required has been obtained and such insurance has been approved by the City. Contractor must not allow any subcontractor to commence work until all similar insurance required of any subcontractor has been obtained.
- B. Contractor must furnish to the City's Risk Manager and Director of Fleet Services, 2 copies of Certificates of Insurance (COI) with applicable policy endorsements showing the following minimum coverage by an insurance company(s) acceptable to the City's Risk Manager. **The City must be listed as an additional insured on the General liability and Auto Liability policies, and a waiver of subrogation is required on all applicable policies. Endorsements must be provided with COI. Project name and or number must be listed in Description Box of COI.**

TYPE OF INSURANCE	MINIMUM INSURANCE COVERAGE
30-written day notice of cancellation, required on all certificates or by applicable policy endorsements	Bodily Injury and Property Damage Per occurrence - aggregate
Commercial General Liability including: 1. Commercial Broad Form 2. Premises – Operations 3. Products/ Completed Operations 4. Contractual Liability 5. Independent Contractors 6. Personal Injury- Advertising Injury	\$1,000,000 Per Occurrence \$1,000,000 Aggregate
PROFESSIONAL LIABILITY (Errors & Omissions)	\$1,000,000 Per Claim
AUTO LIABILITY (including) 1. Owned 2. Hired and Non-Owned 3. Rented/Leased	\$1,000,000 Combined Single Limit
WORKERS' COMPENSATION	Statutory
EMPLOYER'S LIABILITY	\$500,000 /\$500,000 /\$500,000

- C. In the event of accidents of any kind related to this agreement, Contractor must furnish the Risk Manager with copies of all reports of any accidents within 10 days of the accident.

II. ADDITIONAL REQUIREMENTS

- A. Applicable for paid employees, Contractor must obtain workers' compensation coverage through a licensed insurance company. The coverage must be written on a policy and endorsements approved by the Texas Department of Insurance. The workers' compensation coverage provided must be in an amount sufficient to assure that all workers' compensation obligations incurred by the Contractor will be promptly met.
- B. Contractor shall obtain and maintain in full force and effect for the duration of this Contract, and any extension hereof, at Contractor's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A- VII.
- C. Contractor shall be required to submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Contractor shall pay any costs incurred resulting from said changes. All notices under this Article shall be given to City at the following address:

City of Corpus Christi
Attn: Risk Manager
P.O. Box 9277
Corpus Christi, TX 78469-9277

- D. **Contractor agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following required provisions:**
- List the City and its officers, officials, employees, volunteers, and elected representatives as additional insured by endorsement, as respects operations, completed operation and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation policy;
 - Provide for an endorsement that the "other insurance" clause shall not apply to the City of Corpus Christi where the City is an additional insured shown on the policy;
 - Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City; and
 - Provide thirty (30) calendar days advance written notice directly to City of any cancellation. Contractor will provide thirty (30) calendar days advance written notice of any suspension, non-renewal, or material change in coverage, and will inform the City in writing within in ten (10) days of any lapse in coverage for any other reason.
- E. Within five (5) calendar days of a suspension, cancellation, or non-renewal of coverage, Contractor shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Contractor's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this contract.

- F. In addition to any other remedies the City may have upon Contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Contractor to stop work hereunder, and/or withhold any payment(s) which become due to Contractor hereunder until Contractor demonstrates compliance with the requirements hereof.
- G. Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractor's performance of the work covered under this agreement.
- H. It is agreed that Contractor's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of Corpus Christi for liability arising out of operations under this agreement.
- I. It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this agreement.

2018 Insurance Requirements
Fleet Services
Fleet Maintenance M5 Management Software - Hosting Agreement
05/11/2018 sw Risk Management

998 Old Eagle School Road | Suite 1215 | Wayne PA 19087-1805
 Tel (858) 452-0458 Fax (858) 452-0478

MAINTENANCE RENEWAL

Number 8327 M5FL MNT18_REV5_5yr

Adds Ad-hoc Query Module

Removes MobileFocus and Reservations Modules

TO: City of Corpus Christi
FROM: AssetWorks LLC
DATE: April 18, 2018
RE: FleetFocus M5 Maintenance and Support Renewal

Prices valid through December 31, 2022

Annual Software Maintenance and Support for period 1/1/2018 - 12/31/2018

FleetFocus M5 license for up to 2,000 equipment units Including Ad-hoc Query, Crystal Reports, Replacement Analysis, KPI/Dashboards, Motor Pool, and Shop Activity modules	\$ 27,505.17
Smart Apps, Year 2 pro-rated for period 4/1/2018 - 12/31/2018 (9 months)	\$ 2,520.00
FuelFocus software	\$ 774.27
Subtotal, 2018 Maintenance	\$ 30,799.44

OPTION 1: *Removed at City's request*

OPTION 2: Professional Services, up to 40 hours @ \$205, offsite; billed monthly as utilized \$ 8,200.00

Total, 2018 Maintenance + Options **\$ 38,999.44**

Annual Software Maintenance and Support for period 1/1/2019 - 12/31/2019

Same configuration as above	Subtotal, 2019 Maintenance \$ 33,221.41
OPTION 1: Basic Admission for 2 to AssetWorks Academy Fleet Users Conference in 2019	\$ 2,500.00
OPTION 2: Professional Services, up to 40 hours @ \$205, offsite; billed monthly as utilized	\$ 8,200.00
Total, 2019 Maintenance + Options	\$ 43,921.41

Annual Software Maintenance and Support for period 1/1/2020 - 12/31/2020

Same configuration as above	Subtotal, 2020 Maintenance \$ 34,882.48
OPTION 1: Basic Admission for 2 to AssetWorks Academy Fleet Users Conference in 2020	\$ 2,500.00
OPTION 2: Professional Services, up to 40 hours @ \$205, offsite; billed monthly as utilized	\$ 8,200.00
Total, 2020 Maintenance + Options	\$ 45,582.48

Annual Software Maintenance and Support for period 1/1/2021 - 12/31/2021

Same configuration as above	Subtotal, 2021 Maintenance \$ 36,626.60
OPTION 1: Basic Admission for 2 to AssetWorks Academy Fleet Users Conference in 2021	\$ 2,500.00
OPTION 2: Professional Services, up to 40 hours @ \$205, offsite; billed monthly as utilized	\$ 8,200.00
Total, 2021 Maintenance + Options	\$ 47,326.60

Annual Software Maintenance and Support for period 1/1/2022 - 12/31/2022

Same configuration as above	Subtotal, 2022 Maintenance \$ 38,457.93
OPTION 1: Basic Admission for 2 to AssetWorks Academy Fleet Users Conference in 2022	\$ 2,500.00
OPTION 2: Professional Services, up to 40 hours @ \$205, offsite; billed monthly as utilized	\$ 8,200.00
Total, 2022 Maintenance + Options	\$ 49,157.93

Maintenance and Support includes product updates and enhancements, unlimited email and telephone support for periods specified.
 Options to be included only if specified on a purchase order from the city.

REMIT TO: TX Sales Tax: 0.0000% \$ -

CHECKS

AssetWorks
 PO Box 202525
 Dallas TX 75320-2525

5-Year Budgetary Grand Total, Options Included \$ US **\$ 224,987.86**

For payment by credit card, an additional 4% fee will be charged.

EFT, ACH, OR DIRECT DEPOSIT

Wells Fargo, 8601 N. Scottsdale Rd., Scottsdale AZ 85253
 ABA # 122105278
 Account # 5076434348

US Tax ID # 98-0358175

Canada GST/HST # 834113896 RT0001

AssetWorks LLC is a subsidiary of Trapeze Software Group Inc.



998 Old Eagle School Road | Suite 1215 | Wayne PA 19087-1805
Tel (858) 452-0458 Fax (858) 452-0478

MAINTENANCE RENEWAL

Number 8327 M5FL MNT18_REV5_5yr
Adds Ad-hoc Query Module
Removes MobileFocus and Reservations Modules

TO: City of Corpus Christi
FROM: AssetWorks LLC
DATE: April 18, 2018
RE: FleetFocus M5 Maintenance and Support Renewal

Prices valid through December 31, 2022

Page 2 of 2

Acknowledgment

If you require a separate invoice, complete this form and return it by email or fax; AssetWorks will issue an invoice as you instruct below. If your organization requires us to reference a purchase order number on our invoice, we must receive that PO by email to Kimberly.Hamiter@AssetWorks.com or by fax to (858) 452-0478. Do not mail POs to our remittance address.

Terms

This maintenance renewal is issued pursuant to the terms of the current AssetWorks contract with your organization. The parties will continue to be bound by those terms during any renewal period unless otherwise agreed by both parties through a signed amendment. Notification of termination of maintenance is required 90 days prior to annual renewal date.

SOLE SOURCE

FleetFocus is proprietary property of AssetWorks LLC and protected by law. Another party cannot alter, modify, change, manipulate or provide maintenance for this product without infringing upon AssetWorks' ownership rights. Accordingly, **AssetWorks is the sole source for software, maintenance and services of its products.**

I, the undersigned, accept this maintenance renewal as described above.

Name: _____ Title: _____

Signature: _____ Date: _____

PO REQUIRED: # _____ NO PO REQUIRED WILL PAY BY QUOTE - NO SEPARATE INVOICE NEEDED

Please MAIL invoice to: _____

Please E-MAIL invoice to: _____

→ If you have any questions, please contact Kimberly Hamiter at (858) 866-9022 or Kimberly.Hamiter@AssetWorks.com. **Thank You!** ←