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Komputrol Software Systems
Annual Maintenance Agreement

1. Parties

Agreement made as of **June 1, 2014**, between Komputrol (a division of Keystone Consulting Services, Inc. an Indiana corporation), with its principal place of business at 9401 Innovation Drive, Suite 400, Daleville, Indiana 47334-0669 ("Licensor"), and **City of West Lafayette**, with its principal place of business at **609 West Navajo Street, West Lafayette, Indiana 47906-1995** ("Licensee"). Licensor and Licensee agree that the terms and conditions of this Maintenance Agreement cover maintenance services to be provided by Licensor to Licensee. Such maintenance services will be provided by Licensor only with respect to Licensed Software for which Licensee has received a license from Licensor.

2. Definitions

a) **Effective Date**. The date set forth in Clause 1.

b) **Errors, Malfunctions or Defects**. Deviations between the Licensed Software and the documentation furnished by Licensor for such Software.

c) **Licensed Software**. All programs and associated documentation licensed to Licensee under one or more Licenses for Software Products between the parties. Definitions in such Licenses shall apply to this Agreement unless plainly inconsistent.

d) **Maintenance Period**. A period of twelve (12) consecutive months commencing on the Effective Date of this Agreement, or the anniversary thereof.

e) **Minimum Support Period**. An initial period of **12** consecutive months commencing on the Effective Date of this Agreement.

f) **Software Product**. A licensed program and associated documentation that has been licensed by Licensor to Licensee.

g) **Successor Product**. A Software Product generally offered and expressly designated by Licensor in its sole discretion as a successor to a specified Software Product.

h) **Support End Date**. A date established by Licensor after which Support Service for a specific Software Product is no longer available.

i) **Support Service**. The Licensed Software support service ordered by Licensee and furnished under this Agreement, as such service is available and constituted from time to time.

3. Support Service Term

a) **Commencement**. Licensor will begin Support Service for each Software product on the date of installation of such Product or on the effective date set forth in Schedule A attached hereto, whichever is later.

b) **Continuation**. Licensor will continue to furnish Support Service for the Minimum Support Period. With respect to each Software Product set forth in Schedule A, this Agreement shall remain in effect for successive Maintenance Periods after the Minimum Support Period until terminated by notice from one party to the other.

c) **Termination**. Except as otherwise provided herein,

i) *Notice.* Either party may terminate this Agreement as of the end of any Maintenance Period by giving written notice to the other, such notice to be given by Licensor not less than sixty

(60) days before the end of the Maintenance Period, or by Licensee as to any specific Software Product at any time before the end of the Maintenance Period, provided such termination date is after the end of the Minimum Support Period with respect to such Software Product.

ii) *Default.* Either party may terminate this Agreement if the other party defaults in the performance of any of its obligations hereunder or under a License Agreement for Software Product, effective after written notification of default and failure to cure the default after ten (10) days. "Default" shall be defined as: (a) breach of any material term of this Agreement, including but not limited to, the failure of Licensee timely to pay Licensor fees or charges owed; or (b) breach of any material term or condition of any License Agreement between the parties; or (c) Licensee being declared a user not in good standing by Licensor. Licensor shall have the sole right to declare Licensee a user not in good standing for just cause, which shall include but not be limited to the following: abuse or misuse of the Systems, related materials, support services or Licensor staff; failure to obtain appropriate training for Licensee staff; ceasing to use the Systems on a regular basis for their intended purposes or replacing the Systems with those of another computer software Licensor. In the event of a default by either party, including that Licensor elects to declare Licensee a user not in good standing, then the party declaring the default shall give the other written notice of such declaration. The party receiving a declaration of default shall then have ten (10) days after receipt of such notice to cure the declared default. Failure to cure a default within the ten (10) day time limit shall give the party not in default the sole right and power to terminate this Agreement.

iii) *Remedies.* If Licensee fails to pay any amount owed to Licensor under this Agreement or otherwise breaches this Agreement and Licensor terminates this Agreement as provided in paragraph 3(c)(ii), it is agreed that in addition to any other appropriate remedies, any payments made to Licensor prior to termination shall be retained as liquidated damages. Furthermore, Licensee shall be responsible for Licensor's reasonable attorneys fees and court costs if Licensor successfully prosecutes an action against Licensee.

iv) *License Expiration.* This Agreement shall terminate automatically upon termination or expiration of all Licenses for Software Products.

v) *Termination of Support.* Licensor may terminate support service on a Support End Date.

4. Services to be Provided

Licensor shall provide the following services during a Maintenance Period:

a) **Error Correction**. Licensor shall attempt to correct documented errors in a Software Product when such errors are reported to Licensor and can be repeated by Licensor on its equipment. If a reported error causes a Software product to be inoperable or if Licensee's notice to Licensor states that such error is substantial and material with respect to Licensee's use of the Software Product, Licensor shall, as expeditiously as possible, use its best efforts to correct such error, or to provide a software patch or bypass around such error. However, under no circumstances does Licensor warrant or represent that all errors can or will be corrected. Licensor shall not be responsible for problems or defects in the Software Product caused by Licensee negligence, operator error, power failure, computer hardware failure or third-party software failure. Further, Licensor reserves the right to charge the Licensee for any on-site service call or telephone support service call made in response to any such problems.

If Licensee reports an error to Licensor, Licensee shall give Licensor reasonable access to the Equipment, the Software Product and all relevant documentation and records, and shall provide such reasonable assistance as Licensor may request, including sample output and other diagnostic information, in order to assist Licensor in providing maintenance service.

b) **Updates**. Licensor shall provide Licensee, at no additional cost, any updates, error corrections, modifications or enhancements (herein collectively called "Updates") for each Software Product under maintenance when such Updates are developed or published by Licensor and made generally available to other licensees of the Software Product at no additional cost. Any other

Updates developed or published by Licensor will be offered to Licensee at Licensor's then current, published rates. All Updates shall become part of the Software Product and Licensor shall be free to license others with respect thereto. Determination of whether an Update will be made available at no additional cost or will be made available only for an additional cost is the sole and exclusive right of Licensor.

c) **Hotline Service**. Licensor shall provide Licensee toll-free telephone support services to help Licensee in answering routine questions with respect to use of the Software Product. All common carrier charges incurred by Licensee and all costs of telephone and terminal equipment incurred by Licensee shall be the responsibility of Licensee.

d) **Regulatory and Statutory Requirements**. Licensor will make any changes to the application Software Systems necessitated by new or modified regulatory or statutory requirements of federal or state government agencies at no additional charge.

e) **Data Transmittal Programs**. Licensor will provide to Licensee, at no additional charge, software programs for magnetic media transmittal of W-2 payroll information to federal and state government agencies. Licensee is responsible for transmittal of its information. Licensor will develop and distribute programs to the Licensee to facilitate electronic transmittal of data to federal and state government agencies, as federal and state government agencies begin to accept electronically transmitted reports, at no additional charge to the Licensee.

f) **User Advisory Committee**. Licensor has a User Advisory Committee, which serves in an advisory capacity to Licensor management for the purpose of expressing concerns of Licensor software users and provides clients with a mechanism for sharing information and ideas with each other and Licensor. The Licensee will be regularly advised of recommendations or decisions made by the User Advisory Committee, and a representative of Licensee may be invited to serve a term on the User Advisory Committee.

g) **Newsletter**. Licensor publishes a periodic newsletter for clients including announcements and information of interest to clients, and the Licensee will receive the Licensor newsletter.

h) **Cooperative Software Development**. Licensor may make available to the Licensee the opportunity to participate with other License holders in the cooperative development of custom application software systems. The selection of any software systems to be developed shall be within the sole discretion of Licensor, and any software systems so developed shall remain the sole property of Licensor. Licensor will advise the Licensee of each such opportunity to be made available to Licensee and the cost of participation in the cooperative development of custom application software systems.

5. Licensee Responsibilities

a) **Interface**. Licensee shall be responsible for the interface between Software Products for which Support Service is available and all other software used by Licensee, whether or not such software is licensed to Licensee by Licensor or by others, or has been developed by Licensee.

b) **Installation and Operation**. Except as otherwise provided in Schedule A, Licensee is responsible for installing, managing and operating any Support Service elements delivered under this Agreement.

c) **Software License Limitations**. Licensee agrees that the rights granted to Licensee, the use limitations and Licensee's responsibilities to prevent unauthorized disclosure specified in the License for Software Products between Licensor and Licensee apply equally to all Support Service elements, such as corrective code, enhancements and Updates furnished under this Agreement.

d) **Modifications by Licensee**. In no event shall Licensor have any responsibility to correct any errors or damage resulting from changes to or modification of a Software Product made by Licensee.

e) **Uninstalled Updates**. Licensor shall not be responsible for correcting any alleged error if Licensee fails to incorporate in a Software Product any Update (as defined in Clause 4(b) hereof) that Licensor has provided to Licensee.

6. Charges

a) **Payment**. Licensee agrees to pay Licensor the annual charges for maintenance set forth in Schedule A upon execution of this Agreement. Any payment for separately billed services or products shall be due upon receipt of invoice. Additional services to be provided to Licensee by Licensor will be charged Licensor's current rates, which vary depending upon the service provided. A listing of Licensor's current rates will be available at Licensee's request.

No invoice under this Agreement shall be subject to credit for any period of non-use by Licensee for any reason, including defects in the Licensed Software.

b) **Changes**. Licensor may change the charges specified in Schedule A for all or any Software Product effective upon the expiration of the Minimum Support Period or at the end of any calendar month thereafter, by giving at least ninety (90) days written notice prior to the end of the Maintenance Period.

c) **Taxes**. In addition to charges due under this Agreement, the Licensee agrees to pay amounts equal to any sales, use or similar tax, and personal property taxes, if any, resulting from this Agreement.

7. Limitation of Liability and Remedies

a) **Limited Warranty**. LICENSOR MAKES NO WARRANTIES HEREUNDER, EITHER EXPRESS OR IMPLIED (INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE).

b) **Limitation of Remedy**. Licensee agrees that Licensor's liability hereunder for damages shall not exceed the annual maintenance fee paid, or payable, by Licensee for the software product, which Licensee claims resulted in Licensee being damaged for the Maintenance Period in which the cause of action accrued. Furthermore, if Licensee maintains a legal action of any kind against Licensor arising under this Agreement and Licensor successfully defends such action, the Licensee shall pay all costs and expenses, including reasonable attorneys' fee, incurred by Licensor in defending such action. Licensor is deemed to have successfully defended the action taken by Licensee if Licensee does not recover all relief requested.

c) **Limitation of Damages**. IN NO EVENT SHALL LICENSOR BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, OR TORT DAMAGES.

8. General

a) **Entire Agreement**. This Agreement sets forth the entire agreement and understanding between the parties as to the subject matter hereof and merges all prior discussions between them, and neither of the parties shall be bound by any conditions, definitions, warranties, understandings or representations with respect to such subject matter other than as expressly provided herein, or in any prior existing written agreement between the parties, or as duly set forth on or subsequent to the effective date hereof in writing and signed by a proper and duly authorized representative of the party to be bound thereby. No provision appearing on any form originated by Licensee shall be applicable unless such provision is expressly accepted in writing by Licensor.

b) **Force Majeure**. If Licensor shall be delayed or prevented from performing this Agreement due to any cause beyond its reasonable control, such delay shall be excused during the continuance of such delay, and the period of performance shall be extended to such extent as may be necessary to enable Licensor to perform after the cause of delay has been removed.

c) **Licensee Forms and Non-Waiver**. Any provision of Licensee's order that is in any way inconsistent with or in addition to the terms and conditions of this Agreement shall not bind Licensor, and Licensor's failure to object to any such provision shall neither be construed as a waiver of the terms and conditions of this Agreement nor as an acceptance of any such provision.

d) **Notices**. Any notice, request, instruction or other document pertaining to this Agreement shall be in writing and delivered personally or sent by U.S. Mail, postage prepaid, and addressed as follows:

If to Licensor: Komputrol
PO Box 669
Daleville, Indiana 47334-0669

If to Licensee: **City of West Lafayette**
Attn: Ms. Judy Rhodes, Clerk-Treasurer
609 West Navajo Street
West Lafayette, Indiana 47906-1995

Either party may change the address to which notice is to be sent by giving written notice thereof to the other party.

e) **Governing Law**. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Indiana. The exclusive jurisdiction for any legal proceeding regarding this Agreement shall be the appropriate federal or state court in the State of Indiana, and the parties hereto expressly submit to the jurisdiction of said courts.

f) **Assignments**. None of the Products or Services may be assigned or transferred by the Licensee without the prior written consent of Licensor. Any attempt by Licensee to assign or transfer any of the rights, duties, or obligations of this Agreement without Licensor's written consent is void.

g) **Captions**. Captions contained in this Agreement are for reference purposes only and are not part of the Agreement.

h) **Investment Certification.** Licensor certifies that it is not engaged in any investment activities in Iran pursuant to Indiana Code § 5-22-16.5-13(b).

9. Execution

Licensee acknowledges that it has read this Maintenance Agreement and agrees to all the terms and conditions stated herein. The parties have hereunto set their hands and seals as of the day and year first above written by their duly authorized officers.

City of West Lafayette
(Licensee)

By:_____

Name:_____

Title:_____

Date:_____

Accepted By Komputrol
(Licensor)

By: Michael B. Galliher

Name: Michael B. Galliher

Title: President

Date: March 29, 2014

Schedule A

Application Software System

Budgetary Accounting System
Payroll Processing/Direct Deposit System
Fixed Asset Inventory System

Total Annual Maintenance Fees	**$ 4,445.00**