SUPPORT AND MAINTENANCE AGREEMENT

THIS AGREEMENT is made as of the _____ day of _____, 2023 ("Effective Date").

BETWEEN:

SMARTWORKS, a division of
N. HARRIS COMPUTER CORPORATION,
("SmartWorks")

- and -

NEW BRAUNFELS UTILITIES
("Organization")

RECITALS

1. SmartWorks owns the Software and is authorized to license or sublicense the Third Party Software, which are being licensed to Organization pursuant to a Software License Agreement;

2. The Organization wishes to receive support and maintenance services related to the Software;

3. SmartWorks shall provide the support and maintenance services related to the Software;

4. The Organization has entered into a Software License Agreement through SmartWorks' predecessor in interest, Cogsdale Corporation; and

5. The Software License Agreement and this Support and Maintenance are intended to be and should be read and construed together.

NOW THEREFORE, in consideration of the mutual covenants set out in this support and maintenance agreement (the "Support and Maintenance Agreement") and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the parties agree as follows:

1. Unless otherwise defined herein, all defined terms used herein shall have the meaning ascribed to them in the Software License Agreement (the "License Agreement").

2. This Support and Maintenance Agreement is the exclusive statement of the entire support and maintenance agreement between SmartWorks and Organization, and replaces and

supersedes in its entirety that certain Support and Maintenance Agreement between Cogsdale and Organization dated August 10, 2015.

3. SmartWorks shall provide software support primarily via telephone and electronic mail in addition to site visits only when necessary. The support services will be provided during the hours of operation as described in Exhibit 2 and Exhibit 3 hereto. To enable SmartWorks to provide effective support, the Organization will establish auto remote access procedures compatible with SmartWorks' then current practices which may be revised over time.

4. This Support and Maintenance Agreement becomes effective on the Effective Date set forth above.

5. In consideration for the support services specified in Exhibit 2 and, Organization shall pay the "Support and Maintenance Fee" as detailed in Exhibit 1 below. The Support and Maintenance Fee will be billed annually in advance beginning on the Start Date and thereafter on the anniversary of the Start Date or on an alternative date mutually agreed to by both parties. SmartWorks may change the Support and Maintenance Fee from time to time in relation to each renewal term but Organization shall only be billed once per year; provided, however, that the Support and Maintenance Fee will not increase in any one year by a percentage that exceeds the Consumer Price Index for All Urban Consumers: Information Technology, Hardware and Services (CPI), as published by the US Department of Labor.

6. In addition to the Support and Maintenance Fee, Organization shall reimburse SmartWorks for its reasonable and necessary direct expenses in providing support services ("Billable Fees"), if there are any, pursuant to this Support and Maintenance Agreement which include as of the Start Date:

    (a) all reasonable and necessary direct travel expenses including, but not limited to: (i) hotel, airfare, car rental, tolls, parking and airline and travel agent fees; (ii) each individual's travel time billing rate of $100.00/hour; (iii) a per diem rate of $70.00 for week days and a $125.00 for weekends and statutory holidays that includes all meal and telecommunications expenses; and (iv) and a mileage charge consistent with the Internal Revenue Service recommended rate per mile. SmartWorks will not provide receipts to Organization for any of the items described in Sections 6(a)(ii), 6(a)(iii) or 6(a)(iv) for which SmartWorks is seeking reimbursement. SmartWorks will provide receipts free of charge to Organization for any other items in this Section 6(a) for which SmartWorks is seeking reimbursement.

    (b) Organization will not be responsible for any Billable Fees resulting from or necessitated by a defect or flaw in the Software or any negligence of SmartWorks in performance of any its duties or obligations under this Support and Maintenance Agreement.

SmartWorks may update its reimbursement policies from time to time, in which case such updated policies shall apply for purposes of this Support and Maintenance Agreement, provided that such updated reimbursement policies must apply to all clients of SmartWorks and be provided to Organization prior to the start of its fiscal year and further provided that any billing for reimbursement at new and higher rates shall be pursuant to a SOW agreed upon by the parties.

7. SmartWorks shall supply all Upgrades to Organization at no additional charge other than the payment of the Support and Maintenance Fee. Upgrades may require additional services to be performed by SmartWorks outside of the scope of those services provided by SmartWorks as described in Exhibit 2. The cost and scope of any additional services shall be agreed upon in writing by the Parties prior to SmartWorks performing such services or incurring such fees.

8. All Updates of the Software and all those services listed in Exhibit 2 which are included as part of Organization's Software support will be made available to Organization at no additional charge other than the payment of the Support and Maintenance Fee.

9. All payments hereunder shall be in U.S. dollars. SmartWorks shall be responsible for paying all taxes, fees, assessments and premiums of any kind payable on its employees and operations. SmartWorks is advised that Organization is tax exempt by virtue of its status as a governmental entity.

10. The initial term of this Support and Maintenance Agreement shall be for one year beginning on the Start Date.

11. Thereafter, this Support and Maintenance Agreement shall automatically renew on an annual basis until September 30, 2027 at which time it will expire, unless terminated earlier by either party upon giving to the other not less than ninety (90) days' notice in writing prior to the end of the initial term or any subsequent renewal term. Organization shall pay the Support and Maintenance Fee in advance for each term of the Support and Maintenance Agreement. The termination of this Support and Maintenance Agreement by Organization shall not affect the License or the Software License Agreement. SmartWorks shall neither refund any Support and Maintenance Fees nor any Billable Fees if this Support and Maintenance Agreement is terminated. In all automatic renewals subsequent to 2027, in the event that SmartWorks fees have increased, SmartWorks will provide to Organization the new fee rates at least ninety (90) days prior to the renewal date so that Organization may elect to terminate at its election rather than pay the adjusted rate.

Title to and ownership of all proprietary rights in the Releases and all related proprietary information supplied by SmartWorks in providing the services pursuant to this Support and Maintenance Agreement shall at all times remain with SmartWorks, and Organization shall acquire no proprietary rights by virtue of this Support and Maintenance Agreement.

12. SmartWorks shall have the right to terminate this Support and Maintenance Agreement immediately by written notice to Organization if:

(a) Organization assigns this Support and Maintenance Agreement or any of its rights hereunder, or undergoes a Reorganization, without complying with the License

Agreement; or

(b)   Organization has not paid an invoice within ninety (90) days of the start of a renewal term unless Organization has issued a written notice of dispute, in which event only the disputed sum may be withheld.

13.   Unless otherwise agreed to by the parties, all notices required hereunder shall be made in accordance with the provisions of the License Agreement.

14.   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 or the non-breaching party may elect to enforce any such provision in the event of any repeated or continuing breach by the other. A term or condition of this Support and Maintenance Agreement may be waived or modified only by written consent of both parties.

15.   The parties agree that the terms and conditions contained herein shall prevail notwithstanding any variations on any orders, e-mails or other correspondence submitted by Organization.

16.   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 date of termination.

17.   The Organization and SmartWorks recognize that circumstances may arise entitling the Organization to damages for breach or other fault on the part of SmartWorks arising from this Support and Maintenance Agreement. The parties agree that these provisions will survive notwithstanding the termination or other discharge of the obligations of the parties under this Support and Maintenance Agreement

i.   EXCEPT FOR DAMAGES ARISING OUT OF (a) SMARTWORKS' INTENTIONAL MISREPRESENTATION, GROSS NEGLIGENCE OR WILLFUL CONDUCT, (b) DAMAGE TO TANGIBLE PROPERTY OR (c) INJURY OR DEATH TO PERSONS, BOTH PARTIES AGREE THAT THE

AGGREGATE LIABILITY OF SMARTWORKS TO ORGANIZATION FOR ALL CLAIMS, SUITS, ACTIONS AND PROCEEDINGS HOWSOEVER ARISING, DIRECTLY OR INDIRECTLY, UNDER OR RELATING TO THIS SUPPORT AND MAINTENANCE AGREEMENT OR ITS SUBJECT MATTER, INCLUDING THOSE BASED ON BREACH OR RESCISSION OF CONTRACT, TORT, BREACH OF TRUST, OR BREACH OF FIDUCIARY DUTY SHALL NOT EXCEED, IN THE AGGREGATE, ONE (1) TIMES THE AMOUNT OF FEES ACTUALLY PAID BY THE ORGANIZATION TO SMARTWORKS UNDER THIS SUPPORT AND MAINTENANCE AGREEMENT DURING THE THEN-CURRENT TERM (AND IN NO EVENT BEING GREATER THAN 12 MONTHS) OF THE SUPPORT AND MAINTENANCE AGREEMENT UP TO AND INCLUDING THE DATE OF TERMINATION.

ii. BOTH PARTIES AGREE THAT THE AGGREGATE LIABILITY OF ORGANIZATION TO SMARTWORKS FOR ALL CLAIMS, SUITS, ACTIONS AND PROCEEDINGS HOWSOEVER ARISING, DIRECTLY OR INDIRECTLY, UNDER OR RELATING TO THIS SUPPORT AND MAINTENANCE AGREEMENT OR ITS SUBJECT MATTER, INCLUDING THOSE BASED ON BREACH OR RESCISSION OF CONTRACT SHALL NOT EXCEED, IN THE AGGREGATE, ONE (1) TIMES THE AMOUNT OF THE SUPPORT AND MAINTENANCE FEE ORGANIZATION IS OBLIGATED TO PAY TO SMARTWORKS UNDER THIS SUPPORT AND MAINTENANCE AGREEMENT FOR THE THEN-CURRENT TERM (AND IN NO EVENT BEING GREATER THAN THE FEES OWED FOR THE CURRENT 12 MONTH TERM). THIS PROVISION, OR ANY OTHER PROVISION IN THIS AGREEMENT, SHALL NOT WAIVE ANY GOVERNMENTAL OR SOVEREIGN IMMUNITY OR STATUTORY LIMITATIONS OF LIABILITY, SUCH AS THE TEXAS TORT CLAIMS ACT.

iii. IN ADDITION TO THE FOREGOING, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY CLAIMS FOR CONSEQUENTIAL DAMAGES, INCIDENTAL DAMAGES, INDIRECT DAMAGES, SPECIAL DAMAGES, AGGRAVATED DAMAGES, LOSS OF REVENUE, LOSS OF PROFITS, FAILURE TO REALIZE EXPECTED SAVINGS, LOSS OF DATA, LOSS OF BUSINESS OPPORTUNITY EITHER UNDER OR RELATING TO THIS SUPPORT AND MAINTENANCE AGREEMENT OR ITS SUBJECT MATTER, WHETHER BASED ON BREACH OF CONTRACT, RESCISSION OF CONTRACT, TORT, BREACH OF TRUST, OR BREACH OF FIDUCIARY DUTY.

18. 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 extend to such person's affiliates and to its shareholders, directors, officers, employees and affiliates.

19. 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 such party for liabilities of the other party arising out of or in connection with this Support and Maintenance Agreement, notwithstanding any remedy otherwise available at law or in equity.

20. This Support and Maintenance Agreement shall be governed by the laws of the State of Texas without regard to conflict of laws principles. Exclusive venue for all purposes will lie in a court of competent jurisdiction for Comal County, Texas.

21. 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 License Agreement. SmartWorks may not assign any of its rights or duties under this License Agreement without the prior written consent of the Organization, except that SmartWorks may assign any of its rights or duties to a successor entity in the event of its dissolution, acquisition, sale of substantially all of its assets, merger or other change in legal status.

22. 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.

23. 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.

24. Insurance Coverage.
    i. <u>Insurer Qualifications</u>. Without limiting any obligations or liabilities of SmartWorks, SmartWorks shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies authorized to do business in the State of Texas with an A.M. Best, Inc. rating of A- VII or above with policies and forms satisfactory to NBU. Failure to maintain insurance as specified herein may result in termination of this Agreement at Organization's option.

    ii. <u>No Representation of Coverage Adequacy</u>. By requiring insurance, Organization does not represent that coverage and limits will be adequate to protect SmartWorks. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency will not relieve SmartWorks from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

    iii. <u>Additional Insured</u>. All insurance coverage and self-insured retention or deductible portions, except Workers' Compensation insurance and Professional Liability insurance, if applicable, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, Organization, its agents, representatives, officers, directors, officials and employees as an Additional Insured (CG 2010 1001 and CG 2037 1001 or an equivalent on the general liability policy) as specified under the respective coverage sections of this Agreement.

    iv. <u>Coverage Term</u>. All insurance required herein shall be maintained in full force and effect until all the Services required to be performed under the terms of this Agreement are satisfactorily performed, completed and formally accepted by Organization, unless specified otherwise in this Agreement.

v.   <u>Primary Insurance</u>.   SmartWorks' insurance shall be primary insurance with respect to performance of this Agreement and in the protection of Organization as an Additional Insured.

vi.   <u>Claims Made</u>. In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage will extend, either by keeping coverage in force or purchasing an extended reporting option, for three years after the conclusion of the term of this Agreement. Such continuing coverage will be evidenced by submission of annual certificates of insurance stating applicable coverage is in force and containing provisions as required herein for the three-year period.

vii.   <u>Waiver</u>. The Worker's Compensation, Auto Liability and Commercial General Liability policies will contain a waiver of rights of recovery (subrogation) against Organization, its agents, representatives, officials, officers and employees for any claims arising out of the Services performed by SmartWorks. SmartWorks shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.

viii.   <u>Policy Deductibles and/or Self-Insured Retentions</u>. The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts SmartWorks shall be solely responsible for any such deductible or self-insured retention amount.

ix.   <u>Evidence of Insurance</u>. Prior to the Effective Date of this Agreement, SmartWorks shall provide suitable evidence of insurance to Organization, which confirms that all required insurance policies are in full force and effect. Evidence of insurance shall be in a form acceptable to Organization. Organization will rely upon the requested information, including, but not limited to, certificates of insurance but such acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the policies required by this Agreement expire during the life of this Agreement, it will be SmartWorks' responsibility to forward renewal certificates and evidence of insurance to Organization five (5) days prior to the expiration date.

(A)   <u>Required Insurance Coverage</u>. Any of the coverage set forth below may be waived by Organization in its sole discretion, but any such waiver must be signed by an authorized representative of Organization on or before the Effective Date of this Agreement.

i.   <u>Commercial General Liability</u>. SmartWorks shall maintain "occurrence" form Commercial General Liability insurance with an unimpaired limit of not less than $500,000 for each occurrence and a $500,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products, completed operations, personal injury, and property damage. The definition of insured contract cannot have any modifications as outlined in the ISO policy form CG 0001 0413. Third party action over coverage must not be specifically excluded. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, Organization, its agents, representatives, officers, officials and employees shall be cited as an Additional Insured. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

ii.   <u>Auto Liability</u>. SmartWorks shall maintain Automobile Liability insurance with a limit of $100,000 combined single limit on the SmartWorks' owned or hired and non-owned vehicles, as applicable, assigned to or used in the performance of the Services by SmartWorks under this Agreement. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, Organization, its agents, representatives, officers, directors, officials and employees shall be cited as an Additional Insured. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

iii. <u>Professional Liability</u>. SmartWorks shall maintain Professional Liability insurance covering negligent errors and omissions arising out of the Services performed by SmartWorks, or anyone employed by SmartWorks, or anyone for whose negligent acts, mistakes, errors and omissions the SmartWorks is legally liable, with an unimpaired liability insurance limit of $1,000,000 each claim and $2,000,000 annual aggregate. In the event the Professional Liability insurance policy is written on a "claims made" basis, coverage shall extend for three years after the conclusion of the term of this Agreement, and SmartWorks shall be required to submit certificates of insurance and other requested information evidencing proper coverage is in effect as required above. Confidential information such as the policy premium or proprietary information may be redacted from the insurance information requested, provided that such redactions do not alter any of the information required by this Agreement.

iv. <u>Workers' Compensation and Employer's Liability Insurance</u>. SmartWorks shall maintain Workers' Compensation insurance to cover the Professional's employees engaged in the performance of the Services under this Agreement and shall also maintain Employers Liability Insurance of not less than $1,000,000 for each accident, $1,000,000 disease for each employee and $1,000,000 disease policy limit.

25. This Support and Maintenance Agreement may be executed in counterparts (whether by facsimile signature or in PDF format via e-mail or otherwise), each of which when so executed shall constitute an original and all of which together shall constitute one and the same agreement.

26. Confidentiality

(a) For purposes of this Support and Maintenance Agreement, "Confidential Information" means all information or material which: is (A) marked "Confidential," "Restricted," or "Proprietary Information" or other similar marking, (B) known by the parties to be considered confidential or proprietary, such as the Software, or (C) which should be known or understood to be confidential or proprietary by an individual exercising reasonable commercial judgment in the circumstances such as Organization's financial data and customer data. Confidential Information does not include information to the extent that such information: (i) is or becomes generally known to the public by any means other than a breach of the obligations of a receiving party hereunder; (ii) was previously known to the receiving party as evidenced by its written records; (iii) is rightly received by the receiving party from a third party who is not under an obligation of confidentiality; or (iv) is independently developed by the receiving party without reference to or use of the other party's Confidential Information.

(b) <u>Duty Owed to the Disclosing Party</u> — Each Party ("Receiving Party") to this Agreement acknowledges that it may receive Confidential Information from the other Party ("Disclosing Party") or otherwise in connection with this Agreement or the performance of the services under this Agreement. To the extent allowed by law or except for information in the public domain, Receiving Party agrees:

(i) to maintain this Confidential Information in confidence;

(ii) not to use this Confidential Information other than in the course of this Agreement;

(iii) not to disclose or release such Confidential Information except on a need-

to-know only basis; and

(iv)   not to disclose or release such Confidential Information to any third person without the prior written consent of the Disclosing Party, except for authorized employees or agents of Receiving Party, or as required by law or an opinion issued by the Texas Attorney General under the Texas Public Information Act.

(c)   SmartWorks recognizes that Organization is a governmental entity and subject to the disclosure requirements of the Texas Public Information Act. The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Agreement and SmartWorks agrees that the Agreement can be terminated if SmartWorks knowingly or intentionally fails to comply with a requirement of that subchapter.

(d)   This Section will survive termination of this Support and Maintenance Agreement.

27.   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 Agreement and carry out its provisions.

28.   If any legal proceeding is necessary to enforce the terms of this Agreement, the prevailing party will be entitled to reasonable attorney's fees awarded by a court in addition to any other relief to which that party may be entitled under this Agreement.

29.   *Prohibition on Contracts with Companies Boycotting Israel.* SmartWorks hereby verifies that it and its parent company, wholly-or majority owned subsidiaries, and other affiliates, if any, does not boycott Israel and, to the extent this Agreement is a contract for goods or services, will not boycott Israel during the term of this Agreement as described in Chapter 2271 of the Texas Government Code, as amended. As used in the foregoing verification, "boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. SmartWorks understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with SmartWorks and exists to make a profit.

30.   *Contracts with Companies Engaged in Business with Iran, Sudan or Foreign Terrorist Organizations Prohibited.* SmartWorks represents that neither it nor any of its parent company, wholly-or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, as amended, and posted on any of the following pages of such officer's internet website:

https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf,
https://comptroller.texas.gov/purchasing/docs/iran-list.pdf, or
https://comptroller.texas.gov/purchasing/docs/fto-list.pdf.

The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal or State law and excludes SmartWorks and each of its parent company, wholly-or majority-owned subsidiaries, and other affiliates, if any, that the United States government has

affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. SmartWorks understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with SmartWorks and exists to make a profit.

31.   *Prohibition on Contracts with Companies in China, Iran, North Korea, or Russia.* To the extent this Agreement relates to critical infrastructure in the State of Texas, SmartWorks represents the following:

(a)   it is not owned by or the majority of stock or other ownership interest in SmartWorks is not held or controlled by:

(i)   individuals who are citizens of China, Iran, North Korea, Russia, or a country designated by the Governor of Texas as a threat to critical infrastructure under Section 2274.0103 of the Texas Government Code, as amended ("designated country"); or

(ii)   a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a designated country; or

(b)   it is not headquartered in China, Iran, North Korea, Russia, or a designated country.

The foregoing representation is made solely to comply with Chapter 2274 of the Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal or State law. As used in the foregoing verification, "critical infrastructure" means a communication infrastructure system, cybersecurity system, electric grid, hazardous waste treatment system, or water treatment facility.

32.   *Prohibition on Contracts with Companies Boycotting Energy Companies.* SmartWorks hereby verifies that it and its parent company, wholly-or majority owned subsidiaries, and other affiliates, if any, do not boycott energy companies and, to the extent this Agreement is a contract for goods or services, will not boycott energy companies during the term of this Agreement as described in Chapter 2274 of the Texas Government Code, as amended

The foregoing verification is made solely to comply with Section 2274.002 of the Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal and State law. As used in the foregoing verification, "boycott energy companies" has the meaning used in Section 809.001 of the Texas Government Code, as amended. SmartWorks understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with SmartWorks and exists to make a profit.

33.   *Prohibition on Contracts with Companies that Discriminate Against Firearm and Ammunition Industries.* SmartWorks hereby verifies that it and its parent company, wholly-or majority owned subsidiaries, and other affiliates, if any, do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and, to the extent this Agreement is a contract for goods or services, will not discriminate against a firearm entity or firearm trade association during the term of this Agreement as described in Chapter 2274 of the Texas Government Code, as amended.

34.   The foregoing verification is made solely to comply with Section 2274.002 of the Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal and State law. As used in the foregoing verification, "discriminate against a firearm entity or firearm trade association" has the meaning used in Section 2274.001(3) of the Texas

Government Code, as amended. SmartWorks understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with SmartWorks and exists to make a profit.This Agreement is subject to appropriation of funds. The provisions of this Agreement for payment of funds by Organization shall be effective when funds are appropriated for purposes of this Agreement and are actually available for payment. Organization shall be the sole judge and authority in determining the availability of funds under this Agreement and Organization shall keep SmartWorks fully informed as to the availability of funds for the Agreement. The obligation of Organization to make any payment pursuant to this Agreement is a current expense of Organization, payable exclusively from such annual appropriations, and is not a general obligation or indebtedness of Organization.   If sufficient funds are not appropriated to pay the amounts as set forth in this Agreement during any immediately succeeding fiscal year, this Agreement shall terminate at the end of the then-current fiscal year and Organization and SmartWorks shall be relieved of any subsequent obligation under this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Support and Maintenance Agreement to be effective as of the date first written above.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the Effective Date hereof.

NBU/NEW BRAUNFELS UTILITIES,
a Texas municipally owned utility

By:_____
Name: Ian Taylor
Title: CEO
Date:

SMARTWORKS, A DIVISION OF N. HARRIS COMPUTER CORPORATION:

By: *Pelletier*
Name: Marianne Pelletier
Title: Director of Customer Success
Date: January 30, 2023

<div align="center">

Exhibit 1
Annual Support and Maintenance Fee

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Organization shall pay SmartWorks for the Services performed throughout the term of this Agreement in an amount not to exceed $69,984.50 for Year 1; $74,883.42 for Year 2; $80,125.25 for Year 3; $85,734.02 for Year 4; and $91,735.40 for Year 5. Organization may pay Smartworks' up to $20,000 for travel expenses during the term of this Agreement. In no event shall the amount Organization pays to SmartWorks exceed $422,462.59 for the duration of this Agreement without prior written consent of both parties.

Exhibit 2

Standard Support and Maintenance Services – Guidelines

The services listed below are services that are included as part of your software support for SmartWorks Compass.

- Support for the SmartWorks products as implemented by our Professional Services group includes:
  - The SmartWorks products and all default functionality
  - The SmartWorks product side of the interfaces with other third party systems, as implemented by our Professional Services Consultants
  - Customized rules developed by Professional Services staff. Rules developed or modified by the Organization are not supported through the standard Support and Maintenance agreement.
  - The integrity of the data within the SmartWorks products, to the extent that the SmartWorks product has manipulated it. The SmartWorks products are not responsible for the completeness or accuracy of the data originating in third party systems (e.g. AMI, CIS, etc.)
  - Advice on VEE parameter settings and processes, however the VEE settings themselves are the responsibility of the Organization
- We will create and install software updates (release notes will be available upon request and on the Customer Hub) that may include:
  - Defect corrections (as warranted)
  - Planned enhancements
  - State (Provincial) and/or Federal mandated changes (charges may exist depending on scope)
  - From time to time, we will provide software upgrades (note that there may be charges in implementation depending on the scope of services)
- We will troubleshoot customer issues and provide recommendations for resolution
- We will provide remote training on subjects of limited scope. As a rule of thumb, a subject of limited scope can be addressed in about 15 minutes over the phone. If a customer makes numerous training requests in a short period of time, we may deem the training requests to be of a broad nature.
- HealthWatch - Online Diagnostics
  - HealthWatch rules will collect data and alert Support Services when specific thresholds have been met (e.g. disk space limit reached, no interval data for two days, etc.)
  - We will proactively monitor your solution to identify small issues before they become big problems using our HealthWatch tool. Depending on the nature of the issue, we may either alert you or attempt to address the issue ourselves.
  - If customer decides to opt-out of HealthWatch, charges may apply.
- Customer Care Program. On a periodic basis, we will share useful information regarding the use of your SmartWorks products and our services through one or more of the following methods:
  - Support Bulletins
  - Communication on new products and services
  - On-site visits (as required)

- - Webinars
  - Surveys
  - Knowledge Base
- If requested, provide an Outstanding Tickets Report with conference call
- Ability to attend the annual customer conference (attendance fees apply)
- Opportunity to participate in BETA programs at our discretion
- We shall provide an online ticketing system with the following features:
  - Ability to log and close tickets
  - Ability to view and update tickets
  - Ability to update contact information
  - Access to published documentation
  - Access to support knowledge base
  - Ability to report on metrics
- 800 Toll Free Telephone Support (Call SmartWorks at 1-877-696-0125)

Organization Responsibilities

In order to effectively provide our support services, the customer Organization is responsible for the following items:

- Organization shall notify Consultant of suspected defects in any of the Software supplied by Consultant. Organization shall provide, upon Consultant request, additional data deemed necessary or desirable by Consultant to reproduce the environment in which such defect occurred.
- Organization shall allow the use of online diagnostics on the Software supplied by Consultant to Organization. Organization shall provide to Consultant, at Organization's expense, access to the Designated Computer System via the Organization's communications software.
- Organization shall ensure that its personnel are, at relevant stages of the project, educated and trained in the proper use of the Software in accordance with applicable Consultant manuals and instructions. If Organization's personnel are not properly trained as mutually determined by Consultant and Organization, Organization agrees that such personnel will be trained by Consultant or Organization within fifteen (15) days of determination. If Organization desires Consultant to perform the required training then Consultant shall be compensated in accordance with this Agreement.
- Organization shall establish proper backup procedures necessary to replace critical Organizational data in the event of loss or damage to such data from any cause. Organization shall provide Consultant with access to qualified functional or technical personnel to aid in diagnosis and to assist in repair of the Software in the event of error, defect or malfunction.
- Organization shall have the sole responsibility for:
  - The performance of any tests it deems necessary prior to the use of the Software.
  - Assuring proper Designated Computer System installation, configuration, verification, audit controls and operating methods.
  - Implementing proper procedures to assure security and accuracy of input and output and restart and recovery in the event of malfunction.
  - Timely upgrade and keeping current all third party license releases and/or Software products to meet the requirements of the Consultant Software.

- Organization is responsible for the data quality, completeness, and availability from 3rd party applications on which SmartWorks product relies.
- Organization shall be responsible for rules created and/or edited by Organization staff.
- Organization shall be solely responsible for all VEE parameters settings, the regular monitoring of validation failures, and the rectification of any validation failures.

Solution Updates

SmartWorks will make software updates available from time to time. When an update is available, SmartWorks will make an announcement to its customers.

Customers are expected to make commercially reasonable efforts to keep current on the latest version of the SmartWorks Software.

Once a new version is available, you shall have 6 months to update your software. After that time, SmartWorks will charge you at the standard services rate for any support related activities performed by SmartWorks in addition to the support fees you are already paying.

Further, SmartWorks will not provide any support services for customers on a version that is more than one (1) version older than the current version.

Billable Support Services

The services listed below are services that are out of scope of your support and maintenance agreement and are therefore considered billable services.

- Provision of remote or on-site training on subjects of broad scope
- New interfaces or connections to non-SmartWorks (or third party) applications
- Creation of test instances
- Custom modifications (e.g. rules, reports, new data, etc.)
- Data conversions and global modification to setup table data
- Database maintenance, repairs and optimization, refreshes, backups, restores
- Extended Hardware and Operating System support
- Upgrades and support of third party software (e.g. database software, OS, web server, etc.)
- Installations and/or re-installations of software solution
- Support for rules, reports, database procedures, or screens developed by, or modified by, the Organization
- Cleansing or re-processing of data originating from a third party system (e.g. AMI, CIS, etc.)

Note: If customer purchases a billable service with a maintenance fee such as the ones listed above, the Organization is responsible for supporting these items.

Test Databases and Environments

We support customers in the maintenance of independent Test Environments for testing purposes. This allows customers the opportunity to test fixes, modifications, new business processes and/or

scenarios without risking any potentially unwanted changes to the live environment. The creation of Test Databases and Environments is a billable service; quotations and incremental maintenance rates will be provided on request.

Operations

Hours

Our standard hours of support are from 8:00 a.m. EST to 8:00 p.m. EST, Monday to Friday, excluding designated statutory holidays. Weekend assistance is available, but must be scheduled in advance, and in most cases is billable.

Holiday Schedule

Below is a listing of statutory holidays. Please note that support services will be closed on designated days as outlined below.

New Year's Eve	Early Closure (noon EST)
New Year's Day	Closed
President's Day (USA) /Family Day (Canada)	Closed
Victoria Day (Canada)	Closed
Labor Day	Closed
Canada Day (Canada)	Closed
Thanksgiving Day (Canada)	Closed
Christmas Eve	Early Closure (noon EST)
Christmas Day	Closed
Boxing Day (Canada)	Closed

Ticket Process

All issues or questions reported to support are tracked via a TeamSupport Customer Hub ticket. Our support analysts cannot provide assistance unless a support ticket is logged. The use of a TeamSupport ticket allows us to track the resolution of your issues. As well, it helps us measure our activities so we can properly forecast our staffing requirements. Our current process for logging tickets includes the following: TeamSupport's SmartWorks Customer Hub (via website), email, phone and fax.

- Your ticket must contain at a minimum: your organization name, contact person, software product and version, module and/or menu selection, nature of issue, detailed description of your question or issue and any other information you believe pertinent.

- Our support system or one of our support analysts will provide you with a ticket id to track your issue and your ticket will be logged into our support tracking database.

- Your ticket will be stored in a queue and the first available support representative will be assigned to deal with your issue.

- As the support representative assigned to your tickets investigates your issue, you will be notified of status updates, actions and a resolution plan via the support ticketing system. If we require additional information, you will be contacted by the assigned support representative to supply the information required.

- All correspondence and actions associated with your ticket will be tracked against your ticket ID in our support database. At any time, you may log onto our website to see the status of your ticket.

- Once your issue has been resolved, the ticket will be set to a "Resolved" status. You will then have time to evaluate the resolution and provide feedback. Once you are satisfied that the issue has been addressed, you will then close the ticket. We will do our best to provide you with adequate time to evaluate the resolution. However, we will then close a ticket if we do not receive any feedback for an extended period of time. You will always be notified of a pending or actual ticket closure. You will have the option of re-opening the ticket if needed.

- Once your ticket has been closed, you will receive an automated notification by email. This email will contain the entire event history of the ticket from the time it was created and leading up to the resolution of the ticket. You also have the option of viewing both your open and closed tickets, if available to you, via our website.

- If your issue needs to be escalated to a development resource or programmer for resolution, your issue will be forwarded to our development team. Your support ticket will remain open until our development team provides a response. If a development item opens, you will be provided with a development tracking number upon request. Issues escalated to development will be scheduled for resolution and may not be resolved immediately depending on the nature and complexity of the issue. If an issue is determine to be an enhancement or feature, we will log a ticket in our product management queue and will notify you when a release has been made available.

- You may contact the support department at your convenience for a status update on your development issues.

Ticket Priorities

In an effort to assign our resources to incoming tickets as effectively as possible, SmartWorks has identified three ticket priorities: 1(high/critical), 2(medium), and 3(low). The criteria used to establish a ticket priority are as follows:

Priority Level	Description
1	- System Down (Software Application, Hardware, Operating System, Database) - Program errors without workarounds - Incorrect calculation errors impacting one-third of records - Error messages preventing data integration and update - Performance issues of severe nature impacting critical processes - Security Issues *Note: in most cases issues affecting a test environment only will not be considered a priority of 1*
2	System errors that have workarounds

	• Calculation errors impacting less than one-third of records • Reports calculation issues • Performance issues not impacting critical processes • Usability issues • Workstation connectivity issues (Workstation specific)	
3	• Training questions, how to, or implementation of new processes • Aesthetic issues • Issues where a workaround is available for a large majority of cases • Recommendations for enhancements on system changes • Questions on documentation • Test environment issues or questions	

Response Times

Response times will vary and are dependent on the priority of the ticket. We do our best to ensure that we deal with incoming tickets in the order that they are received, however, tickets will be escalated based on the urgency of the issue reported. If a support ticket is logged during standard operating hours, our response times are as follows:

Priority	Initial Response Time*	R&D Response Time from Escalation	Update Frequency
1	Within 4 hours	Same day	Every 2 business days
2	Within 8 hours	Within one week	Every 5 business days
3	Within 24 hours	Within 3 weeks	Every 10 business days

*During Business Hours

Example:

- Priority 1 Support Ticket received Monday January 2 at 10 am >> Support Analyst responds Monday January 2 by noon >> Support Analyst sends update Monday January 2.

- Priority 1 Support Ticket received Monday January 2 at 9 PM >> Support Analyst responds Tuesday January 3 by noon >> Support Analyst sends update Tuesday January 3.

Escalation Process

We strive to provide a satisfying and positive support experience. However, if at any time you are not completely satisfied with the resolution of your issue, you are encouraged to escalate within Support Services, as follows:

Level 1: Your ticket's assigned Support Analyst
Level 2: Team Lead, Support Services
Level 3: Manager, Support Services
Level 4: Executive Vice President, SmartWorks

Exhibit 3
Extended Infrastructure Support Services contract

2023 SmartWorks
Extended Infrastructure Support Services

This document defines the "Extended Infrastructure Support Services" offering provided by the Harris Utilities, SmartWorks division of N.Harris Computer Corporation (Herein referred to as "Consultant").

Customer: _____ (Herein referred to as "Customer").

Related Documents

The Services described in this document supplement Customer's standard Support and Maintenance Services and will be provided under the terms and conditions defined in the SOFTWARE LICENSE, IMPLEMENTATION AND SUPPORT AND MAINTENANCE AGREEMENT between Consultant and Customer.

Description of Services

Compass Oracle and Red Hat Linux Support

Oracle Database Support
- Database tuning and configuration as recommended for best performance of the SmartWorks Compass and MeterSense MDM products.
- Ongoing management of database resources (index rebuild, data file management, etc.).
- Monitoring Oracle published alerts.
- Database software updates/patches as required. All updates/patches will be completed in a test environment first.
- ODBC installation and connection to database assistance.
- Updating database to support new versions of installed application.
- Assist in the Integration of DB backup into Customer's enterprise backup solution.
- Assist Customer in developing a Database recovery strategy, including assisting Customer in recovery testing (maximum 8 hours per year). Note: Customer is responsible for implementing a recovery strategy in in accordance with their IT policies.
- Support provided for installed database issues such as:
  - Repair of corrupted files (limited by the capabilities of the version of Oracle used by Customer).
  - Database recovery after a failure that has left database tables in an invalid state (limited to the capabilities of RMAN in the version of Oracle used by Customer as well as the recovery strategy implemented by Customer).
- Assist in database refresh from production to test environment a maximum of once per year as requested by client.

Red Hat Linux Support
- OS tuning and configuration
- Monitor and address resource issues (i.e. low memory or disk availability) using HealthWatch
- Integrate server backup into Customer's enterprise backup solution
- Assist client in developing a recovery strategy from an OS perspective
- Installation of OS upgrades and patches(Pretested "SmartWorks Approved" upgrades/patches)

Optional Service for Connect; PostgreSQL Database support
(Available only to Customers using the Connect platform supported by SmartWorks)

- Ongoing management of Database resources (Re-indexing, log file management, etc.).
- Database software updates/patches as required.
- Updating database to support new versions of installed application.
- Assist in the Integration of DB backup into city's enterprise backup solution.
- Assist client in developing a Database recovery strategy, including assisting the client in recovery testing (maximum 4 hours per year)
- Assist in database recovery after a failure that has left database tables in an invalid state

Term and Termination

This agreement is effective on the later of the date of signature, or Support and Maintenance Services start date.

This Agreement shall automatically renew on an annual basis, unless Customer or Consultant terminate this agreement in accordance with the terms as defined in the SUPPORT AND MAINTENANCE AGREEMENT between Consultant and Customer.

This agreement automatically terminates upon termination or expiration of the SUPPORT AND MAINTENANCE AGREEMENT.

In addition, Customer or Consultant may terminate this agreement independently of the Support and Maintenance agreement.

Assumptions
Customer is responsible for all license and maintenance fees for Oracle, Red Hat Linux, or PostgreSQL in order for Customer to receive any maintenance updates.

Consultant will provide database repair and recovery services provided Customer abides by Consultants recommended practices for database resiliency.

If Customer was not following recommended practices and the repair and recovery activities require an extraordinary level of effort, additional fees may apply.

Fees & Payment Schedule

In consideration for the support services specified in Section 2.1, Customer shall pay **$18,000** per annum in addition to the fees paid by Customer for standard Support and Maintenance services.   If Customer elects to receive the optional PostgreSQL Database support specified in Section 2.2, Customer shall pay an additional **$1,845** per annum

The first invoice will be paid within 30 days of signature. In order to match the annual invoicing of the fee for these services with the invoicing of the Support and Maintenance Fee Consultant's first invoice will be prorated for the portion of the term remaining for the initial term.

Customer will be billed according to the terms of the Support and Maintenance agreement. Consultant may change the Fee from time to time in accordance with the terms of the Support and Maintenance agreement.

Taxes
Fees exclude any applicable taxes.

Validity
The price is valid for a service start date of 2023. Customer may request this date to be extended.

Acceptance and Signoff

A signature below will serve as Customer's acceptance of Extended Infrastructure Support Services and agreement to pay the associated fees.

Please provide both an authorized signature for sign off on this quotation, and a technical contact. Please initial below to indicate which services will be added to your standard Support and Maintenance Services.

__x___ I am electing to add the Extended Infrastructure Support Services to my standard Support and Maintenance Services.

__x___I am also electing to add the Optional HomeConnect or BizConnect PostgreSQL Database Support Services to my standard Support and Maintenance Services (available only to Customer's using HomeConnect supported by SmartWorks).

Print Name (Authorized signature)	Signature	Date

Name (Technical Contact)	e-mail	Phone Number

N. Harris Computer Corporation

The Harris Utilities SmartWorks manager authorized to sign this change order.

Marianne Pelletie	*Pelletier*	Jan 30, 2023
Marianne Pelletier, Director of Customer Success	Signature	Date

Please sign and return this document to Marianne Pelletier:
- Email: mpelletierharriscomputer.com.