

## CIVICA SUPPLY, IMPLEMENTATION AND SUPPORT CONTRACT

### BETWEEN

- (1) Civica North America, Inc., incorporated in the state of Ohio, U. S. A., headquartered at 52 Hillside Court, Englewood, OH (**Civica**); and
- (2) City of Willowick, a local government agency registered in Ohio, with its primary office at 30435 Lakeshore Blvd., Willowick, OH (**Customer**).

### BACKGROUND

- (A) Customer has a requirement for a software system and wishes to use Civica's software and services in its business operations.
- (B) Civica has agreed to supply software and services to Customer in accordance with the terms of this Civica Supply, Implementation and Support Contract.
- (C) The Customer has agreed to take and pay for Civica's software and services subject to the terms and conditions of Contract.

### AGREED

#### 1. Definitions

- 1.1 The following definitions apply to this Contract:

**Annual Fees** means recurring fees payable by Customer each Year in order to continue to use the Software and the Third Party Software. The current fees are detailed in Schedule 3.

**Civica Hardware** means hardware that is not sold to Customer, but provided to Customer by Civica in order to provide the Services.

**Civica Service Manager** means the person nominated by Civica as its authorized representative who will be the prime point of contact for the purpose of this Contract.

**Confidential Information** means all confidential information (however recorded, preserved or disclosed) disclosed by a party or its employees, officers, representatives or advisers to the other party including but not limited to all designs, design studies, surveys, project plans, implementation plans, software, customised specifications, system configurations, user guidance, training hand-outs, proprietary data whose disclosure to third parties may be damaging and other similar information, and any Software or materials which have been, or will be supplied to Customer by Civica in connection with this Contract.

**Contract** means the terms and conditions of this Civica Supply, Implementation and Support Contract including all the Schedules.

**Customer Responsibilities** means those obligations to be performed by Customer as detailed in Clause 5.

**Customer Service Manager** means the person nominated by Customer as its authorized representative who will be the prime point of contact for the purpose of this Contract.

**Equipment** means all items of hardware, equipment and associated documentation, excluding Civica Hardware, supplied by Civica to Customer under the Contract, including, without limit, such items listed in Schedule 2.

**Fees** means all charges payable under this Contract including the Licence Fees, implementation charges and Support Fees payable by Customer to Civica as detailed in Schedule 3.

**Implementation Services** means any services provided by Civica associated with the implementation of the Software or the Products.

**Information Security Standards** means the standards document setting out details of the security standards and measures Civica has agreed to maintain.

**Initial License Fees** means initial License Fee payable by Customer on delivery of the Software and Third Party Software as set out in Schedule 3.

**Installation Address** means Customer's authorized site as detailed in Schedule 1.

**Intellectual Property Rights/IPR** means all intellectual and industrial property rights including copyright, licenses, patents, know-how, trademarks, trade names, inventions, registered designs, applications for and rights to apply for any of the foregoing, unregistered design rights, unregistered trademarks, database rights, and any other rights in any invention, discovery or process whether in existence at the date hereof or created in the future.

**License Fees** means the Initial License Fees and the Annual Fees.

**Minimum Period** means the minimum term the Software license and the Services are to be provided under the Contract which is a period of Five Years from the Start Date.

**Maintenance Release** shall mean a new release of the Software that is substantially the same as the current Software, which is issued by Civica in order to remove known errors or otherwise improve or enhance the Software.

**Minimum Hardware Requirements** means the description of hardware required to run the Software (and if applicable the Third Party Software) and on which the Software is licensed to be used and whose minimum configuration is described in Schedule 1 or otherwise made known to Customer.

**New Version** shall mean a release of the Software that incorporates significant new or additional functionality and features. New Versions may be subject to additional license and implementation fees.

**Open Source Software** means software that is supplied on an "as is" basis with the Software and is supplied to Customer with all of the rights granted under the applicable licence.

**Order** means a document that is agreed between Customer and Civica for the provision of additional software and services as described in Clause 6.6.

**Product(s)** means Equipment and/or Third Party Software, if any.

**Services** mean any services provided by Civica under this Contract as detailed in Schedule 2 including the Implementation Services and the Support Services.

**Service Desk** means the central point of contact within Civica for Customer's users of the service.

**Service Levels/SLA** means the service level agreement detailed in Schedule 2.

**Software** means Civica's proprietary software and all programs, modules, media and associated documentation (excluding Third Party Software and Open Source Software) licensed to, or made available to Customer under this Contract, as listed in Schedule 2, together with any updates or Maintenance Releases (but excludes New Versions).

**Software Error** means an error in the program code of the Software which causes the Software to be partially or totally inoperative or causes incorrect data to be displayed or stored.

**Special Terms** means any special, additional or varied terms and conditions including third party terms and conditions, agreed between the parties that are set out in Schedule 4 and form part of this Contract.

**Start Date** means the date when this Contract is signed by both parties (if on different dates the later of the two dates).

**Support Fees** means the fees payable each Year for the Support Services detailed in Schedule 3.

**Support Services** means the maintenance and support services for the Software (and if applicable Products) as described in Schedule 2.

**Third Party Software** means any third party software and associated documentation, including, without limit, that listed in Schedule 2, supplied by Civica under this Contract to Customer that is subject to the third party software owner's licensing terms and conditions included in the Special Terms, or which accompany the third party software, or that have been agreed in writing between Customer and the third party software owner.

**Working Day** means 8:00am – 5:00pm EST Monday through Friday excluding Civica U. S. observed holidays.

**Year** means initially one year from the Start Date and thereafter the 1 January – 31 December (being a reduced term in the 2<sup>nd</sup> year being the anniversary of Start to 31 December) and each subsequent anniversary.

1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this Contract.

- 1.3 A person includes a corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Words in the singular shall include the plural and vice versa.
- 1.6 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension or re-enactment, and includes any subordinate legislation for the time being in force made under it.
- 1.7 Any phrase introduced by the words including, includes, in particular or for example, or any similar phrase, shall be construed as illustrative and shall not limit the generality of the related general words.
- 1.8 References to clauses and schedules are to the clauses and schedules of this Contract. References to paragraphs are to paragraphs of the relevant schedule.
- 1.9 Customer and Civica agree that these terms and conditions, together with any Special Terms shall apply to this Contract, and that in the event of, and to the extent of, any conflict or inconsistency between the Special Terms and these terms and conditions the Special Terms shall prevail.

## **2. Contract Term**

- 2.1 This Contract and the Software Licence granted under clause 4 will be in force for the Minimum Period and thereafter it shall continue until it is terminated:
  - 2.1.1 by either party upon 90 days written notice to the other party, such notice to expire at the end of the next Year; or
  - 2.1.2 otherwise in accordance with the terms of this Contract.

## **3. Civica Obligations**

- 3.1 Civica shall provide the Products, Software and Services to Customer and shall carry out the tasks in accordance with the provisions of this Contract from the Start Date, including:
  - 3.1.1 supply Customer with a copy of the Software (together with one copy of the appropriate on-line manuals, on the appropriate media);
  - 3.1.2 if any, supply the Customer with the Products including copies of any Third Party Software;
  - 3.1.3 provide the Services using reasonable care and skill in accordance with good industry practice;
  - 3.1.4 if any, provide the Civica Hardware;
  - 3.1.5 provide the Support Services.
- 3.2 The Software License and Products shall be provided by Civica from the Start Date subject to Customer paying the relevant Fees. Support Services will be provided from the Start Date and subject to Customer paying the Annual Fees and Support Fees each Year thereafter or other negotiated date and until this Contract is properly terminated in accordance with Clause 2.2. No refund will be given for Fees paid in advance on termination.
- 3.3 Civica shall, where applicable and shown as being provided in Schedule 1 and Schedule 2, install the Software and Products and deliver any Civica Hardware at the Installation Address or as specified in Schedule 1.
- 3.4 Civica shall not be liable for any failure to provide or delay in providing the Services or for any failure to meet or delay in meeting the Service Levels, to the extent that they arise out of or in connection with any:
  - 3.4.1 act or omission of Customer or its employees, agents or subcontractors which affects Civica's ability to provide the Services;
  - 3.4.2 breach by Customer of its obligations including Customer Responsibilities under this Contract;
  - 3.4.3 inaccurate or incomplete data, information or documentation provided by Customer;
  - 3.4.4 failure by a third party to fulfil its obligations to Customer;

- 3.4.5 use by Customer of non-manufacturer recommended media and supplies, or any neglect or improper use, or electrical disturbances, or any unauthorized use, of the Products, Software and Services or modification by persons other than Civica employees.
- 3.5 Subject to reasonable notice, Civica will provide information that Customer reasonably requests in order to meet its audit requirements. Civica reserves the right to charge a reasonable fee if Customer requires Civica to hold and make available information that is not covered by normal accounting practices and would not normally be made available by a commercial organization.

#### **4. Software License**

- 4.1 Civica grants to Customer upon payment of the applicable License Fees and subject to the terms and conditions in this Contract, a non-exclusive, non-transferable, term license in object code only to use the Software. The Software shall include any Maintenance releases and/or updates of the Software licensed to Customer under the Support Services.
- 4.2 Without prejudice to the other provisions of this Contract, the license granted in Clause 4.1 is subject to the following conditions:
- 4.2.1 The license is personal to Customer and the Software may only be used by Customer for its internal business purposes on a computer system meeting the Minimum Hardware Requirements.
- 4.2.2 Except to the extent permitted by law, Customer shall not, nor permit any third party to, adapt or modify the Software, or decompile, reverse engineer, disassemble or otherwise derive the source code of the Software.
- 4.2.3 Server elements of the Software are only licensed for use on a single live database and no more than two additional databases may be used for the purposes of testing and training only.
- 4.2.4 Customer may only make as many copies of the Software as are reasonably necessary for operational security, including back-up purposes, and lawful use. Such copies and the media on which they are stored shall be the property of Civica. Customer shall make full and accurate records of such copying and location of the copies and make these available to Civica upon request.
- 4.2.5 The Software is the confidential proprietary information of Civica or its licensor and as such Customer shall not modify or remove any copyright or proprietary notices on the Software and shall reproduce such notices on any copies of the Software and shall treat such Software as confidential.
- 4.2.6 The Software may only be installed at the Installation Address. If Customer wants to change the Installation Address prior consent is needed from Civica.
- 4.2.7 Customer shall not permit any third party to use, access or possess the Software nor use the Software on behalf of or for the benefit of any third party, including any consulting, service-bureau, time-sharing, rental or services of any other kind, except for a third party which provides outsourced services to Customer under a written agreement. The Customer shall be liable to and warranty Civica in full in respect of any breach of the license conditions or obligations of confidentiality caused by such third party, as if such acts or omission were its own, to the extent permitted by Ohio law.
- 4.2.8 If the Software fails to operate due to Customer linking to, accessing or otherwise using the Software or causing the Software to be used in conjunction with, any third party software, database or other application without the prior written consent of Civica then Civica shall not be liable. Customer is not allowed to use third party software which is designed to replicate, run or operate in conjunction with the Software without Civica's written consent.
- 4.3 Products, including Third Party Software, and Open Source Software supplied by Civica will be subject to separate license terms and conditions as notified to Customer by Civica. Civica will pass through all licenses, terms and warranties to Customer upon receipt of payment for the Products. In the event of conflict between the third party license terms and the terms of this Contract, the third party license terms shall prevail in respect of such Products only.
- 4.4 Customer acknowledges that the Software may incorporate technical means of enforcing or monitoring the license terms of the Software, which may result in Customer being unable to utilize the Software beyond these Contract terms.

4.5 Civica shall place current copies of the source code of the Software with its chosen agency, each quarter. The Customer shall have the right to demand delivery of the source code for the Software upon the conditions and pursuant to the terms of an Escrow Agreement to be executed by and between the escrow agent, and Civica, for the benefit of Customer.

## **5. Customer Obligations**

5.1 Customer shall:

5.1.1 only use the Products, Services and Software in accordance with the usage restrictions shown in Schedule 1;

5.1.2 use the Software in accordance with the license terms set out in Clause 4;

5.1.3 promptly pay to Civica the Fees and any other charges due under this Contract in accordance with Schedule 3;

5.1.4 where required, permit reasonable access by Civica to its sites including the Installation Address, in order for Civica to (i) perform its obligations under this Contract; and (ii) ensure compliance with the terms of the Software license;

5.1.5 where Civica personnel are required to work at Customer sites, ensure that its personnel provide all reasonable assistance including desk space, telecommunications equipment and administrative support, as and when required by Civica to discharge its obligations, and particular take all measures necessary to comply acts, orders, regulations and codes of practice relating to health and safety, which may apply to those involved in the performance of this Contract;

5.1.6 carry out and comply with the Customer Responsibilities;

5.1.7 be responsible for (i) its connectivity to the Internet including remote support access by Civica; and (ii) the compatibility between its IT system and the Software and/or Products;

5.1.8 when notified by Civica or the owners of Products supplied, implement promptly any Maintenance Releases or other fixes or upgrades of any system software necessary for the successful operation of the Software and Products;

5.1.9 purchase the necessary upgrade to the license to accommodate higher volumes of usage when any license usage restrictions are exceeded, if applicable.

5.2 Customer agrees that it is the best judge of the value and importance of the data held on the hardware running the Software (and if applicable the Third Party Software) and will be solely responsible for instituting and operating all necessary daily backup procedures to minimize the risk of loss of data.

5.3 Customer warrants that shall in no way allow unauthorized use of the Software by the Customer or any third party whether through breach of this Contract or any other negligent or wrongful act.

5.4 Customer represents and warrants that it possesses the full power and authority to enter into and perform its obligations under this Contract.

## **6. Services**

6.1 Unless otherwise stated in Schedule 2 the Services will be provided by Civica or its affiliates or its or their representatives or contractors on Working Days, either at Civica sites or at the Installation Address.

6.2 Customer will give to Civica promptly upon request such information and documents as Civica reasonably requires for the provision of the Services.

6.3 Services will be provided in accordance with this Contract and in particular Schedule 2. Each party shall perform its obligations set out in this Contract in a timely manner.

6.4 If the dates scheduled for delivery of the Implementation Services are deferred or cancelled by Customer, Civica may revise any scheduled date for completion of any part of the Implementation Services and/or change for the days as detailed in Clause 12.5.

6.5 Support Services are only available for the then current and immediately preceding release of the Software.

## **Additional Services**

6.6 This Contract also acts as an umbrella agreement, which sets out the general terms for the supply of additional related software and services by Civica to the Customer, when so requested from time to time. Such additional software and services and any particular special terms and conditions applicable to the supply thereof shall be set out in Orders. If Civica provides any additional software or services Customer shall be charged separately for the provision of these at Civica's then prevailing rates for such software or services.

## **7. Delivery and Acceptance**

7.1 Upon delivery of any Products to Customer's premises risk shall pass to Customer; title to and property in the Products shall remain with Civica until payment for the Products is made in full by Customer and is received by Civica.

7.2 Where installation of Software:

7.2.1 is by Civica, delivery shall be the date when Civica installs the Software onto the associated hardware either at Civica's premises, or premises of a third party acting on Customer's or Civica's instructions, or the Installation Address;

7.2.2 is a Customer Responsibility, delivery shall be the date the Software is delivered to Customer (either by a physical delivery on media, or remotely by electronic means).

7.3 Acceptance of Software shall be on the earlier of:

7.3.1 delivery or delivery and installation of the Software as detailed in Clause 7.2; or

7.3.2 deemed to have occurred on the date of first live use or processing of data (except for testing purposes).

## **8. Warranties**

8.1 Each party warrants to the other that it has the full power and authority to enter into and perform this Contract.

8.2 Civica warrants in respect of the Software:

8.2.1 that it will, during normal use, provide the facilities and functions described in the accompanying software manuals. Such warranty will start upon acceptance of the Software (in accordance with Clause 7) and continue for so long as the Software is supported by Civica and Customer continues to pay the Annual Fees and Support Fees; and

8.2.2 it has tested for viruses in the Software using commercially available virus checking software consistent with current industry practice.

8.3 If the Software fails to comply with the warranty in Clause 8.2 and Customer gives Civica written notice of such breach together with such information as may be reasonably necessary to assist Civica in resolving the breach, Civica shall at its own expense and within a reasonable time:

8.3.1 remedy the breach by repairing or replacing the Software or any part; or

8.3.2 advise how to achieve substantially the same functionality as described in the software manuals through a different procedure from that set out in the software manuals; or

8.3.3 refund the appropriate portion of the Licence Fees paid for the Software or module provided Customer deletes and returns all copies of the Software or module to Civica.

8.4 The warranties in Clause 8.2 shall not apply if the Software is:

8.4.1 not being used in accordance with Clause 4;

8.4.2 not used in accordance with the software manual;

8.4.3 used in a manner for which it was not intended or other than as permitted by this Contract; or

8.4.4 Third Party Software or Open Source Software.

8.5 Customer acknowledges that:

8.5.1 software in general is not error free and that the existence of such errors in the Software shall not by themselves constitute a breach of this Contract;

- 8.5.2 the Software is not customized software and has not been prepared to meet Customer's individual requirements and that it is therefore the responsibility of Customer to ensure that the facilities and functions in the Software meet its requirements.
- 8.6 Subject to Clause 4.3 Civica shall pass to Customer the benefit of any warranties for the Products that are available from the manufacturers.
- 8.7 Civica warrants that the Services will be carried out with reasonable skill and care and in accordance with good industry practice. In the event of a breach of the warranty under this Clause 8.7 and provided such breach is reported to Civica within a reasonable time (given the nature of the Service) after completion of the Service and, Civica shall re-perform the Service without additional charge to Customer within a reasonable period of time.
- 8.8 The express terms of this Contract are in lieu of all warranties, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade usage, course of dealing or otherwise, all of which are excluded to the fullest extent permitted by law.

## **9. Intellectual Property Rights (IPR)**

- 9.1 All IPR in the Software, any Products and the Services supplied by Civica from time to time, including all trade secrets, copyright, patent rights, ideas and any other IPR in relation thereto, shall belong to Civica or its suppliers or a third party licensor.
- 9.2 Civica shall defend or, at its option, settle any claim brought against Customer that its normal use or possession of the Software, excluding Products and Open Source Software, in the US and in accordance with this Contract infringes any IPR of any third party and shall indemnify Customer against any damages finally awarded against Customer in respect of such claim and any reasonable costs and expenses incurred by Customer provided that:
- 9.2.1 it notifies Civica immediately and shall not make any comment or admission to any third party in respect thereof;
- 9.2.2 Civica is given complete control of such claim, all information and assistance as Civica reasonably requires at Civica's cost, and Customer does not prejudice the defense of such claim; and
- 9.2.3 the claim does not arise as a result of (i) any circumstances set out at Clause 8.4; and/or (ii) breach of Clause 4.
- 9.3 In the event that a claim as contemplated by Clause 9.2 is made or in Civica's opinion is likely to be made, Civica may at its option:
- 9.3.1 procure the right for Customer to continue to use the Software affected;
- 9.3.2 change or replace all or any part of the Software; or
- 9.3.3 terminate this Contract immediately upon written notice in respect of the affected Software.
- 9.4 Clauses 9.2 and 9.3 state the entire liability of Civica to Customer in respect of any claim as contemplated by Clause 9.2.

## **10. Customer Data**

- 10.1 Civica acknowledges that title and all copyright and other intellectual property rights in Customer Data will remain at all times owned by Customer. Civica further acknowledges the sensitivity of all Customer Data and commits that all data will be safeguarded as it would safeguard its own proprietary information. Customer acknowledges that Civica does not desire to process protected health information or other personal information or personal data; Customer represents that Customer Data will not include such information, and Customer will not provide or otherwise make such information available to Civica or otherwise through the Products, Software, or Services.
- 10.2 Customer grants to Civica a non-exclusive, non-transferrable, royalty-free license for the term of this Contract to use, copy, reproduce, adapt and modify Customer Data for purposes of this Contract.
- 10.3 Civica will immediately permanently delete or destroy, all Customer Data in the possession or control of Civica or its agents or contractors upon receiving a written request from the Customer.
- 10.4 Civica will, at no additional cost to Customer, comply with Customer's reasonable security requirements for the handling of Customer Data.

- 10.5 Civica will, upon receipt of a written request from Customer and upon payment of Civica's reasonable costs, return to Customer all Customer Data in the possession or control of Civica or its agents or contractors
- 10.6 Civica will, at its own cost, do all things and execute all documents necessary or convenient for the purpose of giving effect to this clause 10.

## **11. Confidentiality**

- 11.1 Both parties shall keep the other party's Confidential Information confidential and unless it has the prior written consent of the other shall:
- 11.1.1 not use or exploit the Confidential Information in any way except for carrying out its obligations under this Contract;
- 11.1.2 not disclose or make available the Confidential Information in whole or in part to any third party, except as expressly permitted by this Contract;
- 11.1.3 not copy, reduce to writing or otherwise record the Confidential Information except as necessary for this Contract; and
- 11.1.4 not use, reproduce, transform, or store the Confidential Information in an externally accessible computer system or transmit it in any form or by any means whatsoever outside of its usual places of business.
- 11.2 A party may disclose Confidential Information to the extent required by law, by any governmental or other regulatory authority, or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of this disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this Clause 11.2 it takes into account the reasonable requests of the other party in relation to the content of this disclosure.
- 11.3 Civica may publicise the fact that it has been engaged by the Customer to provide the Services and is licensed to copy and reproduce any names or logos of the Customer for this purpose on its website and in any promotional materials, proposals or tenders. No press release will be issued without the Customer's prior consent. The Customer agrees to work with Civica on a case study within 3 months of the Start Date.
- 11.4 If either party becomes aware of a breach of this clause 11 it shall promptly notify the other and give all reasonable assistance in dealing with such breach.

## **12. Payment Terms**

- 12.1 All prices referred to in this Contract are expressed in US Dollars and are exclusive of taxes which are payable by Customer in accordance with the then current legislation. If the Customer is currently exempt by law from state sales and excise taxes, the Customer is responsible for providing proof of such exemption to Civica.
- 12.2 Except as otherwise specified in Schedule 3 as being due on specific dates, or in advance of a date or event, all invoices shall be due for payment within 30 days of the date of the invoice(s) without set-off, deduction or other withholding. All Contract Fees are non-cancellable and non-refundable except. Annual Fees may be adjusted from time to time in accordance with Civica's then-current policies.
- 12.3 Where services are provided on a time and materials basis they will be at the rates current at the time of provision of the service. Where specific daily rates are quoted, these are only valid for 6 months following the date of signing this Contract (or any later date noted in Schedule 3). Unless otherwise stated in Schedule 3, invoices for work carried out on a time and materials basis will be raised monthly in arrears based on time actually worked on the chargeable activities covered by this Contract (as recorded by Civica staff on Civica's internal systems).
- 12.4 Any Service provided outside of a Working Day will be chargeable at the then current time and materials rates plus 50%.
- 12.5 If the provision of the Implementation Services is cancelled, suspended or deferred under Clause 6.4 Civica will:
- 12.5.1 be entitled to payment by Customer for all work done up to such deferment cancellation or suspension (including payment of the Initial Licence Fees); and



- 12.5.2 where able redeploy such staff but in the event the days cannot be re-assigned Civica may charge for these. The rates chargeable for cancellation or deferment where there is: (i) less than 48 hours' notice is 100% per day; (ii) less than 7 days' notice is 75% per day; and (iii) more than 7 days' notice is 50% per day; together with any expenses already incurred or non-refundable e.g. train or air fares.
- 12.6 In the event live use of any Software is delayed by Customer, for 2 months or more after acceptance occurs, then Civica reserves the right to invoice the relevant Fees to Customer for payment. Any costs incurred by Civica as a result of Customer deferring the Software or Services under this Contract e.g. Product charges, will be invoiced on such notice of deferment. Where Civica is able without liability to defer such orders for Products it will do so.
- 12.7 Civica may increase its Fees in line with the then current prices of Civica and its suppliers as follows:
- 12.7.1 except for third party costs, the percentage increase may be applied not more than once per Year or as otherwise agreed in Schedule 3, and as a general rule shall not exceed 6% per year but is subject to change; and
- 12.7.2 NOT USED.
- 12.8 NOT USED.
- 12.9 All daily prices referred to in this Contract are exclusive of transport, travel, subsistence or out of pocket expenses incurred by Civica in carrying out the Services unless otherwise shown in Schedule 3.
- 12.10 Any undisputed amount due hereunder and not received by Civica by the applicable due date shall bear an additional charge of one and an half percent (1.5%) per month (or the maximum rate permissible under applicable law, if less than the foregoing) from the date due until paid. Civica shall be entitled to reimbursement of reasonable collection costs and attorneys' fees in the event Civica retains a collection firm or legal counsel due to Customer's non-payment of fees.

### **13. Limits of Liability**

- 13.1 Neither party excludes or limits liability to the other party for:
- 13.1.1 death or personal injury arising from its negligence; or
- 13.1.2 fraud or fraudulent misrepresentation; or
- 13.1.3 to the extent such limitation or exclusion is unlawful.
- 13.2 Notwithstanding anything to the contrary in this Contract, but subject to Clause 13.1 neither Civica nor Customer shall be liable to the other for any of the following (whether or not the party being claimed against was advised of, or knew of, the possibility of such losses) whether arising from negligence, breach of contract or otherwise:
- 13.2.1 loss of profits, loss of business, loss of revenue, loss of contract, loss of goodwill, loss of anticipated earnings or savings (whether any of the foregoing are direct, indirect or consequential loss or damage); or
- 13.2.2 loss of use or value of any data or equipment including software, wasted management, operation or other time (whether any of the foregoing are direct, indirect or consequential); or
- 13.2.3 any indirect, special or consequential loss or damage; or
- 13.2.4 the poor performance, or lack of connectivity, or lack of availability of the Internet or telecommunications or hardware;
- 13.2.5 NOT USED
- 13.3 Except where liability arises under Clauses 13.1 and subject to Clause 13.2 Civica's total aggregate liability in or for breach of contract, negligence, misrepresentation (excluding fraudulent misrepresentation), tortious claim (including breach of statutory duty), restitution or any other cause of action whatsoever relating to or arising under or in connection with this Contract (including performance, non-performance or partial performance), and including liability expressly provided for under this Contract shall not exceed 100% of the price paid or payable for the Services during the 12 months preceding the date on which the claim arose.
- 13.4 Except as expressly provided otherwise by these terms and conditions or as otherwise expressly agreed in writing between the parties, all other representations, conditions, warranties and other terms are excluded (including any statutory implied terms as to satisfactory quality, fitness for

purpose and conformance with description) save to the extent that the same are not capable of exclusion at law.

- 13.5 Notwithstanding Clause 4.2.7 Civica shall have no liability or obligations to Customer's outsource provider (if any).

#### **14. Termination**

- 14.1 Civica may suspend its obligations under this Contract including providing Support Services, or may terminate Customer's Software licence and/or the Contract at any time upon written notice to Customer, if Customer fails to pay any Fees due under the Contract for 30 days after the due date for payment or is in breach of Clause 4 (Software Licence) or Clause 18.5 (Assignment).

- 14.2 Either party may terminate this Contract (which right shall also extend to the right to terminate any Software licence granted under Clause 4) forthwith at any time by giving notice in writing to the other party if:

14.2.1 the other party commits any material breach of this Contract (other than Customer's obligation to pay under the Contract which is addressed by Clause 14.1 above) provided that if the breach is remediable then the notice of termination shall not be effective unless the party in breach fails within thirty (30) days of the date of such notice to remedy the breach complained of; or

14.2.2 if one party serves notice on the other in accordance with Clause 2.1.1, any Fees paid in advance shall not be refunded; or

14.2.3 one party suffers for a period of 30 consecutive days or more due to a force majeure event described in clause 18.8; or

14.2.4 the other party ceases to carry on business or a substantial part thereof, commits an act of bankruptcy or is adjudicated bankrupt or enters into liquidation whether compulsory or voluntary other than for the purposes of amalgamation or reconstruction or compounds with its creditors generally or has a receiver or manager appointed over all or any part of its assets or suffers execution or distress or takes or suffers any similar action in consequence of debt or becomes unable to pay its debts as they fall due or other similar event.

- 14.3 The accrued rights and remedies of the parties as at termination shall not be affected.

#### **15. Consequences of Termination**

- 15.1 Upon termination of this Contract, Customer shall immediately cease using the Software and Services, deleting all relevant Software and Civica data from both Customer's machines and backup media and upon request provide Civica with written confirmation of deletion.

- 15.2 Upon termination of this Contract, Customer shall immediately deliver up to Civica:

15.2.1 the Software and any copies thereof, any related manuals and documentation; and

15.2.2 any Civica Hardware held at Customer sites, and

15.2.3 all copies of Civica's Confidential Information and copies of programs, manuals and documentation used by Civica for the purpose of providing the Services.

- 15.3 Upon termination of this Contract, Civica shall immediately deliver up to Customer any copies of Customer's Confidential Information and data in its possession that Customer requests are returned.

- 15.4 In the event Customer fails to comply with its obligations under Clause 15.2, Civica shall be entitled to retake possession, by entry into any sites or otherwise, of the Software, the Civica Hardware and Civica's Confidential Information and any related manuals and documentation.

- 15.5 Termination will not discharge Customer from any payment obligation under this Contract, or from payment of sums already due, or, in the case of termination under Clause 14.1 or 14.2 from payment of any sums which would necessarily have become due if the licence had not been terminated.

- 15.6 Clauses which expressly or by implication have effect after termination shall continue in full force and effect.

#### **16. Audit**

- 16.1 Subject to reasonable notice Civica will provide information that Customer reasonably requests in order to meet its audit requirements.

16.2 Civica reserves the right to charge a reasonable fee for provision of services required if Customer requires Civica to hold and make available information that is not covered by normal accounting practices and would not normally be made available by a commercial organization.

## **17. Corruption**

17.1 Civica shall not:

17.1.1 offer, give or agree to give to any person working for or engaged by Customer any fee, gift, reward or other consideration of any kind, which could act as an inducement or a reward for any act or failure to act connected to this Contract, or any other agreement between Civica and Customer including its award to Civica and any of the rights and obligations contained within it; nor

17.1.2 enter into this Contract if it has knowledge that, in connection with it, any money has been, or will be, paid to any person working for or engaged by Customer by or for Civica, or that an agreement has been reached to that effect, unless details of any such arrangement have been disclosed in writing to Customer before signing this Contract.

## **18. General**

18.1 Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post or by commercial courier, at its principal place of business. In the case of Civica notices, they shall be addressed for the attention of the Managing Director with a copy to [admin@civicaus.com](mailto:admin@civicaus.com).

18.1.1 Any notice or communication shall be deemed to have been received if delivered personally, when left at the address referred to above or, if sent by prepaid first-class post at 9.00 am on the third day after posting, or if delivered by commercial courier on the date and at the time that the courier's delivery receipt is signed.

18.1.2 Any notice sent by electronic mail shall be deemed received upon delivery by electronic mail with confirmation from the server transmission was completed.

18.2 This Contract constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter. Each party acknowledges that, in entering into this Contract, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in this Contract. Nothing in this clause shall limit or exclude any liability for fraud or for fraudulent misrepresentation.

18.3 Either party may at any time request a change to this Contract and the Services. No variation of this Contract, including any additional terms and conditions, shall be binding unless it is in writing and signed by each of the parties (or their duly authorized representatives).

18.4 No failure or delay in exercising any remedy or right under this Contract will operate as a waiver of it, nor will any single or partial exercise of it preclude any further exercise or the exercise of any remedy or right under this Contract or otherwise.

18.5 Neither party may assign the benefit of this Contract nor any interest except with the prior written consent of the other (such consent not to be unreasonably withheld), save that Civica may assign this Contract at any time to any member of the Civica group of companies.

18.6 The provisions of this Contract shall be severable in the event that any of its provisions are held by a court of competent jurisdiction or other applicable authority to be invalid, void or otherwise unenforceable and the remaining provisions shall remain enforceable to the fullest extent permitted by law. However, if the severed provision is essential and material to the rights or benefits received by either party, the parties shall use their best efforts to negotiate, in good faith, a substitute, valid and enforceable provision or agreement which most nearly effects their intent in entering into this Contract.

18.7 Nothing in this Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

18.8 Neither party will be liable to the other for any failure or delay or for the consequences of any failure or delay in performance of this Contract, excluding Customer's obligation to pay the Fees, if it is due to a force majeure event: any event beyond the reasonable control of a party to this Contract

including, without limitation, acts of God, war, industrial disputes, protests, fire, flood, storm, tempest, explosion, an act of terrorism and national emergencies. The party subject to such event shall, as soon as practicable, give notice of the event to the other party, such notice to include a reasonable forecast of the duration of the force majeure event. If such delay or failure continues for at least 30 days, either party shall be entitled to terminate this Contract in accordance with clause 14.2.3.

- 18.9 For so long as the Customer is a Civica client and for a period of (12) months after termination, each party agrees that it will not employ or solicit for employment, directly or indirectly, any person employed by the other party without prior written permission of the other party.
- 18.10 All disputes arising out of or under this Contract that are not resolved by the day to day contacts of the parties shall be escalated internally by both parties for resolution. Second level escalation is to the day to day contacts managers and then third level is to that manager's manager. If the parties fail to settle the dispute within 30 days of the third level escalation, or such longer period as the parties may agree, the dispute may be referred to the state or federal courts located in Lake County, Ohio.
- 18.11 This Contract shall be interpreted according to the laws of the State of Ohio without regard to or application of choice-of-law rules or principles. The venue for any claims arising under this Contract shall be state or federal courts located in Lake County, Ohio. The venue for claims arising under this Contract may be changed to another Ohio city upon request by Customer. The parties hereby irrevocably submit to the exclusive jurisdiction of such courts as set forth in this Clause 18.11 and waive the defense of inconvenient forum to the maintenance of any such action or proceeding in such venue. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods of April 11, 1980, shall be excluded.

**SCHEDULE 1 – Contract Particulars**

**Customer Name:** City of Willowick

**Installation Address:** 3045 Lakeshore Blvd., Willowick, OH 44095

**Contact:** Cheryl Benedict

**Email:** CBenedict@cityofwillowick.com

**Phone:** 440-585-3700

**Usage Restrictions:** Single instance at customer installation address.

**Minimum Hardware Requirements:**

Operating System	Windows 2016 Server Standard or Higher
Processor	Intel Xeon 2.0GHz Quad Core
Memory	64GB
Hard Drive	1TB x 2 – SATA (2) 4TB Storage Drives
RAID Configuration	RAID 1
Data Platform	Microsoft SQL Server 2019 Standard (required for Civica Authority applications)
Additional Accessories	Monitor, Keyboard, Serial Parallel Combo Card, External hard drive.

**Installation of:** Authority Payroll

**Third Party Software:** N/A

**Support Services:** for Civica Software only, 3<sup>rd</sup> Party VPN

## **SCHEDULE 2: Services**

### **Civica Software being provided**

Authority Payroll

### **Support Services**

The Civica Support Service provides application and technical support for projects, as well as part of the standard annual maintenance contract for the Civica system(s).

#### **Civica Service Desk Support**

The Civica Service Desk support covers business hours Monday to Friday 8AM to 5PM EST, with the exception of Civica U.S. observed holidays. Support incidents can be placed with the Civica Service Desk for technical or usage support assistance:

- ▶ **Technical Support:** Support is given, where possible, via remote access and where necessary Civica will log into the Civica system to progress a support request.
- ▶ **Usage Support:** A broad range of usage support is available.

#### **Exclusions**

The following applies to our support:

- ▶ Out of hour's technical, usage or special programming support. In the event that out of hours support is required then please contact Civica for further information.
- ▶ Automatic / repeating programs, i.e. the service does not cover requests for a program to be automatically run every month. Individual requests must be made for each occasion a program is to be run.
- ▶ Running of programs outside of the Civica support hours.
- ▶ Unattended running of programs, i.e. the service does not cover scheduling of a program to run automatically overnight.
- ▶ The move or copying of data, (other than a copy of the whole system), from one instance of the Civica system's database to another, unless as an agreed task that is part of an implementation project, i.e. the service does not cover the movement of data from the Test system to the Live system or the Training system to the Test system etc.
- ▶ Import and update of records from a data source external to the Civica system, unless as an agreed task that is part of an implementation project.
- ▶ New Releases (enhancements) of operating system software and/or database software
- ▶ Re-installation and restore of Operating Software [Civica Application Software] following a fault e.g. a server error.
- ▶ Pro-active maintenance of database re: capacity, good housekeeping, checking of database etc.
- ▶ Issues occurring in the customers disaster recovery environment other than application issues when the DR site is acting as the live environment
- ▶ Installation of additional application environments (other than Test and Training).
- ▶ Changes made to data where that change has NOT been made though the Civica supplied software

#### **Go live up to first two weeks:**

- ▶ As part of the Go / No Go stage gate, any outstanding system(s) issues will be transitioned to and managed by the Civica Service Desk and all issues will be recorded as support incidents.

- ▶ The Civica Service Desk will triage the incidents to determine the appropriate response, and liaise with the Civica Project Manager / designated lead as appropriate.
- ▶ Issues will be responded to according to their impact and urgency; i.e. the effect on normal business operations as per the Incident Priorities, (detailed previously in this document), however incidents received in this first period after go live will receive additional focus to ensure the new users receive the support they need.
- ▶ Incidents during this period will be reviewed daily by the project manager and Civica Service Desk team, and progress updates for the customer will be updated on the web based Customer Support System.

### **Service Level Agreement (SLA)**

Support Services shall be provided during Working Hours which are the hours during a Working Day (8:00am – 5:00pm EST Monday through Friday excluding Civica U. S. observed holidays).

Support Services are described in this Schedule 3.

All requests for Support Services must be reported to the Civica’s Service Desk for resolution.

A given problem will be judged against each of the characteristics to make an overall assessment of which severity level (either critical, high, medium or low) best describes the problem.

Civica’s Level 1 support agent and the Customer jointly determine the initial severity rating for the reporting of the problem. Civica’s Level 2 and level 3 support personnel may then modify the assigned severity level after the report is passed to them.

The characteristics below do not cover work order requests. Severity levels for work order requests carry a different set of characteristics and weightings. Work order requests are not covered as part of this SLA.

<b>SERVICE LEVEL AGREEMENT (SLA)</b>			
<b>Severity A (Critical)</b>	<b>Severity B (High)</b>	<b>Severity C (Medium)</b>	<b>Severity D (Low)</b>
Functionality is completely blocked or system is not working and the application cannot work at all.	Functionality is not working as expected and any Workaround would be highly inconvenient, however other modules within the application are still working.	Functionality is not working as expected and an acceptable Workaround can be leveraged.	Functionality may not be exact, however, the application and system are still working with accurate results.
<b>Workaround</b>			
There is no work around to the problem immediately available (i.e. the job cannot be performed in any other way).	There is a temporary workaround to the problem (i.e. the job can be performed in some other way).	There may or may not be an acceptable workaround to the problem.	There may or may not be an acceptable workaround to the problem, however, the application and system are still working with accurate results.
<b>Response Time (A technical resource has evaluated the issue and acknowledged with the Customer)</b>			
Within one (1) working hour.	Within four (4) working hours.	Within eight (8) working hours.	Within sixteen (16) working hours.
<b>Resolution Effort</b>			

Continuous resources, up to 8 working hours per Working Day, until resolved.	Target resolution within three (3) Working Days.	Target resolution within thirty (30) calendar days or any other mutually agreed date.	Target resolution within sixty (60) calendar days or any other mutually agreed date.
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*Below are general examples regarding the classification of severity levels. In addition, Civica will take into consideration the Customer's deadlines and other special circumstances when classifying the severity of a problem.*

#### Severity A

Emergency, problem hinders real time business operations of Customer e.g.:

- Server Down.
- Beta Customers.
- Cannot log onto the Software (system wide).
- Data recovery, account backup or archiving failures for business critical information.
- Report or Form Printer not responding or ALL printers not responding.
- Payroll check, Direct Deposit, and other real time check printing errors.
- Real Time Cash Processing between Client and their Customers.
- Bill processing errors, docket/scheduling crisis, income tax statement printing.
- Data format changes for cross-platform/agency transfers, i.e. 911 and Direct Deposit transmissions. Upload/Download errors for critical electronic data.
- Update loading failure.

#### Severity B

Customer can continue with business operations.

- Report problems for Federal, State, Pension Plan, Auditors, Councils, and Courts.
- Other Reporting problems with longer than 24 hour deadlines.
- Hung Ports, Record Locks, Phantom Users, Access failure or additions.
- Month end balancing, voiding checks.
- Document/Image scanning, posting, viewing and cross-reference errors.
- Auto response tables for CAD not displaying correct units.
- Secondary printer malfunction. Secondary PC workstation networking/Samba problems.
- Backup Tape/File-Save Problems, restoring accounts from previous years.
- General application function and strategy questions.
- Data entry errors that result in a non-user serviceable solution.
- Control record flag alterations. Terminal maintenance adjustments.

#### Severity C & D

Customer's day to day business operation unaffected.

- Pension, Tax Rate, Utility Billing, Court, Payroll Deduction rate changes.
- User defined report /download development..
- Addition of Hardware. Addition of User/License.
- Long Term Questions on product implementation strategies.
- Defect resolution after Work-Around prescribed.



## **SCHEDULE 3: Fees & Payment Schedule**

### **Part 1: Fees**

<b>Description</b>	<b>Fees &amp; Charges</b>	
	<b>Initial Fees \$</b>	<b>Incremental Annual Fees \$</b>
1. Software (License Fees) Authority Payroll	\$24,500	Not Applicable
2. Implementation Services	\$25,360	Not Applicable
<b>Total</b>	<b>\$49,860</b>	<b>Not Applicable</b>

### **Part 2 – Increases in the Fees**

The Initial Fees are fixed unless otherwise specified in the contract.

Annual Fees and/or Support Fees may be increased by Civica in accordance with Clause 12.7 & 12.8 of the standard contract.

<b>Upon Contract</b>	<b>Initial Fees</b>	
	<b>Target Date</b>	<b>Amount (\$)</b>
License Fees – 100%	Upon Contract signature	\$24,500
Implementation Services – 50%	Upon Contract signature	\$12,680
Implementation Services – 50%*	Upon Contract signature	\$12,680
	<b>Total</b>	<b>\$49,860</b>

\*Payment due on Product go live with a long stop date of August 15, 2023.

**Part 4 – Payment Profile: Annual/Support Fees**

All recurring Fees and charges are billed annually to cover the period from January 1<sup>st</sup> through December 31<sup>st</sup> of, and then each Year.

All annual support fees listed below will be payable from January 1, 2024.

Payment Trigger	Annual/Support Fees	
	Annually	2024 Amount (\$)
Authority Payroll	✓	\$5,417.38
Authority Finance	✓	\$7,140.16
Authority Requisition Routing	✓	\$589.36
Authority Fixed Assets	✓	\$3,220.28
	<b>Total</b>	<b>\$16,367.18</b>

Future annual fee amounts are subject to annual price review as outlined within this contract

**SCHEDULE 4: Special Terms**

This Contract supersedes any and all previous versions of contracts for your Civica Software Applications, including all prior versions of those applications listed above.

***Pricing valid until February 28, 2023.***

This Civica Supply, Implementation and Support Contract is made when signed by both parties (if on different dates the later of the two dates) or on the Start Date whichever is the sooner.

**SIGNED**

.....  
for and on behalf of **City of Willowick**

.....  
for and on behalf of **Civica**

Name : .....

Name : .....

Title : .....

Title : .....

Date : .....

Date : .....