

MAINTENANCE AGREEMENT

- | | | |
|-------------------|-------------------------------------|-----------------------------------|
| 1. <u>Parties</u> | ACCELA | CUSTOMER |
| | Accela, Inc. | City of Lincoln, Nebraska |
| | 2633 Camino Ramon, Suite 120 | 233 South 10 th Street |
| | Bishop Ranch 3 | Suite 200 |
| | San Ramon, California 94583 | Lincoln, Nebraska 68508 |
| | Attention: Contracts Administration | Attention: Jim Anderson |
| | T: 925.659.3200 | T: 402.441.7268 |
| | F: 925.407.2722 | F: 402.441.6189 |
| | E-Mail: contractsadmin@accela.com | E-Mail: janderson@lincoln.ne.gov |

This Maintenance Agreement ("MA") is intended for the exclusive benefit of the Parties; nothing herein will be construed to create any benefits, rights, or responsibilities in any other parties.

2. Term and Termination

- 2.1 Term Provided that Customer signs and returns this MA to Accela **no later than May 1, 2016**, this MA is effective as of the date of Customer's signature and will continue for a period of three (3) years. Customer may elect to continue its maintenance coverage for additional annual terms by paying to Accela the fees associated with such terms when these are due; said fees will not increase by more than ten percent (10%) from the maintenance fees for the preceding term. Should Customer fail to renew its maintenance coverage or pay the applicable fees, Accela reserves the right to withhold all support. If Customer resumes maintenance coverage after one or more periods without such coverage, Customer and Accela shall negotiate the fees attributable upon resumption of maintenance coverage.
- 2.2 Termination Either party may terminate if the other party materially breaches this MA and, after receiving a written notice describing the circumstances of the default, fails to correct the breach within thirty (30) calendar days. Upon any termination or expiration of this MA, all rights granted to Customer are cancelled and revert to Accela.
- 2.3 Termination for Convenience City has the right to terminate this MA for any reason for the City's own convenience. If the City terminates this MA for convenience, the City shall provide a written notice of the same to Accela. Upon termination, the City shall pay Accela for any services performed up to the date of termination.
- 2.4 Termination for Non-Appropriation The City may terminate this agreement in whole or in part when funding is not lawfully available for expenditure or when sources of funding are terminated, suspended, reduced, released, or otherwise not forthcoming.

3. Scope of Maintenance

3.1 Maintenance Services

- 3.1.1 Telephone Support Accela will provide Customer with a telephone number to contact the Customer Resource Center (CRC), Accela's live technical support facility, which is available from 4:00 a.m. until 6:00 p.m. Pacific time Monday through Friday, excluding Accela's observed holidays.

- 3.1.2 E-Mail Support Accela will provide Customer with one or more electronic mail addresses to which Customer may submit routine or non-critical support requests, which Accela will address during its regular business hours.
- 3.1.3 Online Support Accela will provide Customer with access to archived software updates and other technical information in Accela's online support databases, which are continuously available.
- 3.1.4 Remote Support When required to properly resolve a maintenance request, Accela will provide remote assistance to Customer via the WebEx™ Meeting Center™ environment or another mutually-acceptable remote communications method.
- 3.1.5 On-Site Support If Customer does not wish for Accela to resolve its maintenance requests remotely, Accela will provide on-site assistance to Customer at Accela's then-current time-and-materials rates. In addition to these charges, Customer will compensate Accela for associated airfare, lodging, rental transportation, meals, and other incidental expenses as such expenses accrue.
- 3.1.6 Software Updates Accela will provide revisions of and enhancements to maintained software products to Customer as such updates are generally-released by Accela. Software updates will be delivered or made available to Customer for electronic download from Accela's File Transfer Protocol ("FTP") site.

3.2 Maintenance Limitations

- 3.2.1 Limitations Generally The following are not covered by this MA, but may be separately available at rates and on terms which may vary from those described herein:
 - a) Services required due to misuse of the Accela-maintained software products;
 - b) Services required due to software corrections, customizations, or modifications not developed or authorized by Accela;
 - c) Services required by Customer to be performed by Accela outside of Accela's usual working hours;
 - d) Services required due to external factors including, but not necessarily limited to, Customer's use of software or hardware not authorized by Accela;
 - e) Services required due to the operation of interfaces between the Accela-maintained software products and other software products or systems, even where such interfaces were provided or implemented by Accela;
 - f) Services required to resolve or work-around conditions which cannot be reproduced in Accela's support environment;
 - g) Services which relate to tasks other than maintenance of Customer's existing implementation and configuration of the Accela-maintained software products including, but not necessarily limited to, enhancing or adapting such products for specific operating environments;
 - h) Services requested by Customer to implement software updates provided by Accela pursuant to this MA; and
 - i) New or additional applications, modules, or functionality released by Accela during the term of this MA.
- 3.2.2 Legacy Releases Accela will provide maintenance support for the current release of each of its maintained software applications and for the release immediately preceding such current release. All other releases are deemed to be "Legacy Releases". Accela will respond to

maintenance requests concerning Legacy Releases only using currently-available information. Services requiring additional research, engineering-level support, or coding or programming by Accela will not be provided pursuant to this MA, but may be separately available at rates and on terms which may vary from those described herein.

3.3 Warranty Accela will commence and complete the maintenance obligations described in this MA in a good and workmanlike manner, consistent with the practices and standards of care generally-accepted within and expected of Accela's industry, to ensure that the operation of the maintained software products does not materially differ from documented specifications. Accela may make repeated efforts within a reasonable time period to resolve maintenance requests. When a maintenance request cannot be resolved, Customer's exclusive remedy will be damages in an amount equal to the total of maintenance fees paid to Accela for the defective or non-conforming software products for the twelve (12) calendar months immediately preceding Customer's maintenance request.

3.4 Compensation

3.4.1 Maintenance Fees In exchange for the Maintenance Services described hereinabove, Customer will pay to Accela the amounts indicated in Exhibit A.

3.4.2 Payment Terms Amounts are quoted in United States dollars and do not include applicable taxes, if any. Customer will be responsible for payment of all federal, state or provincial, and local taxes and duties, except those based on Accela's income. If Customer is exempt from certain taxes, Customer will provide Accela with an appropriate certificate of exemption. Customer will be invoiced for all amounts upon occurrence of the billing events described in Exhibit A. The payment terms of all invoices are net thirty (30) calendar days from the dates of the invoices. Accela may, at its sole discretion, suspend its obligations hereunder without penalty until payments for all past-due billings have been paid in full by Customer.

4. Confidentiality

4.1 Definitions "Disclosing Party" and "Recipient" refer respectively to the party which discloses information and the party to which information is disclosed in a given exchange. Either Accela or Customer may be deemed Disclosing Party or Recipient depending on the circumstances of a particular communication or transfer of information. "Confidential Information" means all disclosed information relating in whole or in part to non-public data, proprietary data compilations, computer source codes, compiled or object codes, scripted programming statements, byte codes, or data codes, entity-relation or workflow diagrams, financial records or information, client records or information, organizational or personnel information, business plans, or works-in-progress, even where such works, when completed, would not necessarily comprise Confidential Information. The foregoing listing is not intended by the Parties to be comprehensive, and any information which Disclosing Party marks or otherwise designates as "Confidential" or "Proprietary" will be deemed and treated as Confidential Information. Information which qualifies as "Confidential Information" may be presented to Recipient in oral, written, graphic, and/or machine-readable formats. Regardless of presentation format, such information will be deemed and treated as Confidential Information. Notwithstanding, the following specific classes of information are not "Confidential Information" within the meaning of this Section:

- a) information which is in Recipient's possession prior to disclosure by Disclosing Party;
- b) information which is available to Recipient from a third party without violation of this MA or Disclosing Party's intellectual property rights;
- c) information disclosed pursuant to Subsection 4.4 below;
- d) information which is in the public domain at the time of disclosure by Disclosing Party, or which enters the public domain from a source other than Recipient after disclosure by Disclosing Party;

- e) information which is subpoenaed by governmental or judicial authority; and
- f) information subject to disclosure pursuant to a state's public records laws.

4.2 Confidentiality Term The obligations described in this Section commence on the Effective Date and will continue until two (2) years following any termination or expiration of this MA ("Confidentiality Term").

4.3 Confidentiality Obligations During the Confidentiality Term, Recipient will protect the confidentiality of Confidential Information using the same degree of care that it uses to protect its own information of similar importance, but will in any case use no less than a reasonable degree of care to protect Confidential Information. Recipient will not directly or indirectly disclose Confidential Information or any part thereof to any third party without Disclosing Party's advance express written authorization to do so. Recipient may disclose Confidential Information only to its employees or agents under its control and direction in the normal course of its business and only on a need-to-know basis. In responding to a request for Confidential Information, Recipient will cooperate with Disclosing Party, in a timely fashion and in a manner not inconsistent with applicable laws, to protect the Confidential Information to the fullest extent possible.

4.4 Publicity During the term of this MA, including the term of any amendment hereto, Accela may publicly disclose its ongoing business relationship with Customer. Such disclosures may indicate Customer's identity and the Accela product(s) and services provided or contracted to be provided to Customer. These disclosures may include press releases or other communications to media, display on Accela web sites, or use in other marketing activities, but will not include non-public information or indicate Customer's express endorsement of Accela's products or services without Customer's prior written authorization.

5. Other Terms and Conditions

5.1 Customer Obligations As required, Customer will provide Accela with appropriate access to Customer's facilities, data systems, and other resources. If Security restrictions impair such access, Customer acknowledges that some maintenance services hereunder may not be provided to Customer. It is Customer's sole responsibility to maintain current backup copies of its data and of its implementation of Accela's software products. If Customer's failure to create proper backups substantially increases the difficulties of any remedial actions by Accela hereunder, Accela reserves the right to charge Customer for any extra work reasonably-attributable to such increased difficulty, as calculated at Accela's then-current time-and-materials rates.

5.2 Proprietary Rights The remedial methods, software updates, and product information provided to Customer pursuant to this MA are protected under the laws of the United States and the individual states and by international treaty provisions. Accela retains full ownership in such items and grants to Customer a limited, nonexclusive, nontransferable license to use the items, subject to the terms and conditions of this MA and other agreements between Accela and Customer.

5.3 Limitation of Liability Accela provides no warranty whatsoever for any third-party hardware or software products. Third-party applications which utilize or rely upon the Application Services may be adversely affected by remedial or other actions performed pursuant to this MA; Accela bears no liability for and has no obligation to remedy such effects. Except as set forth herein, Accela provides all Maintenance Services "as is" without express or implied warranty of any kind regarding the character, function, capabilities, or appropriateness of such services or deliverables. To the extent not offset by its insurance coverage and to the maximum extent permitted by applicable laws, Accela's cumulative liability for any general, incidental, special, compensatory, or punitive damages whatsoever suffered by Customer or any other person or entity, in excess of the provided insurance coverage, shall not exceed the fees paid to Accela by Customer during the twelve (12) calendar months immediately preceding the circumstances

which give rise to such claim(s) of liability, even if Accela or its agents have been advised of the possibility of such damages.

- 5.4 Force Majeure If either party is delayed in its performance of any obligation under this MA due to causes or effects beyond its control, that party will give timely notice to the other party and will act in good faith to resume performance as soon as practicable.
- 5.5 Dispute Resolution This MA is governed by the laws of the State of Nebraska. Any controversy or claim arising out of or relating to this MA may be settled by arbitration or mediation by mutual agreement of the parties. The prevailing party in any arbitration, mediation or litigation may be awarded its expenses, attorneys' fees, and costs.
- 5.6 Assignment Accela may assign its rights and obligations hereunder for purposes of financing or pursuant to corporate transactions involving the sale of all or substantially all of its stock or assets. Accela may subcontract with qualified third parties to provide portions of the Maintenance Services described hereinabove.
- 5.7 Survival The following provisions will survive the termination or expiration of this MA: Section 2.1, as to Customer's obligation to pay any fees associated with a lapse in maintenance coverage upon resumption of such coverage; Section 3.3, as to limitation of remedy; Section 3.4 and all subsections thereof, as to Customer's obligation to pay any fees accrued or due at the time of termination or expiration; Section 4 and all subsections thereof; and Section 5 and all subsections thereof with the exceptions of Subsections 5.1 and 5.4.
- 5.8 Alternate Terms Disclaimed The parties expressly disclaim any alternate terms and conditions accompanying drafts and/or purchase orders issued by Customer.
- 5.9 Severability and Amendment If any particular provision of this MA is determined to be invalid or unenforceable, that determination will not affect the other provisions of this MA, which will be construed in all respects as if the invalid or unenforceable provision were omitted. No extension, modification, or amendment of this MA will be effective unless it is described in writing and signed by the Parties.
- 5.10 Equal Employment Equal employment opportunity in connection with the performance of work under this MA, Accela agrees that it shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, disability, national origin, age, or marital status. In the employment of persons, Accela shall fully comply with the provisions of Chapter 11.08 of the Lincoln Municipal Code and shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, disability, national origin, age, or marital status.
- 5.11 Waiver of Contractual Right The failure of either party to enforce any provision of this MA shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this MA.
- 5.12 Living Wage, Audit & E-Verify
A. Accela agrees to pay all employees in the performance of this contract, a base wage not less than the City Living Wage per Chapter 2.81 of the Lincoln Municipal Code. This wage is subject to change every July.
B. Accela agrees that if asked, Accela shall make available to the City's contract auditor copies of all financial and performance related records and materials in compliance with Chapter 4.66 of the Lincoln

Municipal Code. Accela shall comply with all Federal and State laws and City ordinances applicable to the work.

C. In accordance with Neb. Rev. Stat. 4-108 through 4-114, Accela agrees to register with and use a federal immigration verification system, to determine the work eligibility status of new employees performing services within the state of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program of the illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, otherwise known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee pursuant to the Immigration Reform and Control Act of 1986. Accela shall not discriminate against any employee or applicant for employment to be employed in the performance of this section pursuant to the requirements of state law and 8 U.S.C.A 1324b. Accela shall require any subcontractor to comply with the provisions of this section.

ACCELA

By: 
(Signature)

COLIN SAMUELS
(Print Name)

Its ASST. CORP. SECRETARY
(Title)

Dated: 2 FEBRUARY 2016
(Month, Day, Year)

CUSTOMER

By: 
(Signature)

Steve Hubka
(Print Name)

Its Interim Finance Director
(Title)

Dated: 2/22/16
(Month, Day, Year)

Exhibit Follows.

END OF DOCUMENT

EXHIBIT A

Purchase Order No.	Customer ID	Contract No.		Payment Terms	Due Date
	1702 Lincoln, NE - City of	741_2015-06-21 2016-06-20		Net 30	04/23/2015
Item Number	Description	Quantity	Unit Price	Discount	Ext. Price
MR100ACAM 120601	Accela Citizen Access Annual Maintenance and Support Renewal	1	\$12,654.67		\$12,654.67
MR100ALMM120601	Accela Land Management Annual Maintenance and Support Renewal	1	\$63,775.00		\$63,775.00
MR100AMOM120601	Accela Mobile Office Annual Maintenance and Support Renewal	1	\$31,989.00		\$31,989.00
MR100APHM 120601	Accela Public Health & Safety Annual Maintenance and Support Renewal	1	\$30,790.00		\$30,790.00
MR100GISM120601	Accela GIS Annual Maintenance and Support Renewal	1	\$9,448.00		\$9,448.00
Total of Fees					\$148,656.67¹

¹Annual Maintenance fees cover the period of June 21, 2015, through June 20, 2016 and have been paid in full.

Purchase Order No.	Customer ID	Contract No.		Payment Terms	Due Date
	1702 Lincoln, NE - City of	TBD		Net 30	
Item Number	Description	Quantity	Unit Price	Discount	Ext. Price
MR100ACAM 120601	Accela Citizen Access Annual Maintenance and Support Renewal	1	\$13,287.40		\$13,287.40
MR100ALMM120601	Accela Land Management Annual Maintenance and Support Renewal	1	\$66,963.75		\$66,963.75
MR100AMOM120601	Accela Mobile Office Annual Maintenance and Support Renewal	1	\$33,588.45		\$33,588.45
MR100APHM 120601	Accela Public Health & Safety Annual Maintenance and Support Renewal	1	\$32,329.50		\$32,329.50
MR100GISM120601	Accela GIS Annual Maintenance and Support Renewal	1	\$9,920.40		\$9,920.40
Total of Fees					\$156,089.50²

²Annual Maintenance fees for the period of June 21, 2016 through June 20, 2017, are subject to a five percent (5%) increase over the previous year's fee.

Purchase Order No.	Customer ID	Contract No.		Payment Terms	Due Date
	1702 Lincoln, NE - City of	TBD		Net 30	
Item Number	Description	Quantity	Unit Price	Discount	Ext. Price
MR100ACAM 120601	Accela Citizen Access Annual Maintenance and Support Renewal	1			\$13,951.77
MR100ALMM120601	Accela Land Management Annual Maintenance and Support Renewal	1			\$70,311.94
MR100AMOM120601	Accela Mobile Office Annual Maintenance and Support Renewal	1			\$35,267.87
MR 100APHM 120601	Accela Public Health & Safety Annual Maintenance and Support Renewal	1			\$32,945.98
MR100GISM120601	Accela GIS Annual Maintenance and Support Renewal	1			\$10,416.42
Total of Fees					\$163,893.97³

³Annual Maintenance fees for the period of June 21, 2017 through June 20, 2018, are subject to a five percent (5%) increase over the previous year's fee.

Purchase Order No.	Customer ID	Contract No.		Payment Terms	Due Date
	1702 Lincoln, NE - City of	TBD		Net 30	
Item Number	Description	Quantity	Unit Price	Discount	Ext. Price
MR100ACAM 120601	Accela Citizen Access Annual Maintenance and Support Renewal	1			\$14,649.36
MR100ALMM120601	Accela Land Management Annual Maintenance and Support Renewal	1			\$73,827.54
MR100AMOM120601	Accela Mobile Office Annual Maintenance and Support Renewal	1			\$37,031.26
MR 100APHM 120601	Accela Public Health & Safety Annual Maintenance and Support Renewal	1			\$34,593.28
MR100GISM120601	Accela GIS Annual Maintenance and Support Renewal	1			\$10,937.24
Total of Fees					\$172,088.66⁴

⁴Annual Maintenance fees for the period of June 21, 2018 through June 20, 2019, are subject to a five percent (5%) increase over the previous year's fee.

NOTE: This agreement does not include licenses approved for purchase by the City of Lincoln, NE, via Quote No. Q-06344-2, on 2016-January-27.

END OF DOCUMENT