

SOFTWARE LICENSE AND SUPPORT AGREEMENT
{Data General Corporation,
BI-TECH Software, Inc., and
the City of Carson

THIS AGREEMENT is made as of September 30, 1993, by and between Data General Corporation, a Delaware corporation ("DGC"), BI-TECH Software, Inc., a California corporation ("BI-TECH"), and the City of Carson, a municipal corporation ("City"),

R E C I T A L S

A. City desires to lease from DGC the services of BI-TECH to provide, install and support financial management and accounting software and related documentation and to provide associated training to City's employees.

B. DGC has entered into a State and Local Government Equipment Lease-Option Agreement (the "Lease-Option Agreement"), dated July 20, 1993, with City pursuant to which DGC is leasing and/or licensing the subject matter of this agreement to City.

C. DGC desires to acquire from BI-TECH the services of BI-TECH to provide, install and support financial management and accounting software and related documentation to City and to provide associated training to City's employees.

D. BI-TECH represents that it is fully qualified to provide such software and documentation and to perform the related services by virtue of its experience and the training, education and expertise of its principals and employees.

NOW, THEREFORE, in consideration of performance by the parties of the covenants and conditions herein contained, the parties hereto agree as follows:

1. Grant of License.

A. BI-TECH hereby grants to City a nonexclusive, nontransferable, limited license for proprietary software listed in Schedule A. The collective software and related documentation listed in Schedule A are referred to herein as "Software."

B. City is hereby granted the right to use the Software according to the terms and conditions of this agreement. No title to or ownership of the Software or any of its parts is hereby transferred to City, and City's right to use the Software shall at all times be subject to the terms and conditions set forth in this agreement.

2. Software License Charges

A. BI-TECH shall license to City the Software at the charges specified on the Program and Price Schedule attached as Schedule A and in the form in which the Software presently exists, as more fully described in the corresponding documentation for the Software.

All Software will be provided in both source code and executable code forms. BI-TECH also will provide one (1) copy of all user and technical documentation relating to the Software, which documentation may be reproduced by City for internal use, distribution and training purposes only.

B. In addition to the license fees and other related charges noted in Schedule A and Schedule B, DGC shall be responsible for the payment to BI-TECH of any federal, state, local, municipal and/or provincial sales and use taxes or excise taxes that are or may be imposed on the transactions provided for in this agreement.

3. Use of Software

A. City's right to use the Software licensed under this agreement is restricted solely to its internal use on City's UNIX based computer system (serial number(s)):

or on any upgraded models or replacements that shall be identified by serial number(s) and located at City's address as set forth above, or at a new address of which City shall give prior written notice to BI-TECH. If City violates the terms of this paragraph, BI-TECH shall have the right, in addition to any other remedies available to them, to injunctive relief enjoining such acts as set forth in Section 6 of this agreement. Nothing in this agreement shall be deemed to preclude City from loading and operating the Software on backup computing equipment in the event of the failure or unavailability of City's computer system, including off-site operations at a disaster recovery site or equivalent facilities obtained by City.

B. The Software licensed under this agreement and leased to City is for use by City on City's computer, provided that any Software delivered by BI-TECH in machine readable form may be copied in whole or in part, in printed or machine readable form, solely for City's internal use for back-up and archival purposes. City warrants that source code will not be removed from City's custody. Accompanying documentation and user guides may be reproduced for internal use, distribution and training purposes only.

4. Time of Performance

BI-TECH shall install and load the IFAS software and begin training on the general ledger module within nine weeks of the date of this agreement. The contract shall be completed within one year of the date of this agreement. BI-TECH shall be entitled to a no-cost extension of time to complete the contract beyond one year to the extent that City does not devote sufficient City resources to the project to reasonably permit completion within one year.

5. Payment

A. In consideration of the granting of this software license for lease to City, DGC shall pay the charges provided for herein in the following manner:

(1) The basic license fees set forth in Schedule A, plus any sales or other taxes, shall be paid to BI-TECH in accordance with the payment terms set forth in Schedule A.

(2) Should City agree to maintenance, the maintenance fees set forth in Schedule B shall be paid to BI-TECH in accordance with the payment terms set forth in Schedule B.

B. The Software, plus any BI-TECH created modifications, shall remain the property of BI-TECH and, at BI-TECH's option, shall be returned to BI-TECH in the event any of the charges set forth in Schedule A are not fully and timely paid as therein provided.

6. Delivery

A. BI-TECH shall deliver the Software, and City shall accept such delivery, at City's address set forth herein on mutually agreed upon delivery dates. BI-TECH will provide installation of the Software and training of City's personnel its use at City's address in for a period of sixty-one (61) person days. Such installation and training shall consist of the following:

IFAS (Interactive Fund Accounting System), including Budget Item Detail, Job/Project Ledger, Purchasing, Payroll, Human Resource Information System, Fixed Assets, Stores Inventory, and Business License

B. The sixty-one (61) person days are divided among the following BI-TECH personnel:

<u>Resource</u>	<u>Days</u>
Accountant	4
Trainer	50
Programmer/Analyst	7

C. If City desires additional Accountant, Trainer and/or Programmer days beyond those listed above, the charge will be based on BI-TECH's rate then in effect. However, City may exchange unused Accountant and/or Programmer days for additional Trainer days. The licensee may also receive equal dollar value credit for unused Programmer or Trainer days if trading these days for Accountant days.

D. The BI-TECH accountant who delivers the main GL training shall, subject to City's continuing approval, be the implementation manager and will assume all duties which appertain thereto.

7. Proprietary Information and Confidentiality

A. City, its agents, employees, independent contractors (including site managers), administrators and assigns shall be prohibited from duplicating, except for internal (on-site and off-site) backup use and to the extent necessary to effect modifications of, the Software, and they

shall not allow any other person or entity to duplicate, in any fashion whatsoever, any or all of the Software which is the subject of this agreement. The Software, including modifications made by BI-TECH, constitutes valuable property and a trade secret of BI-TECH. In this connection, marketing rights to the system and all modifications made by BI-TECH remain BI-TECH's property, whether or not any portion is or may be validly copyrighted. City, therefore, acknowledges its obligation not to reveal, and to instruct its employees not to reveal, any information regarding the Software to persons other than to City's employees, computer BI-TECHs, public accountants, and attorneys. City further agrees to take reasonable steps to ensure that these proprietary obligations will be fulfilled.

B. Employees of BI-TECH in the course of their duties will have access to financial, accounting, statistical, and personnel data of private individuals and employees of the City. BI-TECH covenants that all data, documents, discussion, or other information developed or received by BI-TECH or provided for performance of this Agreement are deemed confidential and shall not be disclosed by BI-TECH without written authorization by City. City shall grant such authorization if disclosure is required by law. All City data shall be returned to City upon the termination of this Agreement. BI-TECH's covenant under this section shall survive the termination of this Agreement.

8. Indemnification

Except as provided in Section 9, BI-TECH agrees to indemnify, hold harmless and defend DGC and City, their respective officials, officers, and employees, from any and all liability or financial loss, including legal expenses and costs of expert witnesses, resulting from any suits, claims, losses or actions brought by any person or persons, by reason of injury and arising from the activities and operations of BI-TECH, including its officers, agents, employees, subcontractors or any person employed by BI-TECH, in the performance of this Agreement.

9. Warranty and Limitation of Liability

A. BI-TECH warrants that the Software will be free from any known errors and will operate as described in its accompanying reference manuals and documentation. BI-TECH will, at its sole expense, correct any error in the Software during the warranty period. The Warranty Period is defined as the duration of time between installation and the main GL training (as defined in Schedule B. II) but not to end before 120 days from installation and not to extend beyond 150 days from installation. BI-TECH shall be relieved of any and all obligations with respect to this warranty for those parts of the Software that are revised, changed, modified, or maintained by anyone other than BI-TECH. City may modify the licensed Software, but BI-TECH shall not be responsible for compatibility of such modified Software with equipment, other programs, future program releases or test and verification routines. Upon notification to BI-TECH by City of any City modifications to Software, BI-TECH will use its Client Update Tape Interface Process (CUTIP) system to keep track of all City modified modules.

B. This warranty and BI-TECH's obligations and liabilities under it are in lieu of, and City hereby waives, all other guarantees and warranties, expressed or implied, arising by law or otherwise, including without limitation any implied warranty of fitness for a particular purpose or merchantability.

C. Notwithstanding the warranty made above, BI-TECH shall not be liable to City for any loss of or injury to earnings, profits, or goodwill suffered by City, caused directly or indirectly by the Software pursuant to this agreement, or any interruption or loss of use thereof, or for any incidental or consequential damages even if BI-TECH has been advised of the possibility of such damages.

10. Insurance

A. BI-TECH shall at all times prior to Final Acceptance of Software carry, maintain, and keep in full force and effect, with an insurance company admitted to do business in California, rated at least B+ in the most recent Best's rating guide, and approved by City: (1) a policy or policies of broad-form comprehensive general liability insurance with minimum limits of ~~\$1,000,000.00~~ ^{\$500,000.00} combined single limit coverage against any injury, death, loss or damage as a result of wrongful or negligent acts by BI-TECH, its officers, employees, agents, and independent contractors in performance of services under this Agreement; (2) property damage insurance with a minimum limit of \$500,000.00; (3) automotive liability insurance (including owned, hired, and non-owned liability coverages) with minimum combined single limits coverage of \$1,000,000.00; and (4) worker's compensation insurance with a minimum limit of the amount required by law. DGC and City, its officers, employees, attorneys, and volunteers shall be named as additional insureds on the policy(ies) as to comprehensive general liability, property damage, and worker's compensation coverages.

B. All insurance policies shall provide that the insurance coverage shall not be non-renewed, canceled, reduced, or otherwise modified (except through the addition of additional insureds to the policy) by the insurance carrier without the insurance carrier giving DGC and City thirty (30) day's prior written notice thereof. BI-TECH agrees that it will not cancel, reduce or otherwise modify said insurance coverage.

C. BI-TECH agrees that if it does not keep the aforesaid insurance in full force and effect, and such insurance is available at a reasonable cost, DGC or City may take out the necessary insurance and pay the premium thereon, and the repayment thereof shall be deemed an obligation of BI-TECH and the cost of such insurance may be deducted, at the option of DGC or City, from payments due BI-TECH.

D. At all times during the term of this Agreement, BI-TECH shall maintain on file with the DGC and the City Clerk, endorsements of the insurance carrier or carriers showing that the aforesaid policies are in effect in the amounts above provided, the additional insureds are named therein, and that the policies cannot be non-renewed, canceled or reduced except on thirty (30) day's notice by the insurance carrier to DGC and City. The endorsements shall also specifically state that the coverage contained on those policies affords insurance with the terms and conditions as set forth in this Agreement. BI-TECH shall file such endorsements with the DGC and City Clerk prior to execution of this Agreement.

11. Extended Maintenance

At the time of delivery, City shall have the option of purchasing BI-TECH's maintenance coverage for a period of one year and renewable annually unless terminated by

City, pursuant to the terms set forth in Schedule B. The charges for City's maintenance coverage shall be those set forth in Schedule B as from time to time are in effect, and all charges are subject to change by BI-TECH, provided that such charges cannot be increased during the term of such extended coverage. City may, in its sole discretion, terminate such extended maintenance coverage at any time at the end of any annual coverage period.

12. Term and Termination

A. This agreement shall commence on the date of execution and acceptance by BI-TECH and shall continue in perpetuity, unless terminated as provided below.

B. Prior to Final Acceptance of the Software, any party shall have the right, at its option, to terminate this agreement, and any license granted hereunder, upon written notice to the other party if such other party, whether by default or circumstances beyond its control, fails to perform any of its obligations under this agreement, which failure has not been corrected within thirty (30) days after receipt of written notice thereof. Upon any such termination:

(1) City agrees to return to BI-TECH either:

(a) all unacceptable licensed software programs, related documentation, and copies of such programs and documentation in the forms provided by BI-TECH or as modified by BI-TECH and to make no further use thereof; or

(b) all licensed software programs, related documentation, and copies of such programs and documentation in the forms provided by BI-TECH or as modified by BI-TECH and to make no further use thereof.

(2) BI-TECH agrees to refund to DGC the amount of the license fees for unacceptable software and modifications, prepaid maintenance fees and other related charges as listed in Schedule A or Schedule B, less payments made for (i) all reasonable travel and living expenses incurred prior to notice of termination; (ii) \$650.00 per person day for BI-TECH staff time at City's location prior to notice of termination; (iii) the cost of all modifications completed prior to notice of termination; and, (iv) the License Fees received for acceptable Software which City has determined to retain and has not returned as provided in Section 12.B.(1)(b).

C. Such termination shall not affect either party's ability to pursue any other remedy existing at law or in equity for such default.

D. Final Acceptance of Software shall be as defined below:

(1) Final Acceptance of Interactive Fund Accounting System (IFAS) shall be when sixty (60) days have passed since the live use of Basic IFAS (GL, NU, PE, AR, AP, CR, CK) or 180 days after installation whichever occurs first.

(2) Final Acceptance of any modifications and enhancements which are to be made to IFAS shall be when City has approved of all data entry screen formats and when City has approved of all printed and terminal output formats and when City has approved of all

functional Software modifications and enhancement specifications and when City has demonstrated to City's own satisfaction that the Software successfully conforms to the functional specifications.

13. Warranty of Originality

A. BI-TECH warrants that it has complete legal and tangible access to all source code and documentation for the purpose of tailoring or fixing the Software for the benefit of City for the entire term of this agreement. BI-TECH further warrants that the Software was conceived and developed by BI-TECH and the Software does not infringe any copyright, patent or trademark rights of any third party, that BI-TECH knows of no alleged claim of such infringement, and that BI-TECH has complete legal and tangible access to all source code and documentation for the purpose of tailoring or fixing the Software for the benefit of City for the entire term of this agreement.

B. BI-TECH shall report to City promptly and in reasonable written detail, each notice or claim of patent, copyright trade secret or trademark infringement based on the performance of this agreement of which BI-TECH has knowledge. In the event of any claim or suit against City on account of any alleged patent, copyright, trade secret or trademark infringement arising out of the performance of this Agreement or out of the use of any supplies furnished or work or services performed hereunder, BI-TECH shall furnish to DGC and City all evidence and information in possession of BI-TECH pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of BI-TECH.

C. BI-TECH shall bear all costs arising from the use of patented, copyrighted, trade secret or trademarked materials, equipment, devices or processes used on or incorporated in the Software. In such case materials, equipment, devices or processes are held to constitute an infringement and their use is enjoined, BI-TECH, at its expense shall:

- (a) Secure for City the right to continue using said materials, equipment, devices or processes by suspension of the injunction or by procuring a license or licenses; or
- (b) Replace such materials, equipment, devices or processes with non-infringing materials, equipment, devices or processes; or
- (c) Modify them so that they become non-infringing or remove the enjoined materials, equipment, devices or processes and refund the sum paid therefor without prejudice to any other rights of City.

14. Copyright

BI-TECH will mark all copies of the Software with a copyright notice indicating BI-TECH's ownership as appropriate. Placing of such copyright notice shall not be deemed a publication or placement in the public domain.

15. Other Documents

The following documents and the agreements of BI-TECH and City and representations and warranties of BI-TECH contained therein are hereby incorporated into this agreement by reference and/or attachment:

- (1) IFAS/Software User Guides as listed in Schedule A of this agreement.
- (2) Software and module Product Descriptions for the items listed in Schedule A of this agreement.

16. Liquidation or Bankruptcy of BI-TECH

In the event that BI-TECH (or a surviving company in the event of merger or sale of BI-TECH) is liquidated, dissolved, enters bankruptcy, or ceases to carry on business on a regular basis, City will have a perpetual, irrevocable, nonexclusive, license, title and right of ownership to the Software (inclusive of source code and all other documentation) subject to City's agreement that it will not, at any time, market the Software.

17. Special Provisions

A. BI-TECH is currently developing an English language inquiry system based upon products from Natural Languages Inc. BI-TECH hereby agrees to provide its NLI development to City at no charge upon completion of development. (There is a NLI Run-Time License Fee which must be acquired.)

B. BI-TECH's Graphical User Interface (GUI) project is nearing the Alpha Test stage. The GUI makes use of Windows-based PC's and a network to access applications and reports by simply clicking on the function. BI-TECH's GUI operates across a network and is the underpinning of BI-TECH's planned client server implementation. BI-TECH has agreed to include a twenty (20) user license of its GUI when it becomes available. (Costs for terminal emulation and network software are purchased separately.)

C. BI-TECH agrees to freeze license fees for one year on IFAS modules City may wish to purchase in the future.

18. Assignment of Benefits to City

A. In conjunction with the Lease-Option Agreement, DGC hereby assigns to City the benefits of all covenants, representations and warranties of BI-TECH under this agreement. BI-TECH agrees to perform all such covenants, representations and warranties directly to City, and agrees that City may enforce such covenants, representations and warranties directly against BI-TECH.

B. DGC hereby assigns to City and City hereby accepts all of DGC's rights, obligations and liabilities under this agreement with the exception of the following: (i) the right to take title to the Software and to be named as the purchaser in any bills of sale to be delivered

by BI-TECH; (ii) the right to enforce claims under this agreement arising out of City's performance or BI-TECH's performance or failure to perform; and (iii) the obligation to pay the amount specified in the Lease Schedule A to BI-TECH ("Excluded Rights and Obligations"). BI-TECH hereby consents to such assignment and agrees that DGC shall have no rights, obligations, or liabilities other than as specified herein.

C. It is expressly agreed that notwithstanding anything in this agreement or the Lease-Option Agreement to the contrary: (i) City shall at all times remain liable to BI-TECH to perform all of the duties and obligations with respect to the Software to the same extent as though DGC has not executed this agreement; and (ii) DGC shall have no rights, obligations or liabilities with respect to the Software or in any way to BI-TECH, except prompt payment to BI-TECH of the assigned amount specified in the Lease Schedule A, which is attached hereto and incorporated herein, within ten (10) working days of DGC's receipt from City of a properly prepared and executed certificate of acceptance. Nothing in this paragraph shall be deemed to apply to Excluded Rights and Obligations, however.

D. City and BI-TECH shall indemnify and hold DGC harmless from and against all liability, loss, damage and expense arising directly or indirectly from City's and BI-TECH's acts or omissions under this agreement excluding Excluded Rights and Obligations.

19. Status as Independent Contractor

BI-TECH is, and shall at all times remain as to DGC and City, a wholly independent contractor. BI-TECH shall have no power to incur any debt, obligation, or liability on behalf of DGC or City or otherwise act on behalf of DGC or City as an agent. Neither DGC nor City nor any of their agents shall have control over the conduct of BI-TECH or any of BI-TECH's employees, except as set forth in this Agreement. BI-TECH shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of DGC or City. BI-TECH agrees to pay all required taxes (excluding tax which are City's responsibility under Section 2.B) on amounts paid to BI-TECH under this Agreement, and to indemnify and hold DGC and City harmless from any and all taxes, assessments, penalties, and interest asserted against DGC or City by reason of the independent contractor relationship created by this Agreement. In the event that DGC or City is audited by any Federal or State agency regarding the independent contractor status of BI-TECH and the audit in any way fails to sustain the validity of a wholly independent contractor relationship between Contractor and BI-TECH, then BI-TECH agrees to reimburse DGC and City for all costs, including accounting and attorneys' fees, arising out of such audit and any appeals relating thereto. BI-TECH shall fully comply with the workers' compensation law regarding BI-TECH and BI-TECH's employees. BI-TECH further agrees to indemnify and hold DGC and City harmless from any failure of BI-TECH to comply with applicable worker's compensation laws. DGC or City shall have the right to offset against the amount of any fees due to BI-TECH under this Agreement any amount due to City from BI-TECH as a result of BI-TECH's failure to promptly pay to DGC or City any reimbursement or indemnification arising under this Section 19.

20. Standard of Performance.

BI-TECH shall perform all services under this agreement to the highest professional standards and in a manner reasonably satisfactory to City Administrator or City Administrator's designee.

21. Notices.

Any notices, bills, invoices, or reports required by this Agreement shall be deemed received on the day of delivery if hand delivered, or on the third business day following deposit in the United States mail, postage prepaid, to the addresses set forth below, or to such other addresses as the parties may, from time to time, designate in writing pursuant to the provisions of this section:

DGC:

Data General Corporation
4400 Computer Drive
Westboro, Massachusetts 01580

BI-TECH:

BI-TECH Software, Inc.
1072 Marauder, Suite A
Chico, California 95926

City:

City Administrator
City of Carson
701 East Carson Street
P.O. Box 6234
Carson, California 90749

22. General Provisions

A. Time is of the essence of this agreement.

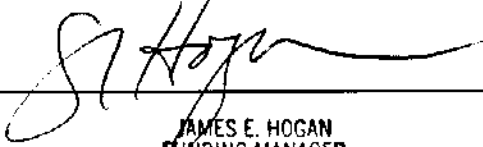
B. This contract will be governed by and construed in accordance with the laws of the State of California.

C. Non-Discrimination. BI-TECH shall not discriminate as to race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, medical condition, or sexual orientation, in the performance of its services and duties pursuant to this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

"DGC"

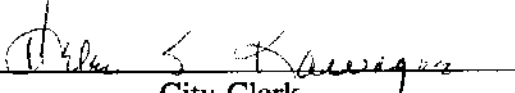
DATA GENERAL CORPORATION



JAMES E. HOGAN
FUNDING MANAGER
DATA GENERAL
LEASING

"City"

ATTEST:

By: 

City Clerk 10-11-93

Approved as to form:

RICHARDS, WATSON & GERSHON
A Professional Corporation

By: 

Asst. City Attorney


"BI-TECH"

BI-TECH SOFTWARE, INC.

By: 

W. Gary Sitton
President

CITY OF CARSON

By: 

Mayor

SCHEDULE A TO SOFTWARE LICENSE AND SUPPORT AGREEMENT

City of Carson, CA

PROGRAM AND PRICE SCHEDULE

I. LICENSED PROGRAMS AND CHARGES

<u>Description of Licensed Software</u>	<u>License Fee</u>
IFAS (Interactive Fund Accounting System), including General Ledger, NUCLEUS, Accounts Payable, Encumbrance, Check Management, Person/Entity, Accounts Receivable/Cash Receipts, Table Formatter, Ad Hoc Report Writer, Budget Scenarios, Recurrent Journal Entries, and Rollover/Conversion	<u>\$100,530.00</u>

Sub-Total \$100,530.00

Additional Module(s)

Budget Item Detail	\$ 9,900.00
Job/Project Ledger	19,800.00
Purchasing	15,675.00
Payroll	26,400.00
Human Resource Information System	26,400.00
Stores Inventory	19,800.00
Fixed Assets	8,910.00
Business License	8,910.00
Supplemental SMARTDB	<u>3,300.00</u>

Total Additional Modules \$139,095.00

Sub-Total License Fees \$239,625.00

Less Special Discount -65,226.00

Total BI-TECH License Fees \$174,399.00

Internal notes during negotiation: We finally agreed not to quote IAL separately. The 139,095 figure is comprised of: 139,095 = 100,530 + 38,565 (which includes 32,500 for IAL license and 6,065 for IAL support). - E2B

Informix Database Management Software:

(Class E for DG AViiON 7400)

On-Line - Full Development (1-16 Users)	\$12,080.00
On-Line - Run Time (33-64 Users)	31,050.00
ESQL/C - Full Development (1-16 Users)	2,420.00
ESQL/C - Run-Time (33-64 Users)	2,760.00
C-ISAM - Run Time (33-64 Users)	<u>3,110.00</u>

Sub-Total Informix Software **\$51,420.00**

Less 5% Discount on Informix **- 2,571.00**

\$48,849.00

Sales Tax @ 8.5% **4,152.17**

Total Informix Software **\$53,001.17**

GRAND TOTAL LICENSE FEES **\$227,400.17**

*total price for car
software fee
\$1,000*

II. PAYMENT SCHEDULE

Payment of License Fees, installation and training shall be made as follows:

1. Upon execution of the IFAS Software License Agreement and the delivery of the user guide documentation.
30% of all applicable License Fees \$52,319.70 ✓
100% of all Informix Database Management Software \$53,001.17 ✓
2. Upon the conclusion of installation of IFAS
30% of all applicable License Fees \$52,319.70 ✓
3. 120 days after the installation of IFAS
25% of all applicable City Fees \$43,599.75
4. Sixty (60) days after live use of Basic IFAS
(GL, NU, PE, AR, AP, CR, CK) or 180 days after
installation whichever occurs first.
15% of all applicable City Fees \$26,159.85

III. LICENSE FEES

Upon paying the applicable Basic License Fee(s) set forth above for the licensed Software programs, such licenses shall be paid up and City shall have the ability to use such programs on the designated computer equipment without additional fees. Applicable Basic License Fee(s) are set by BI-TECH based on the then current processor category on which the licensed Software programs will operate. Should City order an upgrade to a larger processor category within a period of two years from the original execution date of the Software License Agreement, City shall pay fees calculated as the difference between the original licensed category fees and the upgraded licensed category fees, using fees extant at the time of the upgrade order for purposes of calculations. The Basic Software License Fee includes a warranty (Section 9) and the option to purchase maintenance (Section 11) for any licensed Software programs by executing an appropriate instrument (see attached Schedule B) and paying in advance the applicable fees as from time to time are in effect.

SCHEDULE B TO SOFTWARE LICENSE AND SUPPORT AGREEMENT

City of Carson, CA

SOFTWARE MAINTENANCE

I. MAINTENANCE

BI-TECH agrees to provide City with one (1) year of maintenance for the Software described in, and licensed by, this agreement at a rate of 12% per year of the undiscounted price.

(This includes maintenance of all enhancements and modifications made to IFAS by BI-TECH

Total maintenance for one year: \$26,591.40

As long as City is paying for maintenance with respect to the Software under the terms set forth in Schedule A hereof, BI-TECH shall provide to City (and, to the extent applicable, install or give adequate instructions for the installation of magnetic image program updates and additions) the following goods and services:

- All user guide updates created by BI-TECH which relate to the Software.
- All program updates and additions for use with the Software which are developed by BI-TECH, provided, however, that no such program update or addition shall materially impair the functionality or performance characteristics of the Software. Documentation updates which relate to particular program updates and additions will be included in magnetic image with the software mailing; hard copy documentation will normally follow within three months of delivery of the software updates and additions.
- Phone-in consultation service in which City may request and receive verbal information regarding the use of the Software. Normal response to client initiated requests for information will be within four hours. City agrees to attempt to locate information in provided user documentation prior to use of Phone-in consultation service.
- All program changes deemed necessary by City to make the software (including any program updates and additions) perform as described in the user guides, provided, however, that no user guide update shall be effective to delete or reduce a functional specification without City's consent.

Maintenance services shall be provided with sufficient promptness to avoid unreasonable down-time. This agreement specifically does not include any assistance by BI-TECH with respect to modifications of the Software which are desired by City except as set forth in Schedule A. Any modifications not made by BI-TECH and the results caused thereby to the Software shall be the sole responsibility of City.

For the term of this Agreement, BI-TECH shall provide City, on a timely basis, with updates necessary for the System to continue to accomplish its principal computing functions and with updates reflecting improvements made to the Software by BI-TECH. If City notifies BI-TECH that it suspects an error in the program logic or documentation of the Software, BI-TECH shall, as part of such support, use its best efforts to confirm the existence of the error and correct it. If BI-TECH ultimately determines that no such error exists, City shall pay BI-TECH for its services at BI-TECH's then current hourly rates and reimburse BI-TECH for all reasonable travel, living and modem expenses incurred by BI-TECH in rendering such services.

Upon request, BI-TECH shall provide City with such modifications to the Software as City may reasonably require to maintain the compatibility of the Software with new releases of the operating system under which the Software is to be functional.

City will have the option, at the end of the first year of maintenance under this agreement, to extend such maintenance on a year to year basis at the lesser of:

- a. BI-TECH's current maintenance charge for largest CPU Category;
- or,
- b. The previous year's maintenance cost increased by a factor of two (2) percent over the last annual adjusted Consumer Price Index (CPI) for Urban Wages Earners (all items) - Western Region.

Should City not exercise the option to extend maintenance beyond the first year of maintenance under this agreement, City retains the right to purchase at cost from BI-TECH any future releases and/or enhancements to the Software, including modifications to the Software to maintain its compatibility with new releases of the operating system.

II. PAYMENT SCHEDULE

Payment of maintenance charges shall be as follows:

Payments begin when the main GL training has been conducted but not before 120 days from installation and not after 160 days from installation. The main GL training is defined as the first GL visit where the Chart of Accounts and subsequent coding are trained on and initially defined.

Annual maintenance on the INFORMIX Software products will be contracted directly with INFORMIX by City. Estimated annual maintenance fees for the licensed Engine, ESQL/C, and C-ISAM products is \$7,500.00.