

Commission Agenda Item

MEETING DATE: October 21, 2013

SUBJECT: USA Software Support and Maintenance

AGENDA SECTION: Agenda

DEPARTMENT: Alachua Police Department

PREPARED BY: Joel DeCoursey, Jr. – Chief of Police

RECOMMENDED ACTION: Authorize the Chief of Police to execute the Software Support and Maintenance Agreement with USA Software, Inc. Approve expense for continuation of annual software support and maintenance agreement with USA Software, Inc.

Summary

Upon approval of the City's FY 2013 budget, funds were appropriated under contractual services for USA Software, Inc. This item exceeds the City manager's \$10,000 approval threshold, so it is being presented to the Commission for final authorization. The expense has been itemized as follows:

1. **USA Software, Inc.** – In October 2007, the police department began operating with a new Computer Aided Dispatch (CAD) and records management system, USA Software, Inc. The initial purchase of the software system included one year of support and maintenance, after which the department would be charged on an annual basis. USA Software is the sole source for the license and maintenance agreements that are necessary for the function of the current software and related Computer Aided Dispatch (CAD) system in use at the police department. This expense is for the continuation of our annual support and maintenance agreement in the amount of **\$12,257.85**.

ATTACHMENTS: USA Software Support and Maintenance Agreement.

REVIEWED BY CITY MANAGER:



Software Support and Maintenance Agreement

The following are the terms and conditions under which USA Software agrees to furnish and Customer agrees to accept software support services for the Licensed Program(s) and for the number of workstations and users as listed on the attached Support Schedule A.

- I. **ELIGIBILITY REQUIREMENTS:** Services under this Agreement are applicable only to Information Management Systems Software purchased from USA Software commencing with Version 6.
- II. **TERMS & CONDITIONS:** At the time Customer licenses Licensed Programs(s) from USA Software, it may also purchase support services for the Licensed Program(s). All such services shall be upon the following terms and conditions:
 1. **Support.** USA Software will provide the following support
 - a. Telephone support service to Customer for the purpose of assisting Customer with the application of the Licensed Program(s). Telephone Support Service is defined as "answering questions requiring a nominal amount of time, usually during the same telephone call" and will be available from 8:30 A.M. until 4:30 P.M., Mondays through Fridays (holidays excluded). Extended, 24 hour, 7 day per week coverage (24x7 support) is also available, for an additional charge, via an addendum to this agreement. In the event any telephone support requires an inordinate amount of time (over five minutes on any one problem or call) Customer may be responsible for the long distance telephone charges for such call(s).
 - b. Web-based support is provided where available. As an alternative to web-based support, modem communication support is provided. Customer must provide its own compatible modem and will be responsible for all long distance telephone connect time and charges. Customer is responsible for all aspects of configuring their site for communication between USA Software and the Customer site. This includes, but is not limited to, all hardware, internet access, firewall settings, and server access settings. Customer-provided copy of GoToMyPc may be required.
 - c. On site visits either to the USA Software site by Customer or to Customer's site by USA Software and services in addition to telephone service will be charged at the then current labor rates plus expenses. Customer will be informed in advance of incurring any charges. This service is provided only to Customers within the continental United States and Canada.
 - d. DOES NOT INCLUDE:
 - a. Restoration of any software and/or data on Customer system due to failure on the part of Customer to adequately backup software and/or data or protect same from virus attacks and/or spyware/adware related issues.
 - b. After hours, weekend, and holiday support which may be contracted for separately.
 - c. Maintenance of any Customer systems other than the Licensed Product(s). This includes, but is not limited to, security settings, hardware maintenance and configuration, network configuration, etc.
 - d. Support for any operating system no longer supported by Microsoft.
 - e. Customer agrees to keep Customer's systems up to date, at its own cost and expense, with all of USA Software's most current system requirements. Failure to do so may result in suspension of support.

2. **Fees:** Customer shall pay to USA Software an annual support fee in advance in the amount set forth in the USA Software invoice/statement accompanying this Agreement. Fees are payable to USA Software in Broward County, Florida and are subject to change without notice except for current agreements for a maximum of 12 months or until expiration date whichever period is shorter. The annual support fee may be increased for any renewal term but no increase shall be more than five percent (5%) over the immediately preceding term. In the event Customer fails to timely pay the annual support fee or discontinues annual support, the USA Software application modules will cease to function. Customer may elect to pay annual support for "selected" modules but, in such event, only those modules for which annual support is paid will function, and those for which annual support is not paid will no longer function. Prices are subject to change in the event additional workstations or users are added. In the event Customer cancels this agreement or otherwise discontinues paying for support, or any portion thereof, and later desires to reinstate or recommence support at a later date, Customer must prepay for annual support at the then current rate PLUS pay for all updates which were released during the time support was suspended at USA Software's standard rates.

3. **Term:** This Support Agreement shall be for an initial term of twelve (12) months as shown on the invoice/statement accompanying this Agreement and shall automatically renew for consecutive additional twelve month terms unless cancelled in writing at least thirty (30) days prior to the end of any term.

4. **Software Maintenance:** USA Software shall distribute to Customer updated Licensed Program(s) and/or documentation as soon as they are commercially available, subject to their applicable license agreements. USA Software shall distribute to Customer any new versions, upgrades and/or other enhancements to the Licensed Program(s) which are released, in USA Software's sole discretion, during the maintenance term. Customer acknowledges that certain new versions, upgrades and/or other enhancements to the Licensed Program(s) may require either additional software, hardware or hardware updates, with respect to the Customer's original or current computer system(s), in order for the Licensed Program(s) to function and/or to allow Customer to gain the full benefits of said new versions, upgrades and/or other enhancements to the Licensed Program(s). All costs and responsibilities for such new or additional software and/or hardware shall be borne solely by Customer.

III. **WARRANTY AND LIMITATION OF LIABILITY:**

1. USA Software will not be liable for any failure or delay in performance due in whole or in part to any cause beyond USA Software's reasonable control.

IV. **GENERAL**

1. Customer may not assign any of its obligations, rights or remedies under this Agreement and any such attempted assignment shall be null and void.
2. The waiver or failure of either party to exercise in any respect any right provided for herein shall not be deemed a waiver of any further right hereunder.
3. Customer agrees that USA Software may perform such tests as USA Software shall deem reasonably necessary to monitor compliance with applicable software licenses at any time via remote access from our Corporate Offices, with or without notice, and onsite with reasonable notice during normal business hours.
4. That the Software License Agreement for the products covered herein and the USA Software Terms and Conditions of Sale are incorporated herein by reference and made a part hereof. That if any term of this agreement and the applicable License Agreement are inconsistent or contrary the applicable License Agreement shall govern.

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5. This Agreement shall be deemed made and entered into in Broward County, Florida and shall be governed by the laws of the State of Florida. Customer agrees that venue for any suit or action arising out of or in connection with this Agreement, the Licensed Programs or any support or materials provided herewith, or any other matter involving USA Software, including but not limited to rescission, can and shall be maintained in Broward County, Florida should Customer file, and Alachua County should USA Software, Inc. file and Customer hereby waives all rights to trial by jury.
6. Customer agrees that USA Software's entire liability, if any, for any cause whatsoever arising out of this Agreement shall not exceed two times the amount Customer actually paid to USA Software to purchase the support.
7. This Agreement constitutes the entire and sole agreement of the parties hereto and supersedes all prior agreements, understandings, oral or written, expressed or implied, with respect to the subject matter hereof. There are no contemporaneous oral agreements or understandings between the parties other than those contained or incorporated herein. This Agreement may not be amended or modified except in writing.
8. In the event any litigation is instituted by either party under or as a result of this Agreement, the prevailing party shall be entitled to its reasonable attorneys fees from the non-prevailing party.

Accepted and agreed to:

Customer name: _____

Signature: _____

Print Name: _____

Street Address: _____

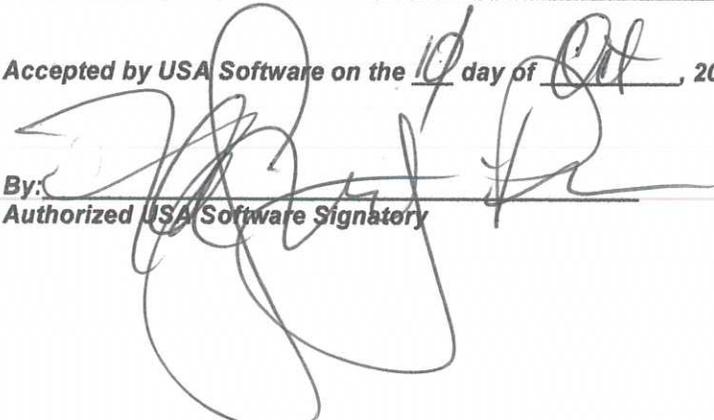
City/State/Zip: _____

Telephone: _____ **Fax:** _____

Date: _____

Not effective until accepted by an authorized representative of USA Software.

Accepted by USA Software on the 10 day of Oct, 2013

By:  _____
Authorized USA Software Signatory

SUPPORT SCHEDULE A

This Support Schedule outlines the software (Licensed Programs) to be included with the USA Software Support and Maintenance Agreement provided to Customer.

<u>Item #</u>	<u>Software name</u>	<u>Quantity</u>
1	<i>CrimeFile® IMS Records Management System</i>	1
2	<i>CADFile® IMS Computer Aided Dispatch</i>	1
3	<i>PhotoFile IMS® Mugshot Management System</i>	1
4	<i>EvidenceFile® IMS Evidence Management System</i>	1
5	<i>MobileFile IMS® eForms Field Reporting System</i>	1



USA Software, Inc. LICENSE AGREEMENT

This legal document is an agreement between you, the end user and USA SOFTWARE, INC. (hereafter referred to as COMPANY). YOU ARE AGREEING TO BECOME BOUND BY THE TERMS OF THIS AGREEMENT, WHICH INCLUDES THE SOFTWARE LICENSE AND SOFTWARE DISCLAIMER OF WARRANTY (collectively the "Agreement"). THIS AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN YOU AND COMPANY AND MAY NOT BE MODIFIED UNLESS IN WRITING SIGNED BY COMPANY. IT SHALL BE DEEMED THAT YOU HAVE AGREED TO ALL OF THE TERMS AND CONDITIONS OF THIS LICENSE BY YOUR USE OF THE PRODUCT.

1. GRANT OF LICENSE. In consideration of payment of the LICENSE fee, which is part of the price you paid for this product, COMPANY, as Licensor, grants to you, the LICENSEE, a limited nonexclusive right to use and display one copy of all COMPANY provided software programs (hereinafter the "SOFTWARE") on a single COMPUTER. If the SOFTWARE is designated as "Multi-User", COMPANY grants you a limited nonexclusive right to 1) install and operate the SOFTWARE on one multi-user computer (one central processing unit and directly connected terminals) OR install and operate the SOFTWARE on one local area network (LAN) server and operate the SOFTWARE solely on work station computers physically attached to the LAN server on which the SOFTWARE is installed (but not including any computer having access to the LAN by way of a bridge or gateway) for the number of users specified and allowed by COMPANY. COMPANY reserves all rights not expressly granted to LICENSEE.

2. OWNERSHIP OF SOFTWARE. COMPANY owns and retains title and ownership of the SOFTWARE recorded on the original tape/disk copy(ies) and all subsequent copies of the SOFTWARE, regardless of the form or media in or on which the original or other copies may exist.

3. COPY RESTRICTIONS. This SOFTWARE and the accompanying written materials constitute confidential material and/or are copyrighted. Unauthorized copying of the SOFTWARE, including SOFTWARE that has been modified, merged, or included with other software, or of the written materials is expressly forbidden. You may be held legally responsible for any copyright infringement that is caused or encouraged by your failure to abide by the terms of this License. Subject to these restrictions you may make one (1) copy of the SOFTWARE solely for backup purposes. You must reproduce and include the copyright notice on the backup copy.

4. USE RESTRICTIONS. The SOFTWARE may only be installed and utilized on only one single computer at any one time except as to such SOFTWARE that is designated as "Multi-User" by COMPANY and then only for the number of users as specified and allowed by COMPANY. You may not electronically transfer the SOFTWARE from one computer to another over a network except such SOFTWARE that is designated as "Multi-User" by COMPANY. You may not distribute copies of the SOFTWARE, accompanying written materials to others. You may not modify, adapt, translate, reverse engineer, decompile, disassemble, or create derivative works based on the SOFTWARE. You may not modify, adapt, translate, or create derivative works based on the written materials without the prior written consent of COMPANY. You agree that COMPANY may perform such tests as COMPANY deems reasonably necessary to monitor compliance with this software license at any time via remote access from our Corporate Offices, with or without notice, and onsite with reasonable notice during normal business hours.

5. TRANSFER RESTRICTIONS. The COMPANY provided SOFTWARE and the written material are licensed only to you, the LICENSEE, and may not be transferred to anyone without prior written consent of COMPANY. Any authorized transfer shall be bound by the terms and conditions of this Agreement. In no event may you transfer, assign, rent, lease, sell or otherwise dispose of the SOFTWARE, or written materials on a temporary or permanent basis without the prior written consent of COMPANY.

6. TERMINATION. This License is effective until terminated. This License will terminate automatically without notice from COMPANY if you fail to timely pay any applicable monthly subscription fee, maintain a current Support Agreement in effect with COMPANY or if you fail to comply with any provisions of this License. In the event you fail to timely pay any applicable monthly subscription fee or fail to maintain a current Support

Agreement or fail to timely pay the annual support fee or discontinue annual support, the Software will cease to function and COMPANY shall not be liable to you for any reason.

Upon termination for any reason you shall return to COMPANY or destroy the written materials and all copies of the SOFTWARE, including backup and modified copies, if any. All of COMPANY'S remedies, whether provided herein or at law, are cumulative and shall survive any termination of this Agreement.

7. UPDATE POLICY. From time to time as they may become available, COMPANY may notify you of any enhancements or updates released by COMPANY for SOFTWARE licensed hereunder. Any such updates offered would be included in the COMPANY's Support Agreement if in effect and subject to standard COMPANY terms and charges. COMPANY MAY MAKE SUCH UPDATES AVAILABLE ONLY TO THOSE LICENSEE'S WHO MAINTAIN AN ACTIVE SUPPORT AGREEMENT WITH COMPANY. In the event you do not maintain a Support Agreement with COMPANY, discontinue paying for support, or any portion thereof, and later desire to reinstate or recommence support at a later date, you must prepay for annual support at the then current rate PLUS pay for all updates which were released during the time support was suspended at COMPANY's standard rates.

8. MISCELLANEOUS. This Agreement is governed by the laws of the State of Florida. You agree that venue for any suit or action arising of or in connection with this agreement, the software or any other matter involving COMPANY, including but not limited to rescission, can and shall only be maintained in Broward County, Florida and you hereby submit to the jurisdiction of the courts in Broward County, Florida for any such suit and hereby waive any and all rights to trial by jury. You agree that COMPANY'S entire liability, if any, for any cause whatsoever arising out of the SOFTWARE of this License Agreement shall not exceed the amount you actually paid to COMPANY to purchase the SOFTWARE. Any civil action or proceeding brought or commenced against COMPANY arising out of the SOFTWARE or this License Agreement must be commenced within eighteen (18) months from the date of purchase of the SOFTWARE, otherwise any such action shall be barred.

9. LIMITED WARRANTY, DISCLAIMER and LIMITATION of LIABILITY. COMPANY warrants the media on which the Licensed Software is provided to be free from defects in materials and workmanship for a period of one (1) year after delivery. Defective media may be returned during the warranty period unless the media has been damaged by accident or misuse. Due to the complex nature of computer software, COMPANY does not warrant that COMPANY Computer Software is completely error free, will operate without interruption or is compatible with all equipment or software configurations.

EXCEPT AS PROVIDED ABOVE, THERE ARE NO OTHER WARRANTIES. COMPANY, ITS DISTRIBUTORS, DEALERS AND/OR AGENTS MAKE NO EXPRESS OR IMPLIED WARRANTIES TO LICENSEES, INCLUDING END USERS, WITH REGARD TO THIS SOFTWARE AND OTHER MATERIALS OR SERVICES PROVIDED THEREWITH, INCLUDING MERCANTABILITY, FITNESS FOR ANY PURPOSE OF NON-INFRINGEMENT OF PATENTS, COPYRIGHTS TRADEMARKS, OR OTHER PROPRIETARY RIGHTS OF OTHERS. NEITHER OF THEM SHALL HAVE ANY LIABILITY OR RESPONSIBILITY TO LICENSEES, INCLUDING END USERS, FOR DAMAGES OF ANY KIND, INCLUDING SPECIAL INDIRECT OR CONSEQUENTIAL DAMAGE, ARISING OUT OF OR RESULTING FROM ANY PROGRAM, SERVICES OR MATERIALS MADE AVAILABLE HEREUNDER ANY FUTURE UPDATE OR THE USE OR MODIFICATION THEREOF. IN THE EVENT YOU FAIL TO MAINTAIN A CURRENT SUPPORT AGREEMENT WITH COMPANY, OR FAIL TO TIMELY PAY THE ANNUAL SUPPORT FEE OR DISCONTINUE ANNUAL SUPPORT, THE SOFTWARE WILL CEASE TO FUNCTION AND COMPANY SHALL NOT BE LIABLE TO YOU FOR ANY REASON WHATSOEVER. IN NO EVENT SHALL COMPANY BE LIABLE FOR ANY LOSS OF PROFIT OR ANY OTHER DAMAGES OF ANY KIND. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU. THIS LIMITED WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS, AND YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE. YOU ACKNOWLEDGE THAT YOU HAVE RELIED ON NO WARRANTIES OTHER THAN THE EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT.

10. U.S. GOVERNMENT RESTRICTED RIGHTS. This computer software and documentation are provided with RESTRICTED RIGHTS. Use, duplication, or disclosure by the government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs (c)(1) and (2) of the Commercial Computer Software Restricted Rights at 48 CFR 52.227-19, as applicable.



INVOICE

September 30, 2013

Invoice Number:

302841

ALACHUA POLICE DEPARTMENT
PO BOX 910
ALACHUA FL 32615

Order Date Terms Ordered By Purchase Order#
09/30/2013 NET 30

<u>DETAIL#</u>	<u>MODULE_ID</u>	<u>MODULE</u>	<u>QUANTITY</u>	<u>PRICE</u>	<u>EXTENSION</u>
1	53	Support Contract – Renewal Renewal Dates will run from 10/27/2013 – 10/26/2014	1	12,257.85	12,257.85
				Total	12,257.85

Please refer to the above Invoice Number to receive proper credit for payment. Remit all payments to:
USA Software, Inc.
9900 Stirling Road, Suite 302
Cooper City, Florida 33024
(954) 436-3911