

THE STATE OF TEXAS

COUNTY OF COLLIN

Subject: Agreement, AmCad Software Maintenance & Update Agreement – County Clerk

On **October 11, 2010** the Commissioners Court of Collin County, Texas, met in **regular session** with the following members present and participating to wit:

Keith Self
Matt Shaheen
Jerry Hoagland
Joe Jaynes
Kathy Ward

Not Present

County Judge, Presiding
Commissioner, Precinct 1
Commissioner, Precinct 2
Commissioner, Precinct 3
Commissioner, Precinct 4

During such session the court considered a request for approval of AmCad Software Maintenance & Update Agreement.

Thereupon, a motion was made, seconded and carried with a majority vote of the court for approval of AmCad Software Maintenance & Update Agreement with American Cadastre, LLC (AmCad) the provider of software for the County Clerk's land, deeds and vitals; recognize American Cadastre, LLC (AmCad) as the sole source for software maintenance and future configuration changes for the AiLIS software per Local Government Code 262.024(a)(7)(A) and further authorize the Purchasing Agent to finalized and execute same. Same is hereby approved in accordance with the attached documentation.



ATTEST:


Stacy Kemp, Ex-Officio Clerk
Commissioners' Court
Collin County, TEXAS



Keith Self, County Judge



Matt Shaheen, Commissioner, Pct. 1



Jerry Hoagland, Commissioner, Pct. 2



Joe Jaynes, Commissioner, Pct. 3

Not Present

Kathy Ward, Commissioner, Pct. 4



AMCAD® Software Maintenance & Update Agreement

THIS SOFTWARE MAINTENANCE & UPDATE AGREEMENT is made the 22nd day of Sept, 2010 between AMERICAN CADASTRE, LLC (dba "AMCAD®") of 220 Spring Street, Ste 150, Herndon, VA 20170 and the Customer identified below whereby AMCAD® is to provide the services specified in this Agreement. This agreement consists of the cover page(s) and 20 Paragraphs.

NAME OF CUSTOMER: Collin County TX

ADDRESS: Collin County, TX, 2300 Bloomdale Suite 2104, McKinney, TX 75071

TELEPHONE: (972) 548 4150

FACSIMILE: (972) 548-5731

CUSTOMER CONTACTS (Maximum of Two):

- 1) Stacey Kemp, Collin County Clerk
- 2) Brenda Cavender, Land Administrator
- 3) Sara Hoglund, Purchasing Agent, Collin County

SOFTWARE APPLICATIONS: Cashiering, Scanning, Indexing/Verification, Index Rule Enforcement, System Administration, Public Inquiry, E Recording,

DESIGNATED SERVER: Procured by Collin County

MAXIMUM NUMBER OF CONCURRENT USERS: Unlimited

SOFTWARE UPDATES: Included for the purchased AiLIS Software Version of the modules licensed and designated above under Software Applications.

SOFTWARE MAINTENANCE: Included while under Software Maintenance & Update Agreement. \$200.00 per hour outside of the Principal Period of Support after Initial Period

\$57.250	1st year;
\$60,112.50	2nd year;
\$63,118.13	3rd year;
\$66,274.04	4th year;
\$69,587.73	5th year;

This Agreement consists of this cover page (the "Cover Page") and the attached terms

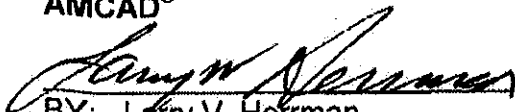


and conditions 1 through 20 and constitutes the entire agreement between the parties for the subject matter hereof and supersedes all prior arrangements, agreements, representations and undertakings written or oral. This Agreement may not be changed or modified except by a written instrument duly executed by each of the parties hereto.

EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT OR BY LAW, THERE ARE NO OTHER WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED.

AGREED AND ACCEPTED:

AMCAD®


BY: Larry V. Heffman

TITLE: President

DATE: 22 Sept 10


BY:

TITLE: Purchasing Agent

DATE: 10/12/10

2010-823-10-11

1. Definitions

"Support Organization" means AMCAD®, or at AMCAD®'s, option in respect of any service to be performed hereunder, means a person, firm or corporation authorized by AMCAD® at any time or from time to time to supply Software Maintenance in respect of Software and nominated in writing by AMCAD® at any time or from time to time to provide Software Maintenance to the Customer hereunder;

"Commencement Date" means the date referred to in Clause 3;

"Customer" means the customer referred to on the Cover Page;

"Initial Period" means the twelve (12) calendar months next ensuing after the Commencement Date;

"Software Applications" means the software detailed on the Cover Page;

"Version" means the software code of a particular AiLIS variant or original;

"Software Maintenance" means advice on operating the Software, advice on problems with the Software (given over the telephone or in writing) and includes spot training, software documentation improvements and software bug fixes;

"Software Updates" means feature additions to the "Software Versions" already purchased by the Customer;

"Application" means a part of a software package containing one or more functions;

"Related Persons" means and includes any related body corporate of AMCAD® or any secretary, officer or employee, agent or contractor of any of AMCAD® or its related bodies corporate.

"Go Live" means the date/day that the AMCAD® system is first utilized by the customer for support to its customers. This is usually the first Monday after training and final legacy data conversion has taken place.

2. Services

Subject to the terms and conditions contained in this Agreement the Support Organization will provide Software Maintenance as may be necessary to maintain the Software in good operating condition.

3. Term

The Software Maintenance to be supplied under this Agreement will have a commencement date of October 1, 2010 through September 30, 2011 with option to renew for four (4) additional one (1) year terms at the pricing specified on the first page of this agreement.



4. Software Updates, Etc

A. AMCAD® will support Software Updates via remote installation support. The Customer is required to provide a VPN connection to AMCAD for remote access. Any on-site support required or any support required to upgrade to a new Version of the AiLIS Software or to add a new Application is subject to service and travel (as required) will be subject to additional costs.

B. AMCAD® has the option of deferring Software Maintenance pursuant to this Agreement should the Customer delay installation of any new release of the Software by AMCAD®.

C. New Versions of the Software or additional Applications not already purchased by the Customer will not be considered part of this Agreement. The Customer may purchase new Software Versions and Applications at a discount from standard pricing for other AMCAD® Customers of similar size and volume (document recordings) processing.

D. The current Version of the AiLIS Software Product installed for this Customer is Version 5.004.31047.

E. Additional Applications or Versions of AMCAD®'s AiLIS Software may or may not be included as determined by AMCAD®. AMCAD has agreed to, as part of this agreement, upgrade Collin County to Version 6 of the application within the timeline of this agreement.

F. STATUTORY CHANGES- If state statutory changes are required; AMCAD® includes, in our Maintenance and Support agreement, the changing to AiLIS system configuration, reports, and user defined tables available through AiLIS Administration table maintenance. Any alterations to the system as a result of state statute changes not covered in this maintenance agreement can be provided to the County, via a change order, at the hourly rates included in this document. AMCAD® will make every attempt to complete the changes as quickly as possible, but will require that a minimum of thirty (30) days be allowed for completion of statutory changes.

AMCAD® also reserves the right to charge, at the hourly rates discussed in this contract, for changes to a state statute, that require AMCAD® to either change the specifications of the alterations to the system or revert back to a previous configuration, that are made after the specifications to comply with the state statute are agreed on by AMCAD® and the County.

5. Software Maintenance

A. The Support Organization provides herewith telephone and/or facsimile and/or electronic mail support for problems associated with the routine use and operation of the software.

B. The Customer shall provide a Virtual Private Network (VPN) connection for AMCAD® to use to perform maintenance during the principal period of support.

C. The Customer shall provide to AMCAD® on the Cover Page with the names of up to



two (2) representatives who with AMCAD®'s acknowledgement shall have access to the Support Organization's telephone advice service. The representatives may be changed from time to time by Agreement between the parties. The initial representatives shall be the persons referred to on the Cover Page.

6. General

All services to be provided under this Agreement shall be referred to as the Principal Period of Support and provided between the hours of 8:00 a.m. to 5:00 p.m. C.S.T. (Central Standard Time), Monday to Friday (excluding public holidays). Service coverage required outside of these hours is defined as emergency support and may be arranged with the Support Organization. Emergency Support services shall be defined as outside the Principal Period of Support and be charged at a rate of \$200 per hour or fraction thereof (in fifteen (15) minute increments). Each customer will be provided an AiLIS Software Maintenance Program document tailored to the specific county. This document will be provided by the AMCAD® Customer Support Manager (CSM) assigned specifically to the County and includes contact, priority, and Tracker support system information.

7. Services Not Covered

The following services are not covered by this Agreement; provided, however, they may be provided by mutual agreement at the request of Customer at charges based on AMCAD®'s then-current price list and as agreed by both parties.

A. Repair or damage resulting from malfunction of external electrical power, air conditioning, water damage, fire damage, burglary, theft, vandalism, civil commotion, or war.

B. Remediation of problems caused by use of software not covered by this Agreement or improper Computer Network operation and control by the customer.

C. Support provided to remedy problems caused by items in paragraphs 7a and 7b will be billed to the customer at \$150 per hour during the Principle Period of Support and \$200 per hour outside of the Principal Period of Support.

D. This Maintenance Support Agreement is not intended to supplement training for Customer personnel that do not attend the training sessions. Excessive support for strictly customer training or lack of knowledge of the system by the customer is not maintenance. It is expected that Customer will utilize the "user manuals" provided by AMCAD® prior to contacting the Support System for help.

E. Hardware maintenance on Customer equipment. If the equipment was purchased through AMCAD®, the Manufacturer's Warranty will be passed on to the Customer. For Customers who purchase equipment through AMCAD®, the Customer will notify AMCAD® of the equipment problem and AMCAD® will arrange for the OEM to provide the warranty service. By passing on the equipment warranty and coordinating warranty service, AMCAD® assumes no responsibility for identifying, troubleshooting, or resolving hardware-related problems. Should this level of support be needed it will be covered by

a separate Hardware Maintenance Agreement.

8. Customer Responsibilities

- A. The Customer must have a valid license to use the Software from AMCAD®.
- B. The Customer shall notify the Support Organization of any Software problem together with complete information concerning the failure, as soon as possible after the problem has been recognized.
- C. The Customer will provide the Support Organization with the following:
 - 1. Name of nominated personnel who are competent to use the Software;
 - 2. Access to the Software and computer(s) on which it resides via VPN access;
 - 3. Adequate working space and facilities;
 - 4. Access to and use of all information necessary to service the Software;
 - 5. The Customer shall be responsible for security of its confidential, proprietary and classified information as well as for the maintenance of adequate backup procedures for files, as AMCAD® will not be responsible for loss of or altered files, data or programs;
 - 6. The Customer agrees to provide an installation environment which meets the specified requirements of the computer on which the software is running.
 - 7. The Customer agrees to limit use of the Software Maintenance Services that are the subject of this Agreement to occasions when the Software fails to work as set forth in the user manuals or occasions where the user manuals are unclear.

9. Service Charges

- A. The annual maintenance fee shall be the amount set out on the Cover Page. Fees for subsequent periods of one (1) year shall be AMCAD®'s then current standard annual fee for maintenance of the Software Applications. Maximum annual increase in the annual maintenance fees shall be 5% per annum.
- B. Where the Software is located at a distance beyond fifty miles (50 miles) from the Support Organization's office, a travel charge may be made by the Support Organization, if on site support is necessary.
- C. Customer will pay all shipping and media costs for Software Updates.

10. Changes to Software Maintenance Agreement



A. During the terms of the Agreement no changes shall be made to the terms and conditions contained herein other than by variation agreed to by both parties and comprised in a written variation hereof.

B. AMCAD® has the right to vary the charges made hereunder if the Customer wishes to extend the service hours beyond normal working hours referred to in Clause 5.

11. Non-Payment

Invoice will be dated October 1st of each year. Payment will be made in accordance with VTCA Government Code 2251. The Support Organization reserves the right to decline support maintenance if any amounts invoiced by Support Organization have not been paid by Customer by November 20th of each year.

12. Extraordinary Expenses

The Support Organization reserves the right to charge for unusual or excessive telephone, shipping, handling media or user manual expenses in connection with the Software Support to be provided hereunder. In all cases, the Support Organization will notify the Customer of these costs in advance.

13. Assignment

Neither party to this agreement may assign this Agreement to a third party without the prior written agreement of the other party to this agreement.

14. Force Majeure

AMCAD® shall not be responsible or liable for failure to perform or observe, or for delay in performing or observing any obligation under this Agreement where such failure or delay arises from any cause beyond the control of AMCAD® or the Support Organization (as appropriate), including, but not limited to, strikes, lockouts, industrial action, act of god, insurrection, or civil commotion, or any other cause which AMCAD® or the Support Organization (as appropriate) could not reasonably be expected to have foreseen and avoided.

15. Limitation of Liability

Laws from time to time in force in the jurisdiction where any service to be performed hereunder may imply warranties or liabilities which cannot be excluded or which can only be excluded to a limited extent. In which case, AMCAD® hereby limits its liability to the extent permitted by law. If AMCAD® cannot exclude or limit any warranty implied by law, this Agreement shall be read and construed subject to such statutory provisions.

SUBJECT TO THIS CLAUSE UNDER NO CIRCUMSTANCES WILL AMCAD OR ITS RELATED PERSONS BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE, OR INCIDENTAL DAMAGES, WHETHER FORESEEABLE OR UNFORESEEABLE, BASED ON CLAIMS OF CUSTOMER OR ITS CUSTOMERS (INCLUDING, BUT NOT LIMITED TO, CLAIMS FOR LOSS OF DATA, GOODWILL, PROFITS, USE OF MONEY OR USE OF THE SOFTWARE, INTERRUPTION IN USE

OR AVAILABILITY OF DATA, STOPPAGE OF OTHER WORK OR IMPAIRMENT OF OTHER ASSETS), ARISING OUT OF BREACH OF EXPRESS OR IMPLIED WARRANTY, BREACH OF CONTRACT, MISREPRESENTATION, NEGLIGENCE, STRICT LIABILITY IN TORT OR OTHERWISE, EXCEPT ONLY IN THE CASE OF PERSONAL INJURY WHERE AND TO THE EXTENT THAT APPLICABLE LAW PROHIBITS EXCLUSION OF SUCH LIABILITY. IN NO EVENT WILL THE AGGREGATE LIABILITY WHICH AMCAD® AND ITS RELATED PERSONS MAY INCUR IN ANY ACTION OR PROCEEDING ARISING OUT OF PERFORMANCE OR NON PERFORMANCE OF THIS AGREEMENT EXCEED THE TOTAL AMOUNT ACTUALLY PAID TO AMCAD BY CUSTOMER FOR THE SPECIFIC PRODUCT OR SERVICE THAT DIRECTLY CAUSED THE DAMAGE.

In the event that it is established to AMCAD®'s satisfaction that any Software Maintenance or other service carried out by AMCAD® under this Agreement was defective, AMCAD® shall remedy such defective maintenance by provision of the same service again without cost to the Customer.

16. Applicable Laws

This Agreement shall be governed and construed in accordance with the laws of the State of Texas and each party hereto submits to the jurisdiction of the Courts of that jurisdiction and any Courts which may hear appeals therefrom.

17. Entire Agreement

This Agreement and the Cover Page and any amendments subsequently made to the terms of this Agreement as provided herein, constitute the entire agreement between the parties in respect of the subject matter hereof and supersede all proposals or prior agreements, whether oral or written, and all other communications between the parties relating to the subject matter of this Agreement.

18. Notices

Any notice permitted or required under this Agreement shall be deemed given if in writing and personally served or sent by pre-paid registered or certified air mail, or by confirmed facsimile, addressed (or as either Party may direct otherwise in writing) to the parties on the Cover Page.

Any notice given in accordance with this Clause shall be deemed to be received by and served upon the other party on the date such letter would in the ordinary course of post have reached such address or on the date such notice is served or left at the relevant address (as appropriate) and in the case of facsimile shall be deemed to have been served on the day following the date of successful transmission.

19. Legal Fees

If any litigation or arbitration shall be commenced to enforce any of the provisions of this Agreement, to recover damages for breach of any of the provisions of this Agreement, or to obtain declaratory, injunctive or specific relief in connection with any of

the provisions of this Agreement, the substantially prevailing party in such action shall be entitled to recover actual legal fees, expert witness fees, costs of depositions, and court costs on a solicitor/client basis, and expert witness fees and associated expenses incurred, and all other court costs and costs of the arbitration process irrespective of any laws or court rules to the contrary.

20. Severability

If any term, provision, covenant or condition of this Agreement shall be held by a court of competent jurisdiction to be invalid, void or unenforceable, it shall be severed herefrom and the remaining provisions of this Agreement will remain in full force and effect and will not be affected, impaired or invalidated.