DELIVERED JUN 0 8 2023

City of Middleburg Heights, Ohio

Ordinance No. 2023- 45

Introduced by: Mr. Bortolotto, Mr. Meany, and Mr. Grech

AN ORDINANCE
AUTHORIZING THE MAYOR AND FINANCE DIRECTOR
TO ENTER INTO A CONTRACT WITH
SOFTWARE SOLUTIONS, INC.

WHEREAS, the City's purchasing policy requires City Council approval on any single purchase of products or services exceeding $25,000 or any professional service contract exceeding $10,000, with the exception of items purchased through or at an amount equal to an approved cooperative purchasing agreement; and

WHEREAS, the City desires to retain the services of a competent and qualified contractor to provide certain products/services to the City; and

WHEREAS, Software Solutions, Inc. is competent and qualified to furnish products and/or services to the City and has provided a responsive and responsible proposal, and desires to provide the Finance/Accounting Software.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIDDLEBURG HEIGHTS, CUYAHOGA COUNTY, STATE OF OHIO:

Section 1. That the Mayor and Finance Director is hereby authorized to enter into a contract with Software Solutions, Inc. to provide certain products and/or services to the City, a copy of which is attached hereto and marked "Exhibit A".

Section 2. That it is hereby found and determined that all formal actions of this council concerning and relating to the passage of this ordinance were adopted in an open meeting of this council, and that all deliberations of this council and any of its committees that resulted in such formal actions were in meetings open to the public, in compliance with all legal requirements including chapter 107 of the Codified Ordinances and section 121.22 of Ohio Revised Code.

PASSED 6/13/23

PRESIDENT OF COUNCIL

ATTEST: M. Meola
CLERK OF COUNCIL

PRESENTED TO MAYOR 6/14/23

APPROVED ON: 6-14-23

MAYOR

	YEAS	NAYS
BORTOLOTTO	X	
ALI	X	
SAGE	X	
MEANY	X	
MCGREGOR	X	
FERENCE	X	
GRECH	X	

I, Mary Ann Meola Clerk of the Council of the City of Middleburg Hts., Ohio, hereby certify that Ord. 2023-45 adopted by the Council of the City of Middleburg Hts., on 6/13/23 was posted for a period of fifteen days, beginning 6/15/23 and remained so posted for fifteen days at the two posting places as designated by Charter.

Mary Ann Meola
Clerk

CERTIFICATE

I, Mary Ann Meola Clerk of Council of the City of Middleburg Heights, Ohio, do hereby certify that the foregoing is a true and accurate copy of Ord. 2023-45 passed on the 13th day of June 2023 by said Council.

Mary Ann Meola
Clerk of Council

Software Solutions

Middleburg Heights VIP upgrade

Quote

Prepared For:

Middleburg Hts., City of

Jason Stewart
15700 Bagley Road
Middleburg Heights, OH 44130

P: (440) 234-8989
E: jstewart@middleburgheights.com

Prepared by:

Software Solutions

Kevin Nye
8534 Yankee Street, Suite 2B
Dayton, OH 45458

P: 513.932.6667
E: knye@mysoftwaresolutions.com

Date Issued:
01.11.2023
Expires:
02.15.2023

Software & Implementation	Price	Qty	Ext. Price
VIP ACCOUNTING			
VIP Accounting Suite License	$37,000.00	1	$37,000.00
VIP Accounting Current User Discount	($7,400.00)	1	($7,400.00)
VIP Core System Implementation Services Accounting Conversion is for current year and 2 years of history. Additional years can be converted for an additional fee.	$23,000.00	1	$23,000.00
VIP Accounting Subtotal			**$52,600.00**
VIP DEPARTMENTAL PURCHASING			
VIP Departmental Purchasing, Vouchering/Invoice Approval License	$14,500.00	1	$14,500.00
VIP Departmental Purchasing Current User Discount	($2,900.00)	1	($2,900.00)
VIP Workflow Implementation Services for Departmental Purchasing	$8,000.00	1	$8,000.00
VIP Departmental Purchasing Subtotal			**$19,600.00**
VIP ASSET MANAGEMENT			
VIP Asset Management Suite License	$7,000.00	1	$7,000.00
VIP Asset Management Current User Discount	($1,400.00)	1	($1,400.00)
VIP Asset Management Implementation	$4,000.00	1	$4,000.00
VIP Asset Management Subtotal			**$9,600.00**
VIP ANALYTICS			
VIP Analytics Suite License Visual Budgeting & Reporting Included Visual Consoles Included	$10,000.00	1	$10,000.00
Implementation Services VIP Analytics Optionally, the city may want to add additional professional services for SSI staff to work directly with departments to set up their dashboards in Analytics for access to their budget information.	$6,500.00	1	$6,500.00
VIP Analytics Subtotal			**$16,500.00**
VIP Concurrent User Licenses - Site License	$0.00	1	$0.00
Post Live Services			

Software Solutions

Software & Implementation	Price	Qty	Ext. Price
Server Technical Setup Assistance	$1,500.00	1	**$1,500.00**
Post Live Training This is discounted from our usual rate of $1,800	$1,500.00	1	**$1,500.00**
Subtotal Post Live Service			**$3,000.00**
		Subtotal:	**$101,300.00**

Quote Summary	Amount
Software & Implementation	**$101,300.00**
Total:	**$101,300.00**

Notes

Software prices quoted are valid for 90 days.

All projects require 10% down at time of order.

Software Assurance maintenance and support annual fees will increase by $6,525 and will start after the go live date. Software Assurance includes "software for life" support plan that ensures sustainability as all future replacement software is include license fee free.

Applications include electronic banking capabilities as part of the applications. These include such things as ACH, Direct Deposit, EFT etc.

VIP Analytics includes base installation and configuration of standard templates for VIP Budgeting, Reporting and Console. Additional services can be quoted on a per project basis. Scope document available at client request.

VIP software requires a Windows Server running SQL. See specifications provided separately.

VIP Payroll, VIP Departmental Time Entry, VIP General Billing and cloud backup are not a part of this project.

To proceed please sign, scan and email this quote along with the Software License Agreement (SLA) to Kevin Nye at knye@mysoftwaresolutions.com

Acceptance

Printed Name: _____

Signature: _____

Title: _____

Purchase Date: _____

Purchase Order Number: _____

Software Solutions

Personal Attention. Public Solutions.

SOFTWARE LICENSING AGREEMENT

Agreement this ___ day of _____, _____ by and between SOFTWARE SOLUTIONS, INC., Dayton, Ohio (hereinafter referred to as "Software Solutions" or "SSI") and the City of Middleburg Heights (hereinafter referred to as "Licensee").

A. PURPOSE OF AGREEMENT, SOFTWARE DESCRIPTION, FEES, AND TRAINING

1. The purpose of this Agreement is to state the terms and conditions under which SOFTWARE SOLUTIONS will grant to Licensee a non-exclusive, non-sublicensable, and non-transferable license to use and operate certain proprietary computer programs and related documentation identified and described more fully in paragraph 2 below.

2. The computer programs which are the subject to this Agreement and the fees to be paid by Licensee therefore shall consist of the following:

   See attached quote #1047 v2

3. The sole computer hardware, software and related equipment (the "Hardware") upon which the Programs will be installed and are authorized to be operated as follows:

   Windows 10 or higher, Professional, Enterprise or Ultimate version
   Windows 2012 R2 64-bit or higher

B. DEFINITIONS

1. For purposes of this Agreement, the term "SOFTWARE SOLUTIONS Programs" shall be deemed to refer to those computer programs and related documentation specifically identified and described above in Section A(2) above and all other computer programs and related documentation which SOFTWARE SOLUTIONS and Licensee agree in writing to have included under Section A(2) of this Agreement. Unless the context otherwise requires, the term "SOFTWARE SOLUTIONS Programs", as used in this Agreement, shall also include all updates, versions, corrections, replacements, enhancements and improvements furnished or required to be furnished by SOFTWARE SOLUTIONS under or pursuant to the terms of this Agreement.

2. For purposes of this Agreement, the term "Third Party Programs" shall be deemed to refer to those computer programs and related documentation identified and described above in the attachment to this Agreement and all other computer programs and related documentation which SOFTWARE SOLUTIONS and Licensee agree in writing to have included under the attachment to this Agreement. With respect to each such additional computer program, the parties shall formally amend this Agreement to incorporate the same and shall specify any license fees or other terms and conditions unique to such program. Unless the context otherwise requires, the term "Third Party Program", as used in this Agreement, shall also include all updates, versions, corrections, replacements, enhancements and improvements

Software Solutions, Incorporated
8534 Yankee St, Suite 2B, Dayton, OH 45458

furnished or required to be furnished by SOFTWARE SOLUTIONS under or pursuant to the terms of this Agreement.

3. For purposes of this Agreement, the term "Programs" shall be deemed to refer collectively to both the SOFTWARE SOLUTIONS Programs and the Third-Party Programs, as those terms are defined above.

4. For purposes of this Agreement the term "Specifications" shall be deemed to mean the specifications, features, functions, and operational capability of the Programs set forth in the user manuals supplied to Licensee by SOFTWARE SOLUTIONS hereunder and any other documentation that the Parties mutually agree in writing should constitute "Specifications" under this Agreement.

5. For purposes of this Agreement, the terms "Problems or Defects" shall mean any failure of the Programs to operate in substantial compliance with the Specifications.

C. FEES AND PAYMENT TERMS

1. In consideration of the License granted and services to be performed hereunder, Licensee agrees to pay SOFTWARE SOLUTIONS the fees set forth in paragraph A2 of this Agreement according to the following schedule:

    10% of total order due at Signing
    60% of total order due upon installation of the first software module in Sandbox
    30% of total order due on scheduled Go Live date

2. The fees set forth in this Agreement do not include any taxes. Where applicable, there shall be added to such fees any amounts equal to any taxes (however designated, levied, or based) on such fees, on this Agreement or on the Programs or their use, including, but not limited to, state and local privilege or excise taxes, unless tax exempt.

3. If Licensee fails to make any payment when due, then in addition to all other remedies that may be available to it, Licensor may charge interest on past due amounts at the rate of 1.5% per month calculated daily and compounded monthly or, if lower, the highest rate permitted under applicable law.

D. SCOPE AND NATURE OF LICENSE GRANTED

1. SOFTWARE SOLUTIONS hereby grants to Licensee on the Hardware: (a) a non-exclusive, non-sublicensable, and non-transferable right to use and operate the SOFTWARE SOLUTIONS Programs subject to the terms and conditions of this Agreement; and (b) a non-exclusive, non-sublicensable, and non-transferable right to use and operate the Third Party Programs subject to the terms and conditions of this Agreement, provided that if the license terms that are applicable to a particular Third Party Program differ from those set forth herein, the Third Party terms shall control. SOFTWARE SOLUTIONS represents and warrants that the Third Party Programs when used in conjunction with the SOFTWARE SOLUTIONS Programs in conformance with this Agreement will not breach any of the terms of the applicable license agreement for Third Party Programs.

2. It is mutually agreed that this Agreement involves a right and license for the use and operation of the Programs and that nothing contained herein shall be deemed to convey any title or

ownership interest in the Programs to Licensee. It further is mutually agreed that nothing in this Agreement grants, or should be construed to grant, Licensee the right to give, market or sublicense the Programs to any third party without the express written consent of SSI.

E. TERM AND TERMINATION OF AGREEMENT

1. The term of this Agreement shall commence effective on the date first written above and shall continue in perpetuity, unless terminated as provided in paragraphs 2 or 3 below of this Section E.

2. SOFTWARE SOLUTIONS shall have the right upon 30 days written notice to terminate this Agreement and all rights and privileges granted hereunder if:
   (a) Licensee defaults in any of its obligations under this Agreement (including, but not limited to, its obligations to timely pay any fees due under this Agreement) and fails to cure such default within 30 days after written notice of such default to Licensee, or
   (b) Licensee shall (i) become insolvent, however evidenced, (ii) make a general assignment for the benefit of creditors, (iii) file or have filed against it a petition in bankruptcy, for a reorganization or an arrangement or for a receiver, trustee or similar creditors' representative for Licensee's property or assets or any part thereof, or any other proceeding under any federal or state insolvency law, and the same shall not have been dismissed or discharged within 60 days of such filing.

3. Licensee shall have the right upon 30 days written notice to terminate this Agreement and all rights and privileges granted hereunder if:
   (a) SOFTWARE SOLUTIONS defaults in any of its obligations under this Agreement (including, but not limited to, its obligations under Section F of this Agreement with respect to completing installation of the Programs) and fails to cure such default within 30 days after written notice of such default to SSI, or
   (b) SOFTWARE SOLUTIONS shall (i) become insolvent, however, evidenced, (ii) make a general assignment for the benefit of creditors, (iii) file or have filed against it a petition in bankruptcy, for a reorganization or an arrangement or for a receiver, trustee or similar creditors' representative for Licensee's property or assets or any part thereof, or any other proceeding under any federal or state insolvency law, and the same shall not have been dismissed or discharged within 60 days of such filing.

4. Within thirty days of the date of termination of this Agreement by either party for any reason, Licensee shall return to SOFTWARE SOLUTIONS the original Programs and any copies thereof in its possession, custody or control, including any and all physical embodiments, documentation, or other materials or copies related to such Programs, and shall also erase from all computer storage any image or copies thereof. Contemporaneously with the return or destruction of such property, Licensee shall certify in writing to SOFTWARE SOLUTIONS that the original and all copies of such property have been returned to SOFTWARE SOLUTIONS or destroyed. The parties hereto understand and agree that it is the purpose of this paragraph E(4) to protect SSI's and certain third party licensors' proprietary interest in the Programs and to prevent the unauthorized copying or use of the Programs after termination of this Agreement. In accordance with that purpose, the parties further understand and agree that nothing contained in this paragraph E(4) shall be construed to bar or prohibit Licensee from retaining after termination of this Agreement copies of reports, listings or other forms of computer output (whether electronic, print, or any other format) which consist of Licensee's own processed or raw data or other such information in which SOFTWARE SOLUTIONS or third party licensors have no proprietary interest.

5. Licensee understands and agrees that in the event of termination of this Agreement by either party for any reason other than a default by SOFTWARE SOLUTIONS of its obligations hereunder, Licensee must pay for all Services performed up to the date of Termination.

6. Notwithstanding any termination of this Agreement for any reason, the terms and conditions set forth in Section G (Limited Warranty and Warranty Disclaimer), H (Limitation on Liability and Remedies), I (Intellectual Property Rights), J (Software Solutions Indemnification), and L (General) of this Agreement shall survive and continue to bind the parties and their legal representatives, successors, heirs and assigns.

F. INSTALLATION AND ACCEPTANCE

1. SOFTWARE SOLUTIONS will use its best efforts to commence installation of the Programs as expeditiously as reasonably possible. Promptly after execution of this Agreement, the parties will work jointly to develop a mutually agreeable schedule for installation of the Programs that will be agreed to in writing by the parties. SOFTWARE SOLUTIONS agrees to use commercially reasonable efforts to perform the installation services in conformance with the dates set forth in such schedule. Notwithstanding the foregoing, SOFTWARE SOLUTIONS shall not be deemed to have missed a schedule date if the cause of such delay arises out of or relates to the actions or inactions of Licensee or results from a force majeure event, as hereafter described. SOFTWARE SOLUTIONS shall not be liable for loss or expense of any nature due to a failure to meet a specified installation date (or dates) or an unanticipated delay in completion of installation for a reason that is beyond SOFTWARE SOLUTIONS reasonable control including, without limitation, a delay that arises out of or relates to the actions or inactions of Licensee or that results from force majeure event, as hereafter described.

2. SOFTWARE SOLUTIONS promptly will notify Licensee in writing of the date on which it considers a Program to be completely installed and ready for full use and operation by Licensee. The installation date is when the Warranty period begins under this Agreement. When the Warranty period ends, the Support Agreement begins if Licensee has paid for such services.

3. Upon receipt of the written notice of installation completion referred to in paragraph 2 above of this Section F, Licensee shall have a reasonable time, not to exceed thirty (30) calendar days, to notify SOFTWARE SOLUTIONS in writing of any and all respects in which it believes installation of the Program is not complete. Licensee understands and agrees that its failure to timely give such notice shall constitute acceptance by Licensee that the Programs have been properly and completely installed.

4. Upon timely receipt by SOFTWARE SOLUTIONS of the notice referred to in paragraph 3 above of this Section F, SOFTWARE SOLUTIONS promptly will either (a) correct the alleged deficiencies identified by Licensee as preventing the Program from being properly and completely installed, and/or (b) notify Licensee in writing of such alleged deficiencies it believes either do not exist or otherwise do not render the installation of the Program incomplete.

5. In the event that SOFTWARE SOLUTIONS gives Licensee notice pursuant to paragraph 4(b) above of this Section F, Licensee shall have a reasonable time, not to exceed ten (10) calendar days, either to (a) accept the Program as properly and completely installed or (b)

notify SOFTWARE SOLUTIONS in writing that it demands that the licensee fees it has paid to SOFTWARE SOLUTIONS under this Agreement for the Program be refunded which does not include payment for Services already performed. In the event that Licensee demands such a refund, Licensee agrees upon receipt of such refund to return the Program to SOFTWARE SOLUTIONS and to waive any rights or claims it might otherwise have hereunder relating to such Program. Licensee further agrees that its failure to timely give SOFTWARE SOLUTIONS such a demand for a refund of license fees will be deemed to constitute agreement by Licensee that the Program has been properly and completely installed.

6. The parties hereto understand and agree that it is the primary purpose of the Section F to establish the dates of completion of installation and acceptance of the Programs for purposes of this Agreement. In accordance with that purpose, the parties further understand and agree that nothing contained in this Section F shall be construed to bar or otherwise limit Licensee's limited warranty rights under Section G of this Agreement with respect to subsequently occurring Problems or Defects in the Programs which are discovered after the dates of completion of installation and acceptance of the Programs.

7. The Programs may contain technological measures designed to prevent unauthorized or illegal use of the Software. Licensee acknowledges and agrees that: (a) SOFTWARE SOLUTIONS may use these and other lawful measures to verify Licensee's compliance with the terms of this Agreement and enforce SOFTWARE SOLUTIONS' rights, including all Intellectual Property Rights, in and to the Software; (b) SOFTWARE SOLUTIONS may deny any individual access to and/or use of the Software on written notice to Licensee if Licensor, in its reasonable discretion, believes that person's use of the Software would violate any provision of this Agreement, regardless of whether Licensee designated that person as an Authorized User; and (c) SOFTWARE SOLUTIONS and its Representatives may collect, maintain, process and use diagnostic, technical, usage and related information, including information about Licensee's computers, systems and software, that SOFTWARE SOLUTIONS may gather periodically to improve the performance of the Software or develop Maintenance Releases.

8. Licensee must use networking environment as set forth by SOFTWARE SOLUTIONS. If the networking environment is altered in any way, it must be modified sufficiently back as set forth by SOFTWARE SOLUTIONS at Licensee's expense.

G. LIMITED WARRANTY AND WARRANTY DISCLAIMER

1. With respect to the SOFTWARE SOLUTIONS Programs only, SOFTWARE SOLUTIONS warrants to Licensee that for a period of 90 days after the initial module scheduled live date of the SOFTWARE SOLUTIONS Program, the installed SOFTWARE SOLUTIONS Program will operate substantially in accordance with the Specifications if the Programs are properly used and not modified by anyone other than SSI.

2. With respect to the Third-Party Programs, SOFTWARE SOLUTIONS agree to use reasonable efforts to correct and/or cause to be corrected any Problems or Defects in such Third-Party Programs for a period as set forth by the Third-Party Provider after the installation date of each Third-Party Program. SOFTWARE SOLUTIONS further agrees to assign to Licensee as a third-party beneficiary during the term of this Agreement any and all warranties (if any) to SOFTWARE SOLUTIONS by the third-party licensors of such third-party programs.

3. Licensee understands and agrees that the Programs, like all other such computer software, are of such complexity that they may have inherent or latent Problems or Defects and agrees that SSI's sole responsibility under this limited warranty provision is to correct those Problems or Defects that Licensor is able to verify and reproduce either in its own testing environment or in Licensee's testing environment. Licensee acknowledges and agrees that Licensor shall have no obligation to correct Problems or Defects which it cannot verify or reproduce. Licensee agrees that during this limited warranty period it will give to Licensor prompt written notice of any Problems or Defects experienced by Licensee with the Programs which Licensee believes are covered by this limited warranty provision. Licensee further agrees that the failure to timely give such written notice shall not be deemed to constitute a breach of this Agreement, but shall be deemed to constitute a waiver of any claim by Licensee against Licensor hereunder based upon such alleged Problem or Defect with the Programs. For purposes of this notice requirement, Licensee acknowledges and agrees that notice of an alleged Problem or Defect with the Licensor Programs shall be deemed untimely if more than one week has elapsed since the date this limited warranty period has expired.

4. LICENSEE ACKNOWLEDGES AND AGREES THAT IN THE EVENT SOURCE CODE FOR THE PROGRAMS IS MODIFIED IN ANY WAY BY ANYONE OTHER THAN SOFTWARE SOLUTIONS WITHOUT THE EXPRESS WRITTEN CONSENT OF SSI, WHETHER OR NOT SUCH SOURCE CODE WAS PROVIDED BY OR ACQUIRED FROM SSI, THE LIMITED WARRANTY PROVIDED HEREUNDER SHALL IMMEDIATELY BE TERMINATED, VOID AND OF NO EFFECT, AND ANY FURTHER USE OR OPERATION OF SUCH PROGRAM WILL BE ON AN "AS IS" BASIS, WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED.

5. EXCEPT AS THIS AGREEMENT EXPRESSLY PERMITS, LICENSEE SHALL NOT PERMIT ANY PERSON TO:

    a. COPY THE PROGRAM(S);
    b. MODIFY, CORRECT, ADAPT, TRANSLATE, ENHANCE, OR OTHERWISE PREPARE DERIVATIVE WORKS OR IMPROVEMENTS OF ANY PROGRAMS;
    c. RENT, LEASE, LAND, SELL, SUBLICENSE, ASSIGN, DISTRIBUTE, PUBLISH, TRANSFER, OR OTHERWISE MAKE AVAILABLE THE PROGRAM TO ANY THIRD PARTY;
    d. REVERSE ENGINEER, DISASSEMBLE, DECOMPILE, DECODE, OR ADAPT THE PROGRAM(S), OR OTHERWISE ATTEMPT TO DERIVE OR GAIN ACCESS TO THE SOURCE CODE OF THE PROGRAMS, IN WHOLEOR IN PART;
    e. BYPASS OR BREACH ANY SECURITY DEVISE OR PROTECTION USED FOR OR CONTAINED IN THE PROGRAM(S) OR DOCUMENTATION;
    f. PERMIT A THIRD-PARTY TO MAKE CHANGES TO LICENSOR SOFTWARE OR HARDWARE WITHOUT LICENSOR'S KNOWLEDGE.

6. SOFTWARE SOLUTIONS WILL NOT BE LIABLE FOR ERRORS WHERE CUSTOMER IS NEGLIGENT INCLUDING BUT NOT LIMITED TO NOT VERIFYING AMOUNTS, INCORRECTLY INPUTTED DATA AND THE LIKE.

7. EXCEPT FOR THE LIMITED WARRANTIES SET FORTH IN THIS AGREEMENT AND THE SPECIFIC OBLIGATIONS TO INDEMNIFY SET FORTH IN SECTION J, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, SOFTWARE SOLUTIONS DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE

IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

H. LIMITATION ON LIABILITY AND REMEDIES

1. In all situations involving performance or nonperformance of a Program accepted by Licensee and in any way warranted under this Agreement, SOFTWARE SOLUTIONS shall remedy such situation by choosing to do one of the following: (a) as to each SOFTWARE SOLUTIONS Program, to provide a correction in accordance with the terms and conditions of Section G(1) of this Agreement of identifiable Problems or Defects which are preventing such SOFTWARE SOLUTIONS Program from operating as warranted, and as to each Third Party Program, to provide reasonable efforts to correct or cause to be corrected in accordance with the terms and conditions of Section G(2) of this Agreement of identifiable Problems or Defects which are preventing such Third Party Program from operating as warranted, or (b) to provide a replacement of that defective Program licensed under terms and conditions substantially similar to the terms and conditions in this Agreement. This Section H(1) states Licensee's sole and exclusive remedy with respect to all situations involving performance or nonperformance of a Program accepted by Licensee.

2. For any claim concerning performance or nonperformance by SOFTWARE SOLUTIONS pursuant to, or in any way related to the subject matter of this Agreement (including, but not limited to, any claim that SOFTWARE SOLUTIONS has failed to satisfy its repair and/or replacement obligation under paragraph 1 above of this Section H), Licensee shall be entitled to recover only its actual damages (specifically excluding, however, any indirect, incidental and/or consequential damages excluded by paragraph 3, below, of this Section H) up to, BUT NOT IN EXCESS OF the total fees paid for the License of the Software. It is understood and agreed to by Licensee that the foregoing limitation on damages is fair and reasonable adjustment to the uncertain and difficult-to-ascertain damages which might flow from a breach of this Agreement and is not intended to be a penalty, but rather is intended to limit Licensee's recovery of damages hereunder to a reasonable proportion of the damages it may sustain and to be a reasonable allocation by the parties of the business risks inherent in this, as well as any other, contract.

3. SOFTWARE SOLUTIONS SHALL NOT BE LIABLE TO LICENSEE, ITS EMPLOYEES, AGENTS OR CUSTOMERS, OR TO ANY THIRD PARTY, FOR ANY INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO, LOST PROFITS, LOST SALES, INJURY TO PROPERTY UNLESS DIRECTLY CAUSED BY SOFTWARE SOLUTIONS, DEATH OF OR INJURY TO ANY PERSON UNLESS DIRECTLY CAUSED BY SOFTWARE SOLUTIONS, ANY AND ALL LOSS OR DAMAGES CAUSED BY OR RESULTING FROM FAILURE DUE TO ANY ERROR, INTERRUPTION OR OTHER MALFUNCTION OF OR DEFECT IN THE PROGRAMS, OR ANY OTHER SUCH INCIDENTAL, INDIRECT OR CONSEQUENTIAL LOSS OR DAMAGES ARISING IN ANY WAY FROM PERFORMANCE OR NONPERFORMANCE BY SOFTWARE SOLUTIONS OF ITS OBLIGATIONS UNDER THIS AGREEMENT.

4. LICENSEE UNDERSTANDS AND AGREES THAT IT IS AND SHALL BE SOLELY RESPONSIBLE FOR ESTABLISHING AND MAINTAINING A PROCEDURE FOR RECONSTRUCTION AND/OR RECOMPILATION OF ANY AND ALL DATA OR INFORMATION LOST OR DESTROYED DURING THE USE, OPERATION, TRANSPORT OR STORAGE OF THE PROGRAMS AND THAT SOFTWARE SOLUTIONS SHALL NOT BE LIABLE UNDER ANY CIRCUMSTANCES FOR ANY DAMAGES CAUSED BY OR

ARISING FROM SUCH LOST OR DESTROYED DATA OR INFORMATION WHICH COULD HAVE BEEN AVOIDED OR PREVENTED HAD CUSTOMER PROPERLY CARRIED OUT ITS RESPONSIBILITY HEREUNDER.

5. Neither party shall be liable to the other in any manner for any loss or damage of any nature whatsoever incurred or suffered as a result of any failures or delays in performance by it due to any cause or circumstance beyond its control, including, but not limited to, any failures or delays in performance caused by strikes, lockouts, labor disputes, fires, acts of God or the public enemy, riots, incendiaries, interference by civil or military authority, compliance with the laws, regulations, orders or policies of any governmental authority, delays in transit or delivery on the part of transportation companies, communication facilities or failures of source of raw materials.

6. No action, regardless of form, arising out of or in any way related to the subject matter of this Agreement, may be brought by either party more than two years after the cause of action has arisen; provided, however, that this limitation shall not apply to any action brought by SOFTWARE SOLUTIONS hereunder for infringement of any of its intellectual property rights in the Programs, which action may be brought by SOFTWARE SOLUTIONS within the period prescribed by the applicable statute(s) of limitations.

I. INTELLECTUAL PROPERTY RIGHTS

1. Licensee understands that the Programs, and any and all versions, corrections, enhancements and improvements to the Programs, include confidential data and know-how which are claimed as trade secrets or other proprietary information by SOFTWARE SOLUTIONS and/or the licensors of the Third-Party Programs. Licensee will take adequate steps and security precautions to prevent unauthorized disclosure of information which is proprietary to SOFTWARE SOLUTIONS and/or the licensors of the Third Party Programs (and which has been so identified to Licensee by SSI) and to maintain the Confidentiality of such information, including but not limited to: (a) limiting disclosure only to employees of Licensee having a genuine need to know; (2) instructing its employees having access to such information not to copy or duplicate the same or any part thereof and to withhold disclosure or access or reference thereto from unauthorized third parties; and (3) effecting sufficient security measures to safeguard such information from theft or from access by unauthorized parties.

2. Each party hereto understands and agrees that, in addition to the information contained in the Programs themselves, it may from time to time furnish to the other information and documentation for the purpose of supporting the Programs which is confidential and/or proprietary in nature. Each party agrees to take reasonable precautions to prevent disclosure of information which is proprietary to the other and which is clearly so identified, at minimum to the same extent that it protects its own proprietary information. The obligations of this subsection shall not extend to any items which now or hereafter may be in the public domain (a) in the case of information of Licensee, by acts or omissions not attributable to SOFTWARE SOLUTIONS or (b) in the case of information of SSI, by acts or omissions not attributable to Licensee or its customers. It further is agreed that all such proprietary information so furnished to the other in written form will be returned to the supplying party at its request when its further retention by the other is no longer necessary or upon written demand by the supplying party.

3. All natural and statutory rights and powers which arise out of this Agreement, whether in the nature of copyrights, trade secrets, trademarks, service marks, trade names or patents (hereinafter jointly and severally sometimes called "Intellectual Property Rights"), in the Programs shall be and remain in the title of SOFTWARE SOLUTIONS and at its exclusive disposal. SOFTWARE SOLUTIONS reserves the right to use any such rights and powers in the same or other combination or permutation when writing programs for others.

4. Licensee agrees that it may copy or reproduce Programs only to the extent reasonably necessary for normal backup purposes and only provide that all such copies and reproductions carry the appropriate copyrights, proprietary information and/or trademark notices of SOFTWARE SOLUTIONS and/or the licensors of the Third-Party Programs.

5. Licensee recognizes that SOFTWARE SOLUTIONS represents itself and the licensors of the Third Party Programs as having the Intellectual Property Rights (either registered or unregistered) relating to the Programs and Licensee will not directly or indirectly dispute or contest the validity of such rights, or directly or indirectly assist any person in disputing or contesting such rights.

J. SOFTWARE SOLUTIONS INDEMNIFICATION

1. Subject to the remainder of Section J, SOFTWARE SOLUTIONS shall defend Licensee against any third party claim that a SOFTWARE SOLUTION Program infringes a U.S. copyright, trademark, or trade secret ("Infringement Claim") and indemnify Licensee from the resulting costs and damages awarded against Licensee to the third party making such Infringement Claim by a court of competent jurisdiction or agreed to in settlement; provided that Licensee: (i) notifies SOFTWARE SOLUTIONS promptly in writing of such Infringement Claim, (ii) grants SOFTWARE SOLUTIONS sole control over the defense and settlement thereof, and (iii) reasonably cooperates in response to a SOFTWARE SOLUTIONS request for assistance. SOFTWARE SOLUTIONS will have the exclusive right to defend any such Infringement Claim and make settlements thereof at its own discretion, and Licensee may not settle or compromise such Infringement Claim, except with prior written consent of SOFTWARE SOLUTIONS.

2. SOFTWARE SOLUTIONS will have no obligation for claims of infringement to the extent such claims result from any combination, operation, or use of the SOFTWARE SOLUTIONS Programs with any programs or equipment not supplied by SOFTWARE SOLUTIONS or not specified in writing for such purpose. SOFTWARE SOLUTIONS will have no obligation for claims of infringement to the extent such claims result from (i) any modification of the SOFTWARE SOLUTIONS Programs by a party other than SOFTWARE SOLUTIONS, or a party authorized in writing by SOFTWARE SOLUTIONS, if such infringement would have been avoided in the absence of such modifications; or (ii) Licensee's failure, within a reasonable time frame, to implement any replacement or modification of SOFTWARE SOLUTIONS Programs provided by SOFTWARE SOLUTIONS. In addition, in no event shall SOFTWARE SOLUTIONS be responsible to Licensee to the extent such claims are based on Licensee's design specifications, Licensee data or content, or software or other requirements provided by the Licensee to SOFTWARE SOLUTIONS.

3. In addition to the rights and remedies set forth above, should any of the Programs licensed hereunder become, or in SOFTWARE SOLUTIONS' opinion be likely to become, the subject of such an Infringement Claim, SOFTWARE SOLUTIONS shall, at its option and expense, (a) procure for Licensee the right to make continued use of the Programs, (b) replace or modify

such so that it becomes non-infringing, or (c) if neither of the foregoing two options is reasonably available, request return of the Programs and, upon receipt thereof, the corresponding licenses are terminated and SOFTWARE SOLUTIONS shall refund the price paid by Licensee, less straight-line depreciation based on a three (3) year useful life.

4. THIS SECTION J STATES LICENSEE'S SOLE AND EXCLUSIVE REMEDY AND SOFTWARE SOLUTIONS' ENTIRE LIABILITY FOR INFRINGEMENT CLAIMS.

L. GOVERNING LAW.

This Agreement is governed by and construed in accordance with the laws of the state where Services are performed without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of such state. If state law requires a specific venue, then such law will control. Service of process, summons, notice or other document by mail to such Party's address set forth herein will be effective service of process for any suit, action, or other proceeding brought in any such court.

M. GENERAL

1. SOFTWARE SOLUTIONS will use reasonable efforts to test SOFTWARE SOLUTIONS Programs for viruses. SOFTWARE SOLUTIONS will also maintain a master copy of the appropriate versions of the SOFTWARE SOLUTIONS Programs, free of viruses. If Licensee believes that a virus may be present in the delivered SOFTWARE SOLUTIONS Programs, then upon Licensee's written request, SOFTWARE SOLUTIONS will provide a master copy for comparison with and correction of Licensee's copy of the programs.

2. All notices, requests and demands required or permitted to be given hereunder shall be deemed sufficient only if in writing and hand delivered or mailed by certified or registered mail, to the appropriate party hereto at the address set forth in the signature line below.

3. Nothing in this Agreement shall in any way be construed as creating a partnership, joint venture, agency or employer-employee relationship between Licensee and SSI. Licensee is not authorized to, and shall not undertake or assume, any obligation of any kind, express or implied, or to conduct any business, on behalf of SSI.

4. The validity, interpretation and performance of this Agreement shall be construed in accordance with and governed by the laws of the State of Ohio, including but not limited to, the provisions of the Uniform Commercial Code as adopted and codified by the State of Ohio (without regard to its choice of law provisions).

5. If any provision, in whole or in part, of this Agreement is held illegal or invalid by any court or administrative agency of appropriate jurisdiction, such provision or appropriate portion thereof shall be deemed severable and the illegality or invalidity of such provision or portion thereof shall not affect any of the remaining provisions of this Agreement. In such event, this Agreement shall be construed as if the illegal or invalid provision, or portion thereof, had not been contained in this Agreement.

6. The failure of either party to require the performance of any term, condition or provision of this Agreement or the waiver by either party of any breach of this Agreement shall not prevent a

subsequent enforcement of such term, condition or provision nor be deemed a waiver of any subsequent breach.

7. Any change in, addition to or waiver of the terms, conditions or provisions of this Agreement shall be binding upon either of the parties only if approved in writing by its authorized representative.

8. Each Party shall have the right to assign or otherwise transfer its rights or obligations under this Agreement only with the prior written consent of the other unless by sale or merger. In the event of any assignment (whether by consent, operation of law, or otherwise), all covenants, stipulations and promises in this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives.

9. EACH PARTY ACKNOWLEDGES THAT HE OR ITS AUTHORIZED REPRESENTATIVE HAS READ THIS AGREEMENT, UNDERSTANDS IT AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS. FURTHER, EACH PARTY AGREES THAT IT IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF WHICH SUPERSEDES ALL PROPOSALS OR PRIOR AGREEMENTS, ORAL OR WRITTEN, AND ALL OTHER COMMUNICATIONS BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT.

IN WITNESS WHEREOF, SOFTWARE SOLUTIONS and Licensee have caused this Agreement to be executed in duplicate by their duly authorized representatives as of the date first written above.

[SIGNATURE PAGE FOLLOWS]

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

Software Solutions, Inc.

By:_____

Name:_____

Title:_____

City of Middleburg Heights

By: Matthew Castelli

Name: Matthew Castelli

Title: Mayor