



LAKE COUNTY FOREST PRESERVES  
www.LCFPD.org

Preservation, Restoration, Education and Recreation

**DATE:** June 25, 2018

**MEMO TO:** Craig Taylor, Chair  
Operations Committee

S. Michael Rummel, Chair  
Finance Committee

**FROM:** Mary E. Kann  
Director of Administration

**RECOMMENDATION:** Recommend approval of a Resolution awarding a Maintenance Agreement for OnBase Document Management Software to Hyland Software, Inc., Westlake, Ohio, in the Contract Price of \$55,044.24 for Fiscal Year 2018/19.

**STRATEGIC DIRECTION SUPPORTED:** Organizational Sustainability

**FINANCIAL DATA:** \$54,000.00 is budgeted in the FY 2018/19 Computer Fees & Services budget 19224000-701400. The remaining fee will be covered by reductions in other areas in 19224000.

**BACKGROUND:** In 2016, the Board approved contracts with Hyland Software, Inc., to install and provide maintenance, support, and training on a document management system, utilizing OnBase Document Management software. OnBase services provided by Hyland include document storage, agenda management, financial software integration, and GIS/mapping integration. The agreement that would be approved by the attached resolution would provide the District with daily customer support services for all these components and includes all software updates for a period of 18 months.

**REVIEW BY OTHERS:** Chief Operations Officer, Information Technology Officer, Director of Finance, Corporate Counsel.



**LAKE COUNTY FOREST PRESERVE DISTRICT  
LAKE COUNTY, ILLINOIS**

**A RESOLUTION AWARDING A MAINTENANCE AGREEMENT FOR ONBASE  
DOCUMENT MANAGEMENT SOFTWARE TO HYLAND SOFTWARE, INC.**

**WHEREAS**, the Lake County Forest Preserve District (the “District”) desires to purchase maintenance and support services for its OnBase Document Management Software (the “Services”); and

**WHEREAS**, the Director of Administration and the Purchasing Manager have determined that the Services require personal confidence; and

**WHEREAS**, the District has received a proposal for the Services from Hyland Software, Inc., the licensor of OnBase Document Management Software (the “Licensor”); and

**WHEREAS**, the District’s staff, the Purchasing Manager, the Director of Administration, and the Operations Committee and Finance Committee have reviewed the proposal for the Services submitted by Licensor and recommend that the Board of Commissioners (i) find that the proposal submitted by Licensor is the proposal that is the most advantageous to the District and (ii) award a contract for the Services to the Licensor (the “Contract”);

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Commissioners of the Lake County Forest Preserve District, Lake County, Illinois, **THAT**:

**Section 1: Recitals.** The recitals set forth above are incorporated as a part of this Resolution by this reference.

**Section 2: Award of Contract.** A Contract for the Services in the amount of \$55,044.24 (the “Contract Price”) in substantially the form attached hereto is hereby awarded to Licensor.

**Section 3: Execution of Contract:** The Executive Director of the District is hereby authorized and directed to execute the Contract for the Services in the amount of the Contract Price with Licensor.

**Section 4: Payments.** The District Treasurer shall make payments under the Contract only pursuant to and in accordance with the Contract terms.

**Section 5: Effective Date.** This Resolution shall be in full force and effect from and after its passage and approval in the manner provided by law.

PASSED this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

AYES:

NAYS:

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Ann B. Maine, President  
Lake County Forest Preserve District

ATTEST:

\_\_\_\_\_  
Julie Gagnani, Secretary  
Lake County Forest Preserve District

Exhibit No. \_\_\_\_\_

## SOFTWARE MAINTENANCE AGREEMENT

This Software Maintenance Agreement (“Agreement”) is made and entered into effective as of the date this Agreement is signed by the last party that signs, as determined based upon the dates set forth after their respective signatures (the “Effective Date”), by and between Hyland Software, Inc., with its principal offices at 28500 Clemens Road, Westlake, Ohio 44145 (“Hyland”), and Lake County Forest Preserve District, with its principal offices at 1899 West Winchester Road, Libertyville, IL 60048 (“Licensee”).

### RECITAL:

Hyland has licensed to Licensee the Software listed on Attachment A, attached hereto (the “Initial Software”), subject to Licensee’s acceptance of the license terms that are included in the packaging with the Initial Software upon delivery and/or are included at the “Login” screen and in the Help Menu of the Initial Software (as the same may be amended or modified from time to time, the “EULA”) and Licensee desires to purchase, and Hyland is willing to provide, Maintenance and Support for such Initial Software, and such other Software as Licensee may subsequently license under the EULA, in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, the parties mutually agree as follows:

1. **DEFINED TERMS.** The following terms shall have the meanings set forth below for all purposes of this Agreement:

(a) Annual Maintenance Fees. “Annual Maintenance Fees” means the amounts charged by Hyland and payable by Licensee for Maintenance and Support of Supported Software for a maintenance period.

(b) Documentation. “Documentation” means the “Help Files” included in the Software which relate to the functional, operational or performance characteristics of the Software.

(c) Error. “Error” means any defect or condition inherent in the Software which is reported by Licensee in accordance with this Agreement and which is confirmed by Hyland, and that causes the Software to fail to function in all material respects as described in the Documentation.

(d) Error Correction Services. “Error Correction Services” means Hyland’s services described in Section 2.1(b).

(e) EULA. “EULA” is defined in the recital to this Agreement.

(f) Maintenance Period. “Maintenance Period” means the eighteen (18) month period that begins on the earlier of: (1) the date Licensee (or Hyland at Licensee’s direction) actually applies the initial Production Certificate to the Initial Software; or (2) the sixtieth (60<sup>th</sup>) day after the Production Certificate is first made available to Licensee for electronic download by Hyland.

(g) Maintenance and Support. “Maintenance and Support” means for Supported Software: (A) Error Correction Services, (B) Technical Support Services, and (C) the availability of Upgrades and Enhancements in accordance with Section 2.1(d).

(h) Software. “Software” means (1) the Initial Software and such other Hyland proprietary software products for which Licensee submits a written purchase order to Hyland that Hyland accepts and fulfills, including, in each case, third party software bundled by Hyland together with Hyland’s proprietary software products as a unified product; and (2) all Upgrades and Enhancements of the software products described in clause (1) which Licensee properly obtains pursuant to the terms of Section 2.1(d) of this Agreement.

(i) Supported Software; Retired Software. At any particular time during a maintenance period covered by this Agreement: (1) “Supported Software” means the current released version of the Software licensed

by Licensee from Hyland and any other version of such Software that is not Retired Software; and (2) “Retired Software” means any version of the Software licensed by Licensee from Hyland under this Agreement which is identified as being retired on Hyland’s applicable secure end user web site. Hyland will specify on its end user web site Software versions which become Retired Software. The effective date of such change will be twelve (12) months from the date Hyland initially posts the status change on its end user web site.

(j) Technical Support Services. “Technical Support Services” means Hyland’s services described in Section 2.1(a).

(k) Upgrades and Enhancements. “Upgrades and Enhancements” means any and all new versions, improvements, modifications, upgrades, updates, fixes and additions to the Software that Hyland makes available to Licensee or to Hyland’s end users generally during the term of this Agreement to correct Errors or deficiencies or enhance the capabilities of the Software, together with updates of the Documentation to reflect such new versions, improvements, modifications, upgrades, fixes or additions; provided, however, that the foregoing shall not include new, separate product offerings, new modules or re-platformed Software.

## 2. MAINTENANCE AND SUPPORT.

2.1 Maintenance and Support Terms. Subject to Licensee’s payment of the applicable Annual Maintenance Fees, Hyland will provide Maintenance and Support during the hours described on Attachment B.

(a) Technical Support Services. Hyland will provide telephone or online Technical Support Services related to problems reported by Licensee and associated with the operation of any Supported Software, including assistance and advice related to the operation of the Supported Software. Technical Support Services are not available for Retired Software.

(b) Error Correction Services. With respect to any Errors in the Supported Software which are reported by Licensee and which are confirmed by Hyland, in the exercise of its reasonable judgment, Hyland will use its commercially reasonable efforts to correct the Error, which may be effected by a commercially reasonable workaround. Hyland shall promptly commence to confirm any reported Errors after receipt of a proper report of such suspected Error from Licensee. Hyland may elect to correct the Error in the current available or in the next available commercially released version of the Supported Software and require Licensee to implement an Upgrade and Enhancement to the version selected by Hyland in order to obtain the correction. Error Correction Services are not available for Retired Software.

(c) Reporting Policies and Procedures. In requesting Maintenance and Support services, Licensee will report any problems or questions related to the operation of any Supported Software in accordance with Hyland’s then-applicable reporting policies and in accordance with Section 2.1(b) above. Hyland’s current policies require Licensee to report by telephone, using Hyland’s regular technical support telephone line, or by e-mail (each as described on Attachment B). In the case of reporting an Error, if requested by Hyland, Licensee agrees to provide written documentation of such Error to substantiate the Error and to assist Hyland in the detection, confirmation and correction of such Error.

(d) Upgrades and Enhancements. Hyland will provide, in accordance with Hyland’s then current policies, as set forth from time to time on Hyland’s secure end user web site (as described on Attachment B), all Upgrades and Enhancements, if and when released during the term of this Agreement. Licensee acknowledges and agrees that, with respect to Hyland’s end users generally, Hyland has the right, at any time, to change the specifications and operating characteristics of the Software and Hyland’s policies respecting Upgrades and Enhancements and the release thereof. Upgrades and Enhancements are not available for Retired Software. Any Upgrades and Enhancements to the Software and Documentation shall remain proprietary to Hyland and the sole and exclusive property of Hyland, and shall be subject to all of the restrictions, limitations and protections of the EULA and this Agreement. All applicable rights to patents, copyrights, trademarks, other intellectual property rights, applications for any of the foregoing and trade secrets in the Software and Documentation and any Upgrades and Enhancements are and shall remain the exclusive property of Hyland.

(e) Licensee's Implementation of Error Corrections and Upgrades and Enhancements. In order to maintain the integrity and proper operation of the Software, Licensee agrees to implement, in the manner instructed by Hyland, all Error corrections and Upgrades and Enhancements to the Supported Software, as applicable. Licensee's failure to implement any Error corrections or Upgrades and Enhancements of the Software as provided in this paragraph shall relieve Hyland of any responsibility or liability for any failure or malfunction of the Software, as modified by a subsequent Error correction or Upgrade and Enhancement.

(f) On-line Access. Licensee acknowledges and agrees that Hyland requires on-line access to the Software installed on Licensee's systems in order to provide Maintenance and Support. Accordingly, Licensee shall install and maintain means of communication and the appropriate communications software as mutually agreed by Licensee and Hyland and an adequate connection with Hyland to facilitate Hyland's on-line Maintenance and Support. Such right of access and use shall be provided at no cost or charge to Hyland.

## 2.2 Exclusions.

(a) Generally. Hyland is not responsible for providing, or obligated to provide, Maintenance and Support under this Agreement: (1) in connection with any Errors or problems that result in whole or in part from any alteration, revision, change, enhancement or modification of any nature of the Software, or from any design defect in any configuration of the Software, which activities in any such case were undertaken by any party other than Hyland; (2) in connection with any Error if Hyland has previously provided corrections for such Error which Licensee fails to implement; (3) in connection with any Errors or problems that have been caused by errors, defects, problems, alterations, revisions, changes, enhancements or modifications in the database, operating system, third party software (other than third party software embedded in the Software by Hyland), hardware or any system or networking utilized by Licensee; (4) if the Software or related software or systems have been subjected to abuse, misuse, improper handling, accident or neglect; or (5) if any party other than Hyland, or an authorized subcontractor specifically selected by Hyland, has provided any services in the nature of Maintenance and Support to Licensee with respect to the Software. Maintenance and Support does not include any services that Hyland may provide in connection with assisting or completing an upgrade of Supported Software with any available Upgrade and Enhancement

(b) Software API and Work Products. Maintenance and Support is not provided for any problems (other than Errors) or questions related to the operation or use of the Software application programming interfaces (APIs). In addition, Maintenance and Support is not provided for any Work Products (as defined hereinbelow) delivered under any work agreement. "Work Products" means all work products in the nature of computer software, including source code, object code, scripts, and any components or elements of the foregoing or items created using the configuration tools of the Software, together with any and all design documents associated with items in the nature of computer software, in each case that are developed, discovered, conceived or introduced by Hyland, working either alone or in conjunction with others, in the performance of professional services.

(c) Excluded Software and Hardware. This Agreement does not govern, and Hyland shall not be responsible for, the maintenance or support of any software other than Supported Software, or for any hardware or equipment of any kind or nature, whether or not obtained by Licensee from Hyland.

## 2.3 Certain Other Responsibilities of Licensee.

(a) Operation of the Software and Related Systems. Licensee acknowledges and agrees that it is solely responsible for the operation, supervision, management and control of the Software and all related hardware and software (including the database software); and for obtaining or providing training for its personnel; and for instituting appropriate security procedures and implementing reasonable procedures to examine and verify all output before use.

(b) Access to Premises and Systems. Licensee shall make available reasonable access to and use of Licensee's computer hardware, peripherals, Software and other software as Hyland deems necessary to diagnose and correct any Errors or to otherwise provide Maintenance and Support. Such right of access and use shall be provided at no cost or charge to Hyland.

2.4 Services for Projects Not Covered by Maintenance and Support. If Licensee requests services related to the Software that are outside the scope of Technical Support Services or Error Correction Services, Licensee agrees that such services shall not be covered by this Agreement or the Annual Maintenance Fees and such services only shall be engaged and provided pursuant to a separate work agreement for professional services fees in accordance with such terms as the parties may mutually agree upon.

### 3. PURCHASE ORDERS.

Licensee shall be required to submit a purchase order for the purchase of Maintenance and Support under this Agreement for the first maintenance period applicable to each Supported Software module; provided, however, that, when this Agreement is signed by both parties, Hyland is permitted to treat this Agreement as Licensee's purchase order for Maintenance and Support for the Initial Maintenance Period for the Initial Software and this Agreement also shall constitute Hyland's acceptance of such purchase order. Each such purchase order shall be subject to acceptance or rejection by Hyland.

### 4. FEES, PAYMENTS, CURRENCY AND TAXES.

(a) Annual Maintenance Fees. Licensee shall pay to Hyland Annual Maintenance Fees for each maintenance period under this Agreement in the amounts invoiced by Hyland for Supported Software for the applicable maintenance period. For the first maintenance period of this Agreement applicable to a Supported Software module other than the Initial Software, Hyland shall invoice Licensee for Annual Maintenance Fees promptly upon Hyland's acceptance of Licensee's purchase order for Maintenance and Support of such Software. Licensee shall pay each such invoice in full net 30 days from the invoice date. For renewal maintenance periods under this Agreement, Hyland shall invoice Licensee for Annual Maintenance Fees at least forty-five (45) days prior to the end of the then-current maintenance period. If Licensee elects to renew Maintenance and Support, Licensee shall pay each such invoice in full prior to the commencement date of the maintenance period to which such Annual Maintenance Fees relate. In the event that any maintenance period under this Agreement for a Supported Software module is a period of less than twelve (12) calendar months, the Annual Maintenance Fees for such maintenance period for such module will be pro-rated based upon the number of calendar months in such maintenance period (including the calendar month in which such maintenance period commences if such period commences prior to the 15<sup>th</sup> day of such month). Fees related to this 18-month Maintenance Period shall be \$55,044.24 and shall be due and payable on or before the first day of such renewal maintenance period.

(b) Taxes and Governmental Charges. All payments under this Agreement are exclusive of all applicable taxes and governmental charges (such as duties), all of which shall be paid by Licensee (other than taxes on Hyland's income). In the event Licensee is required by law to withhold taxes, Licensee agrees to furnish Hyland all required receipts and documentation substantiating such payment. If Hyland is required by law to remit any tax or governmental charge on behalf of or for the account of Licensee, Licensee agrees to reimburse Hyland within thirty (30) days after Hyland notifies Licensee in writing of such remittance. Licensee agrees to provide Hyland with valid tax exemption certificates in advance of any remittance otherwise required to be made by Hyland on behalf of or for the account of Licensee, where such certificates are applicable.

(c) Resolution of Invoice Disputes. If, prior to the due date for payment under any invoice, Licensee notifies Hyland in writing that it disputes all or any portion of an amount invoiced, both parties will use commercially reasonable efforts to resolve the dispute within thirty (30) calendar days of Hyland's receipt of the notice. If any amount remains disputed in good faith after such 30-day period, either party may escalate the disputed items to the parties' respective executive management to attempt to resolve the dispute. The parties agree that at least one of each of their respective executives will meet (which may be by telephone or other similarly effective means of remote communication) within ten (10) calendar days of any such escalation to attempt to resolve the dispute. If the parties' executive managers are unable to resolve the dispute within ten (10) calendar days of such meeting, either party thereafter may file litigation in a court of competent jurisdiction under Section 10(a) of this Agreement to seek resolution of the dispute.

(d) Certain Remedies for Non-Payment or for Late Payment. At the election of Hyland, exercisable by written notice to Licensee, any past due amounts under any Hyland invoice shall bear interest at the rate of one and one-half percent (1.5%) per month (or, if lower, the maximum rate lawfully chargeable) from the date due

through the date that such past due amounts and such accrued interest are paid in full. In the event of any default by Licensee in the payment of any amounts invoiced by Hyland, which default continues unremedied for at least ten (10) calendar days after the due date of such payment, Hyland shall have the right to suspend or cease the provision of Maintenance and Support, including the delivery of any Upgrades and Enhancements, to Licensee unless and until such default shall have been cured.

(e) U.S. Dollars. All fees, costs and expenses under this Agreement shall be determined and invoiced in, and all payments required to be made in connection with this Agreement to Hyland shall be made in, U.S. dollars.

## **5. LIMITED WARRANTY.**

(a) Limited Warranty. For a period of ninety (90) days from the date of completion of Technical Support Services or Error Corrections Services, Hyland warrants to Licensee that such services have been performed in a good and workmanlike manner and substantially according to industry standards. Provided that, within the 60-day period referred to above, Licensee notifies Hyland in writing of any non-conformity of such services to the foregoing limited warranty, Hyland's sole obligation, and Licensee's sole and exclusive remedy, shall be for Hyland to use commercially reasonable efforts to re-perform the nonconforming services in an attempt to correct the nonconformity(ies). If Hyland is unable to correct such nonconformity(ies) after a reasonable period of time, Licensee's sole and exclusive remedy shall be to exercise its termination rights under Section 7.2. This limited warranty specifically excludes non-performance issues caused as a result of incorrect data or incorrect procedures used or provided by Licensee or a third party or failure of Licensee to perform and fulfill its obligations under this Agreement or the EULA.

(b) No Warranty of Upgrades and Enhancements. The EULA shall govern any limited warranty or disclaimers relating to Upgrades and Enhancements of the Software provided to Licensee under this Agreement, and no warranty is given under this Agreement with respect to Upgrades and Enhancements.

(c) DISCLAIMER OF WARRANTIES. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 5(a) ABOVE, HYLAND MAKES NO WARRANTIES OR REPRESENTATIONS REGARDING ANY MAINTENANCE AND SUPPORT OR ANY UPGRADES AND ENHANCEMENTS TO SOFTWARE PROVIDED UNDER THIS AGREEMENT. HYLAND DISCLAIMS AND EXCLUDES ANY AND ALL OTHER EXPRESS, IMPLIED AND STATUTORY WARRANTIES, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF GOOD TITLE, WARRANTIES AGAINST INFRINGEMENT, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND WARRANTIES THAT MAY ARISE OR BE DEEMED TO ARISE FROM ANY COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE. HYLAND DOES NOT WARRANT THAT ANY MAINTENANCE AND SUPPORT SERVICES OR UPGRADES AND ENHANCEMENTS TO SOFTWARE PROVIDED WILL SATISFY LICENSEE'S REQUIREMENTS OR ARE WITHOUT DEFECT OR ERROR, OR THAT THE OPERATION OF ANY OF THE FOREGOING WILL BE UNINTERRUPTED. HYLAND DOES NOT ASSUME ANY LIABILITY WHATSOEVER WITH RESPECT TO ANY THIRD PARTY HARDWARE, FIRMWARE, SOFTWARE OR SERVICES.

(d) No oral or written information given by Hyland, its agents, or employees shall create any additional warranty. No modification or addition to the limited warranties set forth in this Agreement is authorized unless it is set forth in writing, references this Agreement, and is signed on behalf of Hyland by a corporate officer.

## **6. LIMITATIONS OF LIABILITY.**

IN NO EVENT SHALL HYLAND'S AGGREGATE LIABILITY UNDER THIS AGREEMENT EXCEED THE AGGREGATE AMOUNTS PAID BY LICENSEE TO HYLAND UNDER THIS AGREEMENT DURING THE CURRENT MAINTENANCE PERIOD OF THIS AGREEMENT WHEN THE EVENTS OR CIRCUMSTANCES GIVING RISE TO SUCH LIABILITY OCCUR OR ARISE. IN NO EVENT SHALL HYLAND BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO ANY LOST PROFITS, LOST SAVINGS, BUSINESS INTERRUPTION DAMAGES OR EXPENSES, THE COSTS OF SUBSTITUTE SOFTWARE OR SERVICES, LOSSES



RESULTING FROM ERASURE, DAMAGE, DESTRUCTION OR OTHER LOSS OF FILES, DATA OR PROGRAMS OR THE COST OF RECOVERING SUCH INFORMATION, OR OTHER PECUNIARY LOSS, EVEN IF HYLAND HAS BEEN ADVISED OF THE POSSIBILITIES OF SUCH DAMAGES OR LOSSES.

## 7. TERM AND TERMINATION.

### 7.1 Term.

(a) Generally. Subject to the early termination provisions of this Section 7.1(a) and Sections 7.2 and 7.3, the Initial Maintenance Period as defined in Section 1(g) of this Agreement shall be the first maintenance period of this Agreement; and this Agreement may be renewed for one or more successive additional one year maintenance periods only by mutual agreement of the parties. In the case of any additional Supported Software that is licensed by Licensee at any time after the commencement of a maintenance period under this Agreement, the first maintenance period applicable to such additional Software under this Agreement shall commence on the date of Hyland's acceptance of the purchase order under which Licensee has ordered Maintenance and Support for such Software and shall end on the day corresponding to the end of the then-current maintenance period, and may be renewed thereafter, on an annual basis, only by mutual agreement of the parties. With respect to any renewal maintenance period, mutual agreement may be evidenced by Hyland's invoicing of Annual Maintenance Fees for such renewal maintenance period and Licensee's timely payment of such Annual Maintenance Fees; provided, that Hyland may not unilaterally elect not to renew this Agreement until the expiration of two annual renewal maintenance periods. Notwithstanding anything to the contrary, this Agreement shall immediately terminate at the time the version of the Software licensed by Licensee and in use in its production environment becomes Retired Software.

(b) Reinstatement. In the event of the termination of this Agreement either by Licensee's decision not to agree to renew or by the Software becoming Retired Software, Licensee may during the term of this Agreement after the effective date of such termination elect to reinstate this Agreement in accordance with this Section 7.1(b). To obtain reinstatement, Licensee shall: (1) deliver written notice to such effect to Hyland; (2) pay Hyland: (A) Annual Maintenance Fees for all periods which have elapsed from the effective date of such termination through the effective date of such reinstatement (as determined under Section 7.1(a) as if this Agreement had not been terminated); and (B) an amount equal to one hundred ten percent (110%) of the Annual Maintenance Fee for the renewal period of this Agreement commencing on the effective date of such reinstatement; and (3) if the Software has become Retired Software, upgrade to the latest released version of the Software which is Supported Software. Any reinstatement under this Section 7.1(b) shall be effective as of the first business day after Hyland has received the notice of reinstatement and all payments required to be made hereunder in connection with such reinstatement. The renewal period commencing with the effective date of reinstatement of this Agreement shall be for a period ending on the first annual anniversary of such effective date; and thereafter this Agreement shall be renewed for an additional maintenance period as described in Section 7.1(a).

**EXCEPT AS EXPRESSLY PROVIDED BY THIS SECTION 7.1(b), LICENSEE SHALL HAVE NO RIGHT TO REINSTATE THIS AGREEMENT FOLLOWING THE TERMINATION THEREOF FOR ANY REASON.**

### 7.2 Early Termination by Licensee.

(a) For Convenience. At any time Licensee may terminate this Agreement, for any reason or for no reason, upon not less than thirty (30) days advance written notice to Hyland to such effect.

(b) For Cause. Licensee shall be entitled to give written notice to Hyland of any breach by Hyland or other failure by Hyland to comply with any material term or condition of this Agreement, specifying the nature of such breach or non-compliance and requiring Hyland to cure the breach or non-compliance. If Hyland has not cured, or commenced to cure (if a cure cannot be performed within the time period set forth below), the breach or non-compliance within thirty (30) calendar days after receipt of written notice, Licensee shall be entitled, in addition to any other rights it may have under this Agreement, or otherwise at law or in equity, to immediately terminate this Agreement.

7.3 Termination by Hyland For Cause. Hyland shall be entitled to give written notice to Licensee of any breach by Licensee or other failure by Licensee to comply with any material term or condition of the EULA or this Agreement, specifying the nature of such breach or non-compliance and requiring Licensee to cure the breach or non-compliance. If Licensee has not cured, or commenced to cure (if a cure cannot be performed within the time period set forth below), any breach or non-compliance within thirty (30) calendar days after receipt of such written notice, Hyland shall be entitled, in addition to any other rights it may have under this Agreement, or otherwise at law or in equity, to immediately terminate this Agreement.

7.4 Certain Effects or Consequences of Termination; Survival of Certain Provisions.

(a) Limited Refund of Annual Maintenance Fees. In the event Licensee has terminated this Agreement in accordance with the provisions of Section 7.2(b), so long as Licensee has complied in all material respects with its obligations under this Agreement and is current on all payment obligations under this Agreement, Licensee shall be entitled to a refund from Hyland of the “unused portion of the Annual Maintenance Fees” for the then-current maintenance period. For these purposes, the “unused portion of the Annual Maintenance Fees” shall mean that portion of the Annual Maintenance Fees paid by Licensee, with respect to the maintenance period during which such termination of this Agreement is effective, equal to the total of such Annual Maintenance Fees multiplied by a fraction, the numerator of which shall be the number of calendar months during the then-current maintenance period that remain until the end of such then-current period, commencing with the calendar month after the calendar month in which such termination is effective, and the denominator of which shall be the total number of calendar months in such then-current maintenance period determined without regard to such termination.

(b) Survival of Certain Obligations. The termination of this Agreement will not discharge or otherwise affect any pre-termination obligations of either party existing under the Agreement at the time of termination. The provisions of this Agreement which by their nature extend beyond the expiration or termination of this Agreement will survive and remain in effect until all obligations are satisfied, including, but not limited to, Section 2.1(d) (as it relates to title and ownership), Section 5(c) and (d), Section 6, Section 7, Section 9 and Section 10.

**8. FORCE MAJEURE.** No failure, delay or default in performance of any obligation of a party to this Agreement (except the payment of money) shall constitute a default or breach to the extent that such failure to perform, delay or default arises out of a cause, existing or future, beyond the control (including, but not limited to: action or inaction of governmental, civil or military authority; fire; strike, lockout or other labor dispute; flood; war; riot; theft; earthquake; natural disaster or acts of God; national emergencies; unavailability of materials or utilities; sabotage; viruses; or the act, negligence or default of the other party) and without negligence or willful misconduct of the party otherwise chargeable with failure, delay or default. Either party desiring to rely upon any of the foregoing as an excuse for failure, default or delay in performance shall, when the cause arises, give to the other party prompt notice in writing of the facts which constitute such cause; and, when the cause ceases to exist, give prompt notice of that fact to the other party. This Section 8 shall in no way limit the right of either party to make any claim against third parties for any damages suffered due to said causes. If any performance date by a party under this Agreement is postponed or extended pursuant to this Section 8 for longer than ninety (90) calendar days, the other party, by written notice given during the postponement or extension, and at least thirty (30) days prior to the effective date of termination, may terminate this Agreement.

**9. NOTICES.** Unless otherwise agreed to by the parties in a writing signed by both parties, all notices required under this Agreement shall be deemed effective: (a) when sent and made in writing by either (1)(A) registered mail, (B) certified mail, return receipt requested, or (C) overnight courier, in any such case addressed and sent to the address set forth herein and to the attention of the person executing this Agreement on behalf of that party or that person’s successor, or to such other address or such other person as the party entitled to receive such notice shall have notified the party sending such notice of; or (2) facsimile transmission appropriately directed to the attention of the person identified as the appropriate recipient and at the appropriate address under (a)(1) above, with a copy following by one of the other methods of notice under (a)(1) above; or (b) when personally delivered and made in writing to the person and address identified as appropriate under (a)(1) above.

**10. GENERAL PROVISIONS.**

(a) Governing Law; Jurisdiction. This Agreement and any claim, action, suit, proceeding or dispute arising out of this Agreement shall in all respects be governed by, and interpreted in accordance with, the substantive laws of the State of Illinois (and not the 1980 United Nations Convention on Contracts for the International Sale of Goods, as amended), without regard to the conflicts of laws provisions thereof.

(b) Interpretation. The headings used in this Agreement are for reference and convenience purposes only and shall not in any way limit or affect the meaning or interpretation of any of the terms hereof. All defined terms in this Agreement shall be deemed to refer to the masculine, feminine, neuter, singular or plural, in each instance as the context or particular facts may require. Use of the terms “hereunder,” “herein,” “hereby” and similar terms refer to this Agreement.

(c) Waiver. No waiver of any right or remedy on one occasion by either party shall be deemed a waiver of such right or remedy on any other occasion.

(d) Integration. This Agreement and the EULA, including any and all exhibits and schedules referred to herein or therein set forth the entire agreement and understanding between the parties pertaining to the subject matter and merges all prior agreements, negotiations and discussions between them on the same subject matter. This Agreement may only be modified by a written document signed by duly authorized representatives of the parties. This Agreement shall not be supplemented or modified by any course of performance, course of dealing or trade usage. Variance from or addition to the terms and conditions of this Agreement in any purchase order or other written notification or documentation, from Licensee or otherwise, will be of no effect unless expressly agreed to in writing by both parties. This Agreement will prevail over any conflicting stipulations contained or referenced in any other document.

(e) Binding Agreement; No Assignment. This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and permitted assigns. Neither party may assign its rights or obligations under this Agreement, in whole or in part, to any other person or entity without the prior written consent of the other party. Any change in control resulting from an acquisition, merger or otherwise shall not constitute an assignment under the terms of this provision; however, in the event of any such acquisition, the acquired party shall notify the other party in writing and shall require the acquiror to assume all obligations of the acquired party under this Agreement. The non-assigning party shall have the option, in its sole discretion, to terminate this Agreement by written notice within thirty (30) days after receipt of notice of such acquisition, without liability or penalty to any party. Any assignment made without compliance with the provisions of this Section 10(e) shall be null and void and of no force or effect.

(f) Severability. In the event that any term or provision of this Agreement is deemed by a court of competent jurisdiction to be overly broad in scope, duration or area of applicability, the court considering the same will have the power and is hereby authorized and directed to limit such scope, duration or area of applicability, or all of them, so that such term or provision is no longer overly broad and to enforce the same as so limited. Subject to the foregoing sentence, in the event any provision of this Agreement is held to be invalid or unenforceable for any reason, such invalidity or unenforceability will attach only to such provision and will not affect or render invalid or unenforceable any other provision of this Agreement.

(g) Independent Contractor. The parties acknowledge that Hyland is an independent contractor and that it will be responsible for its obligations as employer for those individuals providing the Maintenance and Support.

(h) Subcontracting. Hyland may subcontract all or any part of Maintenance and Support. Hyland shall remain responsible to Licensee for the provision of any subcontracted services.

(i) Export. Licensee agrees to comply fully with all relevant regulations of the U.S. Department of Commerce and all U.S. export control laws, including but not limited to the U.S. Export Administration Act, to assure that the Upgrades and Enhancements are not exported in violation of United States law.

(j) Injunctive Relief. The parties to this Agreement recognize that a remedy at law for a breach of the provisions of this Agreement relating to confidential information and intellectual property rights will not be

adequate for Hyland's protection and, accordingly, Hyland shall have the right to obtain, in addition to any other relief and remedies available to it, specific performance or injunctive relief to enforce the provisions of this Agreement.

(k) Counterparts. This Agreement may be executed in one or more counterparts, all of which when taken together shall constitute one and the same instrument.

(l) Third Parties. Nothing herein expressed or implied is intended or shall be construed to confer upon or give to any person or entity, other than the parties hereto, any rights or remedies by reason of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized representatives:

**LAKE COUNTY FOREST PRESERVE DISTRICT**

**HYLAND SOFTWARE, INC.**

By:

By:

Print Name:

Print Name:

Title:

Title:

Date:

Date:

Hyland Legal

Approved By:

Date:

**ATTACHMENT A**

<b>Module</b>	<b>Description</b>	<b>Qty</b>	<b>8/1/18- 12/31/19 Maintenance</b>
AEMPI1	Application Enabler Maintenance	1	-
AGMPI1	Integration for ESRI ArcGIS Desktop Maintenance	1	-
BSMPW1	Bar Code Recognition Server Maintenance	1	-
CTMPC1	Concurrent Client (1-100) Maintenance	50	-
DIMPW1	Production Document Imaging (Kofax or Twain) (1) Maintenance	1	-
DIMPW2	Production Document Imaging (Kofax or Twain) (2+) Maintenance	4	-
DPMPW1	Document Import Processor Maintenance	1	-
EGMPI1	Integration for ESRI ArcGIS Server Maintenance	1	2,283.79
GWMPI1	Public Sector Constituency Web Access Maintenance	1	1,607.59
IDMPC1	Full-Text Indexing Concurrent Client for Autonomy IDOL Maintenance	20	-
IDMPI1	Full-Text Indexing Server for Autonomy IDOL Maintenance	1	-
OAGMPI2	OnBase Agenda (6-20 Users) Maintenance	1	-
OBMPW1	Multi-User Server Maintenance	1	-
OUTMPI1	Integration for Microsoft Outlook Maintenance	1	-
RIMPI1	Records Management Maintenance	1	-
SFMWR1	Maintenance Per Contract (Code for Billing Purposes)	1	50,010.95
UFMPI1	Unity Forms Maintenance	1	-
UNMPI1	Unity Client Server Maintenance	1	-
WLMPC1	Workflow Concurrent Client SL (1-20) Maintenance	20	-
WTMPW1	Web Server Maintenance	1	-
OMMPW1- IPAD	Mobile Access for iPad Maintenance	1	<u>1,141.90</u>
			55,044.24

## **ATTACHMENT B**

### **TECHNICAL SUPPORT INFORMATION**

The technical support telephone lines, technical support email addresses and secure end user websites currently maintained by Hyland are as follows:

For the Singularity™ Software:

Technical Support Line: currently 1-800-722-4454

Technical Support e-mail address: currently [support@hershey.com](mailto:support@hershey.com)

Secure End User Website: currently <http://singularity.hershey.com>

Hours: Excluding holidays, during the hours of 8:00 a.m. to 8:00 p.m., USA Eastern Time, Monday through Friday

For the SIRE™ Software:

Technical Support Line: currently 801-415-0626

Technical Support e-mail address: currently [support@siretechnologies.com](mailto:support@siretechnologies.com)

Secure End User Website: currently <http://siretechnologies.com>

Hours: Excluding holidays, during the hours of 6:00 a.m. to 6:00 p.m., USA Mountain Standard Time, Monday through Friday

For the OnBase®, IACConnect®, ReqConnect® and VPConnect™ Software:

Technical Support Line: currently 440-788-5600

Technical Support e-mail address: currently [support@onbase.com](mailto:support@onbase.com)

Secure End User Website: currently <https://www.hyland.com/community>

Hours: Excluding holidays, Hyland will provide Maintenance and Support twenty-four hours a day, seven days a week.

For the Hyland AnyDoc® Software:

Technical Support Line: currently (888) 426-9362

Technical Support e-mail address: currently [support@anydocsoftware.com](mailto:support@anydocsoftware.com)

Secure End User Website: currently <https://www.anydocsoftware.com/support.html>

Hours: Excluding holidays, during the hours of 9:00 a.m. to 6:00 p.m., USA Eastern Time, Monday through Friday.

Hyland may, from time to time, change the applicable technical support hours, technical support telephone line, technical support email address or secure end user website to be used by Licensee in connection with Hyland's Software products