

Council Meeting of
December 22, 2009

Honorable Mayor and Members
of the City Council
City Hall
Torrance, California

Members of the Council:

**SUBJECT: Community Development—Approval of a First Amendment to Airport Noise Monitoring System Contract C2005-129 with Lochard Corporation changing the title of the contract from “ANOMS System Maintenance” to “Noise Office Services”.
Expenditure: None**

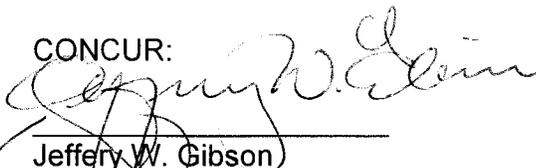
RECOMMENDATION

Recommendation of the Community Development Director that City Council approve a First Amendment to Contract C2005-129 with Lochard Corporation changing the name of the contract from “ANOMS System Maintenance” to “Noise Office Services”.

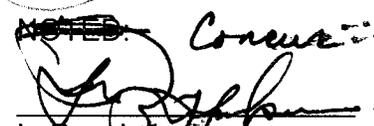
BACKGROUND AND ANALYSIS

Our current Airport Noise Abatement Noise Monitoring System contract is with Lochard Corporation. They have recently joined with Bruel And Kjaer, a company well known for their noise monitoring equipment and hardware. Lochard is maintaining its corporate name and will continue to service our Airport Noise system, however, in order for them to track their aviation-related service contracts, they have requested that we change the name of the contract from “ANOMS System Maintenance” to “Noise Office Services”. This change will be reflected on the title page of the contract only and the original agreement will remain intact other than the name change.

CONCUR:



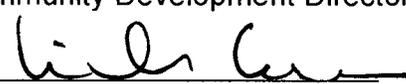
Jeffery W. Gibson
Community Development Director

~~NOTED~~ *Concur*


LeRoy J. Jackson
City Manager

Respectfully Submitted,

JEFFERY W. GIBSON
Community Development Director

By 

Linda Cessna
Deputy Community Development Director

Attachments:

- A. Lochard Correspondence
- B. Amendment to Agreement
- C. Maintenance Agreement C2005-129



L O C H A R D

November 20, 2009

Ms. Linda Cessna
Deputy Community Development Director
Torrance - Zamperini Field
3031 Torrance Boulevard
Torrance, CA 90503

Subject: Noise Office Services

LINDA
Dear Ms. Cessna,

Recently, Lochard Corporation has been integrated into the Brüel and Kjær company structure and has retained all of the original and future aviation related services. Lochard Corporation will remain, so there is no assignment of contracts and no changes to the existing Terms and Conditions of your original contracts. The injection of Brüel and Kjær's extra range of support and services to the Lochard existing infrastructure with several offices in the United States and abroad will provide the ability to respond quickly to any service issues that our airports are faced with. The capability of Brüel and Kjær research and development, top of the line facilities, and engineers in the region, are available to Lochard Corporation and we are hoping to take advantage of all of these services and pass them on to you, our customer.

Brüel and Kjær and the Lochard Corporation provide a broad range of services to our customers, so to ensure all the service contracts related to aviation will remain with Lochard, we are requesting that the "Noise Office Services" name replaces the original "ANOMS System Support and Maintenance" name to distinguish Airport Noise Services over all other Brüel and Kjær branded services. The name change reflects the same services, terms and conditions as your original agreement and will be serviced by Lochard Staff. We are hoping that you can accomplish this task before the end of December 2009.

We appreciate your time in accomplishing this small but important task for us. If you have any questions regarding this letter, feel free to call or email me.

Regards,


Jaime M. Locquiao
Regional Services Manager
Lochard Corporation

AMENDMENT TO AGREEMENT

This Amendment to Agreement is made and entered into as of December 22, 2009, by and between the CITY OF TORRANCE, a municipal corporation ("CITY"), and LOCHARD CORPORATION, a Delaware Corporation (LOCHARD").

RECITALS:

- A. CITY and LOCHARD entered into a Maintenance Agreement on July 1, 2005, whereby LOCHARD agreed to provide maintenance services for Designated Equipment and maintenance and support service for certain software all related to Anoms System Maintenance.
- B. The CITY is satisfied with the level of service provided by LOCHARD.
- C. Both parties wish to amend the Agreement to change the title of the Agreement.

AGREEMENT:

1. The title page of the agreement," is amended to read in its entirety as follows:

**"MAINTENANCE AGREEMENT BETWEEN THE CITY OF
TORRANCE AND LOCHARD CORPORATION FOR NOISE
OFFICE SERVICES"**

2. In all other respects, the Agreement dated July 1, 2005, between CITY and LOCHARD is ratified and reaffirmed and is in full force and effect.

CITY OF TORRANCE
a Municipal Corporation

LOCHARD CORPORATION
a Delaware Corporation

Frank Scotto, Mayor

By: _____
Michael Rikard-Bell, President

ATTEST:

Sue Herbers, City Clerk

APPROVED AS TO FORM:

JOHN L. FELLOWS III
City Attorney

By: _____



CITY OF TORRANCE
 BUILDING & SAFETY
 2005 JUN 31 PM 4:20

MAINTENANCE AGREEMENT

BETWEEN

THE CITY OF TORRANCE

AND

LOCHARD CORPORATION

FOR

ANOMS SYSTEM MAINTENANCE

C2005-129

COPY

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LOCHARD

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LOCHARD

1. PREAMBLE

This agreement made

the day of 2005

is between

Lochard Corporation

(hereinafter called Lochard) a company incorporated under the laws of the state of Delaware relating to companies and having its registered office at 39 Pleasant St Stoneham MA 02180-3829

and

City of Torrance

(hereinafter called The Customer) an incorporated City under the laws of California and having its office at 3031 Torrance Blvd, Torrance CA 90509-2970;

and takes effect from

the 1st day of July 2005

whereas

subject to the terms and conditions set forth in this Agreement, Lochard and The Customer agree that Lochard will provide to The Customer the maintenance services described herein.

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- 2.24 Services means the maintenance and other services provided by Lochard under this Agreement as described in clause 5.1.
- 2.25 Support Request means a request in writing by The Customer to Lochard for work to be performed under this Agreement in relation to the Services in the form of Schedule J.
- 2.26 The Software means the Software products specified in Schedule A: The Software.
- 2.27 *The Specification means the documents listed in*
- 2.28 The System means both The Software and the Designated Equipment as specified in Schedule B: The Designated Equipment.
- 2.29 Telephone Hotline Support means the service described in clause 8.
- 2.30 Third Party Software means software supported by other vendors and which forms part of The System.
- 2.31 Upgrade means error correction and improvements to existing functions of The System, in accordance with clause 13.
- 2.32 Working Day means the normal days worked by Lochard as specified in Schedule I: Lochard North American Support.
- 2.33 Working Hours means the normal hours worked by Lochard as specified in Schedule I: Lochard North American Support.

3. TERM

- 3.1 This Agreement shall be for a term of three (3) years, commencing on the Effective Date. It will automatically be extended for two additional terms of one (1) year unless either party notifies the other party of its intention not to extend. Such notice must be in writing and be given at least three (3) months prior to the end of the term of the current Agreement.
- 3.2 Lochard shall not unreasonably withhold an extension of the term of this Agreement.

4. CONTRACT ADMINISTRATION

- 4.1 The following person shall be responsible for all matters relating to the administration and management of this Agreement and all notices should be addressed to him or her in the manner prescribed in section 28.2

Customer Support Team Leader
 Lochard Corporation
 39 Pleasant St

Stoneham MA 02180-3829

Telephone: 781+ 4385515
 Facsimile: 781+ 4385616

MA 02180



All notices in the case of The Customer should be addressed to:

Fred Richards
 Environmental Quality Division
 3031 Torrance Blvd
 Torrance CA 90509-2970
 Telephone: 1 310 784 7950
 Facsimile: 1-310-784-7930

With a copy addressed to Torrance City Clerk:

City Clerk
 3031 Torrance Blvd
 Torrance CA 90509-2970

5. SCOPE OF WORK

5.1 Subject to the following clauses of this Agreement, Lochard shall provide maintenance services for the Designated Equipment and maintenance and support services for The Software, including:

- (i) Telephone Hotline Support within the hours designated in Schedule I
- (ii) Preventative Maintenance in accordance with Schedule G
- (iii) Fault Diagnosis
- (iv) Fault Rectification
- (v) NMT Maintenance
- (vi) Upgrades
- (vii) New Modules
- (viii) Reporting

Lochard will endeavour to resolve all Support Requests in a fast and efficient manner with a minimum disruption to The Customer's operations.

6. RESPONSE TIMES

6.1 Once The Customer has lodged a Support Request, Lochard will respond according to the nature of the problem and its impact on the Customer's operations, during the Working Hours:

Category	Fault Description	Response Time (within the Working Hours)
1	Loss of radar data, flight plan data, or all noise data collection; AMOMS Software not operating.	8 Working Hours
2	Major system function non-operational	8 working hours
3	Minor system function non-operational; Loss of noise data collection from one or more NMTs	16 Working Hrs
4	Miscellaneous software problem	Next release
5	Query or request for information	16 Working Hrs

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7. CUSTOMER OBLIGATIONS

- 7.1 The Customer will perform initial faultfinding and diagnosis of all hardware and software problems before contacting Lochard. This is to include NMT as well.
- 7.2 The Customer will ensure data backups are completed daily in accordance with Lochard's specifications.
- 7.3 All Support Requests shall be submitted to Lochard in writing in the prescribed form as set out in Schedule J: Support Request Form by electronic mail ("email"), facsimile, or post.
- 7.4 The Customer shall provide and maintain a dedicated telephone line for remote modem access to The System by Lochard.
- 7.5 The Customer is responsible for maintaining power to the source for The System and will notify Lochard -
- (i) 7 days in advance of any planned outage; and
 - (ii) within 4 working hours of an unplanned outage.
- 7.6 The Customer is responsible for maintaining its own disk space quotas for The System.
- 7.7 The Customer must provide all necessary user IDs and passwords (including the root password) to Lochard before Lochard will perform the Services under this Agreement. Lochard is not responsible for any delay caused by The Customer failing to provide a user ID or password to Lochard.
- 7.8 Lochard will undertake a complete review of all equipment and NMTs after 3 years of the maintenance contract, and annually thereafter. Lochard may recommend to replace any obsolete equipment or equipment not meeting specifications following Lochard's annual inspections. If the customer does not accept the recommendations, Lochard will have the right to increase maintenance charges accordingly to reflect the expected higher maintenance costs of the equipment.
- 7.9 If The Customer does not agree to the replacement requirement under clause 7.7 above, The Customer agrees to an escalation of the Maintenance Fees for the Services, as specified in Schedule D.

8. TELEPHONE/EMAIL HOTLINE SUPPORT

- 8.1 Lochard shall provide support in the form of advice by telephone (or email) in response to a telephone call (or email) from The Customer in relation to the operation of The System.
- 8.2 Lochard's telephone/email support service shall operate only during the Working Hours.

9. PREVENTATIVE MAINTENANCE

- 9.1 Lochard will, from time to time, provide routine system checking and housekeeping to ensure the operating integrity of The System, including:
- (i) ANOMS Data Processing
 - (ii) ANOMS Data Integrity
 - (iii) Database Performance
 - (iv) UNIX System Administration
- 9.2 Preventative maintenance can be carried out by Lochard at any time during the normal business hours of The Customer. Preventative maintenance may be carried out by Lochard outside of those hours by mutual agreement.

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10. FAULT DIAGNOSIS

- 10.1 In addition to the obligation under clause 7.1, The Customer shall undertake initial fault diagnosis work in accordance with Lochard's fault finding documentation if requested to do so by Lochard. This includes NMT, as well.
- 10.2 The Customer shall, if requested, supply a listing of output and any other data that Lochard requires in order to diagnose or reproduce operating conditions similar to those present when a Support Request is made.
- 10.3 Lochard will assist The Customer to diagnose all fault conditions including, where possible, those associated with equipment other than the Designated Equipment.

11. FAULT RECTIFICATION

- 11.1 Lochard shall carry out such remedial work as it determines is necessary to return The System to operating within substantial conformity with The Specifications.
- 11.2 Lochard shall carry out remedial work either remotely or on site at its discretion.
- 11.3 Lochard will not be liable to perform such fault rectification if:
- 11.3.1 it has not received a Support Request from The Customer in the prescribed form;
 - 11.3.2 The Customer has changed the configuration on PCs and User IDs which has caused, or contributed to the cause of, the fault;
 - 11.3.3 the fault is in connection with the consumable equipment on NMTs as per Schedule K; and
 - 11.3.4 the fault is in connection with any equipment that does not meet The Specifications.

12. NMT, COMPUTER, AND OTHER THIRD PARTY SUB-SYSTEM MAINTENANCE

- 12.1 Lochard agrees to provide preventative maintenance on the equipment specified in Schedule G: The Preventative Maintenance Cycle every 12 (twelve) months.
- 12.2 System hardware in Schedule B: The Designated Equipment will be maintained and repaired on-site unless specifically excluded in the schedule.
- 12.3 All NMT repair will be done at additional charge on a time and materials basis, using spares from Customer's supply. Customer acknowledges that spare parts are no longer manufactured, and repairs will be made on a best efforts basis.

13. UPGRADES

- 13.1 Lochard shall notify The Customer of Upgrades to the current version of the System when they are made available for general distribution. The Customer may choose to install the Upgrades.
- 13.2 The Customer will be entitled to one Upgrade per year including the following components of the System:
- (i) Application Software
 - (ii) Third Party Software
- 13.3 Upgrades to The System may require a suitably qualified Lochard engineer travelling to The Customer site, installing software and/or hardware, performing any necessary data conversion, testing, and training users in the features and use of the upgraded software.
- 13.4 The Customer shall pay Lochard for the engineer's time and all other associated costs



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according to the rates in Schedule E: Additional Services unless performed during a scheduled site visit.

- 13.5 The Customer shall pay Lochard for the engineer's time and all other associated costs of upgrades to third parties' software used in The System according to the rates in Schedule E: Additional Services.
- 13.6 There is no separate software licence fee payable for Upgrades.
- 13.7 The annual maintenance payment under this Agreement will not be increased as a result of an Upgrade to the System.
- 13.8 The annual maintenance payment under this Agreement may be increased as a result of maintenance to versions of The Software that are older than two years or third party software .

14. NEW MODULES

- 14.1 Lochard shall notify The Customer of New Modules applicable to The System when they are made available for general distribution.
- 14.2 The Customer will be entitled to any New Modules upon payment of the then current New Module licence fees.
- 14.3 Installation of the New Modules may require a site visit by Lochard or may be done remotely, depending upon the requirements of The System.
- 14.4 The Customer shall pay Lochard for the engineer's time and all other associated costs according to the rates in Schedule E: Additional Services.
- 14.5 The annual maintenance payment under this Agreement will be increased according to the rates in Schedule E: Additional Services for all New Modules.
- 14.6 Lochard may cease supporting previous versions of The Software more than two years after the introduction of a new version of The Software.
- 14.7 The customer acknowledges that an upgrade of third party software or new version, during the maintenance period, may require new hardware which is outside the control of Lochard (ie. the third party may not continue to support present hardware requirements). The customer agrees to pay for the additional cost of new hardware to support new versions of third party software if Lochard considers necessary.

15. FAULT REPORTING

- 15.1 All Support Requests shall be submitted to Lochard in accordance with clause 7.2 and will include the results of the first level fault finding work carried out by The Customer.
- 15.2 The Customer shall, if requested, supply a documented example of the defect or error which it alleges prevents substantial conformity of The System with The Specifications.
- 15.3 The Customer shall, if requested, supply a listing of output and any other data which Lochard requires in order to diagnose or reproduce operating conditions similar to those present when any defect or error in The System was discovered.

16. MAINTENANCE RECORDS

- 16.1 The Customer shall keep accurate records relating to the use and performance of The System as may be directed by Lochard from time to time.

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- 16.2 The Customer shall permit Lochard to inspect these records at any time during The Customer's normal business hours. The Customer shall provide Lochard with a copy of all or any part of these records if so requested.

17. ON-SITE SPARES

- 17.1 The Customer agrees to maintain spares on site as set out in Schedule F: The On-Site Spares.
- 17.2 These spares will be available for Lochard or its sub-contractors to use as replacement parts in the event of the failure of any of the Designated Equipment.
- 17.3 Spares are no longer manufactured and will not be replaced.

18. RETURN TO DEPOT REPAIRS

No equipment is covered by Return to Depot Repairs

19. ADDITIONAL SERVICES

- 19.1 Should The Customer require Lochard to perform any additional services not covered by this Agreement, and Lochard agrees to provide those services, then:
- (i) All such Additional Services are to be authorised in advance using the procedures in clause 28.1 of this Agreement;
 - (ii) All time is charged at the hourly rate specified in Schedule E: Additional Services;
 - (iii) All travel, accommodation and other material costs incurred by Lochard will be paid for by The Customer.
- 19.2 No Additional Services shall be performed unless a written cost estimate is provided by Lochard and approved in writing by The Customer.

20. ADDITIONAL DESIGNATED SITES

- 20.1 Subject to clause 20.2, should The Customer decide to use The System for or at an additional site or location not specified under this Agreement as a Designated Site, Lochard will extend this Agreement to cover the use of The System on the new Site after payment of the then current Maintenance Upgrade Fee.
- 20.2 All such additional designated sites are to be authorised in advance using the procedures in clause 29.1 of this Agreement.

21. ACCESS

- 21.1 The Customer shall ensure that Lochard's maintenance personnel have full and safe access to The System at all reasonable times for the purpose of providing the Services.
- 21.2 The Customer shall ensure that Lochard's maintenance personnel are provided with all information, facilities, services and accessories reasonably required by Lochard to meet its obligations under this Agreement.
- 21.3 The Customer shall provide on request a suitably qualified or informed representative to accompany Lochard's maintenance personnel and to advise Lochard on access or any other matter within The Customer's knowledge or control that will assist Lochard in meeting its obligations under this Agreement.



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- 21.4 Access includes spare parts storage areas, such areas adjacent to the Designated Equipment as are reasonably required by Lochard to carry out the Services, and suitable vehicle parking areas.
- 21.5 Access shall include unhampered working facilities, adequate light, heating, cooling, ventilation, suitable electrical outlets and computer network connections to enable Lochard to meet its obligations under this Agreement.

22. STORAGE OF MAINTENANCE EQUIPMENT

- 22.1 If requested by Lochard, The Customer shall provide secure and adequate facilities adjacent to or in reasonable proximity to the Designated Equipment for the storage by Lochard of tools, documentation, and other items necessary for the maintenance of The System.
- 22.2 The Customer shall permit Lochard to have access to such storage facilities at all reasonable times including, but not restricted to, all times during The Customer's normal business hours.

23. CONFIDENTIALITY

- 23.1 Lochard will treat all of The Customer's data as confidential and will only use that data for the purpose of diagnosis and rectification of problems under the scope of this Agreement.
- 23.2 Lochard will not transfer or disclose any of The Customer's data to any other party without the prior written consent of The Customer.

24. PAYMENT AND CHARGES

24.1 Payment Terms

- 24.1.1 The Customer shall pay to Lochard the Maintenance Fees. The Customer will also pay any sales tax, duties, or government charges that may apply either directly or indirectly to this Agreement or the service provided hereunder.
- 24.1.2 Payments shall be quarterly, in advance for each 3 month period in accordance with Schedule D: The Maintenance Fees.
- 24.1.3 Payments will be made twenty-eight (28) calendar days from the receipt by The Customer of a correctly rendered, fully detailed, invoice.

All payments under this Agreement shall be paid in United States Dollars to Lochard's account:

Account Name	Lochard Corporation
Account Number	941214-3519
Bank	Fleet Bank
Bank Address	100 Federal St MA DE 10007A

Boston MA 02102011

24.2 Indexation of Charges

- 24.2.1 Lochard shall be entitled to increase the charges on an annual basis for the Services, being the charges set out in Schedule D: The Maintenance Fees and Schedule E: Additional Services. These variations shall be on the anniversary of the Effective Date of this Agreement. Such variations are to be specified in writing to The Customer 30 days prior to the renewal date. They will:

- (i) Be escalated yearly by the weighted average movement in the Consumer Price Index for the State of California,

M.A.S.



LOCHARD

- (ii) be determined utilising a base date of the first day of the month of the Effective Date of this Agreement and subsequent anniversaries of that date; and
- (iii) be calculated utilising the following formula:

$$\text{Adjusted MC} = \text{Existing MC} \times [1 + \text{CPI}/100]$$

MC = Maintenance Charge;
CPI = Percentage change in the Consumer Price Index

25. INSURANCE

25.1 Lochard will take out and maintain during the period of this Agreement:

25.1.1 a comprehensive public liability policy to cover all sums which Lochard may become legally liable to pay as compensation consequent upon:

- (i) death of, or bodily injury (including disease or illness) to any person; and
- (ii) loss of, or damage to, property,

arising out, or in connection with, this Agreement. The limit of liability provided by this comprehensive public liability policy must not be less than \$10 million US, unless otherwise agreed by the parties;

25.1.2 insurance in respect of all claims and liabilities arising, whether at common law or under statute, relating to workers compensation or employer's liability, from any accident or injury to any person employed by Lochard in connection with the Services;

25.1.3 insurance for all insurable risks under a third party motor vehicle insurance policy in compliance with the laws of the relevant jurisdiction in which the Services are to be performed for and in respect of any vehicle used by Lochard in connection with the Agreement to cover all sums which we may become legally liable to pay arising out of the use of the relevant motor vehicle; and

25.2 The Customer will, at The Customer's cost, take out and keep current during the term of this Agreement:

25.2.1 all such insurances as are reasonable and prudent in light of the nature and form of the Services being provided to a Customer by Lochard and The Customer's obligations under this Agreement, including without limitation:

- (i) insurance in respect of The System;
- (ii) insurance against any and all liability, loss or damage of any kind whatsoever (including indirect, special or consequential loss or damage) arising directly or indirectly from the use, non-use, storage, transportation, testing, failure, breakage or any other act, omission or matter in respect of The System to a sum of not less than \$10 million US; and

25.2.2 other insurances required by law or reasonably required by Lochard.

25.3 At Lochard's request, The Customer must produce evidence that The Customer is maintaining the insurances as required by clause 25.2.

25.4 Lochard has the right to take out and maintain any policy of insurance required by clause 25.2 if The Customer fails to do so.

25.5 The Customer agrees to reimburse Lochard for any expenses Lochard incurs in taking out and maintaining any policy of insurance under clause 25.4.

25.6 The Customer will ensure that each policy of insurance that The Customer takes out under clause 25.2:



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- 25.6.1 names Lochard as a co-insured; and
- 25.6.2 includes a waiver of the insurer's rights of subrogation against Lochard.

26. INDEMNIFICATION

In addition to the provisions of Section 25 Insurance herein, Lochard shall indemnify, defend, keep, and hold City, including Board, and City's officers, agents, servants, and employees, harmless from any and all costs, liability, damage, or expense (including costs of suit and fees and reasonable expenses of legal services) claimed by anyone by reason of injury to or death of persons, or damage to or destruction of property, including property of Lochard, sustained in, on, or about the Airport, and which in any case arises (a) out of Lochard's use or occupancy of Airport and (b) as a proximate result of the acts or omissions of Lochard, its agents, servants, or employees.

27. SITE VISITS

A Lochard Customer support representative will attend at the Customer's Premises 4 times per year for software support and NMT calibration. Such visits will address topics included on an agenda mutually agreed upon and predetermined by the customer and Lochard. The site visits will be for a maximum two days of eight hours per day.

Lochard holds a yearly North American user group meeting to discuss technical issues related to airport noise and the use of our products. The customer may pay directly for the travel expenses (transportation, lodging, meals etc) of representatives to attend the user group meeting. Alternatively, one customer representative may attend the user group meeting in lieu of one of the site visits, and Lochard will be responsible for the cost of transportation, lodging, and group functions hosted by Lochard. The customer will be responsible for all other costs, including meals, entertainment, and incidental expenses.

28. GENERAL TERMS AND CONDITIONS

28.1 Contract Variation Procedures

- 28.1.1 Either Lochard or The Customer may propose alterations, additions or omissions to this Agreement.
- 28.1.2 Amendments to the terms and conditions of the Agreement shall be agreed in writing between the parties. The Contract Manager, in the case of Lochard, or the City Council on behalf of the Customer shall thereafter issue a Contract Variation.
- 28.1.3 Where The Customer requires a variation to the Agreement, it shall notify Lochard in writing of the nature of the variation it seeks, and Lochard shall as soon as possible and within thirty (30) days of receipt, forward to The Customer a formal Contract Variation Proposal identifying attendant price and schedule variations.
- 28.1.4 Where Lochard requires a variation to the Agreement, it shall notify The Customer in writing of the nature of the variation it seeks, and send a formal Contract Variation Proposal identifying attendant price and schedule variations.
- 28.1.5 Contract Variation Proposals shall become effective when accepted and issued by the Contract Manager on behalf of Lochard and the City Council on behalf of the Customer. Until then, the Agreement shall remain unaltered.
- 28.1.6 Neither Party shall be liable for any additional work undertaken or expenditure incurred by The other party in relation to the variation of the Agreement, which has not been authorised pursuant to this procedure.

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28.2 Notices

- 28.2.1 All notices or other communications given by either party to the other under this Agreement shall be in writing, marked for the attention of the person specified in clause 4.1 as relevant, and shall be personally delivered or sent by postage pre-paid, registered or certified mail, return receipt requested, or by facsimile to the last notified facsimile number of the party, or sent by email to the last email address of the party.
- 28.2.2 A notice, approval, consent or other communication takes effect from the time it is received unless a later time is specified in it.
- 28.2.3 If posted in Australia, a letter is taken to be received on the third day after posting.
- 28.2.4 If posted overseas, a letter is taken to be received on the seventh day after posting.
- 28.2.5 A facsimile is taken to be received at the time shown in a transmission report by the machine which indicates that the whole facsimile was sent.
- 28.2.6 An email is taken to be received at the time shown in a delivery confirmation report generated by the sender's email system.

28.3 Termination

- 28.3.1 Either party may at any time upon giving thirty (30) days notice in writing to the other party of its intention to do so, terminate this Agreement.
- 28.3.2 Where The Customer terminates under this clause, upon the requisite notice being given, The Customer shall within ten (10) days of the termination of this Agreement, return to Lochard any equipment belonging to Lochard that is in The Customer's possession, custody or control.

28.4 Default

- 28.4.1 Notwithstanding clause 28.3, Lochard may terminate this Agreement immediately on notice in writing to The Customer if any of the following circumstances arise:
- (i) Any payment due to Lochard from The Customer under this Agreement remains unpaid for a period of sixty (60) days;
 - (ii) The Customer is in breach of the whole or any part of this Agreement and this breach is not remedied within thirty (30) days of written notice by Lochard;
 - (iii) The Customer disposes of The System;
 - (iv) The Customer becomes, resolves or threatens to become, or is in jeopardy of becoming the subject of any bankruptcy proceedings, becomes insolvent, or enters into receivership;
 - (v) The Customer ceases or threatens to cease to conduct its business in the normal manner.
- 28.4.2 In the event of termination in accordance with this clause Lochard may:
- (i) Repossess any of its equipment in the possession, control, or custody of The Customer;
 - (ii) Retain any money paid;
 - (iii) Charge a reasonable sum for work performed for which no sum has previously been charged;
 - (iv) Be regarded as discharged from any further obligations under this Agreement;
 - (v) Pursue any alternative or additional remedies afforded by the law.
- 28.4.3 The Customer shall not be entitled to a refund of any fees paid or accrued prior to the effective date of such termination.
- 28.4.4 The Customer shall not be entitled to compensation for loss of earnings or damages.



L O C H A R D

28.5 Waiver

- 28.5.1 No right under this Agreement will be waived by either party except by notice in writing signed by both parties.
- 28.5.2 A waiver by Lochard or by the City of Torrance will not prejudice its rights in respect of any other breach of this Agreement by The Customer.
- 28.5.3 Failure by either party at any time to enforce any of the provisions of this Agreement shall not be construed as a waiver by such party of any such provision or in any way affect the validity of the Agreement or any part thereof.

28.6 Assignment

- 28.6.1 Neither party may assign, sub-license, or sub-contract this Agreement, or any of its rights, obligations or duties hereunder, without the prior written consent of the other party. Lochard will not unreasonably withhold such consent.

28.7 Entire Agreement

- 28.7.1 This Agreement constitutes the entire understanding between Lochard and The Customer with respect to the subject matter hereof, and supersedes and extinguishes all prior statements, understandings and agreements between the parties with respect to the subject matter hereof, and all warranties and representations previously given, whether oral, written, or in any other form.
- 28.7.2 Lochard and The Customer further agree that neither party places any reliance whatsoever on any representations, agreements, statements or understandings made prior to the Effective Date whether orally, in writing, or any other form, other than those which have been expressly incorporated in this Agreement.
- 28.7.3 No alterations or changes to this Agreement are valid unless they are in writing and signed by both parties in accordance with clause 29.1.

28.8 Force Majeure

- 28.8.1 If, as a result of some fact, circumstance, matter or thing beyond the reasonable control of a party ("force majeure"), that party becomes unable, wholly or in part, to perform any of its obligations under this Agreement:
- (i) that party is to give the other party prompt notice of the relevant event of force majeure with reasonably full particulars and, in so far as known to it, the probable extent to which it will be unable to perform, or be delayed in performing, the relevant obligations;
 - (ii) the relevant obligations, other than an obligation to pay money, is suspended but only so far as, and for so long as, it is affected by the relevant event of force majeure; and
 - (iii) that party is to use all possible diligence to overcome or remove the relevant event of force majeure as quickly as possible.
- 28.8.2 Clause 29.9.1(iii) does not require the affected party to:
- (i) settle any strike or other labour dispute on terms contrary to its wishes; or
 - (ii) contest the validity or enforceability of any law, regulation or legally enforceable order by way of legal proceedings.
- 28.8.3 On receiving notice of the force majeure, the parties must negotiate an extension of time as is reasonably necessary in the circumstances to enable the parties to complete their obligations under this Agreement.
- 28.8.4 Lochard may, with The Customer's prior written consent, extend the time for completion of this Agreement and/or the Services.
- 28.8.5 The obligation of the affected party to perform its obligations, resumes as soon as it is

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L O C H A R D

no longer affected by the relevant event of force majeure.

28.9 Rights

28.9.1 Any express statement of a right of either party under this Agreement is without prejudice to any other rights of either party either arising in law or expressly stated in this Agreement.

28.10 Severability

28.10.1 The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement.

28.11 Governing Law

28.11.1 The validity, construction and interpretation of this Agreement, and the rights and duties of the parties shall be governed by and construed in accordance with the laws of the state of California.

28.11.2 Both parties irrevocably agree to the exclusive jurisdiction of the courts of California in the event of any dispute arising out of this Agreement.

28.12 Independent Contractor

28.12.1 Both parties acknowledge that Lochard is The Customer's contractor and not The Customer's employee or agent.

28.13 Other

28.13.1 The headings used in this Agreement are for ease of reference only and do not affect its meaning or interpretation.

28.13.2 A reference to a person includes a corporation, its successors and permitted assigns.

28.13.3 The singular includes the plural and vice versa unless the contrary intention appears.

28.13.4 Words importing one gender shall include the other.



LOCHARD

29. EXECUTION

the 29th day of June two thousand and five.

CITY OF TORRANCE
A Municipal Corporation

~~Dee Hardison, Mayor~~
DAN WALKER, Mayor

LOCHARD CORPORATION

A private corporation

~~Robert Brodecky, Vice President~~

Michael R. Kard-Bell, President

ATTEST

Sue Herbers

City Clerk

APPROVED AS TO FORM:

JOHN L. FELLOWS III

City Attorney

By:

Heather K. Whitham

Deputy City Attorney

Attachments:

- SCHEDULE A: THE SOFTWARE
- SCHEDULE B: THE DESIGNATED EQUIPMENT
- SCHEDULE C: THE DESIGNATED SITES
- SCHEDULE D: THE MAINTENANCE FEES
- SCHEDULE E: ADDITIONAL SERVICES
- SCHEDULE F: THE ON-SITE SPARES
- SCHEDULE G: THE PREVENTATIVE MAINTENANCE CYCLE
- SCHEDULE I: LOCHARD WORLD WIDE SUPPORT
- SCHEDULE J: SUPPORT REQUEST FORM
- SCHEDULE K: CONSUMABLE EQUIPMENT



LOCHARD

SCHEDULE A: THE SOFTWARE

Item	Author	Licence Number	User Count
ANOMS Release 6.5	Lochard	N/A	
Interbase Relational Database			
Solaris 2.7	SUN Microsystems	N/A	
Adobe Framemaker			



LOCHARD

SCHEDULE B: THE DESIGNATED EQUIPMENT

1 Servers

Item	Manufacturer	Model	Location	Serial Number
1	Sun Microsystems	Ultra 10		PR92010258

2 Work Stations

Item	Manufacturer	Model	Location	Serial Number
None				

3 Personal Computers

Item	Manufacturer	Model	Location	Serial Number
None				

4 Printers

Item	Manufacturer	Model	Location	Serial Number
1	HP	HP4000N		USQF011069

5 Tape Recorder

Item	Manufacturer	Model	Location	Serial Number
1	Dictaphone			NOT Covered by this Agreement



LOCHARD

6 Modems

Item	Manufacturer	Model	Location	Serial Number
None				

7 NMTs

Item	Covered Items
8 NMTs	Repair on T&M Basis Maintenance once yearly Calibration

8 NMT Weather Sensors

Item	Manufacturer	Model	Location	Serial Number
None				

M.L.D.



SCHEDULE C: THE DESIGNATED SITES

Site	Address
Torrance Airport Environmental Office	3031 Torrance Blvd. Torrance CA

10/1/07



LOCHARD

SCHEDULE D: THE MAINTENANCE FEES

Item	Due Date	Amount	Escalated price (clause 7.8)
Year One Quarter One Maintenance	On the Effective Date	\$ 9,929.86	NA
Year One Quarter Two Maintenance	1 Oct 2005	\$ 9,929.86	NA
Year One Quarter Three Maintenance	1 Jan 2006	\$ 12,179.86	NA
Year One Quarter Four Maintenance	1 April 2006	\$12,179.86	NA
Year Two Quarter One Maintenance	1 July 2006	\$12,179.86	
Year Two Quarter Two Maintenance	1 Oct 2006	\$12,179.86	
Year Two Quarter Three Maintenance	1 Jan 2007	\$12,179.86	
Year Two Quarter Four Maintenance	1 April 2007	\$12,179.86	
Year Three Quarter One Maintenance	1 July 2007	\$ 12,179.86	
Year Three Quarter Two Maintenance	1 Oct 2007	\$12,179.86	
Year Three Quarter Three Maintenance	1 Jan 2008	\$12,179.86	
Year Three Quarter Four Maintenance	1 April 2008	\$ 12,179.86	
(Year Two and Three charges subject to indexation according to clause 24.2)			

NOTE: DATA DOWNLOADS FROM PASSUR (PASIVE RADAR) ARE SCHEDULED TO START IN JANUARY 1, 2006.



LOCHARD

SCHEDULE E: ADDITIONAL SERVICES

Item	Rate
Software Engineer, Customer Support, Consulting, Training, Programming, and other labour.	\$135.00 per hour
Travel, accommodation, meals, disbursements and other expenses.	At Cost
Third Party Software and Hardware Purchases and Repairs	Cost plus 15%
New Modules added to The System:	Annual Maintenance Fee:
Hardware	12% of Hardware Price
Software	12% of Module License Fee
(These charges are subject to CPI variation according to clause 24.2)	

ITEM	START DATE	ANNUAL AMOUNT
DATA DOWNLOADS FROM PASSUR (PASSIVE RADAR) TO ANOMS	JANUARY 1, 2006	\$9,000.00

1/1/07



LOCHARD

SCHEDULE F: THE ON-SITE SPARES

Item	Location
NMT Spare Parts as maintained by the City	Torrance Airport

MW



LOCHARD

SCHEDULE G: THE PREVENTATIVE MAINTENANCE CYCLE

Equipment	Annual Check
NMT	October 2006
NMT	October 2007
NMT	October 2008



LOCHARD

SCHEDULE I: LOCHARD NORTH AMERICAN SUPPORT

North American Support Hours

Lochard's North American Support team operates from Stoneham MA and Sacramento CA offices.

Hours for the Stoneham Office are 0830-1730 Eastern Time

Hours for the Sacramento Office are 0830-1730 Pacific Time

Support staff may be reached by Cellular Telephone outside of these hours.

Lochard North American offices are closed on US public holidays.

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LOCHARD

SCHEDULE J: SUPPORT REQUEST FORM

LOCHARD PTY. LTD.
ACN 007 330 403
69 KOOYONG ROAD
CAULFIELD NORTH 3161
VICTORIA AUSTRALIA

TELEPHONE: +61 3 9500 1017
FACSIMILE: +61 3 9500 1191
EMAIL: info@lochard.com.au
INTERNET: http://www.lochard.com.au/



LOCHARD

CUSTOMER SUPPORT REQUEST.

Customer Ref:	
Contact Details:	
Site:	<i>Customer Name</i>
	<i>Section Name</i>

Category:	<input type="text"/>	Category.	Description
		1	URGENT DATA LOSS
		2	MAJOR FUNCTIONALITY LOSS
		3	EMU EQUIPMENT/DATA
		4	OTHER
		5	REQUEST FOR INFORMATION

Date/Time:	<input type="text"/>	<input type="text"/>	EMU #:	<input type="text"/>	Checklist incl.:	<input type="text"/>
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Brief Description:

(Lochard use only)

Date Processed	<input type="text"/>
Lochard Id	<input type="text"/>

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SCHEDULE K: CONSUMABLE EQUIPMENT

1. NMT Batteries
2. NMT Windscreen
3. Bird Spikes



LOCHARD

Maintenance Agreement

Customer

City of Torrance

Reference number

[Agreement reference number]

Services

Term

This Agreement shall be for a term of three (3) years, commencing on the Effective Date. It will automatically be extended for two additional terms of one (1) year

Other Matters

Radar data provided through PASSUR

Price

\$ 12,179.86 quarterly in advance

Payment to be deposited in bank account

Account Name	Lochard Corporation
Account Number	941214-3519
Bank	Fleet Bank
Bank Address	100 Federal St MA DE 10007A Boston MA 02102011

Person nominated by Lochard Corporation for receipt of notices (clause [])

Sharlene McCaslin
Service Delivery Manager
Sacramento
California
USA

Person nominated by Customer for receipt of notices (clause [])

Fred Richards
Environmental Quality Division
3031 Torrance Blvd
Torrance CA 90509-2970

Telephone: 1 310 784 7950
Facsimile: 1-310-784-7930

Date of signing of this Agreement

/ /

The Parties agree to the supply and receipt of services on the terms and conditions set out in this Maintenance Agreement.

MMS



L O C H A R D

2. DEFINITIONS

- 2.1 Additional Services means the services described in Schedule E.
- 2.2 Agreement means this Maintenance Agreement.
- 2.3 Contract Manager means the person referred to in clause 4.1.
- 2.4 Designated Equipment means the computer and other related systems specified in Schedule B: The Designated Equipment.
- 2.5 Designated Sites means The Customer's premises and other locations where the Designated Equipment is situated and operated as specified in Schedule C: The Designated Sites.
- 2.6 Dollar means the currency of the United States of America.
- 2.7 Effective Date means the date that this Agreement comes into effect as specified in clause 1.
- 2.8 EMU means a Lochard Environment Monitoring Unit.
- 2.9 Fault Diagnosis means the service described in clause 10.
- 2.10 Fault Rectification means the service described in clause 11.
- 2.11 Fault Reporting means the service described in clause 15.
- 2.12 ANOMS Application Software means the software described in the Specifications.
- 2.13 ANOMS Data Processing means the data processing described in the Specifications.
- 2.14 Hardware Price means the price paid by The Customer to Lochard under the contract to purchase hardware.
- 2.15 Language means the official language exchanged in all verbal and written communications pursuant to this Agreement. For the purpose of this Agreement, that language is English.
- 2.16 Maintenance Equipment means the equipment maintained pursuant to this agreement.
- 2.17 Maintenance Fees means the fees specified in Schedule D: The Maintenance Fees.
- 2.18 Module Licence Fee means the additional fee payable for new features to be added to the Specifications from time to time.
- 2.19 New Modules means new components or functionality added to The System as described in clause 14.
- 2.20 NMT means a Noise Monitoring Terminal.
- 2.21 NMT Maintenance means the service described in clause 12.
- 2.22 Prescribed terms are:
- (a) terms and conditions and warranties implied by law in contracts for the supply of goods or services; and
 - (b) rights and remedies provided by law.
- 2.23 Preventative Maintenance means the pre-agreed cycle of maintenance provided by Lochard to The Customer to ensure the Maintenance Equipment continues to meet certain levels of Specifications.