

# CONTRACT ROUTING FORM

CONTRACT NO: 2009-270

**INSTRUCTIONS:** All original contracts must first be signed and notarized by the contractor, then routed to the authorized Gallatin County representatives according to the Small Purchasing Policy (Resolution #2008-085) and the Service Contract Procedure Guidelines. All contracts will be routed back to the originating department who MUST forward the original contract to the Clerk & Recorder for filing. NO EXCEPTIONS!

(NOTE: If contractor requires an original document, two contracts must be routed.)

**1. This section to be completed by: Department Head, Board Chairperson or Elected Official**

DATE: 6/18/09 FUND #: 2850  
RESPONSIBLE DEPARTMENT: 911 Communications SIGNATURE: [Signature]  
CONTRACT NAME: Contract with Intergraph for 911 CAD System Maintenance & Support  
CONTRACT AMOUNT: \$ 171,452.16 AMOUNT IS WITHIN MY BUDGET: YES \_\_\_ NO \_\_\_  
CONTRACT AMOUNT IS WITHIN APPROVED PURCHASE AUTHORITY: YES \_\_\_ NO \_\_\_  
MINIMUM SOLICITATION REQUIREMENTS HAVE BEEN DOCUMENTED: YES \_\_\_ NO \_\_\_

\*IF "NO" ANSWERED TO ANY QUESTION ABOVE, EXPLAIN REASONS and SEND TO COUNTY ADMINISTRATOR FOR REVIEW.

---

START DATE: 7/1/09 EXPIRATION DATE: 6/30/11

\*\*DESCRIPTION OF CONTRACT / GOODS OR SERVICES / SCOPE OF WORK:  
Contract for Maintenance and Support of Intergraph 911 CAD System.

\*\*IF THIS IS A MODIFICATION, WORK ORDER OR AMENDMENT OF EXISTING CONTRACT PROVIDE ORIGINAL CONTRACT #: \_\_\_\_\_

DATE SIGNED BY CONTRACTOR:     /    /    

**2. Finance Director complete, if amount is \$1,500 or greater.**

FINANCE DIRECTOR APPROVED: [Signature] DATE: 6/18/09

**3. County Administrator complete, if necessary.**

COUNTY ADMINISTRATOR APPROVED: \_\_\_\_\_ DATE:     /    /    

**4. County Commissioner approval required?:**  Yes  No

**5. Clerk and Recorder: Date Recorded:**     /    /    

**6. Responsible originating department must send one approved contract to contractor.**



# MAINTENANCE QUOTATION SUMMARY

Quote #1-4U01KL

Period of Performance: 7/1/09 through 6/30/11

Customer Address: County of Gallatin - Bozeman  
615 South 16<sup>th</sup> Avenue, Suite 101  
Bozeman, MT 59715  
Attn: Bruce Cunningham

Billing Address: County of Gallatin - Bozeman  
311 West Main Street  
Bozeman, MT 59715  
Attn: Ben Hess

Quotation Summary:	Software Maintenance
	Tax*
	Total Service Cost

\$	171,452.16
\$	<u>          .00</u>
\$	171,452.16

Billing Terms: Annual

All services provided here under are subject to the Terms & Conditions (T's & C's) of the GSA Contract, Contract Number GS-35F-0011-K. This quotation shall remain valid and all prices quoted herein shall remain firm for a period of ninety (90) days from the quotation issue date. \* Total is exclusive of any applicable sales tax.

### THIS IS NOT AN INVOICE

Offered By: Intergraph Corporation  
Security, Government & Infrastructure (SG&I)

Accepted By: County of Gallatin - Bozeman

Name: Cathy McGinn  
Cathy McGinn  
Maintenance Contract Administrator

Name: [Signature]  
County Commission Chair

Telephone #: 256-730-8655

Telephone #: \_\_\_\_\_

Email: cathy.mcginr@intergraph.com

Email: \_\_\_\_\_

Date: June 8, 2009

Date: 6-16-09

# Exhibit A



Gallatin MT County Of-Bozeman

Account Nbr: MDC-1382

Quote: 1-4U01KL - County of Gallatin - Bozeman SW - GSA

Bill To:

Gallatin MT County Of-Bozeman  
 Attn: Ben Hess  
 311 West Main Street  
 Bozeman, MT 59715  
 USA

PO#: TBD

Performance Period: 07/01/2009 Through 06/30/2011

Ship To:

Gallatin MT County Of-Bozeman  
 Attn: Bruce Cunningham  
 615 South 16th Avenue Suite 101  
 Bozeman, MT 59715  
 USA

## Security, Government and Infrastructure

Ln	Base Part	Description	Serial	Begin	End	SVC	Coverage	Mths Qty	Mth Cost	Total Cost
1	IPS0001	I/Executive	MME-1-Y4QA	07/01/2009	06/30/2011	PRM	Ph Supp with Upg's	24	\$504.24	\$12,101.76
2	IPS0002	I/Dispatcher	MME-1-Y4OG	07/01/2009	06/30/2011	PRM	Ph Supp with Upg's	24	\$216.48	\$25,977.60
3	IPS0004	I/Informer	MME-1-9VMSW	07/01/2009	06/30/2011	PRM	Ph Supp with Upg's	24	\$287.76	\$6,906.24
4	IPS0004A	I/Informer to I/LEADS	MME-1-9VM6D	07/01/2009	06/30/2011	PRM	Ph Supp with Upg's	24	\$0.00	\$0.00
5	IPS0007	I/Executive 2	MME-1-Y4OW	07/01/2009	06/30/2011	PRM	Ph Supp with Upg's	24	\$359.92	\$8,638.08
6	IPS0009	I/Mobile Data Terminal	1-228533085	07/01/2009	06/30/2011	PRM	Ph Supp with Upg's	24	\$575.52	\$27,624.96
7	IPS0012	I/Page	MME-1-Y4OY	07/01/2009	06/30/2011	PRM	Ph Supp with Upg's	24	\$262.24	\$6,293.76
8	IPS0015	I/Tracker	1-228594957	07/01/2009	06/30/2011	PRM	Ph Supp with Upg's	24	\$327.36	\$7,856.64
9	IPS0019	I/LEADS-Server	MME-1-Y4P8	07/01/2009	06/30/2011	PRM	Ph Supp with Upg's	24	\$287.76	\$6,906.24
10	IPS0020	I/LEADS-Records Management System - 1-214799730	MME-1-Y4P8	07/01/2009	06/30/2011	PRM	Ph Supp with Upg's	24	\$21.12	\$13,178.88
11	IPS0022	I/LEADS-Incident Based Reporting	MME-1-Y4Q4	07/01/2009	06/30/2011	PRM	Ph Supp with Upg's	24	\$132.00	\$3,168.00
12	IPS0027	I/LEADS-Mugshot Capture System	MME-1-9K60A	07/01/2009	06/30/2011	PRM	Ph Supp with Upg's	24	\$132.00	\$3,168.00
13	IPS0035	I/Backup	1-238776144	07/01/2009	06/30/2011	PRM	Ph Supp with Upg's	24	\$327.36	\$7,856.64
14	IPS0038	I/Mobile	1-228533112	07/01/2009	06/30/2011	PRM	Ph Supp with Upg's	24	\$14.08	\$8,448.00
15	IPS0048	I/FRMS-CADlink	1-16457027	07/01/2009	06/30/2011	PRM	Ph Supp with Upg's	24	\$132.00	\$3,168.00
16	IPS0063	I/MapEditor NL	13V5LYABilling	07/01/2009	06/30/2011	PRM	Ph Supp with Upg's	24	\$49.28	\$1,182.72
17	IPSF520AA-A	Orade Workgroup Std Ed-Full Use	ORA-10973	07/01/2009	06/30/2011	PRM	Ph Supp with Upg's	24	\$10.00	\$2,400.00
18	IPSF584AA-A	Orade Std Ed-Appl Spec Named User	1-228533130	07/01/2009	06/30/2011	PRM	Ph Supp with Upg's	24	\$8.00	\$24,000.00
19	SJBY690AA-A	GeoMedia Professional	13V5LYA00057936	07/01/2009	06/30/2011	PRM	Ph Supp with Upg's	24	\$107.36	\$2,576.64
<b>SubTotal for Site Number 00057936</b>									<b>\$171,452.16</b>	

**Exhibit A**



Gallatin MT County Of-Bozeman

**Security, Government and Infrastructure**

Account Nbr: MDC-1382

PO#: TBD

Quote: 1-4U01KL - County of Gallatin - Bozeman SW - GSA

Performance Period: 07/01/2009 Through 06/30/2011

Ln	Base Part	Description	Serial	Begin	End	SVC	Coverage	Mths Qty	Mth Cost	Total Cost
----	-----------	-------------	--------	-------	-----	-----	----------	----------	----------	------------

Estimated Tax Amount \$0.00

Grand Total \$171,452.16



## Security, Government & Infrastructure (SG&I) U.S. Maintenance Terms and Conditions for Software and Hardware

---

The SG&I U.S. Maintenance Terms and Conditions for Software and Hardware consists of this cover page, the attached General Terms and Conditions, the Scope of Work (as indicated by the applicable Exhibits marked below), and any Addenda thereto. This document and the Quote to which it is attached comprise the complete agreement. This Agreement replaces all prior oral or written communications between the Parties regarding the terms and conditions of SG&I Maintenance Services.

By signing the maintenance Quote, the Parties agree to the terms of this Agreement. Once signed, 1) the Parties agree any reproduction of the Agreement made by reliable means (for example, photocopy or facsimile) is considered an original and 2) all Covered Products are subject to it.

### Scope of Work

If checked below, additional Terms and Conditions specific to the following Scope of Work items are made a part of this Agreement:

- |                      |   |                                     |   |
|----------------------|---|-------------------------------------|---|
| Exhibits:            | A | <input checked="" type="checkbox"/> | Commercial Off-The-Shelf ("COTS") Software, except for DMC Software |
| (mark as applicable) | B | <input type="checkbox"/>            | Z/I Imaging Hardware, except for DMC Hardware                       |
|                      | C | <input type="checkbox"/>            | Digital Mapping Camera ("DMC") Systems Hardware and Software        |
|                      | D | <input type="checkbox"/>            | Third Party Products  |

## GENERAL TERMS AND CONDITIONS

The following general terms and conditions apply to all maintenance Services provided by Intergraph, except as otherwise modified in an applicable Exhibit or by subsequent Addendum signed by Intergraph and the Customer, or unless Customer and Intergraph enter into a separate agreement that provides for maintenance services. In case of conflict between any of the parts of the Terms and Conditions, the order of precedence shall be as follows: 1) any Addenda executed by the Customer and Intergraph, with the latest Addendum taking precedence over any earlier Addenda in which a conflict may appear; 2) any applicable Exhibits, as pertains to the subject thereof; and 3) the general terms and conditions.

### 1.0 DEFINITIONS

1.1 "**Agreement**" means the agreement between Customer and Intergraph that is created by Customer accepting the Quote which references and is subject to the Terms and Conditions. The Customer-accepted Quote and the Terms and Conditions make up the Agreement between Customer and Intergraph.

1.2 "**Coverage Period**" means the Agreement period of performance as designated in the Quote(s).

1.3 "**Covered Products**" means the hardware and/or software products listed on the Quote for which Services are to be provided by Intergraph. Covered Products shall also include additional copies of a software product that are already covered by the Agreement and that are purchased or otherwise obtained by Customer during the Coverage Period. Covered Products may include products of Security, Government & Infrastructure, as well as Third Party Products, as defined below.

1.4 "**Customer**" means the entity or person purchasing maintenance services.

1.5 "**Designated Hardware**" means hardware designated by Intergraph as eligible for cancellation with ninety (90) days notice.

1.6 "**DMC**" means Digital Mapping Camera.

1.7 "**Intergraph**" means the Security, Government & Infrastructure (SG&I) division of Intergraph Corporation.

1.8 "**Quote**" means a quotation for Services submitted to Customer by Intergraph. A Quote may be the quotation issued by the Customer Services Center, but may also be the maintenance quotation submitted to Customer along with a product quotation at time of purchase.

1.9 "**Scope of Work**" means the specific maintenance services contracted by Customer and to be performed by Intergraph, as described in applicable Exhibits attached hereto.

1.10 "**Services**" means the maintenance services for Covered Products that are further described in the Scope of Work.

1.11 "**Terms and Conditions**" means these terms and conditions, including any Addenda and applicable Exhibits, that together with the Quote accepted by Customer comprise the Agreement between Customer and Intergraph for the Services.

1.12 "**Third Party Products**" means the hardware or software products of any division of Intergraph Corporation other than Security, Government & Infrastructure and/or of an entity other than Intergraph Corporation.

1.13 "**Upgrade(s)**" means the subsequent releases of applicable software products covered under the Agreement.

### 2.0 AUTHORIZATION AND PERFORMANCE

#### 2.1 Initiating Services

By accepting the Quote issued by Intergraph and paying all charges listed in the Quote, Customer thereby authorizes Intergraph to provide the Services for Covered Products during the Coverage Period specified on the Quote, and

thereby agrees to these Terms and Conditions. Such Services will be provided in accordance with the Scope of Work. The Agreement shall be considered as beginning on the first day of the month that the Agreement becomes effective, and thus the Covered Period shall be for whole months only.

## **2.2 Renewing Services**

Approximately ninety (90) days prior to the Agreement expiration date, Intergraph will submit to the Customer a renewal Quote that includes pricing for the Services during the subsequent Coverage Period. By accepting the renewal Quote and agreeing to pay or paying all charges listed in the renewal Quote, Customer thereby authorizes Intergraph to provide the Services for Covered Products during the designated Coverage Period, and thereby agrees to the then current Terms and Conditions referenced in the renewal Quote. Intergraph reserves the right to increase maintenance prices at any time at its sole discretion, which shall, if applicable, be reflected in the renewal Quote and shall take effect for the renewal Coverage Period.

## **3.0 TERMINATION OF SERVICES**

Coverage may only be terminated by either party at the end of a Coverage Period. The party desiring to terminate Services must provide to the other party written notification at least thirty (30) days prior to the end of the then current Coverage Period of its intent to terminate Services. However, should Customer not remit payment for any renewal Quote prior to the end of the then current Coverage Period, Services shall terminate at the end of that Coverage Period and Services shall be deemed by Intergraph to have lapsed.

This Agreement may only be terminated prior to its expiration in the following ways:

- (a) A new Agreement between Customer and Intergraph is signed into effect for similar service.
- (b) If either party petitions for reorganization under the Bankruptcy Act or is adjudicated as bankrupt, or a receiver is appointed for either party's business, or the Customer fails to pay Intergraph any amount when due hereunder.

## **4.0 CHANGES, DELETIONS, AND ADDITIONS**

### **4.1 Changes of Coverage**

If Customer desires to change coverage for the renewal Coverage Period, Customer should notify Intergraph and obtain a revised renewal Quote that reflects Customer's wishes, provided such changes are not in violation of the Terms and Conditions.

### **4.2 Deletions from Agreement**

#### **4.2.1 Designated Hardware**

Either party may remove Designated Hardware from the Agreement by providing ninety (90) days advance written notice to the other party, with the deletion to take effect at the end of the month in which falls the ninetieth day from the date notice was received by the other party, or at the end of the Coverage Period, whichever comes first. In the event either party withdraws maintenance for an item of Designated Hardware, the charges pertaining to such item of Designated Hardware shall be prorated for the remaining term of this Agreement, and if applicable, to the extent charges were prepaid, refunded to Customer in whole months only.

#### **4.2.2 Covered Products**

Either party may provide written notice to the other party at least thirty (30) days prior to the end of any Coverage Period of its intent to remove any individual Covered Products from the Agreement for the renewal period. Neither party may remove Covered Products other than Designated Hardware except upon Agreement renewal.

Customer may not remove from Coverage individual software licenses of a software product for which Customer has multiple copies under maintenance at one site or for software licenses that are being used interdependently at a single site.

### **4.3 Additions to Agreement**

In the event Customer purchases additional Intergraph hardware or software during the term of this Agreement and does not also purchase maintenance for those items at the time of purchase, and if Customer purchased the additional items from Intergraph, Intergraph will notify the Customer by submitting in writing an add-on Quote that reflects the additional items, effective date(s) of service, and charges for those items pursuant to these Terms and Conditions.

In the event Customer should obtain additional Intergraph software license(s) from an authorized reseller or by any other manner, Customer agrees to notify Intergraph about the newly acquired software licenses(s). In response, Intergraph will provide the Customer with an add-on Quote reflecting the effective date of service and charges for the additional software license(s).

Customer shall purchase maintenance coverage on all additions of software licenses to a site obtained via software license transfer. Any such software license transfers shall be in accordance with the current Intergraph Software Transfer Policy and the End-User License Agreement and Limited Product Warranty for Intergraph Corporation Software Product(s) or other applicable Software License Agreement delivered with the software product.

## **5.0 REQUIRED COVERAGE**

### **5.1 Multiple or Interdependent Licenses**

Maintenance may not be declined for individual licenses of a software product for which Customer has multiple copies under maintenance at one site or for software licenses that are being used interdependently at a single site.

### **5.2 Prerequisite Licenses**

All prerequisite Intergraph software licenses that are necessary to operate the software for which Customer desires Services under the Agreement must also be included as Covered Products and listed on the Quote.

## **6.0 CHARGES**

**Maintenance services are not eligible for discounts.**

### **6.1 Payment**

Charges for Services are due and payable **annually in advance**. For Customers desiring to pay quarterly in advance instead of annually in advance, the Customer must request a revised Quote which shall include a convenience fee uplift of fifteen percent (15%) of the total annual charges, which convenience fee Customer agrees to pay. The convenience fee shall be prorated and charged to the four quarterly invoices.

All charges are due net thirty (30) days from the date of invoice, unless Customer accepts the Quote less than thirty (30) days before the first day of the Coverage Period in which case the charges for the invoice or initial invoice, as applicable, are due prior to the beginning of the Coverage Period. In the event Customer accepts a Quote after the Coverage Period has already begun, the charges for the invoice or initial invoice, as applicable, shall be due and payable in full upon receipt of the invoice. Charges for products added during a Coverage Period to an Agreement shall be prorated to the remaining months of the Coverage Period, in whole month increments only, and such charges shall be due and payable in full upon receipt of invoice.

### **6.2 Past Due Accounts**

**INTERGRAPH RESERVES THE RIGHT TO REFUSE SERVICE TO ANY CUSTOMER WHOSE ACCOUNT IS PAST DUE.** At the discretion of Intergraph, Customers who have not paid any charges when due may not be rendered Services or receive Upgrades until the charges are paid in full. Additionally, Intergraph shall charge and Customer agrees to pay interest at the rate of two percent (2%) per month or the maximum amount allowed by law, whichever is less, for all



amounts not received when due. The start of the Coverage Period shall not be postponed due to delayed payment of any charges.

### **6.3 Reinstatement of Software Maintenance Coverage**

Software reinstatement fees will apply if there is a lapse in software maintenance Services. Intergraph will provide a Quote for reinstatement of maintenance upon request.

### **6.4 Reinstatement of Hardware Maintenance Coverage**

Intergraph may charge a recertification fee for reinstating coverage for hardware where coverage has lapsed. Recertification of hardware will require inspection and possible refurbishment of the hardware at Customer's expense prior to being eligible for addition to an Intergraph maintenance contract.

## **7.0 CUSTOMER RESPONSIBILITIES**

During the Coverage Period of the Agreement, Customer shall commit to the following:

- (a) Customer is responsible for backing up all systems software, applications, and user data files prior to commencement of any repair services.
- (b) Customer warrants that for all software licenses supported under the Agreement, all like software licenses in the possession of the Customer and located at the site referenced on the Quote are listed on the Quote. If all like software licenses are not listed on the Quote, Customer agrees to notify Intergraph so that Intergraph may issue a revised Quote to the Customer. Customer also warrants that all prerequisite Intergraph software licenses necessary to operate the software supported under the Agreement are listed on the Quote.
- (c) Customer warrants that Services provided herein shall be utilized only for the quantity of licenses listed on the Quote.

## **8.0 SERVICES WARRANTIES AND LIMITATION OF LIABILITY**

Product warranties are as provided in the Security, Government & Infrastructure Terms and Conditions of Sale, the End-User License Agreement and Limited Product Warranty for Intergraph Corporation Software Product(s) and/or other Software License Agreement provided with the Covered Products, and/or in other contractual documents, as applicable. The following warranties apply to the Services described in these Terms and Conditions.

### **8.1 Warranties**

**INTERGRAPH WARRANTS FOR A PERIOD OF THIRTY (30) DAYS FROM THE DATE OF SERVICE THAT, UNDER NORMAL USE, MATERIALS AND SPARES PROVIDED PURSUANT TO THIS AGREEMENT FOR SECURITY, GOVERNMENT & INFRASTRUCTURE HARDWARE SHALL BE FREE FROM DEFECT IN MATERIAL AND WORKMANSHIP. ANY SPARES OR MATERIALS PROVIDED PURSUANT TO THIS AGREEMENT FOR SERVICE OF THIRD PARTY HARDWARE ITEMS SHALL ONLY BE WARRANTED TO THE EXTENT THE SPARES OR MATERIALS ARE WARRANTED BY THE THIRD PARTY HARDWARE MANUFACTURER.**

**INTERGRAPH DOES NOT WARRANT THAT THE SOFTWARE UPDATES OR MAINTENANCE SERVICES PROVIDED HEREUNDER WILL MEET CUSTOMER'S REQUIREMENTS, AND UNDER NO CIRCUMSTANCES DOES INTERGRAPH WARRANT THAT SOFTWARE WILL OPERATE UNINTERRUPTED OR ERROR FREE. ANY ADDITIONAL WARRANTY OF THIRD PARTY SOFTWARE ITEMS SHALL ONLY BE TO THE EXTENT THE ITEMS ARE WARRANTED BY THE THIRD PARTY SOFTWARE MANUFACTURER.**

### **8.2 Disclaimers**

**THE FOREGOING WARRANTIES ARE VOID IF FAILURE OF A WARRANTED ITEM RESULTS DIRECTLY, OR INDIRECTLY, FROM AN UNAUTHORIZED MODIFICATION OF A WARRANTED ITEM; AN UNAUTHORIZED ATTEMPT TO REPAIR A WARRANTED ITEM; OR MISUSE OF A WARRANTED ITEM, INCLUDING WITHOUT LIMITATION, USE OF WARRANTED ITEM UNDER ABNORMAL OPERATING CONDITIONS OR WITHOUT ROUTINELY MAINTAINING A WARRANTED ITEM.**

THE FOREGOING WARRANTIES FOR MAINTENANCE SERVICES PROVIDED PURSUANT TO THIS AGREEMENT ARE IN LIEU OF ALL OTHER WARRANTIES OF MAINTENANCE SERVICES, WHETHER EXPRESSED OR IMPLIED. INTERGRAPH DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESSED OR IMPLIED, WITH REGARD TO MAINTENANCE SERVICES SUPPLIED HEREUNDER, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE.

### **8.3 Limitation of Liability**

INTERGRAPH SHALL NOT BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, OR PUNITIVE DAMAGES, ARISING OUT OF, OR IN CONNECTION WITH THE FOREGOING WARRANTIES, OR THE PERFORMANCE OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO LOSS OF REVENUE OR PROFIT, OR LOSS OR CORRUPTION OF DATA. IN NO EVENT SHALL INTERGRAPH BE RESPONSIBLE FOR DAMAGES IN EXCESS OF THE AMOUNT PAID BY CUSTOMER DURING THE PAST TWELVE MONTHS FOR THE SITE(S) REFERENCED IN THE MOST RECENT QUOTE ISSUED BY INTERGRAPH UNDER THIS AGREEMENT AS OF THE DATE OF ANY SUCH WARRANTY CLAIM.

### **9.0 NON-SOLICITATION OF EMPLOYEES**

For purposes of this Section 9.0, the term "employee" shall also include employees of Intergraph's Services subcontractors who directly support Customer. Customer agrees that it will not, without the prior written consent of Intergraph, solicit or hire any Intergraph employee, or induce such employee to leave Intergraph's employment, directly or indirectly, during the term of this Agreement and for a period of twelve (12) months after the Agreement expires or is terminated. Customer agrees that a breach of this provision would cause actual and substantial damages to Intergraph such that it would be very difficult to calculate actual damages. Accordingly, any such breach will entitle Intergraph to recover liquidated damages from Customer in the amount equal to one year of the affected employee's annual salary plus benefits for each such breach, as well as expenses, costs, and reasonable attorney's fees incurred by Intergraph in seeking enforcement of this Agreement. Customer agrees that the foregoing amount is intended to be, and in fact is, a reasonable estimate of the actual damages that would be incurred by Intergraph if Customer were to breach this provision, and that this amount is not intended to be, and in fact is not, a penalty. In addition, Intergraph shall be entitled to equitable or injunctive relief to prevent further breaches.

### **10.0 MISCELLANEOUS**

#### **10.1 Taxes**

All maintenance charges are exclusive of United States and/or any other country's federal, state, municipal, or other governmental, withholding, excise, sales, use, value added or other taxes, tariffs, custom duties and importing fees ("Taxes"). Customer shall be liable for, and shall indemnify and hold Intergraph harmless from and against, any and all Taxes. Taxes shall expressly exclude any United States (i) federal, (ii) state, (iii) municipal, (iv) or other governmental income taxes, franchise taxes, business license fees and other like taxes measured by Intergraph's income, capital and/or assets. The total invoice amount for maintenance charges is subject to increase by the amount of any Taxes which Intergraph is required to withhold, collect, or pay so that Intergraph receives the full amount of the maintenance charges. Any certificate to exempt the Agreement from tax liability or other documentary evidence of statutory exemption shall be obtained by Customer at Customer's expense.

#### **10.2 Notices**

Any notice or other communication ("Notice") required or permitted under this Agreement shall be in writing and either delivered personally or sent by electronic mail, facsimile, overnight delivery, express mail, or certified or registered mail, postage prepaid, return receipt requested. A Notice delivered personally shall be deemed given only if acknowledged in writing by the person to whom it is given. A Notice sent by electronic mail or facsimile shall be deemed given when transmitted, provided that the sender obtains written confirmation from the recipient that the transmission was received. A Notice sent by overnight delivery or express mail shall be deemed given twenty-four (24) hours after having been sent.

A Notice that is sent by certified mail or registered mail shall be deemed given forty-eight (48) hours after it is mailed. If any time period in this Agreement commences upon the delivery of Notice to any one or more parties, the time period shall commence only when all of the required Notices have been deemed given.

### **10.3 Headings**

The various headings in these Terms and Conditions are inserted for convenience only and shall not affect the meaning or interpretation of these Terms and Conditions or any section or provision hereof.

### **10.4 Assignment**

Neither party shall have the right to assign any of its rights nor delegate any of its obligations under the Agreement without the prior written consent of the other party, provided that such consent shall not be unreasonably withheld, except that Intergraph may assign its rights and obligations under the Agreement, without the approval of Customer, to an entity which acquires all or substantially all of the assets of Intergraph or of the Intergraph division furnishing services under the Agreement, or to any subsidiary, affiliate or successor in a merger or acquisition of Intergraph, or in the case of individual products or product lines, Intergraph may assign its rights and obligations under the Agreement for the product or product line, without the approval of Customer to an entity which acquires all or substantially all of the product or product line asset.

### **10.5 Interpretation**

The Agreement shall for all purposes be construed and enforced under and in accordance with the Laws of the State of Alabama and shall have been deemed to have been executed in Huntsville, Alabama. The parties agree that any legal action or proceeding relating to the Agreement shall be instituted in the Circuit Court for Madison County, Alabama or the United States District Court for the Northern District of Alabama, Northeastern Division. The parties agree to submit to the jurisdiction of and agree that venue is proper in these courts in any such legal action or proceedings.

### **10.6 Severability**

Whenever possible, each provision of the Agreement and each related document shall be interpreted in such a manner as to be effective and valid under applicable law. However, if any provision of the Agreement or any related document shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of the Agreement or such related document.

### **10.7 No Waiver**

Any failure by either party to enforce performance of the Terms and Conditions of the Agreement shall not constitute a waiver of, or affect said party's right to avail itself of such remedies as it may have for any subsequent breach of the terms of the Agreement.

### **10.8 Force Majeure**

Except for payment obligation hereunder, neither party shall be liable for any failure to perform or observe any of its obligations under this Agreement for as long as and to the extent that such performance is prevented or hindered by any circumstances beyond its reasonable control. By way of example and not limitation, such causes may include acts of God or public enemies; labor disputes; acts of local, state, or national governments or public agencies; utility or communications failure; fire; flood; epidemics; riots; or strikes. The time for performance of any right or obligation delayed by such events will be postponed for a period equal to the delay. If, however, a party is subject to a force majeure that endures for more than sixty (60) days, the other party has a right to terminate the Agreement.

#### **10.9 Subcontracting**

Intergraph reserves the right to provide services as set forth in this Agreement through a subcontract arrangement with a third party maintenance provider.

#### **10.10 Entire Agreement**

The Agreement constitutes the entire agreement between the parties hereto with regard to the subject matter hereof. The Agreement supersedes any and all prior discussions and/or representations, whether written or oral, and no reference to prior dealings may be used to in any way modify the expressed understandings of the Agreement. The Agreement may not be amended or modified unless done so in writing signed by authorized representatives of both parties.

**Exhibit A**  
**COTS Software, except DMC Software**

**A.1. SOFTWARE SERVICE**

Intergraph offers three levels of support for Covered Products software, although not all levels are available for all software products. When available, the highest level of support offered is Premium Service which provides 24x7 coverage and Upgrades of Covered Products software. The service offered for the majority of the Covered Products is Standard Service which offers Upgrades and support during standard business hours. Advantage Service, when available, provides support during standard business hours but no Upgrades. Customer may choose any level of service offered; however all Covered Products in the support Agreement must have the same level of service when available.

**A.1.1 Premium Service**

For critical Customer applications, Premium Service provides support to the Customer twenty-four hours per day, seven days per week (24x7), including Intergraph-observed holidays.

Premium Service will include and be limited to the following for Security, Government & Infrastructure software products listed on the Quote as having Premium level support under the Agreement:

- (a) Out-of-the-box functionality support via the Help Desk (telephone or eService via Intergraph's web site) Phone support for all priority levels of software errors is available on normal business days from 7AM – 7PM Central Time, excluding Intergraph-observed holidays. When the software error is considered to be Critical (meaning production is down), then phone support is available after-hours and on Intergraph-observed holidays.
- (b) Access to all published software Upgrades, updates, fixes and enhancements
- (c) Twenty-four-hour-per-day/seven-day-per-week access to problem Knowledge Base, an on-line self-help tool
- (d) Complete problem diagnostic support (This often extends to data related problems that have nothing to do with Intergraph software issues. It should be noted that when Intergraph solves a data related problem, it will provide the instructions for solving the problem to the customer but not the actual solution. For example, if a customer has difficulty in performing a bundle adjustment due to a data problem, Intergraph will instruct the customer on the proper steps to solve the problem, but will not, in general, provide the results of the adjustment.)

Services are limited to the specific Security, Government & Infrastructure products listed on the Quote and functioning on the appropriate Intergraph-supported operating system.

Intergraph will notify Customer when Upgrades are made available for any Covered Products for which Premium Service has been purchased. Upgrades are shipped upon Customer request.

Premium Service is only available for the current version and the one version prior to the current version of a particular Security, Government & Infrastructure software product.

Premium Service may not be available for all software products.

**A.1.2 Standard Service**

Standard Software support will be provided to the Customer during the hours of 7:00 a.m. to 7:00 p.m. Central Time, Monday through Friday, excluding Intergraph-observed holidays.

Standard Service will include and be limited to the following for Security, Government & Infrastructure software products listed on the Quote as having Standard level support under the Agreement:

- (a) Out-of-the-box functionality support via the Help Desk (telephone or eService via Intergraph's web site) Phone support for all priority levels of software errors is available on normal business days from 7AM – 7PM Central Time, excluding Intergraph-observed holidays.
- (b) Access to all published software Upgrades, updates, fixes and enhancements
- (c) Twenty-four-hour-per-day/seven-day-per-week access to problem Knowledge Base, an on-line self-help tool

**Exhibit A**  
**COTS Software, except DMC Software**

- (d) Complete problem diagnostic support (This often extends to data related problems that have nothing to do with Intergraph software issues. It should be noted that when Intergraph solves a data related problem, it will provide the instructions for solving the problem to the customer but not the actual solution. For example, if a customer has difficulty in performing a bundle adjustment due to a data problem, Intergraph will instruct the customer on the proper steps to solve the problem, but will not, in general, provide the results of the adjustment.)

Services are limited to the specific Security, Government & Infrastructure products listed on the Quote and functioning on the appropriate Intergraph-supported operating system.

Intergraph will notify Customer when Upgrades are made available for any Covered Products for which Standard Service has been purchased. Upgrades are shipped upon Customer request.

Standard Service is only available for the current version and the one version prior to the current version of a particular Security, Government & Infrastructure software product.

Standard Service may not be available for all software products.

**A.1.3 Advantage Service**

Advantage Service support will be provided to the Customer during the hours of 7:00 a.m. to 7:00 p.m. Central Time, Monday through Friday, excluding Intergraph-observed holidays.

Advantage Service will include and be limited to the following for Security, Government & Infrastructure software products listed on the Quote as having Advantage level support under the Agreement:

- (a) Out-of-the-box functionality support via the Help Desk (telephone or eService via Intergraph's web site) Phone support for all priority levels of software errors is available on normal business days from 7AM – 7PM Central Time, excluding Intergraph-observed holidays.
- (b) Twenty-four-hour-per-day/seven-day-per-week access to problem Knowledge Base, an on-line self-help tool

Services are limited to the specific Security, Government & Infrastructure products listed on the Quote and functioning on the appropriate Intergraph-supported operating system.

**With Advantage Service the Customer is not eligible to receive Upgrades or new releases to any software for which Advantage Service is contracted.**

Advantage Service may not be available for all software products.

**A.2 EXCLUDED SOFTWARE SERVICES**

Services are limited to specific software products listed on the Quote and functioning on the appropriate Intergraph supported operating system. Support for the following is outside the scope of this Exhibit and may be available under a different category of Service or through a separate agreement:

- (a) Software malfunctions from causes other than through the ordinary and intended use of the software
- (b) Installation of any software, Upgrades, fixes or releases
- (c) Network configuration
- (d) System-level tuning and optimization
- (e) Programming or software development
- (f) Installation of Custom Interface Software
- (g) Product training

Services provided by Intergraph under this Exhibit shall not include support calls that are necessary due to failure of software not supplied by Intergraph and not covered in the Agreement.