SOFTWARE LICENSE AGREEMENT

THIS SOFTWARE LICENSE AGREEMENT ("Agreement") is made and entered into this 12th day of January, 2018 ("Effective Date"), by and between the CITY OF COSTA MESA, a municipal corporation ("City" or "Licensee"), and ISSAM SHAHROURI, an individual ("Licensor").

WHEREAS, Licensor has developed a queuing and data management software system, which can be used as queuing system, a case management system, to track and monitor plan checks, permits and inspections, and as an overall enterprise resource planning ("ERP") system (the "Software"); and

WHEREAS, Licensor is the sole owner of all copyrights and other proprietary rights in the Software; and

WHEREAS, Licensor desires to grant to City and City desires to obtain from Licensor a license to install and use the Software; and

WHEREAS, City and Licensor desire to set forth their rights, duties, and liabilities in connection with such license.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions set forth herein, City and Licensor agree as follows:

1.   GRANT OF LICENSE.

Subject to the terms and conditions set forth herein, Licensor grants to City a perpetual, unlimited, non-exclusive, non-transferable right and license to install and use the Software (the "License").

2.   NO FEES.

City shall owe no fees to Licensor in connection with the License or this Agreement.

3.   RESTRICTIONS ON USE.

Except as otherwise permitted by Licensor or this Agreement, City shall not modify, disassemble, decompile, or reverse engineer the Software, probe, scan, test the vulnerability of, or circumvent any security mechanisms used by the Software, or copy or reproduce the Software.

4.   INTELLECTUAL PROPERTY.

4.1   Definition. As used herein, "Intellectual Property" means trademarks and service marks, copyrights and all applications and registration of such worldwide, trade secrets, confidential know-how, patents, rights to apply for patents, inventions, domain names, software programs, and other intangible proprietary information.

4.2   Licensor's Rights. Licensor shall retain all interest in and to the Software, including all documentation, modifications, improvements, upgrades, derivative works, and all other Intellectual Property rights in connection with the Software.

4.3   Indemnification. Licensor represents and warrants that the Software does not infringe on any copyright, trademark, patent, trade secret, or other proprietary rights or Intellectual Property rights of any third party. Licensor agrees to defend, indemnify, and hold free and harmless the City, its elected and appointed officials, agents, officers, representatives, employees, and volunteers from and

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against any and all liability, including attorneys' fees and costs, for any and all claims by third parties that Licensor's Software infringes on any Intellectual Property right, or misappropriates any trade secret. Notwithstanding the foregoing, Licensor shall have no defense or indemnity obligations for claims based on City's modifications to the Software or claims of infringement based on City's other products or other third party products.

5.   SOFTWARE INSTALLATION.

Licensor shall install the Software on computer systems within the City's Development Services Department and such other systems and devices as Licensor and City deem appropriate. Licensor shall coordinate with, and obtain all necessary permissions from, City's Information Technology Department in the installation of the Software.

6.   MAINTENANCE AND SUPPORT.

Licensor shall provide maintenance and support services in connection with the Software, including but not limited to Software updates and upgrades. Licensor shall also, as needed, train staff members from City's Development Services Department and Information Technology Department to provide maintenance and support of the Software.

7.   TRAINING; USER'S MANUAL.

7.1   Training. Licensor shall provide all necessary training for use of the Software.

7.2   User's Manual. Licensor shall provide to City a comprehensive user's manual for the Software.

8.   DATA HOSTING, CONFIDENTIALITY AND SECURITY.

8.1   Data Hosting. Licensor agrees to host and maintain the Software and City's data contained therein (collectively, the "Data") on an offsite server. Licensor agrees to ensure that all reasonable precautions are taken to ensure the physical security of the offsite server, including, but not limited to, constant monitoring, restricted access, backup generators, and fire suppression systems. If the offsite server is no longer available for hosting and maintaining the Data, or if Licensor desires to discontinue utilizing the offsite server, City may determine, in its sole discretion, where the Data will be hosted and maintained. Notwithstanding the foregoing, the Data may be hosted on City servers upon mutual written agreement of City and Licensor.

8.2   Data Security. Licensor shall implement administrative, physical, and technical safeguards to protect the City's data that are no less rigorous than accepted industry practices, and shall ensure that all such safeguards comply with all applicable data protection and privacy laws.

8.3   Confidentiality. Licensor may have access to confidential financial, accounting, statistical, and personal data of private individuals and employees of City, including but not limited to personally identifiable information ("Confidential Information"). Licensor shall not access, use or disclose the Confidential Information except as permitted or required by this Agreement or as otherwise authorized in writing by City or applicable law. If required by a court of competent jurisdiction or an administrative body to disclose any Confidential Information, Licensor shall immediately and prior to any disclosure notify City in writing of such requirement, to allow the City an opportunity to oppose or otherwise respond to such disclosure (unless prohibited by law from doing so). Licensor agrees to employ commercially acceptable standards to protect the privacy and security of the City's Confidential Information from unauthorized access, disclosure, alteration and use in accordance with all applicable laws and regulations. Licensor shall implement, maintain, and use appropriate administrative, technical and physical security measures to preserve the confidentiality of the Confidential Information. While

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Licensor is providing the services contemplated by this Agreement, Licensor shall further ensure that such security measures are reviewed regularly and revised to address potential and evolving threats and vulnerabilities. Licensor's obligations under this Section shall survive the termination of this Agreement or any termination of Licensor's employment relationship with City.

8.4 <u>Ownership of Documents</u>. All documents, records, information and data provided to Licensor in connection with this Agreement shall be and remain the sole property of City. Licensor agrees that any such documents or information shall not be made available to any individual or organization without the prior consent of City.

8.5 <u>Return of Documents and Data</u>. Unless otherwise agreed upon in writing by City and Licensor, upon termination of this Agreement or termination of Licensor's employment relationship with City, Licensor shall return to City, at no cost to City, in a readable digital format, all City documents, records, data, information, and Confidential Information in Licensor's possession.

9. TERM AND TERMINATION.

9.1 <u>Term</u>. The term of this Agreement shall commence on the Effective Date and continue in perpetuity, unless the Agreement is terminated as set forth herein.

9.2 <u>Termination</u>. City may terminate this Agreement at any time, with or without cause, by providing written notice to Licensor. Upon termination, City shall promptly cease use of the Software and remove the Software to from City's computer systems.

10. SEPARATE FROM EMPLOYMENT.

The parties acknowledge that Licensor is a current employee of City, and agree that this Agreement and the License granted hereunder are separate from Licensor's employment relationship with City, and in no way impact Licensor's employment with City.

If Licensor's employment relationship with City terminates, Licensor agrees that City may continue to use the Software and shall owe Licensor no license fees for such use. If City desires for Licensor to provide maintenance and support services, and/or data hosting services, for the Software upon such termination, City and Licensor shall agree in writing to the terms and conditions of such services.

11. COMPLIANCE WITH ALL LAWS.

The parties shall comply with all applicable federal, state, and local laws, including but not limited to Federal and State data security breach notification laws, in the performance of this Agreement.

12. NO DRAFTING PRESUMPTION.

In the event of any ambiguity or dispute regarding the definition or meaning of any word, phrase, or other verbiage, or the construction of any provision of this Agreement, there shall be no presumption favoring the definition, meaning or construction propounded by a particular party based upon which party, or which party's attorney, drafted the word, verbiage, or provision at issue, and the same will be deemed mutually drafted.

13. NOTICES.

Any notices, documents, correspondence or other communications concerning this Agreement may be provided by personal delivery or mail and shall be addressed as set forth below. Such communication shall be deemed served or delivered: (a) at the time of delivery if such communication

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is sent by personal delivery, and (b) 48 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark if such communication is sent through regular United States mail. Licensor shall notify City in writing of any changes to the contact information set forth herein.

IF TO LICENSOR:

Issam Shahrouri
77 Fair Drive
Costa Mesa, CA 92626
Tel: (714) 754-5604

IF TO CITY:

City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626
Tel: (714) 754-5172
Attn: Lance Nakamoto, HR Manager

With a copy to:

City of Costa Mesa
77 Fair Drive, CA 92626
Attn: Ruth Wang, HR Analyst

14.   HEADINGS.

Paragraphs and subparagraph headings contained in this Agreement are included solely for convenience and are not intended to modify, explain or to be a full or accurate description of the content thereof and shall not in any way affect the meaning or interpretation of this Agreement.

15.   GOVERNING LAW.

This Agreement shall be governed by and construed under the laws of the State of California without giving effect to that body of laws pertaining to conflict of laws. In the event of any legal action to enforce or interpret this Agreement, the parties hereto agree that the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California.

16.   ENTIRE AGREEMENT.

This Agreement constitutes the entire agreement between the parties with respect to any matter referenced herein and supersedes any and all other prior writings and oral negotiations. This Agreement may be modified only in writing, and signed by the parties in interest at the time of such modification. The terms of this Agreement shall prevail over any inconsistent provision in any other contract document appurtenant hereto, including exhibits to this Agreement.
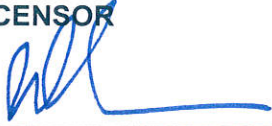
17.   CORPORATE AUTHORITY.

The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by doing so the parties hereto are formally bound to the provisions of this Agreement.

[Signatures appear on following page.]

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IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by and through their respective authorized officers, as of the date first written above.

LICENSOR

Date: 1/11/2018

Issam Shahrouri

CITY OF COSTA MESA

Date: 1/22/18

Thomas Hatch
City Manager

ATTEST:

Brenda Green 1/22/18

Brenda Green
City Clerk

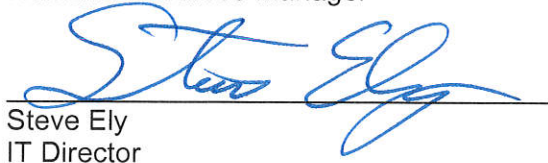APPROVED AS TO FORM:

Date: 01/19/18

Thomas Duarte
City Attorney

APPROVED AS TO CONTENT:

Date: 1/18/18

Lance Nakamoto
Human Resources Manager

Date: 1/16/18

Steve Ely
IT Director

DEPARTMENTAL APPROVAL

Date: 1.11.18

Barry Curtis
Economic and Development Services
Director