



AMENDED AND RESTATED SOFTWARE LICENSE AND SUPPORT AGREEMENT

This Software License and Support Agreement between CityView, a division of N. Harris Computer Corporation (“CityView”), and City of Lee’s Summit, MO (“Licensee”) is effective as of _____ (the “Effective Date”).

Whereas on July 10, 2008, CityView, through its predecessor entity Municipal Software, Inc., and Licensee entered into a Services Agreement for Permit Services Software (“Services Agreement”), pursuant to RFP No. 07-188:

Whereas, the Services Agreement included a Contractual Services Agreement as Exhibit B, and the Contractual Services Agreement, incorporated a Software License and Support Agreement (“Original License and Support Agreement”) as Attachment 2 to Exhibit B;

Whereas CityView and Licensee amended and restated the terms of the Services Agreement via an amendment dated on February 24, 2015 to amend the scope of work of the Services Agreement;

Whereas CityView and Licensee further amended the terms of the Services Agreement on July 21, 2016, for the purpose of updating terms of the Original License and Support Agreement;

Whereas CityView desires to continue to license its software application to Licensee, but in accordance with the terms and conditions set out in this Agreement, which will replace and supersede all previous software application license terms provided to Licensee, including the Services Agreement, as amended, and the Original License and Support Agreement, as amended, and all of their exhibits, attachments and schedules;

Whereas CityView desires to continue to provide the Licensee with support and maintenance services related to its software application, but in accordance with the terms and conditions set out in this Agreement, which will replace and supersede all previous support and maintenance terms provided to Licensee, including the Services Agreement, as amended, and the Original License and Support Agreement, as amended, and all of their exhibits, attachments and schedules;

Whereas the Licensee has received the proper approvals such that it will license the software application;

Now therefore, the two parties agree to the following:

1. DEFINITIONS

Throughout this Agreement, except as otherwise expressly provided, the following words and expressions shall have the following meanings.

- a. **“Add-on”** means an individual component of the software that provides a specific functionality.
- b. **“Agreement”** means this Software License and Support Agreement, including all of its Schedules and all instruments supplementing, amending or confirming this Agreement agreed to and executed by both parties.
- c. **“Confidential Information”** means the Software and all information or material that either party treats as confidential which: is (A) marked "Confidential," "Restricted," or "Proprietary Information" or other similar marking, or (B) known by the parties to be considered confidential or proprietary. Confidential Information does not include information to the extent that such information: (i) is or becomes generally known to the public by any means other than a breach of the obligations of a receiving party hereunder; (ii) was previously known to the receiving party as evidenced by its written records; (iii) is rightly received by the receiving party from a third party who is not under an obligation of confidentiality; or (iv) is independently developed by the receiving party without reference to or use of the other party's Confidential Information which such independent development can be establish by evidence that would be acceptable to a court of competent jurisdiction.
Notwithstanding anything to the contrary in this Agreement, “Confidential Information” does not include information that Licensee must disclose pursuant the Missouri Sunshine Law, as set forth in Chapter 610, RSMo so long as Licensee provides such information in accordance with the terms of the Sunshine Law and provides CityView with all notices permitted under the Sunshine Law prior to such disclosure.
- d. **“Configuration Console”** is a set of tools used for the process of defining the values of parameters for the Software and automating the software. This includes but is not limited to Lookup table values, Fees, Letter templates, Activity-based workflows, custom data fields, organizational roles, business rules definable in the Software rules engine and expression writing.
- e. **“Core Software”** means that portion of the Software that provides the base functionality which, when installed and implemented, will always be in operation when the Software is in operation on the Designated Computer System.
- f. **“Event of Default”** is deemed to have occurred if CityView: (1) ceases to market or make available maintenance or support Services for the Software during a period in which the Licensee is receiving support services pursuant to the Standard Service

- Level Support Agreement, or, (2) becomes insolvent, executes an assignment for the benefit of creditors, or becomes subject to bankruptcy or receivership proceedings, (3) ceases business operations generally or (4) has transferred all or substantially all of its assets or obligations set forth in this Agreement to a third party which has not assumed all of the obligations of CityView.
- g. **“Designated Computer System”** shall mean the Licensee’s platform and operating system environment which is operating the Software.
 - h. **“Documentation”** shall mean user guides, operating manuals, technical manuals, supporting materials, and other information relating to the use of the Software, whether distributed in print, magnetic, electronic, or video format.
 - i. **“Maximum Concurrent Users”** shall have the meaning ascribed to it in section 3.
 - j. **“Module”** means a particular application component of the Software that provides general functionality.
 - k. **“Project”** means services to be provided pursuant to additional Modules or Add-ons (including Third Party Software) that are to be licensed to Licensee and which services are provided pursuant to a Short Form Contractual Services Agreement
 - l. **“Software”** shall mean the licensed CityView application software consisting of the Core Software, the Configuration Console, the Modules and the Add-ons, including any updates provided subsequent to this Agreement, and including all copies made by whomsoever produced. Third Party software are not included in the definition of software.
 - m. **“Source Code”** of the Software means the Software written in programming languages, including all comments and procedural code, such as job control language statements, in a form intelligible to trained programmers and capable of being translated into object code for operation on computer equipment through assembly or compiling, and accompanied by documentation, including flow charts, schematics, statements of principles of operations, and architecture standards, describing the data flows, data structures, and control logic of the Software in sufficient detail to enable a trained programmer through study of such documentation to maintain and/or modify the Software without undue experimentation.
 - n. **“User”** means an agent of Licensee who has been provided with permission by CityView to be a User or an employee of Licensee while that agent or employee is engaged in using the Software.
 - o. **“Third Party Software”** means any software applications and services that CityView or its service providers has licensed or purchased and provided access to or otherwise made available to Customer as part of the Services as well as any third party software that is required to be obtained by Licensee directly from the applicable third party vendor in accordance with Section 6 of this Agreement.

2. SCHEDULES

The Schedules described below and appended to this Agreement shall be deemed to be integral parts of this Agreement.

- Schedule “A” - Description of Software, Software & Maintenance Fees, Payment Milestones and Deliverables
- Schedule “B” - **INTENTIONALLY OMITTED** - Optional Escrow Services Languages
- Schedule “C” - Configuration Console Correct Usage Protocol
- Schedule “D” - CityView Standard Support Service Level Agreement

3. LICENSE

Subject to the terms and conditions of this Agreement, including without limitation the payment of the License Fees, CityView hereby grants the continuation of the following license to Licensee: a non-transferable, non-exclusive and limited license to:

- a. Use the Software on Licensee’s Designated Computer System for its own internal business purposes and operations with access to third parties as reasonably necessary for the intended use and otherwise in accordance with the Documentation. The Software is in "use" on a computer when it is loaded into temporary memory (i.e., RAM) of that computer;
- b. Copy the Documentation and copy the Software into any machine readable form for back-up, archival or training purposes in support of the Licensee's use of the Software on the Designated Computer System PROVIDED THAT:
 - i. the Licensee shall maintain a record of the number and location of copies made and to erase all such copies promptly when no longer in use or necessary;
 - ii. the copies, together with the original, shall remain the property of CityView; and
 - iii. the Licensee has not removed or obscured any copyright, trademark or other proprietary notices from the Documentation, Software and related materials supplied by CityView; and
- c. Customize the Software using (specifically) the expression writing capabilities of the Configuration Console and such customizations using the Configuration Console are not subject to the restrictions detailed in Section 4.

The Software and related materials supplied by CityView are protected by copyright and trademark laws. Title, ownership rights and intellectual property rights in the Software and related materials supplied by CityView remain with CityView and any rights not expressly granted are reserved. Use of the Software and related materials supplied by CityView is subject to the applicable copyright laws and the express rights and restrictions of this Agreement.

The Software that is delivered to the Licensee includes all of the Modules, the Core Software, the Configuration Console and the Add-ons. The Licensee’s use of these components is subject to the restrictions detailed in Section 4.

The number of Users who may access the Software at any one time is limited to the **“Maximum Concurrent Users”** as listed in Schedule “A”. Any request to increase the number of Maximum Concurrent Users may entail additional license fees. The Licensee is not restricted in the number of employees or agents who may be permitted to use the Software. The restriction only applies to those accessing the Software at the same time.

The Software and/or some components may be licensed with the designation of "Read Only"; where this occurs the license permits users with view-only access to the Software but not the right to input, write, or alter any data or information. Any applicable "Read Only" designation will be stated in Schedule "A" and those aspects of the Software will be licensed as such.

The license rights granted herein and the other terms and conditions of this Agreement do not apply to any third party software listed in Schedule "A" to this Agreement. Such third party software is licensed pursuant to and subject to all of the terms and conditions set out in the applicable third party license agreements for such software. For greater certainty and without limiting the generality of the foregoing, CityView makes no warranties, express or implied with respect to the third party software, including without limitation, their merchantability or fitness for a particular purpose and CityView accepts no liability of any kind whatsoever with respect to third party software.

4. LICENSE RESTRICTIONS

- a. Without limiting the generality of the License granted in Section 3 and any other restrictions listed in this Agreement, Licensee shall not, and will not allow, direct or authorize any other party, directly or indirectly, to: (i) use the Software for any purpose other than in connection with Licensee's primary business or operations; (ii) disassemble, de-compile, reverse engineer, defeat license encryption mechanisms, or translate any part of the Software, (iii) attempt to reconstruct or discover the Source Code of the Software or to otherwise convert it into human readable code; (iv) modify or create derivative works of the Software; (v) rent, lease, lend, or use the Software for timesharing or bureau use; (vi) allow a third party to copy, access, or use the Software; (vii) take any actions that would cause the Software to become subject to any open source or quasi-open source license agreement or; (viii) attempt to access a Module or Add-on for which a license has not been granted. Licensee shall be liable to CityView for any use of the Software by Licensee in violation of this Agreement, and these restrictions are absolute except as and only to the extent that this Agreement may expressly permit CityView to do otherwise.
- b. Licensee requires a separate License for each environment into which the Software or any portion thereof is read in machine-readable form for operation on such Designated Computer System in a production environment.
- c. The Licensee may only use the Software for which it has paid the license fees. Upon the payment of the applicable license fee Licensee shall be provided with the electronic key which will permit Licensee to use the components of the Software for which it has paid a license fee. The Licensee may at any time request a further license to use additional components, the use of which shall be subject to the payment of the appropriate license fee and the provision of an electronic key.
- d. The Licensee may only use the Configuration Console where it has paid the appropriate license fee. Upon the payment of the applicable license fee, Licensee shall be permitted to use the Configuration Console subject to any restrictions that may be detailed in writing when such permission is granted.
- e. Prior to the use of the Software for the initial and each renewal term, the use of the Software will be subject to the Licensee's receipt from CityView of an electronic key permitting access to the Software. The receipt of the key is subject to the renewal of the Standard Support Service Level Agreement. The Licensee acknowledges that it will not be able to use the Software in any fashion without the use of the key and that it understands fully its obligations in order to receive each applicable key.

5. LICENSE FEES

The rights granted to Licensee hereunder are subject to the Licensee paying to CityView the following license fees:

- a. A license fee to use the Software; license fee(s) in relation to the Modules for which the Licensee has requested access; and the license fee related to the Configuration Console, if requested by Licensee.
- b. The appropriate license fees are detailed in Schedule "A" and the Modules for which a license is provided and whether a license in the Configuration Console is provided are also listed in Schedule "A" (including the details of the applicable license fees). The list of licenses for Modules and the Configuration Console may be amended from time to time by a Statement of Work that specifically references this Agreement and which amends Schedule "A" by detailing those Modules that are being licensed or will no longer be licensed in accordance with the terms of this Agreement.
- c. Where a Project is undertaken, the license fees applicable to the Software related to the Project shall be detailed in a short form Contractual Services Agreement.

The failure to pay such license fees within ninety (90) days receipt of an invoice shall automatically terminate this Agreement despite any cure periods provided elsewhere herein and section 9(a) shall apply.

In addition to the above required license fees, any services applicable to the installation, implementation, training or configuration of the Software (both at the time the initial license is granted and for any subsequent licenses) may require additional professional service fees for the provision of the applicable professional services both of which would be subject to this Agreement.

6. SUPPORT

In consideration of payment of the annual support and maintenance fee set out in Schedule "A" (the "Support and Maintenance Fees"), CITYVIEW will provide:

- a. Priority response on support requests regarding the Software, as described in the CityView Service Level Addendum Attached as Schedule "D";

- b. Remote diagnosis of operational issues related to the Software, provided that the Licensee has obtained, at its cost, the necessary software, hardware and instruction to allow CITYVIEW to provide such assistance.
- c. Updates for the Software at no extra charge except for magnetic media and courier costs, these updates to include minor changes, enhancements, improvements, and problem resolutions;

In consideration of the services set out above, the Licensee agrees to pay the Support and Maintenance Fees in accordance with the payment schedule set out in Schedule "A". Despite anything in the support terms or this Agreement to the contrary, the Support and Maintenance Fees may be increased by CityView following the Initial Term, provided that CityView gives Licensee sixty (60) days' written notice of the amount of the increase, or if Licensee adds new modules that are subject to this Agreement as described in subsection 3(c) above.

The Licensee acknowledges that the Support and Maintenance Fees have been discounted by CITYVIEW because the Licensee has agreed to pay for and the Licensor has agreed to provide Support and Maintenance for a minimum three (3) year period. As such, any termination of this Agreement or the Support and Maintenance services by the Licensee prior to the payment of all three (3) years of Support and Maintenance Fees shall automatically cause the remaining unpaid Support and Maintenance Fees to be accelerated and to become automatically payable and due on the date notice of termination is provided by the Licensee to CITYVIEW

7. CONTEMPORANEOUS AGREEMENTS

This Agreement is meant to replace and supersede any and all previous agreements and service terms and conditions between Licensee and Cityview, including the Services Agreement, as amended, and the Original License and Support Agreement, as amended, and all of their exhibits, attachments and schedules. Both parties agree that neither any licenses under any of the previous agreements and service terms and conditions continue nor any obligations of the parties under any of the previous agreements and service terms and conditions continue as of the Effective Date of this Agreement.

8. TERM AND TERMINATION

Unless terminated earlier in accordance with the terms hereof, this Agreement shall commence on the Effective Date and is for a duration of three (3) years (the "Initial Term"). After the Initial Term, this Agreement shall automatically renew for successive one (1) year periods (each a "Renewal Term") subject to CityView's then current price structure unless either party provides written notice to the other party of its intention not to renew within one-hundred eighty (180) days of the end of the then current term. The Initial Term and each Renewal Term shall collectively be referred to as the "Term".

- a. CityView may terminate this Agreement where Licensee fails to comply with its obligations of confidentiality set out in section 11 or the obligations under section 4(a) of this Agreement, whereby CityView must notify the Licensee in writing of such default (a "Default Notice"). Upon receipt of a Default Notice, the Licensee must correct the default at no additional cost to CityView, or issue a written notice of its own disputing the alleged default, in either case within ten (10) days immediately following receipt of a Default Notice.
- b. If the Licensee fails to correct the default, or issue a notice disputing the alleged default, in either case within ten (10) days following receipt of the Default Notice, CityView may terminate the whole of this Agreement including the grant of license to the Software and in such case the Licensee will be responsible for payment to CityView of only that part of the fee earned by CityView for that part of the Services performed in accordance with the Contractual Services Agreement, unless that agreement states otherwise, up to the time of communication of such notice of termination to the Licensee and the entire License Fee for all Software that was fully installed on the Designated Computer System. Once a dispute has been settled, to the extent that any issues still remain unresolved in the Default Notice, Licensee shall have ten (10) days to remedy such breach following the date of the settlement of the other issues.
- c. Despite the above, for any Default Notice alleging a breach Subsection 4(a) (iii), CityView may terminate this Agreement at any time following the delivery of a Default Notice despite Licensee rectifying such default.
- d. Notwithstanding anything to the contrary in this Agreement, Licensee is obligated only to pay its obligations set forth in the Agreement as may lawfully be made from funds appropriated and budgeted for that purpose during Licensee's then current fiscal year. The parties understand and agree that Licensee's obligations under this Agreement are current expenses subject to the "budget law" and the unfettered legislative discretion of Licensee concerning budgeted purposes and appropriation of funds. Should Licensee elect not to appropriate and budget funds to pay its Agreement obligations, this Agreement shall be deemed terminated at the end of the then-current fiscal year term for which such funds were appropriated and budgeted for such purpose and Licensee shall be relieved of any subsequent obligation under this Agreement. The Parties agree that Licensee has no obligation or duty of good faith to budget or appropriate the payment of Licensee's obligations set forth in this Agreement in any budget in any fiscal year other than the fiscal year in which the Agreement is executed and delivered. Licensee shall be the sole judge and authority in determining the availability of funds for its obligations under this Agreement. The obligation of Licensee to make any payment pursuant to this Agreement is not a general obligation or indebtedness of Licensee. CityView hereby waives any and all rights to bring any claim against Licensee from or relating in any way to Licensee's termination of this Agreement pursuant to this section.

9. PROCEDURE FOLLOWING TERMINATION

- a. If this Agreement is terminated for any reason except an Event of Default, then within thirty (30) days following such termination, the Licensee shall destroy/return the Software and any documentation to CityView, at CityView's absolute discretion, and the Licensee shall certify, under the hand of a duly authorized officer of the Licensee, that all copies of the Software and Documentation or any part thereof, in any form, within the possession or control of the Licensee have been destroyed/returned to CityView.
- b. Upon the termination of this Agreement for any reason except for the terms set out in Schedule "B", the Licensee will not be entitled to access the Source Code through the escrow agreement where a valid escrow agreement exists.
- c. Upon the termination of this Agreement for any reason whatsoever, (i) the parties agree that the Standard Support Service Level Addendum expires on its own terms, (ii) and the confidentiality provisions shall survive and be binding on both parties for five (5) years from the date of termination.

10. CITYVIEW'S PROPRIETARY RIGHTS

The grant of the License herein contained permits the limited use of the Software by the Licensee. Title to and all property in the Software, its name, logo and computer stored data shall remain exclusively with CityView.

The Licensee hereby acknowledges that the Software and the Documentation is the property of CityView and that CityView asserts that the Software constitutes a trade secret, and agrees to exercise due care and diligence in safeguarding the Software, the Documentation and CityView's proprietary interest.

Except for a breach of section 4(a), the Licensee also acknowledges that any gross negligence or deliberate violation of this Agreement on its part which results in failure to protect CityView's proprietary interest in the Software shall actually and materially damage CityView.

In order to ensure compliance with the terms of this Agreement, CityView shall be entitled, upon reasonable notice to Licensee and subject to CityView's compliance with Licensee's reasonable security measures, to enter upon the Licensee's premises during normal business hours and require the Licensee to produce such information, records and documents as may be required to ascertain compliance.

CityView may revise or update the Software from time to time at its discretion.

11. OWNERSHIP OF SOFTWARE AND CONFIDENTIALITY OBLIGATIONS

- (a) The Licensee acknowledges that the Software contains proprietary information and Confidential Information of CityView which shall, at all times, remain the property of CityView and, in addition to its obligations outlined Section 4, the Licensee agrees to treat such Confidential Information in accordance with Subsections (b) and (c) herein.
- (b) The Licensee will take the same care to safeguard the Software as it takes to safeguard its own Confidential Information of a like nature and such care shall not be any less than would be taken by a reasonable person to safeguard its own confidential information.

12. LIMITED WARRANTY OF PERFORMANCE

CityView warrants to Licensee that:

- a. The Software shall function as described in the user documentation accompanying the Software from the Completion of Services if the Software is properly used in accordance with CityView's instructions and the terms of this Agreement.
- b. The Software (including Software updates) will be provided via electronic delivery.

In the event an error is discovered in the Software outside the warranty period and the error can be reproduced by CityView, CityView will make reasonable commercial efforts to provide Licensee with a correction or suitable workaround in accordance with the terms of this Agreement. CityView reserves the right to correct any defects about which it is made aware and to produce Releases at a time of CityView's own choosing and at CityView's discretion. Licensee's sole recourse in the event the Software does not conform to the applicable documentation is the repair and replacement of the Software.

CityView warrants that it has the full right and authority to grant the license rights in the Software that is licensed by CityView to Licensee under this Agreement

The warranty above is void if the Licensee modifies the Software without the written consent of CityView. Examples of such modifications include, but are not limited to, the de-compiling and modifying of the source code, and tampering with the base set-up of the system.

For clarity, the parties agree that THE LICENSEE shall have the right to configure the Software using the Desktop configuration tools. Where a license for Configuration Console has been granted, THE LICENSEE shall have the right to use Configuration Console for expression writing in accordance with Schedule "C" without voiding the warranties herein.

The Licensee assumes sole responsibility for the selection of the Software to achieve the Licensee's intended results, and for the installation, use and results obtained from the Software.

The parties agree that the warranties as presented in this section 12 and the exclusions provided in section 13 have modified Sections 400.2-316 and 400.2-315 RSMo.

13. EXCLUSIONS TO WARRANTIES

CityView shall not be liable for any breach of the foregoing warranties which results from causes beyond the reasonable control of CityView, including:

- a. where the installation, integration, modification or enhancement of the Software has not been carried out by CityView or its authorized agent, or where Licensee has taken any action which is expressly prohibited by the Documentation or this Agreement;
- b. any use or combination of the Software with any software, equipment or services not supplied by or on behalf of or approved or authorized by CityView
- c. User error, or other use of the Software in a manner or in an operating environment for which it was not intended or other than as permitted in this Agreement;
- d. Licensee's failure to install a new Update which has been released to remedy an error or bug, and which CityView has stated to Licensee is a required Update necessary for security purposes or for legislative compliance purposes or other reasons as CityView may determine is important in its sole discretion; Or
- e. Any other event of force majeure.

14. NO OTHER WARRANTIES

EXCEPT AS SET FORTH IN THIS AGREEMENT, TO THE GREATEST EXTENT PERMITTED BY LAW, THE SOFTWARE IS LICENSED AND ALL OTHER MATERIALS AND SERVICES ARE PROVIDED TO THE LICENSEE "AS IS" AND THERE ARE NO WARRANTIES, REPRESENTATIONS OR CONDITIONS, EXPRESSED OR IMPLIED, WRITTEN OR ORAL, COURSE OF DEALING, USAGE OF TRADE OR OTHERWISE, REGARDING THEM OR ANY OTHER PRODUCT, SERVICE OR MATERIAL PROVIDED HEREUNDER OR IN CONNECTION HERewith.

CITYVIEW, ITS LICENSORS AND SUPPLIERS DISCLAIM ANY IMPLIED WARRANTIES OR CONDITIONS REGARDING THE SOFTWARE AND ANY OTHER PRODUCTS, SERVICES AND MATERIALS PROVIDED HEREUNDER OR IN CONNECTION HERewith, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, DURABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.

CITYVIEW DOES NOT REPRESENT OR WARRANT THAT THE SOFTWARE SHALL OPERATE ERROR FREE OR IN THE COMBINATIONS SELECTED, THAT IT SHALL MEET ANY OR ALL OF THE LICENSEE'S PARTICULAR REQUIREMENTS, OR THAT ALL ERRORS OR DEFECTS IN THE SOFTWARE CAN BE FOUND OR CORRECTED.

NO AGREEMENTS VARYING OR EXTENDING ANY EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT SHALL BE BINDING ON EITHER PARTY UNLESS IN WRITING AND SIGNED BY AN AUTHORIZED SIGNING OFFICER OF CITYVIEW.

15. INTELLECTUAL PROPERTY INDEMNITY

In the event there is a third party claim against Licensee alleging that Licensee's use of the Software in accordance with this Agreement constitutes an infringement of a Canadian or United States patent, copyright, trade-mark or trade secret, CityView shall, at its expense, defend, indemnify, and hold harmless Licensee and pay any final judgment against Licensee or settlement agreed to by CityView on Licensee's behalf; provided that Licensee promptly notifies CityView of any such claim or proceeding and shall give CityView full and complete authority, information, and assistance to defend such claim or proceeding. This indemnity is only effective where (i) Licensee has not made any admissions or begun settlement negotiations either prior to or after providing notice to CityView of the applicable claim except with CityView's prior written consent, (ii) CityView shall have sole control of the defense of any claim or proceeding and all negotiations for its compromise or settlement, and (iii) Licensee has not modified the Software in any manner whatsoever except as permitted by this Agreement or with the prior written consent of CityView. If CityView knows or should have known that Licensee's use of the Software constitutes an infringement of a Canadian or United States patent, copyright, trade-mark or trade secret, CityView shall promptly notify Licensee; any good faith defense of a claim not involving Licensee by CityView will not impute any knowledge to CityView that would require notification under this sentence.

Any breach by Licensee of its covenants under this section 12 shall nullify this indemnity but not the sole right of CityView to have full and complete authority of the defense to defend such claim or proceeding and of all negotiations related therewith. In the event that the Licensee's use of the Software is finally held to be infringing or CityView deems that it may be held to be infringing, Licensee agrees that the sole remedy available to it is that CityView shall, at CityView's election: (1) procure for the Licensee the right to continue use of the Application Software; or (2) modify or replace the Software so that it becomes non-infringing.

The foregoing states CityView's entire liability, and the Licensee's exclusive remedy, with respect to any claims of infringement of any copyright, patent, trade-mark, trade secret or other property interest rights relating to the Software, or any part thereof or use thereof. CityView's obligations under this Section 12 shall survive the termination and/or expiration of this Agreement.

Licensee may, at Licensee's sole cost and expense—which is outside the scope of this indemnity—retain counsel of its own choosing who shall be permitted to attend all settlement conferences and hearings or other court appearances (except where the court has specifically made an order against such attendance) related to the proceeding.

16. REMEDIES AND LIMITATION OF LIABILITY

- a. The Licensee and CityView recognize that circumstances may arise entitling the Licensee to damages for breach or other fault on the part of CityView arising from this Agreement. The parties agree that in all such circumstances the Licensee's remedies and CityView's liabilities will be limited as set forth below and that these provisions will survive notwithstanding the termination or other discharge of the obligations of the parties under this Agreement.
 - i. EXCEPT FOR DAMAGES ARISING OUT OF (a) CITYVIEW'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS (EXCLUDING ANY OBLIGATIONS UNDER SECTION 31 OF THIS AGREEMENT) OR (b) INDEMNITY OBLIGATIONS PROVIDED IN SECTION 12, BOTH PARTIES AGREE THAT CITYVIEW'S LIABILITY (UNDER BREACH OF CONTRACT, NEGLIGENCE, OR OTHER ALTERNATIVE LEGAL THEORIES), IF ANY, FOR ANY DAMAGES RELATING TO THIS AGREEMENT SHALL NOT EXCEED TWO-HUNDRED FIFTY THOUSAND DOLLARS (\$250,000.00).
 - ii. IN ADDITION TO THE FOREGOING NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, OR SPECIAL DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO, LOSS OF BUSINESS, OR FAILURE TO REALIZE EXPECTED SAVINGS, EVEN IF SUCH OTHER PARTY HAS BEEN ADVISED OF THE LIKELIHOOD OF THE OCCURRENCE OF SUCH DAMAGES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.
 - iii. CLAUSES (i) AND (ii) SHALL APPLY IN RESPECT OF ANY CLAIM, DEMAND OR ACTION BY A PARTY IRRESPECTIVE OF THE NATURE OF THE CAUSE OF ACTION UNDERLYING SUCH CLAIM, DEMAND OR ACTION, INCLUDING, BUT NOT LIMITED TO, BREACH OF CONTRACT OR TORT.
- b. Where remedies are expressly afforded by this Agreement, such remedies are intended by the parties to be the sole and exclusive remedies of the Licensee for liabilities of CityView arising out of or in connection with this Agreement, notwithstanding any remedy otherwise available at law or in equity.

17. INTENT

The parties hereby confirm that the waivers and disclaimers of liability, releases from liability, limitations and apportionments of liability, and exclusive remedy provisions expressed throughout this License Agreement shall apply even in the event of default, negligence (in whole or in part), strict liability or breach of contract of the person released or whose liability is waived, disclaimed, limited, apportioned or fixed by such remedy provision, and shall extend to such person's affiliates and to its shareholders, directors, officers, employees and affiliates.

18. INJUNCTIVE RELIEF

The Licensee agrees that the breach of any term, provision or condition of this Agreement by the Licensee may cause irreparable damage to CityView in which case an award of damages may not be adequate relief to CityView. Therefore, the Licensee agrees that in addition to all the remedies available to CityView in the event of any breach of this Agreement by the Licensee, CityView shall have the right to obtain timely injunctive relief to protect its proprietary right.

19. COUNTERPARTS

This Agreement may be executed in counterparts (whether by facsimile or PDF signature or otherwise), each of which when so executed shall constitute an original and all of which together shall constitute one and the same instrument.

20. GOVERNING LAW

The validity and interpretation of this Agreement and each clause and part thereof shall be governed by the law of the State of Missouri without reference to principles of conflict of laws. Any suit pertaining to this Agreement shall be brought and tried only in the federal courts in eastern Jackson County, Missouri. The Parties expressly and irrevocably consent to the exclusive jurisdiction and venue of such courts and expressly waive the right to transfer or remove any such action.

21. ENTIRE AGREEMENT

This Agreement contains all the terms and conditions agreed on by the parties hereto with regard to the matters dealt with herein, and no understandings or agreements, verbal or otherwise, exist between the parties except as herein expressly set out. This Agreement completely replaces all other software license agreements that may have been entered into between the parties (including all precursor entities, including those entities that have amalgamated with N. Harris Computer Corporation).

22. RIGHT TO ASSIGN

This Agreement and the rights and liabilities hereunder shall not be assigned by the Licensee unless consent in writing is obtained from CityView.

23. SUCCESSORS AND ASSIGNS

This Agreement shall inure to the benefit of and be binding upon the respective successors and permitted assigns of the parties.

24. SEVERABILITY

If any portion of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect.

25. WAIVER

No waiver of any default shall constitute a waiver of any other breach or default, whether of the same or any other covenant or condition. No waiver, benefit, privilege or service voluntarily given or performed by other parties shall give the other any contractual right by custom, estoppel, or otherwise.

26. FORCE MAJEURE

No default, delay or failure to perform on the part of CityView shall be considered a breach of this Agreement where such default, delay or failure is due to a force majeure or to circumstances beyond its control. Such circumstances will include, without limitation, strikes, riots, civil disturbances, actions or inactions concerning government authorities, epidemics, war, terrorist acts, embargoes, severe weather, fire, earthquakes, acts of God or the public enemy or default of a common carrier or other disasters or events.

27. MEDIATION

The parties agree to submit any claim, controversy or dispute arising out of or relating to this Agreement or the relationship created by this Agreement to non-binding mediation before bringing a claim, controversy or dispute in a court or before any other tribunal. The mediation is to be conducted by either an individual mediator or a mediator appointed by mediation services mutually agreeable to the parties. The mediation shall take place in Jackson County, Missouri and at a time which is also mutually agreeable; provided; however, in no event shall the mediation occur later than ninety (90) days after either party notifies the other of its desire to have a dispute be placed before a mediator. Such mediator shall be knowledgeable in software system agreements. The costs and expenses of mediation, including compensation and expenses of the mediator (and except for the attorney's fees incurred by either party), is to be shared by the parties equally. If the parties are unable to resolve the claim, controversy or dispute within ninety (90) days after the date either party provides the other notice of mediation, then either party may bring and initiate a legal proceeding to resolve the claim, controversy or dispute unless the time period is extended by a written agreement of the parties.

28. ALLOCATION OF RISK

Licensee acknowledges that the limited warranties, disclaimers and limitations of liability contained in this Agreement are fundamental elements of the basis of bargain between Licensee and CityView and set forth an allocation of risk reflected in the fees and payments due hereunder.

29. AMENDMENTS. This Agreement may be modified only by a written amendment signed by persons duly authorized to enter into contracts on behalf of Licensee and CityView.

30. MISCELLANEOUS. Pursuant Section 285.530, RSMo., if this Agreement exceeds five thousand dollars (\$5,000.00), CityView warrants and affirms to Licensee that (i) CityView is enrolled and participates in a federal work authorization program with respect to the employees working in connection with the contracted services and (ii) CityView does not knowingly employ any person who is an unauthorized alien in connection with the contracted services.

CityView shall swear to and sign an affidavit declaring such affirmation, and provide Licensee with supporting documentation of its enrollment and participation in a federal work authorization program with respect to the employees working in connection with this Agreement. The required documentation must be from the federal work authorization program provider (e.g. the electronic signature page from the E-Verify program's Memorandum of Understanding); a letter from CityView reciting compliance is not sufficient.

If this Agreement has a total potential value of \$100,000 or more and CityView has 10 or more employees, the following applies. Pursuant to Section 34.600, RSMo and to the fullest extent permitted by law, CityView certifies that CityView is not engaged in a boycott of Israel as of the Effective Date of this Agreement, and agrees for the duration of this Agreement to not engage in a boycott of Israel as defined in Section 34.600, RSMo.

Each and every provision of law and any clause required by law to be in the Agreement will be read and enforced as though it were included herein and, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either Party, the Agreement will promptly be physically amended to make such insertion or correction.

31. INFORMATION TECHNOLOGY

A. Data Confidentiality: All data, regardless of form, including originals, images and reproductions, prepared by, obtained by or transmitted to CityView in connection with this Contract is confidential, proprietary information owned by Licensee. Except as specifically provided in this Contract, CityView shall not shall not, without the prior, written consent of Licensee’s Chief Technology Officer or authorized designee, (A) disclose data generated in the performance of the Services to any third party or (B) use City data and information.

B. Data Security. Personal identifying information, financial account information, or restricted City information, whether electronic format or hard copy, must be secured and protected at all times to avoid unauthorized access. At a minimum, CityView must encrypt and/or password-protect electronic files. This includes data saved to laptop computers, computerized devices or removable storage devices. When personal identifying information, financial account information, or restricted Licensee information, regardless of its format, is no longer necessary or this Contract is terminated (whichever occurs first), the information must be redacted or destroyed through appropriate and secure methods that ensure the information cannot be viewed, accessed or reconstructed. Before the information discussed in this subsection is destroyed, CityView shall send a copy of such information to Licensee in a format specified by Licensee.

C. Compromised Security. In the event that data collected or obtained by CityView in connection with this Contract is believed to have been compromised, CityView shall notify Licensee’s Chief Technology Officer, or authorized designee, immediately. CityView agrees to reimburse Licensee for any costs incurred by Licensee to investigate potential breaches of this data and, where applicable, the cost of notifying individuals who may be impacted by the breach.

D. Cessation of Operation or Support. If Contractor ceases to operate, ends support of, or otherwise divests its interest in the software and materials for which it is contracted by Licensee and does not assign its service obligations according to these Terms and Conditions, CityView shall provide Licensee a copy of current source code. Licensee agrees it shall only use the source code to support its internal use of the software.

E. Survival. The obligations of CityView under this Section shall survive the termination of this Contract.

IN WITNESS WHEREOF, Licensee and CityView have executed this Contract as evidenced by dual signature below.

ACCEPTED:

ACCEPTED:

CityView Authorized Signature:

Licensee Authorized Signature:

Name: Susan McCormick

Name: _____

Title: Senior VP, Customer Success

Title: _____

Date: August 24, 2021

Date: _____

Schedule "A"

Description of Software, Software & Maintenance Fees, Payment Milestones and Deliverables

This is Schedule 'A' attached to and made part of the Software License and Support Agreement (dated the Effective Date of this Agreement), by and between CityView and the City of Lee's Summit, Missouri.

Licensed CityView Core Software

Product Description
CityView Server
CityView Configuration Console
CityView Application Builder (superseded by Configuration Console)

Licensed CityView Modules – subject to 69 Maximum Concurrent read-write users.

CityView Property Information
CityView Permits and Inspections
CityView Planning
CityView Code Enforcement
CityView Licensing for Businesses and Contractors
CityView Cashiering
CityView Portal for Permits and Inspections, Planning, Code Enforcement and Licensing
CityView Paymentus Integration (Preferred Payment Gateway)
Esri ArcGIS Mapping Extension
CityView MS Exchange Integration

CityView Add-Ons

14 Concurrent Users	CityView Mobile for Permits and Inspections
5 Concurrent Users	CityView Mobile for Code Enforcement

Initial Term Annual CityView Software Maintenance Payments

Year 1 (November 1, 2021 – October 31, 2022)	\$82,126.51
Year 2 (November 1, 2022 – October 31, 2023)	\$85,411.57
Year 3 (November 1, 2023 – October 31, 2024)	\$88,828.04