City of Garden Grove

INTER-DEPARTMENT MEMORANDUM

To: Matthew Fertal

From: Susan Emery

Dept: City Manager

Dept: Community Development

Subject: PERMITSOFT PURCHASE
AGREEMENT

Date: August 12, 2008

OBJECTIVE

To request that City Council authorize the City Manager to execute the agreement with PermitSoft, Inc. for the purchase of the PermitCity application.

BACKGROUND

The Permit Center currently uses a legacy software application initially designed in 1988 by City staff to run on an old mini-computer architecture. The current system does not take advantage of the web-based architecture used in many modern systems today.

PermitCity is an integrated system for permitting, plan check, and inspection services, which will replace the City's Building Services' current system. This system can also easily be integrated with many of the modern in-house applications developed by IT. The new system will:

- Accept all building permit applications
- Enable staff to assign and track plan checks and building inspections
- Provides for the possibility of a field inspection interface for rapid report and status postings over the Internet
- Allow for secure, user-friendly, on-line access for our customers, enabling them to obtain simple permits, check the status of their permits and plan review applications, request inspections, and check the status of inspections on-line.

On-line customer access will be phased in, beginning 12 months after the full implementation of PermitCity.

DISCUSSION

The implementation of a streamlined permit application will simplify the plan application and submittal process at the Permit Center. The establishment of a system that allows staff to access City information more readily will enhance the effectiveness and efficiency of Building Services and the divisions with which it works.

As the capability to access information from the field is implemented, staff will be able to make more decisions in the field, rather than having to return to City Hall to gather information. To a further extent, the ability to enter information into the system, while in the field, will simplify the process and allow for more efficient utilization of staff.

Over the last seven months Building Services has been analyzing and testing the PermitCity application. The Permit Center staff, plan check engineers, and building inspectors have done a series of checks and ran a series of test permits to ensure the application was compatible with City procedures, discover any necessary customizations, and check for the application's user-friendliness.

After the extensive testing, staff has concluded that the PermitCity application will allow for better customers' service, capture information that will allow for easier retrieval of information and reports, and provide better analysis of the data being collected.

The acquisition of PermitCity will maximize the efficiency of updating the current system, saving the City substantially greater software development costs. Working off of the initial testing site, the full acquisition ought to be completed in the shortest time possible, allowing staff to begin full implementation.

FINANCIAL IMPACT

The financial cost of the full acquisition of the PermitCity application will be $54,400, with a licensing fee of $15,000 a year.

The price for acquiring the software has already been approved in the current budget, and will be charged to the General Fund.

The price of comparable software would cost around $150,000 for the original purchase price, and approximately $22,500 a year for a licensing fee.

COMMUNITY VISION IMPLEMENTATION

By the implementation of information technology designed to streamline the entire development process, the City will help "ensure the preservation of community pride and property values" by improving inter-agency communication and delivery to customers, and allowing for better allocation of staff resources by improving the monitoring of permits and inspection activity.

RECOMMENDATION

It is recommended that the City Council:

- Approve the attached agreement
- Authorize the City Manager and City Clerk to execute on behalf of the City Council.
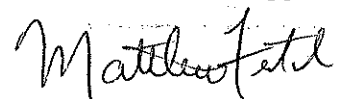
SUSAN EMERY
Community Development Director

By: Grant Raupp
       Administrative Analyst

Recommended for Approval

Matthew Fertal
City Manager

Attachment 1:   PermitSoft Agreement

PERMITSOFT, INC.
MASTER SERVICES AGREEMENT

This **MASTER SERVICES AGREEMENT** is made effective this ___12____ day of _____August_____, 2008 (the "Effective Date") by and between **PermitSoft, Inc.** (herein referred to as "PSI"), a California corporation having its primary offices at 261 Hamilton Ave, Suite 208, Palo Alto, California 94301, and City of Garden Grove ("Client"), a municipal corporation having its primary offices at 11222 Acacia Parkway, Garden Grove, California, 92840.

1. Definitions.

In addition to all other terms defined herein, the following terms shall have the following meanings:

(a) "Agreement" means this Master Services Agreement, together with all attachments, exhibits, and amendments attached hereto or hereafter attached by mutual consent of the parties all of which are incorporated herein by reference.

(b) "Equipment" means Client's computer equipment, software, communications software, communications lines, router, channel service unit, dial-up modem, connecting cables (if applicable), and any additional equipment (i.e. personal computer, alarm signal receiver equipment, etc.) needed to meet the required specifications for use with the Hosting Service and Permicity Software.

(c) "Fees" mean all fees payable by Client to PSI under this Agreement.

(d) "Permicity Software" means certain proprietary PSI computer programs which provides access to the building permitting and related plan check and inspection services herein described as the Hosting Service as more fully described in Exhibit A, attached herto.

(e) "Hosting Service" means PSI proprietary Permitting and Inspection software solution as more fully described in Exhibit A attached hereto, together with all Enhancements and System Improvements as defined in Section 4.4.

(f) "Service Attachment" means an attachment to this Agreement that describes any additional services which will be provided to Client, other than the Hosting Service.

(g) "Services" mean such additional services provided to Client by PSI under a Service Attachment.

(h) "Subscriber" means a customer of the Client as of the Effective Date or who becomes a customer of Client during the Term, and who is authorized to access and use the Hosting Service.

(k) "Term" means the Initial Term and all Renewal Terms (as defined in Section 8.1).

(l) "Territory" means the corporate boundaries of the City of Garden Grove, California.

2. Rights Granted.

2.1 Access and Use of the Hosting Service. During the Term and subject to the limitations set forth herein, PSI hereby grants to Client a nonexclusive, nontransferable, right to install on the Equipment and access, display and use the Hosting Service only (i) for the purpose of supporting its Subscribers, and (ii) for Client's own internal use. Client's use of the Hosting Service shall be subject to the pricing and other terms and conditions as set forth on Exhibit B attached hereto. In addition, Client expressly acknowledges that its use of the Hosting Service shall be subject to all of the terms and conditions set forth in this Agreement.

2.2 Subscriber Rights. During the Term and subject to the limitations set forth herein, PSI hereby grants to Client a nonexclusive, nontransferable, right to install on the Equipment and provide only to Subscribers the right to access, display and use the Permitcity Software solely for purposes of allowing Subscribers to access and display the Hosting Service only for each Subscriber's private use; provided, however, that such Subscribers either reside in or have substantial business operations in the Territory.

2.3 Reservation of Rights. Except as expressly granted in this Agreement, Client shall have no other rights of any kind in the Hosting Service and Permitcity Software. Under no circumstances will anything in this Agreement be construed as granting, by implication, estoppel or otherwise, a license to any of PSI' intellectual property or proprietary technology other than the Hosting Service and Permitcity Software.

2.4 Ownership of Permitcity Software. Client acknowledges that the Permitcity Software is the sole property of PSI, and this Agreement only grants Client a limited right to use the Permitcity Software under the terms and conditions of this Agreement. Title to all intellectual property rights with respect to the Permitcity Software, as well as any new technology developed by PSI in connection with its performance under this Agreement, shall remain exclusively with PSI.

3. Obligations.

3.1 PSI Obligations. During the Term, PSI, at its cost and expense, shall:

(a) train Client's personnel in the daily use and operation for the Hosting Service as set forth in Exhibit A;

(b) perform any other services or obligations as set forth herein or in any Service Attachment; and

(c) make reasonable commercial efforts to comply with the performance obligations set forth in the Service Agreement attached herewith as Exhibit C.

3.2 Client's Obligations. During the Term, Client, at its cost and expense, shall:

(a) in addition to providing all Equipment, provide broadband internet access to support the Hosting Service and have available an internet dial-up service as back up;

(b) make available the appropriate Client personnel to attend such training programs and other refresher and upgrade training as PSI may, at reasonable intervals, recommend or require (at either the executive offices of Client or PSI, as designated by PSI);

(c) adhere, and cause its employees and agents to adhere, to mutually agreed upon commercially reasonable security procedures as affirmed or modified from time to time;

(d) provide customer and technical support for the Hosting Service to Subscribers either directly or through its Dealers; and

3.3 Relationship Between PSI and Client. This Agreement does not in any way create the relationship of principal and agent, or any similar relationship between PSI and Client, including, but not limited to, that of joint venturers, partners, employees, or associates. Neither party is granted any right or authority to assume or create any obligation or responsibility for, or on behalf of, the other party or to otherwise bind the other party, other than as may be expressly authorized in this Agreement.

4. **Fees and Payment Terms.**

4.1 Fees and Payment Terms. In consideration for the rights granted to Client herein, Client shall pay those Fees set forth on Exhibit B attached hereto. Client also agrees to pay or reimburse PSI for any reasonable travel-related and other out-of-pocket expenses incurred by PSI in connection with this Agreement; provided, however, Client shall have no obligation to pay any travel-related or other out-of-pocket expenses of PSI unless Client pre-approves such expenses.

4.2 Taxes and Other Fees. All Fees payable hereunder do not include and are net of any federal, state or local sales, Canadian provincial taxes or Canadian GST, use, property, gross receipts, excise, service, telecommunications, utility, import or export, value added or similar tax (excluding any taxes based on PSI' net income) and all government permit or licenses fees and all customs, duty tariff and similar fees now or hereafter levied upon the delivery of the Hosting Service (collectively, the "Taxes"). Client shall promptly furnish PSI a copy of any resale certificate or other certificate, document or other evidence of exemption or payment of withholding of certain Taxes that is required in order to exempt the furnishing of Hosting Service hereunder from any such liability or to enable Client to claim any tax exemption, credit, or other benefit. In the absence of any such certificate, document, or other evidence, PSI will separately invoice Client all applicable Taxes and Client shall remit payment of all such Taxes to PSI together with its payment of fees under Section 4.1. Client agrees to indemnify and hold PSI harmless from all Taxes payable by Client hereunder, including any penalties and interest that may apply as a result of non-payment.

4.3 Changes of Fees. Fees (described in Exhibit B) may be modified by PSI at its sole discretion but only after written or electronic notice to Client. Any modification to monthly service and usage fees will take effect sixty (60) days from notice to Client. Within fifteen (15) days of receipt of notice from PSI of a Fee change, Client may, at its option, terminate this Agreement as set forth in Section 8 below.

4.4 Changes to Hosting Service.
(a) During the Term, PSI may modify the Hosting Service and Permitcity Software, and shall have the right to (i) modify or change routing supported by the Hosting Service; (ii) change geographic areas served; (iii) change the method of access to or delivery of the Hosting Service; or (iv) upgrade or improve the Hosting Service or Permitcity Software which may be provided to Client at no additional cost ("Enhancements"). In the event PSI creates a new version or adds additional functionality to the Permitcity Software or Hosting Service ("System Improvements"), it shall offer such System Improvements to Client for such Fees as PSI may deem appropriate.

(b) If Client agrees to purchase any additional System Improvements from PSI, then Client and PSI shall, before such System Improvements are installed or delivered to Client (i) amend Exhibit B to reflect the additional Fees to be paid for such System Improvements; and (ii) amend Exhibit A to reflect the inclusion of such System Improvements.

4.5 Disputed Invoices. In the event Client disputes any invoice, Client shall notify PSI in writing of any amounts in dispute within fifteen (15) days of the PSI invoice. Failure to notify PSI as required herein shall be deemed an acceptance of the accuracy of the invoiced amounts by the Client. PSI shall promptly review any amounts in dispute and notify the Client in writing within fifteen (15) days of the receipt of the Client's notice of the result of PSI's review. For any disputed amount agreed to by PSI, PSI shall provide a credit to the Client for this amount and/or may apply such credit against amounts otherwise owing by Client. Client is required to remit all amounts, which are not in dispute as required herein, whether or not contained on the same invoice.

4.6 Late Payments. PSI will assess a late payment fee equal to 1% of all unpaid amounts due hereunder for each succeeding thirty (30) day period or portion thereof. All such late fees shall automatically begin to accrue on overdue amounts starting on the 30th day after such amounts were due.

5. **Warranties and Limitations of Liability.**

5.1 No Violation. Each party represents and warrants that it has the right to enter into this Agreement and to fulfill the obligations herein and that its doing so does not violate any agreement, obligation or limitation of any kind.

5.2 Software Warranty. PSI represents and warrants to Client that (i) it has developed the Permitcity Software entirely through the efforts of PSI employees and consultants, and that to its knowledge, the Permitcity Software is free and clear of all liens, claims, encumbrances, rights or equities whatsoever of any third party; and (ii) the Hosting Service will conform to the specifications set forth on Exhibit A in all material respects, provided that the Equipment is properly maintained by Client and is used with an internet browser approved by PSI, and that Client complies with its obligations hereunder.

5.3 Subscriber Disclosure. Client shall not make any

misrepresentation to Subscribers with respect to the functionality and capabilities of the Hosting Service and shall provide its Clients with the same disclaimer of warranties and limitations of liability as provided in Section 5.2 and 5.4 herein.

5.4 Not an Insurer; Limitations and Indemnification.

(a) IT IS UNDERSTOOD AND AGREED THAT PSI AND THE THIRD-PARTY PROVIDERS ARE NOT INSURERS AND THAT THE AMOUNTS PAID TO PSI HEREUNDER ARE FOR THE HOSTING SERVICE PROVIDED BY PSI AND NOT FOR THE VALUE OF ANY PROPERTY, LOSS OR INJURY. IN THE EVENT OF ANY LOSS OR INJURY TO ANY PERSON OR PROPERTY BEING MONITORED BY THE HOSTING SERVICE, CLIENT AGREES TO EXCLUSIVELY LOOK TO ITS INSURER TO RECOVER DAMAGES, AND CLIENT WAIVES ALL RIGHTS OF SUBROGATION OR ANY OTHER RIGHT OF RECOVERY AGAINST PSI THAT ANY INSURER OR OTHER PERSON MAY HAVE AS A RESULT OF PAYING ANY CLAIM FOR LOSS OR INJURY TO ANY OTHER PERSON. IN ADDITION, CLIENT AGREES THAT IT SHALL NOT BRING ANY CLAIM OR ACTION AGAINST ANY THIRD-PARTY PROVIDER ARISING FROM CLIENT'S USE OF THE HOSTING SERVICE. FOR PURPOSES OF THIS AGREEMENT, "THIRD-PARTY PROVIDERS" MEANS ANY PERSON OR COMPANY THAT SUPPORTS OR MAINTAINS THE HOSTING SERVICE, AND INCLUDES, BUT IS NOT LIMITED TO, WIRELESS CARRIERS, MAPPING DATA PROVIDERS AND PSAP DATA VENDORS.

(b) EXCEPT AS SPECIFICALLY SET FORTH HEREIN, THE HOSTING SERVICE, PERMITCITY SOFTWARE AND ALL SERVICES ARE PROVIDED BY PSI "AS-IS" AND "WHERE IS." PSI SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, ACCURACY AND FITNESS FOR A PARTICULAR PURPOSE AS TO THE HOSTING SERVICE, THE PERMITCITY SOFTWARE OR SERVICES PROVIDED UNDER THIS AGREEMENT. WITHOUT LIMITING THE FOREGOING, PSI DOES NOT WARRANT THAT THE HOSTING SERVICE OR ITS OPERATION WILL BE ACCURATE, RELIABLE, UNINTERRUPTED, ERROR-FREE OR FREE OF VIRUSES OR OTHER HARMFUL AGENTS. CLIENT ACKNOWLEDGES THAT THE HOSTING SERVICE IS SUPPORTED BY SATELLITE AND OVER LOCAL EXCHANGE, INTER-EXCHANGE AND INTERNET BACKBONE CARRIER LINES AND THROUGH ROUTERS, SWITCHES AND OTHER DEVICES OWNED, MAINTAINED AND SERVICED BY LOCAL AND LONG DISTANCE CARRIERS, UTILITIES, SATELLITE COMPANIES, COMMUNICATIONS COMPANIES, INTERNET SERVICE PROVIDERS AND OTHER THIRD PARTIES, ALL OF WHICH ARE BEYOND PSI'S CONTROL. CLIENT ACCEPTS ALL RISK ARISING OUT OF OR RELATING TO THE DELAY, FAILURE, INTERRUPTION, OR CORRUPTION OF THE HOSTING SERVICE. UNDER NO CIRCUMSTANCES, INCLUDING NEGLIGENCE, WILL PSI OR ANYONE ELSE INVOLVED IN ADMINISTERING, MAINTAINING OR PROVIDING THE HOSTING SERVICE BE LIABLE FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES THAT RESULT FROM THE USE OF OR INABILITY TO USE THE HOSTING SERVICE, INCLUDING BUT NOT LIMITED TO, PERSONAL INJURY, DEATH, LOSS OF REVENUE OR LOST PROFITS, OR DAMAGES THAT RESULT FROM MISTAKES, OMISSIONS, SERVICE INTERRUPTIONS, SERVER DOWNTIME, ERRORS, DEFECTS, VIRUSES, DELAYS IN OPERATION OR TRANSMISSION, FAILURE OF PERFORMANCE, OF THE HOSTING SERVICE, EVEN IF PSI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(c) CLIENT AGREES THAT IT WOULD BE EXTREMELY DIFFICULT TO DETERMINE THE ACTUAL AMOUNT OF DAMAGES RESULTING FROM ANY FAILURE OF THE HOSTING SERVICE, AND THEREFORE, CLIENT AGREES THAT DESPITE THE DISCLAIMER OF WARRANTIES AND LIMITATION OF LIABILITY CONTAINED HEREIN, IN THE EVENT THAT PSI IS FOUND LIABLE FOR DAMAGES FOR ANY REASON OR FOR ANY CAUSE OF ACTION, THE AGGREGATE AMOUNT OF ALL DAMAGES PAYABLE BY PSI HEREUNDER SHALL BE LIMITED TO THE GREATER OF $250 OR ONE MONTH'S OF SERVICE FEES PAID BY CLIENT TO PSI HEREUNDER.

5.5 Warranty Claims/Remedies.

(a) Client must submit any claim by Client for breach of warranty in writing on or before expiration of the Term, or such claims shall be deemed waived.

(b) For Permitcity Software warranties, Client's sole remedy and PSI' sole liability for breach of the warranties made in this Agreement shall be, at PSI's option, to correct any nonconformity in the Permitcity Software or replace any nonconforming software with conforming software. PSI's warranty obligations are solely for the benefit of Client and Client shall have no authority to extend or transfer this warranty to any other person or entity.

6. Indemnification.

6.1 PSI. PSI shall at all times during and after the term of this Agreement indemnify, defend and hold Client harmless from any and all claims, damages, suits or proceedings brought against Client based upon a claim that the Permitcity Software infringes upon any patent, copyright or trade secret of any third party. Client and PSI shall promptly notify each other of any possible infringements, imitations or unauthorized possession, knowledge or use of the Permitcity Software by others of which Client and PSI become aware. Client shall have the right, at its expense, to bring any action on account of such infringements, imitations or unauthorized possessions, knowledge or use of the Permitcity Software, and PSI shall cooperate with Client, as Client may request, in connection with any such action. Client shall keep the entire proceeds of any such action. If Client does not bring such action, PSI shall have the right, at its expense and in its own name, to do so. PSI's indemnification obligation hereunder shall not apply to the extent that an otherwise indemnifiable infringement claim is based upon a modification or alteration to the Permitcity Software made by Client or any third party, or any improper or unauthorized use of the Permitcity Software or Hosting Service by Client.

6.2 Client. At all times during and after the term of this Agreement, Client shall indemnify, defend and hold PSI harmless from any and all claims, damages, suits or proceedings brought against PSI by any third party, including Third-Party Providers, arising from or in connection with any

breach by Client of the terms of this Agreement or any Client obligations contained herein ("Losses").

7. Confidentiality and Non-Disclosure.

7.1 <u>Definition and Disclosure</u>. In the performance of this Agreement, either party may disclose to the other certain Proprietary Information. For the purposes of this Agreement, (i) "Proprietary Information" means trade secrets and Confidential Information. "Confidential Information" means information that is of value to its owner and is treated as confidential other than trade secrets. Proprietary Information includes, without limitation, all information regarding Subscribers and their accounts, all financial information, the Permitcity Software and its documentation, business plans, Subscriber lists, applications, procedures, formulas, discoveries, inventions, improvements, innovations, designs, methods, processes, techniques, concepts and ideas. The receiving party agrees to hold the Proprietary Information disclosed by the other party in strictest confidence and not to, directly or indirectly, copy, use, reproduce, distribute, manufacture, duplicate, reveal, report, publish, disclose, cause to be disclosed, or otherwise transfer the Proprietary Information for any purpose whatsoever other than as expressly provided in this Agreement.

7.2 <u>Ownership</u>. Both parties acknowledge and agree that the Proprietary Information shall remain the sole and exclusive property of the disclosing party or third party providing such information to the disclosing party. The disclosure of the Proprietary Information does not confer upon the receiving party any license, interest, or rights of any kind in or to the Proprietary Information, except as expressly provided in this Agreement. Subject to the terms set forth herein, the receiving party shall protect the Proprietary Information of the disclosing party with the same degree of protection and care the receiving party uses to protect its own Proprietary Information, but in no event less than reasonable care. Any and all written information or materials exchanged by the parties hereto pursuant to this Agreement shall be returned along with all copies of the same to the other party upon request of such party. With regard to trade secrets, the obligations in this Section shall continue for so long as such information constitutes a trade secret. With regard to Confidential Information, the obligations in this Section 7 shall continue for the longer of (i) the duration dictated under governing law or (ii) the term of this Agreement and for a period of three (3) years thereafter.

7.3 <u>Exceptions</u>. Nothing in this Section 7 shall prohibit or limit the receiving party's use of information if (i) at the time of disclosure hereunder such information is generally available to the public; (ii) after disclosure hereunder such information becomes generally available to the public, except through breach of this Agreement by the receiving party; (iii) the receiving party can demonstrate such information was in its possession prior to the time of disclosure by the disclosing party; (iv) the information becomes available to the receiving party from a third party which is not legally prohibited from disclosing such information; (v) the receiving party can demonstrate the information was developed by or for it independently without the use of such information; or (vi) if disclosure is required under applicable law or regulation.

7.4 <u>Terms of Agreement</u>. Neither party shall disclose the terms of this Agreement except (i) as required by applicable law or regulation, (ii) to its employees and agents (including its Dealers) with a need to know such terms, or (iii) in connection with a potential merger or sale of all or substantially all of its assets; provided that the receiving party agrees in writing to be bound by the restrictions of this Agreement. Public statements regarding the existence of a business relationship between the two parties are specifically set forth in Section 9.1.

7.5 <u>Court Orders</u>. In the event that either party or its respective directors, officers, employees, consultants or agents is required pursuant to an order or requirement of a court, administrative agency, or other governmental body to disclose any Proprietary Information of the other party, the party required to make such disclosure shall give prompt notice of such requirement sufficient to allow the other party to seek a protective order or other appropriate relief prior to such disclosure. In the event that such a protective order is not obtained, the party required to make such disclosure shall disclose only that portion of the Proprietary Information that such party's legal counsel advises that it is legally required to disclose.

7.6 <u>Disclosure of Subscriber Information</u>. There may certain instances when PSI may be compelled to disclose Subscriber information to law enforcement agencies, other governmental agencies or in order to comply with a court order. Therefore, with respect to the disclosure of confidential Subscriber information, Client acknowledges and agrees that the following PSI policies shall apply:

(a) In those instances in which PSI receives any inquiry regarding a particular Subscriber, and such inquiry is not supported by a court order or subpoena, PSI will not disclose any information and PSI will not inform any Client or Subscriber of such inquiry, and Client waives all claims for losses, damages or liabilities of any kind relating to PSI' failure to disclose such inquiry.

(b) In the event that PSI or its respective directors, officers, employees, consultants or agents is required pursuant to an order or requirement of a court, administrative agency, or other governmental body to disclose any Subscriber information, PSI shall give prompt notice to Client of such order or subpoena so as to allow Client sufficient time to seek a protective order or other appropriate relief prior to such disclosure. In the event that such a protective order is not obtained, PSI shall disclose such information that it is legally required to disclose pursuant to such court order or subpoena.

7.7 <u>Injunctive Relief</u>. Each party agrees that its obligations under this Section 7 are necessary and reasonable in order to protect the other party and the other party's business, and expressly agrees that monetary damages would be inadequate to compensate the other party for any breach by such party of any covenants and agreements set forth herein. Accordingly, each party agrees and acknowledges that any such violation or threatened violation will cause irreparable injury to the other party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, the other party shall be entitled to obtain injunctive relief against the threatened breach of this Agreement or the

continuation of any such breach, without the necessity of proving actual damages.

8. Term and Termination.

8.1 Term. This Agreement shall commence as of the Effective Date and shall remain in effect (unless sooner terminated pursuant to Section 8.2) for two (2) years thereafter (the "Initial Term"). The Agreement shall thereafter automatically renew without interruption for successive two (2) year periods (each a "Renewal Term"), unless either party (at its sole option, for any reason or for no reason) gives written notice of intent not to renew the Agreement at least ninety (90) days before the beginning of any Renewal Term.

8.2 Right to Terminate. Notwithstanding any other provision hereof, and subject to the provisions in Section 4.3, this Agreement may be terminated as follows:

(a) by mutual agreement of the parties;

(b) by either party at any time if the other party has materially breached the Agreement and, if the breach is curable, the breaching party has failed to cure such breach (i) within ten (10) days after written notice thereof in the case of failure to pay amounts due and owing, or (ii) within thirty (30) days in case of all other curable breaches;

(c) in the event either party materially breaches any of the provisions hereof, and such breach is not curable, this Agreement shall be immediately terminable by the non-breaching party upon written notice to other party. Without limiting the foregoing, any violation of Section 7 hereof (Confidentiality and Non-Disclosure) or any use of the Hosting Service in a manner inconsistent with the terms of this Agreement, shall constitute a non-curable breach;

(d) immediately by PSI or Client in the event the other party becomes insolvent, files or is forced to file any petition in bankruptcy, or makes an assignment for the benefit of its creditors;

(e) by either party at any time if the other party commits an act or an omission by the other party that constitutes gross negligence, a criminal activity, or fraud, or any other act that, in the other party's reasonable determination would be likely to cause material damage to such party's business reputation; or

(f) by Client for convenience during the Initial Term upon ninety (90) days written notice to PSI ("Client Termination Notice").

8.3 Effect of Termination.

(a) Any termination of this Agreement shall not release Client or PSI from paying any Fees or expenses owed to the other party. In the event of any termination of this Agreement, all obligations owed by Client or PSI shall become immediately due and payable upon termination to the other party.

(b) Upon termination of this Agreement, Client shall promptly and without charge return to PSI all copies of all documentation, maintenance and policy manuals and other publications of PSI relating to the Hosting Service and Permitcity Software (collectively "Copies"). Client shall destroy all Copies contained on any hard drive or other fixed medium of storage. Client's right to access the Permitcity Software and right to use PSI' Marks as provided in this Agreement shall immediately terminate. Within thirty (30) days from the date of termination of this Agreement, an officer of Client shall certify in writing to PSI that Client has complied with all requirements of this Section 8.3. In addition, provided that Client is not in breach of any of the terms of this Agreement, and that all fees have been paid, at Client's request, PSI will provide Client all of Client's user data. Depending on the amount of user data that Client requests, PSI shall be entitled to charge a reasonable fee to be approved in advance by Client.

9. Miscellaneous Provisions.

9.1 Cooperation in Publicity and Marketing. PSI and Client will cooperate regarding public announcements, press releases, market promotions and other activities designed primarily to accelerate the adoption of the Hosting Service. Client will not unreasonably withhold the right of PSI to publicly acknowledge the business relationship identified herein. These rights extend to the use of the name and logo on the PSI website and marketing materials. PSI will obtain Client approval before using the marks in any manner.

9.2 Entire Agreement. This Agreement, including the all Service Attachments, exhibits and amendments hereto constitutes the entire understanding of the parties with respect to the subject matter of this Agreement and supersedes all prior understandings, whether written or oral, between the parties with respect thereto.

9.3 Waiver. Any failure of a party to comply with any obligation, covenant, agreement, or condition herein may be expressly waived in writing by the other party, but such waiver or failure to insist upon strict compliance with such obligation, covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

9.4 No Third Party Beneficiary Rights. No provision of this Agreement is intended or shall be construed to provide or create any third party beneficiary right or any other right of any kind to any Client, Subscriber or any member, affiliate, insurer, lender, shareholder, partner, officer, director, employee or agent of any party hereto, or in any other person.

9.5 Third Party Processor. If Client utilizes a third party to process Client's information, the use of such third party shall not diminish or relieve Client of its obligations under this Agreement.

9.6 Amendment; Binding Effect; Assignment.

(a) No amendment, modification or alteration of the terms of this Agreement shall be binding unless in writing and executed by the parties hereto. This Agreement shall be binding upon, inure to the benefit of, and be enforceable by, the parties and their respective successors (including, without limitation, successors by merger) and permitted assigns.

(b) Except as provided below, neither party may assign this Agreement in whole or in part without the prior written consent of the other party. Either party may freely assign this Agreement in conjunction with (i) a sale of all or substantially all of its assets, or (ii) a merger or similar transaction; provided that the acquiring or resulting entity agrees in writing to be

bound by the terms of this Agreement. In addition, PSI may freely assign all or any part of the payments due under this Agreement.

(c) Neither party shall unreasonably withhold or delay its consent to a requested assignment by the other party. Any attempted assignment in violation of this Section 9.6 shall be void and of no effect.

9.7 Force Majeure. PSI shall not be liable for loss or damage resulting from any cause beyond its reasonable control, including, but not limited to, (i) internet network failures or internet capacity limitations, (ii) wireless network failures or wireless network capacity limitations, (iii) compliance with regulations, orders or instructions of any federal, state or municipal government or any department or agent thereof that delay or restrict performance hereunder, or (iv) acts of God, acts of third parties, acts or omissions of Client, acts of civil or military authority, fires, embargoes, war or riot.

9.8 Governing Law; Jurisdiction. Any claim or action under this Agreement shall be governed by and construed in accordance with the laws of the State of California, without reference to its conflicts of law principles. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. In any action, dispute or controversy arising either directly or indirectly, under or in connection with this Agreement, the parties hereby consent and submit to the exclusive jurisdiction of the federal or state courts, as appropriate, for the county of Los Angeles, Central judicial district, California.

9.9 Injunctive Relief. Notwithstanding any other term of this Agreement, the parties may apply to a court of competent jurisdiction for any appropriate equitable or injunctive relief, including, without limitation, preliminary and permanent injunctions and temporary restraining orders. The parties also acknowledge that (i) any use or threatened use of data related to Subscribers, the Permitcity Software, the Hosting Service, or either party's trademarks or service marks in a manner inconsistent with this Agreement, or (ii) any other misuse of the Proprietary Information of either party will cause immediate irreparable harm to the non-breaching party for which there is no adequate remedy at law. Accordingly, the parties agree that the non-breaching party shall be entitled to immediate and permanent injunctive relief from a court of competent jurisdiction in the event of any such breach or threatened breach. The parties hereby waive the defense that the non-breaching party has or will have an adequate remedy at law for any such breach or threatened breach. Nothing contained in this Section 9.9 shall limit either party's right to any remedies at law, including the recovery of damages from the other party for breach of this Agreement. The prevailing party in any action pursuant to this Section 9.9 shall be entitled to collect from the other party its attorneys' fees and full costs of such action.

9.10 Severability. If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws effective during the Term, such provision shall be fully severable. This Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement, and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement.

9.11 Counterparts. This Agreement may be executed simultaneously or in two or more counterparts, each of which together shall constitute one and the same instrument and shall be deemed an original hereof.

9.12 Notices. All notices required or permitted under this Agreement shall be made in writing and shall be deemed to have been duly given if delivered by courier or sent by registered or certified mail (return receipt requested), or facsimile (with proof of transmission). All notices shall be addressed to a party at the address or facsimile number indicated in the introductory paragraph of this Agreement, or at such other address and/or facsimile number as may be designated by such party in a written notice delivered to the other party as set forth in this Section 9.12.

9.13 Survival. All provisions of this Agreement that by their nature are intended to survive the expiration or termination of this Agreement shall survive and remain in full force and effect including, but not limited to, the applicable provisions of Sections 2, 4, 6, 7, 8 and 9.

9.14 Headings; Interpretation. Headings of particular Sections are inserted only for convenience and shall not be considered a part of this Agreement or be used to define, limit, or construe the scope of any term or provision of this Agreement. Should any provision of this Agreement require judicial interpretation, the parties agree that the court or arbitrators construing the same shall not apply a presumption that the terms of this Agreement shall be more strictly construed against one party than against another.

9.15 This Agreement Controls. Notwithstanding the content of any purchase order, sale order, sale confirmation, or any other document relating to the subject matter of this Agreement, this Agreement shall take precedence over any such document, and any conflicting, inconsistent, or additional terms contained therein shall be null and void.

9.16 Attorneys' Fees. In the event any dispute arises between the parties hereto to enforce or interpret the provisions of this Agreement (including any arbitration, mediation, litigation, or other enforcement or interpretation of this Agreement), the prevailing party in such action shall be entitled to recover from the other party all reasonable costs, expenses, attorneys' fees and costs actually incurred relating to or arising from such action.
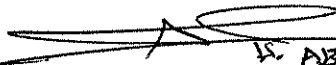
9.17 Exhibits. Exhibits attached hereto are incorporated into this Agreement for all purposes.

Exhibit A	Description of Software and Hosting Service
Exhibit B	Fees
Exhibit C	Service Agreement

IN WITNESS WHEREOF, the parties have executed this
Agreement as of the Effective Date.

PERMITSOFT, INC.

By: _____ K. ABOLHODA

Print name: _MASSOUD ABOLHODA_

Title: _PRESIDENT_

CITY OF GARDEN GROVE

By: _____

Print name: Matt Fertal_____

Title: City Manager

Approved as to form:

Omar Sandoval /10/

Thomas F. Nixon, City Attorney

EXHIBIT A

DESCRIPTION OF SERVICE

Scope of Work for Planning, Building and Code Enforcement System

The following is the scope of Work for this Agreement.

The Project covered by this Agreement is the implementation of a Permitting and Inspection system for the City of Garden Grove. The system will be customized to the need of the Client. The system will be hosted by PSI and will back up every night onto a remote server. Client will be able to use any Internet Explorer or Firefox browser to access the data via Internet. All hardware on the user (desktop, laptop, notebook, PDA, printer and other peripherals) shall be provided, maintained and serviced by the Client. The scope of customizations provided by the PSI is as follows:

- Import Client Fees
- Import permit and inspection type
- Import Client parcel address (if any)
- Import most common correction list
- Printable correction list
- PSI and Client will coordinate two days of onsite training for Client staff and provide evidence of Commercial General Liability, and Automobile Liability insurance coverage naming the Client as additional insured in the amounts and form normally required by Client's risk manager.
- The system will also provide public access for viewing result of client inspections via internet
- The PermitCity application will allow for limitless viewing capability to the Client.
- Web based Application Programming Interface (API) for interfacing with PSI and the Client's in-house cash register application
- The ability to link directly to a permit with a URL
- Provide full access to the PSI database
- The PermitCity application is to be hosted on Client supplied and installed servers or virtual machines configured per Permitsoft's specifications
- Customization of printer permits to Client's specifications, including inspector sign-offs area on permit
- Auto Assignment of Inspectors by area
- Allow for Plan Check Consultant Access
- Allow queries of permit activity for property addresses in Client's jurisdiction that originate from Client's systems (through an URL)
- Include Sewer sign-off in permit application before permit issuance
- Include page with recent history of permits/applications
- Include number of units put in permit/application
- Continuation of the Client's permit/application numbers
- The application will generate additional reports required by the Client as specified here. Reports will reflect the Client provided documentation.
  - Census Bureau Data: Monthly totals for Final permits and Valuations for Single-family Dwellings, Multi-family Dwelling, new Commercial and Tenant Improvements
  - Census Bureau Data: Monthly valuations for residential alterations with all categories except New Single-Family Dwellings and New Commercial construction
  - Certificate of Occupancy
  - Month at a Glance with two years prior

FEES: The following are the fees associated with this Agreement. All items marked FUTURE WORK may be added to the scope of the project at a later date.

Cost Item	Cost	Remarks
1-Building, Planning, Engineering, and Code Enforcement module **Payment schedule**	$54,400 ● $16,320due at the time of signing contact. ● $10,880due at the time of release of the site for testing ● $16,320due at the time of going live ● $10,880due 30 days after going live	The cost ● Includes customization as identified in Exhibit A ● Includes database ● Includes all existing reports plus 5 new reports for inspection module ● Additional forms and report $1000 per form or report, see item 4
2-Licensing Costs (concurrent users)	50 user license	Additional user, $1000/yr for additional user.
3- Annual Maintenance and supports Costs	$15,000 per year for the first three years. Payable at the end of each year, prorated if contract terminated	The yearly cost of hosting is
4-Training Costs (basic user and admin)	Basic software cost, Item 1, includes 4 half day online (remote) training. The cost of onsite training $1000/day, plus cost of travel, traveling identified under item 7.	
5-Upgrade Costs (forecast timing)	Upgrades cost will be negotiated with the Client but shall not exceed 25% of cost of purchase	
6-Costs associated with travel and expenses (must be approved in advance)	● Travel time will be charged at $75/hour ● Onsite time $135/hour ● Other expenses per receipts.	
7-Hourly cost for additional enhancement after acceptance of the software	$95/hour **FUTURE WORK**	
8 – Hourly cost for additional issues due to error by the Client or third party personnel, excluding repair of issues due to reasonable use of the PermitCity application by the Client.	$95/hour	
9-Hardware	PermitSoft will provide all required server for hosting at no additional cost. Client will be responsible for desktop computers and any laptop	

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	or PDA or Tablet PC for offsite use. In terms of additional software all is needed a web browser available to download free of charge
10- Documentation	No additional cost for the first 10 copies "User Guides" and the first 5 copies "Operational Manual", Printed manual will be $35 each, CD's at $15 each

EXHIBIT C

SERVICE AGREEMENT

TECHNICAL SUPPORT

PermitSoft, Inc. (PSI) provides 24 hours of free support for the input of new data at the beginning of each fiscal year.

The following is our response protocol for ongoing Technical Support.

A PSI technician will be available during "Normal Business Hours" (7 a.m. to 6 p.m. Monday through Friday, excluding City holidays) to take City calls, faxes, or e-mails. City may contact the PSI using one of the following methods during normal business hours:

1. Direct phone contact with the technician
2. PSI's Voice Mail System
3. E-mail
4. Fax

During times other than normal business hours, PSI personnel are available by phone to respond to Service Level 1 Errors. An emergency telephone number will be provided to designated City personnel.

SERVICE LEVELS

Table of Service Level Requirements. By way of example, but not by limitation, a compilation of the deadlines stated herein is included below for convenience of reference by the Parties.

	Level 1 Error	Level 2 Error	Level 3 Error
Initial Response Due	2 hours	4 hours	5 bus. days
Correction Required	24 hours	2 bus. days	10 bus. days

Classification of Services. Services are classified as follows:

(1) Service Level 1 (**"Critical"**) : An Error, for which there is <u>no means</u> of Circumvention or workaround, causing (i) unrecoverable "crashes" of the licensed software, (ii) ongoing unrecoverable loss or corruption of data or (iii) loss of <u>essential</u> licensed software functionality that prevents permit processing. A Service Level 1 may be attributed to the permit software, third-party software, hardware failure, server attack, hack, or virus and may require emergency recovery from a previous backup.

(2) Service Level 2 (**"Urgent"**) : An Error causing (i) ongoing but <u>recoverable</u>

loss or corruption of data for which there is <u>no means</u> of Circumvention or workaround, (ii) loss of essential licensed software functionality that prevents permit processing that <u>can</u> be Circumvented, or (iii) loss of <u>non-essential</u> licensed software functionality that <u>cannot</u> be Circumvented.

(3) Service Level 3 **("Minor")** : An Error causing (i) loss of <u>non-essential</u> licensed software functionality that <u>can</u> be Circumvented or (ii) difficulties in the user interface.

(4) Service Level 4 **("Extra Work")** :Programming code and/or graphic changes that the Client would like PSI to perform. These changes may include changing programming logic, adding functionality or features, creating new templates, adding new graphics, or modifying existing graphics. A Service Level 4 will be billed at prevailing hourly rates.

<u>Service Level Correction</u>. PSI will correct reported Service Level Requests in accordance with the following provisions. All time references below are clock hours or calendar days, unless otherwise specified.

(1) **Service Level 1 Errors**

a. PSI will provide City with a telephone number for emergency support to be used by City at any time on a seven (7) day a week, twenty-four (24) hours a day basis to report Level 1 Errors.

b. PSI will provide an initial response to all Service Level 1 Errors within two (2) hours following the report of Error.

c. PSI will use commercially reasonable efforts to resolve Service Level 1 Errors within twenty-four (24) hours following the report of Error.

d. City will provide PSI with a telephone number for emergency decision making should a business decision need to be made by Client staff during resolution of a Level 1 Error.

(2) **Service Level 2 Errors**

a. PSI will provide City with a telephone number for emergency support to be used by Client during normal business hours (7 a.m. to 6 p.m., PST, Monday through Friday, excluding City holidays).

b. PSI will provide an initial response to all Service Level 2 Errors within four (4) working hours following the report of Error.

c. PSI will use commercially reasonable efforts to resolve Service Level 2 Errors within two (2) business days following the report of Error.

(3)   **Service Level 3 errors**

           a.   PSI will provide Client with a telephone number for support to be used by Client during normal business hours (7 a.m. to 6 p.m., PST, Monday through Friday, excluding Client holidays).

           b.   PSI will provide Client an initial response to all Service Level 3 Requests within five (5) business days following the Request.

           c.   PSI will use commercially reasonable efforts to resolve Service Level 3 within ten (10) business days following the report of Error

(4)   **Service Level 4**

           a.   PSI will use commercially reasonable efforts to resolve Service Level 4 Requests as mutually agreed. PSI will bill City as provided for in the Master Agreement.

FAILURE TO CORRECT ISSUES.

Client shall be entitled to receive a ten percent (10%) reduction of the fee for the affected software, allocated on a monthly rate basis, up to a maximum of 100% of such fee for the current month, for each twenty four (24) hour period (excluding weekends and Client holidays) during which a Service Level 1 Error is not corrected seventy-two (72) hours following the report of the Error, provided however, such reductions shall not apply where the cause of the Error is not within PSI's reasonable control, which includes hardware malfunctions, utility failures, air conditioning malfunctions, communications malfunctions, environmental problems, and issues due to errors by the Client or third-party personnel.