

SOFTWARE LICENSE AGREEMENT

This Software License Agreement ("Agreement") is made this 9th day of Sept, 2011, by and between City of Lakewood ("Licensor") and City of Toppenish ("Customer").

1. Definitions

- a. *Software*. Shall mean the Public Disclosure Request and Tracking System, the source code, and the documentation already provided.
- b. *Tailoring Changes*. Shall mean those changes made for Customer's own business use of the software, such as the Licensor name, emblem, and other minor adjustments to enable Customer's current, normal business practices.

2. License Grant

- a. *License*. The parties agree that Licensor is the sole distributor of software. Subject to the terms and conditions of this Agreement, Licensor grants Customer a perpetual, nonexclusive, nontransferable license to use "the Software" at the installation Address set forth below.
- b. *Restrictions*. Customer agrees to use the Software only for Customer's own business. Customer shall not i) use the Software to provide services under any name other than that of Customer; ii) use the Software to process the data of third parties without Licensor's prior written consent; iii) modify or change the software without notification to the Licensor.
- c. *Material Terms and Conditions*. Customer specifically agrees that each of the terms and conditions of this Section 2 are material and the failure of Customer to comply with these terms and conditions shall constitute sufficient cause for Licensor to terminate this Agreement. The presence of the Subsection 2c shall not be relevant in determining the materiality of any other provision or breach of the Agreement by either party.

3. Deliverables Customer acknowledges that items are provided by licensor "as is":

- a. *Software*. Licensor shall provide Customer one executable copy of the Software's computer program.
- b. *Documentation*. Licensor shall provide Customer one copy of the available documentation. Customer is allowed to copy the documentation for internal uses only.

4. Installation, Conversion, Maintenance, and Training Customer shall be solely responsible for decisions regarding Software's suitability for Customer's planned use, the installation of the software, any data conversion, system maintenance, and provide training to its employees pursuant to industry standards and the provided documentation. Customer is informed that as a ASP.NET web application, the software needs 8 megabytes minimum of hard drive space and industry standards for running ASP.NET web applications to function at an acceptable level.

5. Ownership/Title
 - a. *Title.* Customer agrees that Licensor owns all copyright, trade secret, patent, trademark, and other proprietary rights in and to the Software, including all modifications thereto.
 - b. *Transfers.* Under no circumstances shall customer sell, license, publish, display, distribute, or otherwise transfer to a third party the Software or its documentation, or any copy thereof, in whole or in part, without Licensor's prior written consent.

6. Confidential Information Customer agrees that the Software contains proprietary information, including trade secrets, know-how, and confidential information, that is the exclusive property of Licensor. During the period this Agreement is in effect and at all times after its termination, neither Customer, its agents or its employees shall in any manner use, disclose, display, sell, license, or otherwise make available or communicate this information to third parties; nor use such information except as authorized by this Agreement. Customer agrees to take all necessary action to protect the confidential and proprietary information included in the Software, including appropriate instruction and agreement with its employees. The City of Lakewood is subject to the Washington State Public Records Act which requires the City to disclose, upon request, any document related to city business unless exempt. Should the City receive such a request for this contract, the City will comply with the Public Records Act.

7. Warranties Licensor warrants that it has clear title to the Software. Licensor further warrants that the Software, as provided for installation, if installed and used by Customer in accordance with the Software documentation, will substantially perform the functions set forth in the documentation for a period of ninety (90) days. CUSTOMER ACKNOWLEDGES AND AGREES THAT USE OF THE SOFTWARE IS AT ITS SOLE RISK. LICENSOR MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES AS TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

8. Consequential Damages Licensor shall not be liable to Customer for indirect, special, incidental, exemplary, or consequential damages (including, without limitation, lost profits) related to this Agreement or resulting from Customer's use or inability to use the Software, arising from any cause of action whatsoever, including contract, warranty, strict liability, or negligence, even if Licensor has been notified of the possibility of such damages.

9. Limitation of Recovery Under no circumstances shall the liability of Licensor to Customer exceed the amount paid by Customer to Licensor under this Agreement.

10. Assignment Customer shall not assign or otherwise transfer the Software or this Agreement to anyone, including any parent, subsidiaries, affiliated entities or third parties, or as part of the sale of any portion of its business, or pursuant to any merger, consolidation, or reorganization, without Licensor's prior written consent.

11. General Provisions

Governing Laws. The laws of the State of Washington hereunder shall govern this Agreement and performance. Any suit brought by either party arising out of this Agreement shall be in a court of competent jurisdiction in Pierce County, Washington.

Indemnification. It is understood and agreed that this Agreement is solely for the benefit of the parties hereto and gives no right to any other party. Customer will indemnify, defend, save, and hold harmless Licensor from and against all damages, losses, costs, and expenses (including actual legal fees and disbursement), fines and liabilities incurred by or awarded, asserted, or claimed against Licensor in connection with Customer's activities under this Agreement or otherwise in connection with the Software including claims brought by a person using or relying upon any advice given or publication produced or distributed by Customer, even if such claims arise as a consequence of the negligence of Licensor.

Severability. If any provision of this Agreement is invalid, illegal, or unenforceable under any applicable statute or rule of law, it is to that extent to be deemed omitted. The remainder of the Agreement shall be valid and enforceable to the maximum extent possible.

Waiver. The waiver or failure of either party to exercise in any respect any right provided for in this Agreement shall not be deemed a waiver of any further right under this Agreement. No term or condition of this contract shall be held to be waived except by the mutual, written consent of both parties.

Complete Agreement. The parties agree that this Agreement is the complete and exclusive statement of the agreement between the parties, which supersedes and merges all prior proposals, understandings, and all other agreements, oral or written between the parties relating this Agreement.

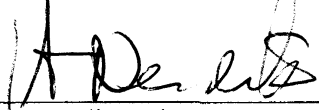
Modifications. This Agreement may be modified or amended by the mutual written consent of both parties.

Force Majeure. Neither party shall be in default or otherwise liable for any delay in for failure of its performance under this agreement if such delay or failure arises by any reason beyond its reasonable control, including any act of god, any acts of the common enemy, the elements, earthquakes, floods, fires, epidemics, riots, failures of delay, transportation of communications, or any act of failure to act by the other party or such other party's employees, agents or contractor; provided, however that lack of funds shall not be deemed to be a reason beyond a party's reasonable control. The parties will promptly inform and consult with each other as to any of the above causes, which in their judgment may or could be the cause of a delay in the performance of this Agreement.

Each party acknowledges it has read and understood this Agreement and agrees to be bound by its terms.


AGREED:

CITY OF LAKEWOOD

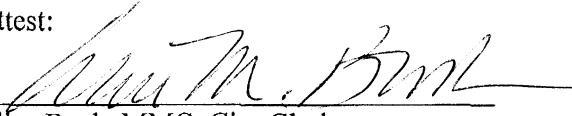


Andrew Neiditz, City Manager
Date: 9-9-11

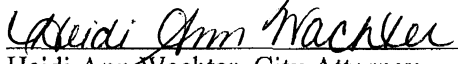
CUSTOMER - CITY OF TOPPENISH

By: 

Title: William C. Murphy, City Manager
Date: 8/23/11

Attest:


Alice Bush, MMC, City Clerk
9-9-11

Approved as to Form:


Heidi Ann Wachter, City Attorney