SOFTWARE LICENSE AGREEMENT

This Software License Agreement ("Agreement") is entered in to between City of Roseville, California ("City") and *Vendor*, hereinafter ("Company").

1. Definitions

a. *Software.* The term "Software" shall mean the computer program in object code and source code and the user manuals described in the specifications set forth in Exhibit "A," Statement of Work. The term "Software" includes any corrections, bug fixes, enhancements, updates or other modifications, including custom modifications, to such computer program and user manuals.

b. *Certificate of Installation.* The term "Certificate of Installation" shall mean a written notice, signed by Company and acknowledged by the City, certifying that the Software has been installed, that the Software substantially complies with the specifications set forth in Exhibit "A," that the software has been fully configured and that the master records ("rules") for the operation of the program have been established and that the training of City employees is complete.

2. License

a**.** *Grant of License.* Company grants City, pursuant to the terms and conditions of this Agreement, a perpetual, nonexclusive, nontransferable license to use the Software.

b. *Authorized Equipment and Site.* City shall use the Software on the computers used for City business.

c. *Restrictions on Use.* City agrees to use the Software only for City's business, including any collaborative services with other governmental entities, provided appropriate licensing fees have been paid to the Company.

d. *Copies.* City may make archival copies of the Software's computer program, provided that the copies shall include Company's copyright and any other proprietary notices.

e. *Modifications, Reverse Engineering.* City agrees that only Company shall have the right to alter, maintain, enhance or otherwise modify the Software. City shall not disassemble, decompile or reverse engineer the Software's computer program.

f. *User Manuals.* Company shall provide City with a minimum of three paper copies and one CD copy of the user manuals, and the manuals shall be updated with each new release of the Software and shall be updated no less than annually.

g. *Personnel.* Personnel working with the City shall be acceptable to the City.

h. *Test Environment.* City is authorized to create a separate environment using supported version of Company's software for testing purposes.

i. *Development Environment.* City is authorized to create a separate environment using supported version of Company's software for demonstrating customizations.

3. Delivery, Installation, Data Conversion, Testing and Acceptance.

All activities related to the implementation of the Software shall proceed in accordance with Exhibit "B", Implementation Schedule. Each activity listed in Exhibit B shall include both a start date and completion date. In addition, the Implementation Schedule shall incorporate the following specific activities.

a. *Delivery.* Company shall deliver the Software to the City location(s) specified by the Information Technology Director of the City within mutually agreed timeframe of the effective date of this Agreement.

b. *Installation.* Company shall install the Software at the locations designated. City shall grant Company access to the location(s) and the computer system(s) for the period of time required for such installation.

c. *Data Conversion.* Data conversion, data entry and verification of data shall be completed in accordance with the specifications of City as set forth in Exhibit "A."

d. *Testing.* City shall have thirty (30) days, commencing upon delivery of the Certificate of Installation, to test the Software for substantial compliance with the specifications set forth in Exhibit "A" (the "Testing Period). City shall provide notice to Company of any failure of the Software to comply with such specifications. Upon receipt of such notice, Company shall use its best efforts to remedy the failure and install a fix within five (5) days. If City provides such notice to Company, the Testing Period, at City's option, may be extended for thirty (30) days after Company asserts to City that the problem has been fixed.

e. *Acceptance.* Acceptance shall occur (i) upon City's delivery of notice to Company that the Software substantially complies with the specifications set forth in Exhibit "A", or (ii) if City does not provide notice of a failure of the Software after thirty (30) days from the close of the Testing Period, then after thirty (30) days after the close of the Testing Period, Acceptance shall be deemed to have occurred.

4. License Fee

a. *In General.* In consideration for the license(s) granted by Company under this Agreement as set forth in Exhibit "C", Pricing Quotation, City shall pay Company a fee, not to exceed $ <XX,XXX.00>.

b. *Payment Terms.* Each installation of the License Fee shall be due and payable in accordance with the Payment Schedule, which is incorporated into Exhibit "B", Implementation Schedule. All amounts are due thirty (30) days from receipt of invoice by City from Company.

5. Ownership

a. *Title.* City and Company agree that Company owns all proprietary rights, including patent, copyright, trade secret, trademark and other proprietary rights, in and to the Software and any corrections, bug fixes, enhancements or updates to the Software.

b. *Transfers.* Under no circumstances shall City sell, license, publish, display, distribute, assign or otherwise transfer to a third party the Software or any copy thereof, in whole or in part, without Company's prior written consent, except in when City is using the Software to provide collaborative services with other governmental entities and the appropriate licensing fees have been paid to the Company for this usage.

6. Confidential Information

Company agrees not to use City data except when specifically authorized by City. City agrees to maintain the confidentiality of proprietary information to the extent allowed by law.

7. Warranty Period

Company warrants to City that for a period of one year commencing upon Acceptance, the Software will substantially comply with the specifications set forth in Exhibit "A." During this warranty period, Company shall also provide City the support and maintenance services set forth in the Software Maintenance Agreement appended hereto as Exhibit "E." After expiration of the warranty period, Company shall provide support and maintenance for the Software pursuant to the terms of such Maintenance Agreement.

8. Indemnification

Indemnity. Company shall indemnify and hold harmless City from and against any claims, including reasonable legal fees and expenses, based upon infringement of any copyright or patent by the Software. City agrees to notify the Company of any such claim promptly in writing and to allow Company to control the proceedings. City agrees to cooperate fully with Company during such proceedings. Company shall defend and settle at its sole expense all proceedings arising out of the foregoing. In the event of such infringement, Company may replace, in whole

or in part, the software with a substantially compatible and functionally equivalent computer program or modify the Software to avoid the infringement.

9. Insurance
Company agrees to maintain workers' compensation and employer's liability insurance at the statutory limits. Company will also maintain a commercial general liability policy in the amount of $500,000.00 per occurrence; $1,000,000.00 aggregate' $1,000,000.00 products and completed operations aggregate.

10. Source Code
The uninterrupted availability of the Software is critical to City in the operation of its business. Company agrees to provide the source code to the Information Technology Director of City through a source code escrow agreement, in the form attached as Exhibit "D", to be executed by the parties concurrently with the signing of this agreement.
The cost of the escrow shall be paid by the company. Notwithstanding anything in this agreement to the contrary, any such source code that is delivered, provided, or disclosed to the City by Company, will not be disclosed or distributed by the City to any other party. This provision shall be subject to operation of applicable law.

11. Term and Termination
a. *Effective Date.* This Agreement and the license granted hereunder shall take effect upon the date the last party executes this Agreement.
b. *Termination.* City shall have the right to terminate this Agreement upon giving thirty (30) days notice.
c. Within thirty (30) days after termination of the license, City will return to Company, at Company's expense, the Software and all copies thereof or delete or destroy all other copies of the Software and inform the Company that the Software has been returned or all copies deleted or destroyed, and its use discontinued**.**

12. Force Majeure
Neither party shall be in default or otherwise liable for any delay in or failure of its performance under this Agreement if such delay or failure arises due to any act of God, any acts of the common enemy, the elements, earthquakes, floods, fires, epidemics, riots, failures or delay in transportation or communications; 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.

13. Notices
All notices under this Agreement are to be delivered by (a) depositing the notice in the mail, using certified mail, return receipt requested, addressed to the address below; (b) faxing the notice by using the telephone number set forth below, if confirmation is received and the party sending notice calls the other party to confirm that the notice was received; (c) overnight delivery service addressed to the address below; or (d) hand delivery to the individual designated below. The notice shall be deemed delivered (a) by certified mail, four (4) days after the notice's deposit in the mail; (b) by fax when confirmation is given by the receiving party; (c) if by overnight delivery, on the next day; and (d) if by hand delivery, on the date of hand delivery. If either party needs to change the address for notices, the party making the change shall send the new address to the other party by certified mail.
COMPANY:
Name: Attention:

Address: Fax No.:
Phone No.:
CITY:
Name: Director of Information Technology
Address: 401 Oak Street #404   Fax No.: 916.774.5511
             Roseville, California 95678   Phone No.: 972.774.5152

14. General Provisions.

a. *Complete Agreement.* The parties agree that this Agreement, its attachments, the City's Request for Quote/Proposal and the Company's Response to the Request for Quote/Proposal are 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 to this Agreement.

b. *Order of Precedence.* In the event of any conflict or inconsistency among documents related to this Agreement, said conflict or inconsistency shall be resolved by giving precedence to the later dated document. Unless otherwise agreed to by both parties, document precedence shall be as follows: (1) the Software License and/or Hardware Sales Agreement; (2) the Request for Quote/Proposal; (3) the Company's response to the Request for Quote/Proposal.

c. *Amendment.* This Agreement may not be modified, altered or amended except by written instrument duly executed by both parties, except that address for notice may be changed as provided in section 13.

d. *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.

e. *Severability*. If any provision of this Agreement is invalid, illegal or unenforceable under any applicable statute, court decision 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.

f. *Governing Law*. This Agreement and performance hereunder shall be governed by the laws of the State of California. Venue for any cause of action arising hereunder shall be in Placer County, California.

g. *Read and Understood.* Each party acknowledges that it has read and understands this Agreement and agrees to be bound by its terms.

15. Database/Server/Systems Security

Company agrees to implement database/server/systems passwords and security in compliance with City's policies. Policy is available from City's IT Department upon request.

16. Third Party Connections

Company with remote access privileges to City's network agrees to abide by City's Third Party Connection Agreement Policy. Policy is available from City's IT Department upon request.

17. Exhibits

a. *Exhibit A.* Scope of Work and Specifications.
b. *Exhibit B.* Implementation and Payment Schedule
c. *Exhibit C.* Price quote.
d. *Exhibit D.* Escrow.
e. *Exhibit E. Software Maintenance Agreement*

AGREED:
COMPANY: _____
BY: _____
SIGNATURE: _____
TITLE: _____

DATE: _____

CITY OF ROSEVILLE:
SIGNATURE: _____
Ray Kerridge, City Manager
DATE: _____
ATTESTED TO:
SIGNATURE: _____
Sonia Orozco, City Clerk
DATE: _____
APPROVED AS TO FORM:
SIGNATURE: _____
Brita Bayless, City Attorney
DATE: _____

EXHIBIT "A"
Statement of Work
Acceptance Specifications

EXHIBIT "B"
Implementation Schedule/Payment Schedule

EXHIBIT "C"
Price Quote

EXHIBIT "D"
Software Source Code Escrow Agreement

EXHIBIT "E"