

Software License, Hosting, Technical Support, and Maintenance Agreement

THIS SOFTWARE LICENSE, HOSTING, TECHNICAL SUPPORT, AND MAINTENANCE AGREEMENT (the "Agreement")

BETWEEN:

Intuitive Municipal Solutions, LLC of 600 La Terraza Blvd, Escondido, CA 92025
(the "Vendor")

OF THE FIRST PART

- AND -

The City of Blaine, Minnesota of 10801 Town Square Drive NE, Blaine, MN 55449
(the "Licensee")

OF THE SECOND PART

BACKGROUND:

The Vendor wishes to license, host, support, and maintain computer software to the Licensee and the Licensee desires to purchase the software license, hosting, technical support, and maintenance under the terms and conditions stated below.

IN CONSIDERATION OF the provisions contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

Software License

1. Under this Agreement the Vendor grants to the Licensee a non-exclusive and non-transferable license (the "License") to use the Intuitive Municipal Solutions Software Suite (the "Software").
2. "Software" includes the executable computer programs and any related printed, electronic and online documentation and any other files that may accompany the product.
3. Title, copyright, intellectual property rights and distribution rights of the Software remain exclusively with the Vendor. Intellectual property rights include the look and feel of the Software. This Agreement constitutes a license for use only and is not in any way a transfer of ownership rights to the Software.

4. Use of the Software is limited to the following functional areas of the Licensee:
 - a. Planning & Development
 - i. Planning
 - ii. Building Inspections
 1. All trades but Electrical
 2. Contractor Licensing & Registration
 - b. Community Standards
 - i. Fire Inspection
 1. Routine Inspections
 - ii. Housing Services
 1. Rental Licenses
 - iii. Neighborhood Services
 1. Code Enforcement
 - c. Engineering
 - d. Public Works
 - e. Clerks Office (Business Licensing)
 - f. Public Complaint/Inquiries
 - i. Route to Code Enforcement or other department
5. Use of the Software is limited to the following features and/or applications:
 - a. iMSPermits
 - b. iMSApprovals
 - c. iMSEnforce
 - d. iMSLicenses
 - e. iMSPros
 - f. iMSLocations
 - g. Citizen Login
 - h. Pro Login
 - i. Anonymous Login
 - j. Offline Inspection Results
6. The rights and obligations of this Agreement are personal rights granted to the Licensee only. The Licensee may not transfer or assign any of the rights or obligations granted under this Agreement to any other person or legal entity.
7. The Software may not be modified, reverse-engineered, or de-compiled in any manner through current or future available technologies.
8. Failure to comply with any of the terms under the License section will be considered a material breach of this Agreement.

Limitation of Liability

9. The Software is provided by the Vendor and accepted by the Licensee "as is". Liability of the Vendor will be limited to a maximum of the First Year Software License, Hosting, Technical Support, and Maintenance Fee of the Software (**\$32,760**). The Vendor will not be liable for any general, special, incidental or consequential damages including, but not limited to, loss of production, loss of profits, loss of revenue, loss of data, or any other business or economic disadvantage suffered by the Licensee arising out of the use or failure to use the Software.
10. The Vendor makes no warranty expressed or implied regarding the fitness of the Software for a particular purpose or that the Software will be suitable or appropriate for the specific requirements of the Licensee.
11. The Vendor does not warrant that use of the Software will be uninterrupted or error-free. The Licensee accepts that software in general is prone to bugs and flaws within an acceptable level as determined in the industry.

Warrants and Representations

12. The Vendor warrants and represents that it is the copyright holder of the Software. The Vendor warrants and represents that granting the license to use this Software is not in violation of any other agreement, copyright or applicable statute.

Software License, Hosting, Technical Support, and Maintenance

13. Beginning on Acceptance, and for a period of One Year:
 - a. The Licensee will hold the software license described above.
 - b. The Licensee will be entitled to hosting services in Microsoft Azure at no additional cost. The Vendor will provide both a Production and Test environment that include necessary software licenses and capacity to accommodate the Licensee's needs under this Agreement.
 - c. The Licensee will be entitled to maintenance, upgrades, and backups of the hosted environments at no additional cost.
 - d. The Licensee will be entitled to unlimited technical support during iMS business hours (7:30 AM to 5:30 PM Pacific, Monday through Friday) at no additional cost. A contact number will be provided for critical issues outside of business hours. Support is provided via email, or phone. Phone support includes screen sharing when required.
 - e. The Licensee will be entitled to regular software updates at no additional cost.
 - f. The Licensee will be notified via email when an update becomes available at no additional cost. If the Licensee elects not to upgrade they will not be able to take advantage of features and fixes added in that update.

- g. The Licensee will be entitled to up to Four (4) refreshes per year of the test environment from production at no additional cost.
- h. The Licensee is also entitled to licensing costs for major upgrades that require services at no additional cost. In these cases, covered clients only incur the cost of the services required. An example of a major upgrade would be a change in the development platform or re-write of the program based on newly-available programming tools. Such upgrades would be very infrequent but could require implementation services and training to successfully migrate.

Software License, Hosting, Technical Support, and Maintenance Fee

14. The annual fee for Hosting, Technical Support, and Maintenance is **\$32,760**, due within 30 days of Acceptance.

Software License, Hosting, Technical Support, and Maintenance Automatic Extension

15. The annual fee for Software License, Hosting, Technical Support, and Maintenance in subsequent years will follow the schedule below, and is due within 30 days of the Acceptance date anniversary:

Year 2: **\$33,415.**

Year 3: **\$52,000.**

Year 4: **\$53,040.**

Year 5: **\$54,100**

Any gap in payment of the Hosting, Technical Support, and Maintenance fees will terminate this Automatic Extension clause and all Software License, Hosting, Technical Support, and Maintenance benefits will immediately cease.

Data Access

16. Licensee data will be used only to provide Licensee with the defined services and for purposes compatible with providing those services. Vendor will not use Licensee data or derived information for any commercial purposes. Licensee retains all rights, titles, and interests in and to their data, and Vendor acquires no rights to Licensee data other than the rights granted to provide the service. Vendor will not disclose Licensee data except as directed by the Licensee or as required by law.

Data Rights Retention

17. Licensee will have the ability to request a Licensee database backup and copy of Licensee files at any time during the term of service. In the event of expiration or termination of service, Vendor will make Licensee data (database backup and attached files) available to download for a period of 90 days after expiration or termination of service. At the end of the 90-day retention period, Vendor will delete Licensee data. Licensee is solely responsible for the retention or extraction of software provided by Licensee. Vendor has no liability for the deletion of data as described in this section.

Acceptance

18. All terms, conditions and obligations of this Agreement will be deemed to be accepted by the Licensee ("Acceptance") upon the execution and delivery hereof by each of the parties hereto, but in no event later than February 28, 2019.

Termination

19. This Agreement will be terminated, the License forfeited, and all benefits will cease where the Licensee has failed to comply with any of the terms of this Agreement or is in breach of this Agreement (including non-payment of annual fees). Licensee may terminate the agreement for any reason with 30-days written notice. Year One and Year Two annual fees shall be payable if not paid already, the License is forfeited, and all benefits cease.

Force Majeure

20. The Vendor will be free of liability to the Licensee where the Vendor is prevented from executing its obligations under this Agreement in whole or in part due to Force Majeure, such as earthquake, typhoon, flood, fire, and war or any other unforeseen and uncontrollable event where the Vendor has taken any and all appropriate action to mitigate such an event.

Governing Law

21. The Parties to this Agreement submit to the jurisdiction of the courts of the State of Minnesota for the enforcement of this Agreement or any arbitration award or decision arising from this Agreement. This Agreement will be enforced or construed according to the laws of the State of California.

Miscellaneous

22. This Agreement can only be modified in writing signed by both the Vendor and the Licensee.
23. This Agreement does not create or imply any relationship in agency or partnership between the Vendor and the Licensee.
24. Headings are inserted for the convenience of the parties only and are not to be considered when interpreting this Agreement. Words in the singular mean and include the plural and vice versa. Words in the masculine gender include the feminine gender and vice versa. Words in the neuter gender include the masculine gender and the feminine gender and vice versa.
25. If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, it is the parties' intent that such provision be reduced in scope by the court only to the extent deemed necessary by that court to render the provision reasonable and enforceable and the remainder of the provisions of this Agreement will in no way be affected, impaired or invalidated as a result.
26. This Agreement contains the entire agreement between the parties. All understandings have been included in this Agreement. Representations which may have been made by any party to this Agreement may in some way be inconsistent with this final written Agreement. All such statements are declared to be of no value in this Agreement. Only the written terms of this Agreement will bind the parties.
27. This Agreement and the terms and conditions contained in this Agreement apply to and are binding upon the Vendor's successors and assigns.

Intuitive Municipal Solutions, LLC

Notices

28. All notices to the parties under this Agreement are to be provided at the following addresses, or at such addresses as may be later provided in writing:

Intuitive Municipal Solutions, LLC: 600 La Terraza Blvd, Escondido, CA 92025

City of Blaine, Minnesota: 10801 Town Square Drive NE, Blaine, MN 55449

Signatures

The individuals signing below represent that they have the authority to sign this Agreement.

City of Blaine, Minnesota

Tom Ryan, Mayor

Signature

Date

City of Blaine, Minnesota

Clark Arneson, City Manager

Signature

Date

Intuitive Municipal Solutions, LLC

Vance Bradshaw, President

Signature

Date