



# CITY OF GARDEN GROVE

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(714) 741-5040

William J. Dalton  
Mayor

Mark Rosen  
Mayor Pro Tem

Dina Nguyen  
Council Member

Bruce A. Broadwater  
Council Member

Steven R. Jones  
Council Member

October 6, 2008

Permitsoft Inc.  
261 Hamilton Avenue Suite 208  
Palo Alto, California 94301

Enclosed is an original copy of the Agreement by and between the City of Garden Grove and Permitsoft Inc. to implement a software system for permitting and inspection for the City of Garden Grove per Exhibit A - Description of Service.

This Agreement was approved at the City Council meeting held August 12, 2008.

Sincerely,

Kathleen Bailor  
City Clerk

By:   
Teresa Pomeroy  
Deputy City Clerk

Enclosure

c: Finance Department  
Finance Department/Purchasing  
Community Development

**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 Permitcity Software.

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

(d) "Permitcity 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 hereto.

(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's 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 30<sup>th</sup> 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's 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 Definition and Disclosure. 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 Ownership. 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 Exceptions. 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 Terms of Agreement. 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 Court Orders. 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 Disclosure of Subscriber Information. There may be 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's 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 Injunctive Relief. 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 Permittcity 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:   
M. ABOLHODA

Print name: MASSOUD ABOLHODA

Title: PRESIDENT

CITY OF GARDEN GROVE

By: 


Print name: Lee M. Jones II

Title: Asst City Manager

Approved as to form:

  
Thomas F. Nixon, City Attorney

Attest:

  
Kathy Bailor  
City Clerk

Date:

10/2/08



## 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

**EXHIBIT B**

**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
<b>1-Building, Planning, Engineering, and Code Enforcement module</b>  <b>Payment schedule</b>	\$54,400  <ul style="list-style-type: none"> <li>• \$16,320 due at the time of signing contact.</li> <li>• \$10,880 due at the time of release of the site for testing</li> <li>• \$16,320 due at the time of going live</li> <li>• \$10,880 due 30 days after going live</li> </ul>	The cost <ul style="list-style-type: none"> <li>• Includes customization as identified in Exhibit A</li> <li>• Includes database</li> <li>• Includes all existing reports plus 5 new reports for inspection module</li> <li>• Additional forms and report \$1000 per form or report, see item 4</li> </ul>
<b>2-Licensing Costs (concurrent users)</b>	50 user license	Additional user, \$1000/yr for additional user.
<b>3- Annual Maintenance and supports Costs</b>	\$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
<b>4-Training Costs (basic user and admin)</b>	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.	
<b>5-Upgrade Costs (forecast timing)</b>	Upgrades cost will be negotiated with the Client but shall not exceed 25% of cost of purchase	
<b>6-Costs associated with travel and expenses (must be approved in advance)</b>	<ul style="list-style-type: none"> <li>• Travel time will be charged at \$75/hour</li> <li>• Onsite time \$135/hour</li> <li>• Other expenses per receipts.</li> </ul>	
<b>7-Hourly cost for additional enhancement after acceptance of the software</b>	\$95/hour	<b>FUTURE WORK</b>
<b>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.</b>	\$95/hour	
<b>9-Hardware</b>	PermitSoft will provide all required server for hosting at no additional cost. Client will be responsible for desktop computers and any laptop	

	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
<b>10- Documentation</b>	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 no means of Circumvention or workaround, causing (i) unrecoverable "crashes" of the licensed software, (ii) ongoing unrecoverable loss or corruption of data or (iii) loss of essential 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 recoverable

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

(3) Service Level 3 (“Minor”) : An Error causing (i) loss of non-essential licensed software functionality that can 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.

**Service Level Correction.** 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.

# ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
08/19/08

**PRODUCER**  
Dealey, Renton & Associates  
P. O. Box 12675  
Oakland, CA 94604-2675  
510 465-3090

*Steven Baker*  
Fax 510-452-2193  
sbaker@insdra.com

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

**INSURED**  
Permitsoft, Inc.  
261 Hamilton Avenue, No. 208  
Palo Alto, CA 94301

(L)  
(S)

INSURERS AFFORDING COVERAGE	NAIC #
INSURER A: Hartford Casualty Insurance Co.	AL XV
INSURER B: Evanston Ins. Co.	A, XII
INSURER C:	
INSURER D:	
INSURER E:	

**COVERAGES**

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR	INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A		<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	57SBMAV8987	03/16/08	03/16/09	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$300,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000
A		<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS  <b>GARAGE LIABILITY</b> <input type="checkbox"/> ANY AUTO  <b>EXCESS/UMBRELLA LIABILITY</b> <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE  <input type="checkbox"/> DEDUCTIBLE RETENTION \$	57SBMAV8987	03/16/08	03/16/09	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$
		<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below				<input type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
B		<b>OTHER Professional Liability</b>	IT801118	03/31/08	03/31/09	\$1,000,000 Each Claim \$1,000,000 Aggregate \$2,500 Deduct/Claim

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

With respect to Business Liability Coverage provided by Hartford Casualty Insurance Company, the City of Garden Grove and each of its officer,  
(See Attached Descriptions)

Reviewed and approved as to insurance language and/or requirements.

*9-20-08* *Heidi M. Jay*  
Risk Management

**CERTIFICATE HOLDER**

City of Garden Grove  
11222 Acacia Parkway  
Garden Grove, CA 92840

**CANCELLATION Ten Day Notice for Non-Payment of Premium**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE  
*Steve Baker*

**DESCRIPTIONS (Continued from Page 1)**

employees and agents are additional insureds, as required by written contract or agreement, as per policy form SS 00 08 04 05, excerpt attached.



## BUSINESS LIABILITY COVERAGE FORM

## 2. Applicable To Medical Expenses Coverage

We will not pay expenses for "bodily injury":

- a. Any Insured  
To any insured, except "volunteer workers".
- b. Hired Person  
To a person hired to do work for or on behalf of any insured or a tenant of any insured.
- c. Injury On Normally Occupied Premises  
To a person injured on that part of premises you own or rent that the person normally occupies.
- d. Workers' Compensation And Similar Laws  
To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.
- e. Athletics Activities  
To a person injured while practicing, instructing or participating in any physical exercises or games, sports or athletic contests.
- f. Products-Completed Operations Hazard  
Included with the "products-completed operations hazard".
- g. Business Liability Exclusions  
Excluded under Business Liability Coverage.

## C. WHO IS AN INSURED

1. If you are designated in the Declarations as:
  - a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
  - b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
  - c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
  - d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.

- e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.

## 2. Each of the following is also an insured:

## a. Employees And Volunteer Workers

Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business.

However, none of these "employees" or "volunteer workers" are insureds for:

- (1) "Bodily injury" or "personal and advertising injury":
  - (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), or to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;
  - (b) To the spouse, child, parent, brother or sister of that co-"employee" or that "volunteer worker" as a consequence of Paragraph (1)(a) above;
  - (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs (1)(a) or (b) above; or
  - (d) Arising out of his or her providing or failing to provide professional health care services.

If you are not in the business of providing professional health care services, Paragraph (d) does not apply to any nurse, emergency medical technician or paramedic employed by you to provide such services.

- (2) "Property damage" to property:
  - (a) Owned, occupied or used by,

9-20-08 *Heidi M. Jay*  
Risk Management

## BUSINESS LIABILITY COVERAGE FORM

(b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).

**b. Real Estate Manager**

Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.

**c. Temporary Custodians Of Your Property**

Any person or organization having proper temporary custody of your property if you die, but only:

- (1) With respect to liability arising out of the maintenance or use of that property; and
- (2) Until your legal representative has been appointed.

**d. Legal Representative If You Die**

Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this insurance.

**e. Unnamed Subsidiary**

Any subsidiary and subsidiary thereof, of yours which is a legally incorporated entity of which you own a financial interest of more than 50% of the voting stock on the effective date of this Coverage Part.

The insurance afforded herein for any subsidiary not shown in the Declarations as a named insured does not apply to injury or damage with respect to which an insured under this insurance is also an insured under another policy or would be an insured under such policy but for its termination or upon the exhaustion of its limits of insurance.

**3. Newly Acquired Or Formed Organization**

Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain financial interest of more than 50% of the voting stock, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

- a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier; and

b. Coverage under this provision does not apply to:

- (1) "Bodily injury" or "property damage" that occurred; or
- (2) "Personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

**4. Operator Of Mobile Equipment**

With respect to "mobile equipment" registered in your name under any motor vehicle registration law, any person is an insured while driving such equipment along a public highway with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the equipment, and only if no other insurance of any kind is available to that person or organization for this liability. However, no person or organization is an insured with respect to:

- a. "Bodily injury" to a co-"employee" of the person driving the equipment; or
- b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

**5. Operator of Nonowned Watercraft**

With respect to watercraft you do not own that is less than 51 feet long and is not being used to carry persons for a charge, any person is an insured while operating such watercraft with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the watercraft, and only if no other insurance of any kind is available to that person or organization for this liability.

However, no person or organization is an insured with respect to:

- a. "Bodily injury" to a co-"employee" of the person operating the watercraft; or
- b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

**6. Additional Insureds When Required By Written Contract, Written Agreement Or Permit**

The person(s) or organization(s) identified in Paragraphs a. through f. below are additional insureds when you have agreed, in a written

## BUSINESS LIABILITY COVERAGE FORM

contract, written agreement or because of a permit issued by a state or political subdivision, that such person or organization be added as an additional insured on your policy, provided the injury or damage occurs subsequent to the execution of the contract or agreement, or the issuance of the permit.

A person or organization is an additional insured under this provision only for that period of time required by the contract, agreement or permit.

However, no such person or organization is an additional insured under this provision if such person or organization is included as an additional insured by an endorsement issued by us and made a part of this Coverage Part, including all persons or organizations added as additional insureds under the specific additional insured coverage grants in Section F.— Optional Additional Insured Coverages.

## a. Vendors

Any person(s) or organization(s) (referred to below as vendor), but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business and only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

- (1) The insurance afforded to the vendor is subject to the following additional exclusions:

This insurance does not apply to:

- (a) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
- (b) Any express warranty unauthorized by you;
- (c) Any physical or chemical change in the product made intentionally by the vendor;
- (d) Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;

- (e) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;

- (f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

- (g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or

- (h) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

- (i) The exceptions contained in Subparagraphs (d) or (f); or

- (ii) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

- (2) This insurance does not apply to any insured person or organization from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

## b. Lessors Of Equipment

- (1) Any person or organization from whom you lease equipment; but only with respect to their liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person or organization.

**BUSINESS LIABILITY COVERAGE FORM**

- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after you cease to lease that equipment.
- c. Lessors Of Land Or Premises**
- (1) Any person or organization from whom you lease land or premises, but only with respect to liability arising out of the ownership, maintenance or use of that part of the land or premises leased to you.
- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:
- (a) Any "occurrence" which takes place after you cease to lease that land or be a tenant in that premises; or
- (b) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.
- d. Architects, Engineers Or Surveyors**
- (1) Any architect, engineer, or surveyor, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:
- (a) In connection with your premises; or
- (b) In the performance of your ongoing operations performed by you or on your behalf.
- (2) With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:
- This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or the failure to render any professional services by or for you, including:
- (a) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
- (b) Supervisory, inspection, architectural or engineering activities.
- e. Permits Issued By State Or Political Subdivisions**
- (1) Any state or political subdivision, but only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.
- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:
- (a) "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the state or municipality; or
- (b) "Bodily injury" or "property damage" included within the "products-completed operations hazard".
- f. Any Other Party**
- (1) Any other person or organization who is not an insured under Paragraphs a. through e. above, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:
- (a) In the performance of your ongoing operations;
- (b) In connection with your premises owned by or rented to you; or
- (c) In connection with "your work" and included within the "products-completed operations hazard", but only if
- (i) The written contract or written agreement requires you to provide such coverage to such additional insured; and
- (ii) This Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".
- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:
- "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

**BUSINESS LIABILITY COVERAGE FORM**

(a) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or

(b) Supervisory, inspection, architectural or engineering activities.

The limits of insurance that apply to additional insureds are described in Section D. - Limits Of Insurance.

How this insurance applies when other insurance is available to an additional insured is described in the Other Insurance Condition in Section E. - Liability And Medical Expenses General Conditions.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

#### **D. LIABILITY AND MEDICAL EXPENSES LIMITS OF INSURANCE**

##### **1. The Most We Will Pay**

The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:

- a. Insureds;
- b. Claims made or "suits" brought; or
- c. Persons or organizations making claims or bringing "suits".

##### **2. Aggregate Limits**

The most we will pay for:

- a. Damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard" is the Products-Completed Operations Aggregate Limit shown in the Declarations.
- b. Damages because of all other "bodily injury", "property damage" or "personal and advertising injury", including medical expenses, is the General Aggregate Limit shown in the Declarations.

This General Aggregate Limit applies separately to each of your "locations" owned by or rented to you.

"Location" means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway or right-of-way of a railroad.

This General Aggregate limit does not apply to "property damage" to premises while rented to you or temporarily occupied by you with permission of the owner, arising out of fire, lightning or explosion.

##### **3. Each Occurrence Limit**

Subject to 2.a. or 2.b. above, whichever applies, the most we will pay for the sum of all damages because of all "bodily injury", "property damage" and medical expenses arising out of any one "occurrence" is the Liability and Medical Expenses Limit shown in the Declarations.

The most we will pay for all medical expenses because of "bodily injury" sustained by any one person is the Medical Expenses Limit shown in the Declarations.

##### **4. Personal And Advertising Injury Limit**

Subject to 2.b. above, the most we will pay for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization is the Personal and Advertising Injury Limit shown in the Declarations.

##### **5. Damage To Premises Rented To You Limit**

The Damage To Premises Rented To You Limit is the most we will pay under Business Liability Coverage for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, lightning or explosion, while rented to you or temporarily occupied by you with permission of the owner.

In the case of damage by fire, lightning or explosion, the Damage to Premises Rented To You Limit applies to all damage proximately caused by the same event, whether such damage results from fire, lightning or explosion or any combination of these.

##### **6. How Limits Apply To Additional Insureds**

The most we will pay on behalf of a person or organization who is an additional insured under this Coverage Part is the lesser of:

- a. The limits of insurance specified in a written contract, written agreement or permit issued by a state or political subdivision; or
- b. The Limits of Insurance shown in the Declarations.

Such amount shall be a part of and not in addition to the Limits of Insurance shown in the Declarations and described in this Section.

If more than one limit of insurance under this policy and any endorsements attached thereto applies to any claim or "suit", the most we will pay under this policy and the endorsements is the single highest limit of liability of all coverages applicable to such claim or "suit". However, this paragraph does not apply to the Medical Expenses limit set forth in Paragraph 3, above.

The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

#### E. LIABILITY AND MEDICAL EXPENSES GENERAL CONDITIONS

##### 1. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

##### 2. Duties In The Event Of Occurrence, Offense, Claim Or Suit

###### a. Notice Of Occurrence Or Offense

You or any additional insured must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:

- (1) How, when and where the "occurrence" or offense took place;
- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

###### b. Notice Of Claim

If a claim is made or "suit" is brought against any insured, you or any additional insured must:

- (1) Immediately record the specifics of the claim or "suit" and the date received; and
- (2) Notify us as soon as practicable.

You or any additional insured must see to it that we receive a written notice of the claim or "suit" as soon as practicable.

###### c. Assistance And Cooperation Of The Insured

You and any other involved insured must:

#### BUSINESS LIABILITY COVERAGE FORM

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
- (2) Authorize us to obtain records and other information;
- (3) Cooperate with us in the investigation, settlement of the claim or defense against the "suit"; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization that may be liable to the insured because of injury or damage to which this insurance may also apply.

##### d. Obligations At The Insured's Own Cost

No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

##### e. Additional Insured's Other Insurance

If we cover a claim or "suit" under this Coverage Part that may also be covered by other insurance available to an additional insured, such additional insured must submit such claim or "suit" to the other insurer for defense and indemnity.

However, this provision does not apply to the extent that you have agreed in a written contract, written agreement or permit that this insurance is primary and non-contributory with the additional insured's own insurance.

##### f. Knowledge Of An Occurrence, Offense, Claim Or Suit

Paragraphs a. and b. apply to you or to any additional insured only when such "occurrence", offense, claim or "suit" is known to:

- (1) You or any additional insured that is an individual;
- (2) Any partner, if you or an additional insured is a partnership;
- (3) Any manager, if you or an additional insured is a limited liability company;
- (4) Any "executive officer" or insurance manager, if you or an additional insured is a corporation;
- (5) Any trustee, if you or an additional insured is a trust; or
- (6) Any elected or appointed official, if you or an additional insured is a political subdivision or public entity.

## BUSINESS LIABILITY COVERAGE FORM

This Paragraph f. applies separately to you and any additional insured.

### 3. Financial Responsibility Laws

a. When this policy is certified as proof of financial responsibility for the future under the provisions of any motor vehicle financial responsibility law, the insurance provided by the policy for "bodily injury" liability and "property damage" liability will comply with the provisions of the law to the extent of the coverage and limits of insurance required by that law.

b. With respect to "mobile equipment" to which this insurance applies, we will provide any liability, uninsured motorists, underinsured motorists, no-fault or other coverage required by any motor vehicle law. We will provide the required limits for those coverages.

### 4. Legal Action Against Us

No person or organization has a right under this Coverage Form:

a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or

b. To sue us on this Coverage Form unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this insurance or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

### 5. Separation Of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this policy to the first Named Insured, this insurance applies:

a. As if each Named Insured were the only Named Insured; and

b. Separately to each insured against whom a claim is made or "suit" is brought.

### 6. Representations

#### a. When You Accept This Policy

By accepting this policy, you agree:

(1) The statements in the Declarations are accurate and complete;

(2) Those statements are based upon representations you made to us; and

(3) We have issued this policy in reliance upon your representations.

#### b. Unintentional Failure To Disclose Hazards

If unintentionally you should fail to disclose all hazards relating to the conduct of your business at the inception date of this Coverage Part, we shall not deny any coverage under this Coverage Part because of such failure.

### 7. Other Insurance

If other valid and collectible insurance is available for a loss we cover under this Coverage Part, our obligations are limited as follows:

#### a. Primary Insurance

This insurance is primary except when b. below applies. If other insurance is also primary, we will share with all that other insurance by the method described in c. below.

#### b. Excess Insurance

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis:

##### (1) Your Work

That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";

##### (2) Premises Rented To You

That is fire, lightning or explosion insurance for premises rented to you or temporarily occupied by you with permission of the owner;

##### (3) Tenant Liability

That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner;

##### (4) Aircraft, Auto Or Watercraft

If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of Section A. - Coverages.

##### (5) Property Damage To Borrowed Equipment Or Use Of Elevators

If the loss arises out of "property damage" to borrowed equipment or the use of elevators to the extent not subject to Exclusion k. of Section A. - Coverages.

## BUSINESS LIABILITY COVERAGE FORM

**(6) When You Are Added As An Additional Insured To Other Insurance**

That is other insurance available to you covering liability for damages arising out of the premises or operations, or products and completed operations, for which you have been added as an additional insured by that insurance; or

**(7) When You Add Others As An Additional Insured To This Insurance**

That is other insurance available to an additional insured.

However, the following provisions apply to other insurance available to any person or organization who is an additional insured under this Coverage Part:

**(a) Primary Insurance When Required By Contract**

This insurance is primary if you have agreed in a written contract, written agreement or permit that this insurance be primary. If other insurance is also primary, we will share with all that other insurance by the method described in c. below.

**(b) Primary And Non-Contributory To Other Insurance When Required By Contract**

If you have agreed in a written contract, written agreement or permit that this insurance is primary and non-contributory with the additional insured's own insurance, this insurance is primary and we will not seek contribution from that other insurance.

Paragraphs (a) and (b) do not apply to other insurance to which the additional insured has been added as an additional insured.

When this insurance is excess, we will have no duty under this Coverage Part to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

**c. Method Of Sharing**

If all the other insurance permits contribution by equal shares, we will follow this method also. Under this approach, each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

**8. Transfer Of Rights Of Recovery Against Others To Us****a. Transfer Of Rights Of Recovery**

If the insured has rights to recover all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them. This condition does not apply to Medical Expenses Coverage.

**b. Waiver Of Rights Of Recovery (Waiver Of Subrogation)**

If the insured has waived any rights of recovery against any person or organization for all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, we also waive that right, provided the insured waived their rights of recovery against such person or organization in a contract, agreement or permit that was executed prior to the injury or damage.





P.O. BOX 420807, SAN FRANCISCO, CA 94142-0807

CERTIFICATE OF WORKERS' COMPENSATION INSURANCE

ISSUE DATE: 08-19-2008

GROUP:  
POLICY NUMBER: 1835636-2007  
CERTIFICATE ID: 9  
CERTIFICATE EXPIRES: 11-01-2008  
11-01-2007/11-01-2008

CITY OF GARDEN GROVE  
11222 ACACIA PKWY  
GARDEN GROVE CA 92840-5208

NB

This is to certify that we have issued a valid Workers' Compensation insurance policy in a form approved by the California Insurance Commissioner to the employer named below for the policy period indicated.

This policy is not subject to cancellation by the Fund except upon 10 days advance written notice to the employer.

We will also give you 10 days advance notice should this policy be cancelled prior to its normal expiration.

This certificate of insurance is not an insurance policy and does not amend, extend or alter the coverage afforded by the policy listed herein. Notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate of insurance may be issued or to which it may pertain, the insurance afforded by the policy described herein is subject to all the terms, exclusions, and conditions, of such policy.

*James Neary*  
AUTHORIZED REPRESENTATIVE

*Janet Frank*  
PRESIDENT

EMPLOYER'S LIABILITY LIMIT INCLUDING DEFENSE COSTS: \$1,000,000 PER OCCURRENCE.

ENDORSEMENT #1600 - MASSOUD ABOLHODA PRESIDENT - EXCLUDED.

ENDORSEMENT #1600 - M DREW STREIB VICEPRES - EXCLUDED.

ENDORSEMENT #1600 - BRIAN CHRISMAN VICEPRES - EXCLUDED.

EMPLOYER

PERMITSOFT, INC  
657 ALVARADO RD  
BERKELEY CA 94705

NB

Reviewed and approved as to Insurance language  
and/or requirements.  
9-26-08 *Heidi M. Jay*  
Risk Management

[GJS,CN]