
THE VILLAGE OF TINLEY PARK
Cook County, Illinois
Will County, Illinois

RESOLUTION
NO. 2018-R-040

**A RESOLUTION APPROVING THE AGREEMENT BETWEEN MAINSTAR AND THE
VILLAGE OF TINLEY PARK FOR BUILDING PERMIT AND CODE COMPLIANCE
SOFTWARE**

JACOB C. VANDENBERG, PRESIDENT
KRISTIN A. THIRION, VILLAGE CLERK

MICHAEL J. PANNITTO
BRIAN H. YOUNKER
CYNTHIA A. BERG
WILLIAM P. BRADY
MICHAEL W. GLOTZ
Board of Trustees

RESOLUTION NO. 2018-R-040

A RESOLUTION APPROVING THE AGREEMENT BETWEEN MAINSTAR AND THE VILLAGE OF TINLEY PARK FOR BUILDING PERMIT AND CODE COMPLIANCE SOFTWARE

WHEREAS, the Village of Tinley Park, Cook and Will Counties, Illinois, is a Home Rule Unit pursuant to the Illinois Constitution of 1970; and

WHEREAS, the Corporate Authorities of the Village of Tinley Park, Cook and Will Counties, Illinois, have considered entering into an Agreement with Mainstar a true and correct copy of such Agreement being attached hereto and made a part hereof as **EXHIBIT 1**; and

WHEREAS, the Corporate Authorities of the Village of Tinley Park, Cook and Will Counties, Illinois, have determined that it is in the best interests of said Village of Tinley Park that said Agreement be entered into by the Village of Tinley Park;

NOW, THEREFORE, Be It Resolved by the President and Board of Trustees of the Village of Tinley Park, Cook and Will Counties, Illinois, as follows:

Section 1: The Preambles hereto are hereby made a part of, and operative provisions of, this Resolution as fully as if completely repeated at length herein.

Section 2: That this President and Board of Trustees of the Village of Tinley Park hereby find that it is in the best interests of the Village of Tinley Park and its residents that the aforesaid "Agreement" be entered into and executed by said Village of Tinley Park, with said Agreement to be substantially in the form attached hereto and made a part hereof as **EXHIBIT 1**.

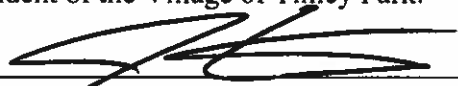
Section 3: That the President and Clerk of the Village of Tinley Park, Cook and Will Counties, Illinois are hereby authorized to execute for and on behalf of said Village of Tinley Park the aforesaid Agreement.

Section 4: That this Resolution shall take effect from and after its adoption and approval.

ADOPTED this 19th day of June, 2019, by the Corporate Authorities of the Village of Tinley Park on a roll call vote as follows:

AYES: Younker, Pannitto, Berg, Brady, Glotz
NAYS: None
ABSENT: None
ABSTAIN: Curran

APPROVED this 19th day of June, 2018, by the President of the Village of Tinley Park.



Village President

ATTEST:


Village Clerk

STATE OF ILLINOIS)
COUNTY OF COOK) SS
COUNTY OF WILL)

CERTIFICATE

I, KRISTIN A. THIRION, Village Clerk of the Village of Tinley Park, Counties of Cook and Will and State of Illinois, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Resolution No. 2018-R-040, “**AGREEMENT BETWEEN MAINSTAR AND THE VILLAGE OF TINLEY PARK FOR BUILDING PERMIT AND CODE COMPLIANCE SOFTWARE,**” which was adopted by the President and Board of Trustees of the Village of Tinley Park on June 19, 2018.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the Village of Tinley Park this _____ day of _____ 2018.



KRISTIN A. THIRION, VILLAGE CLERK

EXHIBIT 1

**AGREEMENT BETWEEN MAINSTAR AND THE
VILLAGE OF TINLEY PARK FOR BUILDING
PERMIT AND CODE COMPLIANCE SOFTWARE**

LICENSE AGREEMENT

1.	<p><u>Parties</u></p> <p>MAINTSTAR MaintStar, Inc. 28 Hammond, Unit D Irvine, California 92618 Attention: Contracts T: 949.458.7560 x206 F: 949.458.7626 e-Mail: james@maintstar.com</p>	<p>CUSTOMER Village of Tinley Park 16250 South Oak Park Avenue Tinley Park, IL 60477 Attention: Paula Wallrich T: 708-444-5100 F: 708-444-5099 Email: pwallrich@tinleypark.org</p>
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This License Agreement ("LA") is intended for the exclusive benefit of the Parties; nothing herein will be construed to create any benefits, rights, or responsibilities in any other parties. (This LA in conjunction with the Hosting Agreement ("HA") and Maintenance Agreement ("MA") shall be collectively referred to as ("Agreement Set")).

2. Term and Termination

- 2.1 Term Provided that Customer signs and returns this Agreement Set to MaintStar no later than, 201_ , this Agreement Set is effective as of the date of Customer's signature ("Effective Date") and will continue until terminated as provided herein.
- 2.2 Termination Either party may terminate if the other party materially breaches this Agreement Set and, after receiving a written notice describing the circumstances of the default, fails to correct the breach within thirty (30) calendar days. Upon any termination or expiration of this Agreement Set, all rights granted to Customer are cancelled and revert to MaintStar.

3. Intellectual Property License

- 3.1 License The software products ("Software") listed in Exhibit A are protected under the laws of the United States and the individual states and by international treaty provisions. MaintStar retains full ownership in the Software and grants to Customer a limited, nonexclusive, nontransferable license to use the Software, subject to the following terms and conditions:
- 3.1.1 The Software is provided for use only by Customer employees or third party users designated by the Customer.
- 3.1.2 The Software will be delivered or made available to Customer for electronic download from MaintStar's File Transfer Protocol ("FTP") site.
- 3.1.3 The Software is licensed for unlimited Customer users ("Enterprise Wide"), with the exception of the Plan Review Module ("EPlanSoft") which is licensed for twenty (20) Customer users, of which ten (10) Customer users may operate it concurrently. The Software is deemed to be in use when it is loaded into memory in a computer, regardless of whether a user is actively working with the Software.
- 3.1.4 Customer may make backup copies of the Software only to protect against destruction of the Software. Customer may copy MaintStar's documentation only for internal use by Customer's employees.
- 3.1.5 Customer may not make any form of derivative work from the Software, although Customer is permitted to develop additional or alternative functionality for the Software using tools and/or techniques licensed to Customer by MaintStar.

- 3.1.6 Customer may not obscure, alter, or remove any confidentiality or proprietary rights notices.
- 3.1.7 Customer is liable to MaintStar for any losses incurred as the result of unauthorized reproduction or distribution of the Software which occur while the Software is in Customer's possession or control.
- 3.1.8 Customer may use the Software only to process transactions relating to properties within both its own geographical and political boundaries and may not sell, rent, assign, sublicense, lend, or share any of its rights under this LA.
- 3.1.9 Customer is entitled to receive the Software compiled (object) code and is licensed to use any data code produced through implementation and/or normal operation of the Software; Customer is not entitled to receive source code for the Software except pursuant to an Intellectual Property Escrow Agreement, which may be executed separately by the Parties. Customer may not decompile or reverse-engineer the Software.
- 3.1.10 All rights not expressly granted to Customer are retained by MaintStar.

3.2 License Warranties

- 3.2.1 MaintStar warrants that it has full power and authority to grant this license and that, as of the effective date of this LA, the Software does not infringe on any existing intellectual property rights of any third party. If a third party claims that the Software does infringe, MaintStar may, at its sole option, secure for Customer the right to continue using the Software or modify the Software so that it does not infringe.
- 3.2.2 MaintStar has no obligation for any claim based upon a modified version of the Software or the combination or operation of the Software with any product, data, or apparatus not provided by MaintStar. MaintStar provides no warranty whatsoever for any third-party hardware or software products.
- 3.2.3 Except as expressly set forth herein, MaintStar disclaims any and all express and implied warranties, including but not necessarily limited to warranties of merchantability and fitness for a particular purpose.
- 3.2.4 MaintStar warrants, third party software included as part of this agreement (i.e., EPlanSoft) to be supported with the same warranty as MaintStar. In the event EPlanSoft is no longer available or supported, MaintStar will replace with equivalent performing applications (such as BluBeam Review).

3.3 Compensation

- 3.3.1 License Fees In exchange for the Software described hereinabove, Customer will pay to MaintStar the amounts indicated in Exhibit A.
- 3.3.2 Payment Terms Amounts are quoted in United States dollars and do not include applicable taxes, if any. Customer will be responsible for payment of all federal, state or provincial, and local taxes and duties, except those based on MaintStar's income. Customer will be invoiced for all amounts upon occurrence of the billing events described in Exhibit A. The payment terms of all invoices are net forty-five (45) calendar days from the dates of the invoices. MaintStar may, at its sole discretion, suspend its obligations hereunder without penalty until payments for all past-due billings have been paid in full by Customer.

4. Confidentiality

4.1 Definitions "Disclosing Party" and "Recipient" refer respectively to the party which discloses information and the party to which information is disclosed in a given exchange. Either MaintStar or Customer may be deemed Disclosing Party or Recipient depending on the circumstances of a particular communication or transfer of information. "Confidential Information" means all disclosed information relating in whole or in part to non-public data, proprietary data compilations, computer source codes, compiled or object codes, scripted programming statements, byte codes, or data codes, entity-relation or workflow diagrams, financial records or information, client records or information, organizational or personnel information, business plans, or works-in-progress, even where such works, when completed, would not necessarily comprise Confidential Information. The foregoing listing is not intended by the Parties to be comprehensive, and any information which Disclosing Party marks or otherwise designates as "Confidential" or "Proprietary" will be deemed and treated as Confidential Information. Information which qualifies as "Confidential Information" may be presented to Recipient in oral, written, graphic, and/or machine-readable formats. Regardless of presentation format, such information will be deemed and treated as Confidential Information. Notwithstanding, the following specific classes of information are not "Confidential Information" within the meaning of this Section:

- a) information which is in Recipient's possession prior to disclosure by Disclosing Party;
- b) information which is available to Recipient from a third party without violation of this LA or Disclosing Party's intellectual property rights;
- c) information disclosed pursuant to Subsection 4.4 below;
- d) information which is in the public domain at the time of disclosure by Disclosing Party, or which enters the public domain from a source other than Recipient after disclosure by Disclosing Party;
- e) information which is subpoenaed by governmental or judicial authority; and
- f) information subject to disclosure pursuant to a state's public records laws.

4.2 Confidentiality Terms The obligations described in this Section commence on the Effective Date and will continue until two (2) years following any termination or expiration of this LA ("Confidentiality Term").

4.3 Confidentiality Obligations During the Confidentiality Term, Recipient will protect the confidentiality of Confidential Information using the same degree of care that it uses to protect its own information of similar importance, but will in any case use no less than a reasonable degree of care to protect Confidential Information. Recipient will not directly or indirectly disclose Confidential Information or any part thereof to any third party without Disclosing Party's advance express written authorization to do so. Recipient may disclose Confidential Information only to its employees or agents under its control and direction in the normal course of its business and only on a need-to-know basis. In responding to a request for Confidential Information, Recipient will cooperate with Disclosing Party, in a timely fashion and in a manner not inconsistent with applicable laws, to protect the Confidential Information to the fullest extent possible.

4.4 Publicity During the term of this LA, including the term of any amendment hereto, MaintStar may publicly disclose its ongoing business relationship with Customer. Such disclosures may indicate Customer's identity and the MaintStar product(s) and services provided or contracted to be provided to Customer.

These disclosures may include press releases or other communications to media, display on MaintStar web sites, or use in other marketing activities, but will not include non-public information or indicate Customer's express endorsement of MaintStar's products or services without Customer's prior written authorization.

5. Other Terms and Conditions

- 5.1 **Dispute Resolution** This LA is governed by the laws of the State of California and the State of Illinois. Any controversy or claim arising out of or relating to this LA, or the breach thereof, will be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, including the Emergency Interim Relief Procedures, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The place of arbitration will be in Cook County, Illinois. Either party may apply to the arbitrator for injunctive relief until the arbitration award is rendered or the controversy is otherwise resolved. Either party also may, without waiving any remedy under this LA, seek from any court having jurisdiction any interim or provisional relief that is necessary to protect the rights or property of that party, pending the arbitrator's determination of the merits of the controversy. Each party will initially bear its own expenses and an equal share of the costs of the arbitration, but the prevailing party may be awarded its expenses, reasonable attorneys' fees, and costs. The failure of either party to object to a breach of this LA will not prevent that party from thereafter objecting to that breach or any other breach of this LA.
- 5.2 **Removal and Destruction of Software** Within ten (10) business days following termination of this LA by either Party, Customer will remove all copies of the Software from those computer systems which it owns or controls and will destroy all media which contain copies of the Software or portions thereof. Customer will certify said removal and destruction to MaintStar within fifteen (15) business days following termination of this LA.
- 5.3 **Assignment** MaintStar may assign its rights and obligations hereunder for purposes of financing or pursuant to corporate transactions involving the sale of all or substantially all of its stock or assets. MaintStar may subcontract with qualified third parties to provide portions of the Maintenance Services described herein above.
- 5.4 **Survival** The following provisions will survive the termination or expiration of this LA: Section 3.3 and all subsections thereof, as to Customer's obligation to pay any fees accrued or due at the time of termination or expiration; Section 4 and all subsections thereof; and Section 5, and all subsections thereof.
- 5.5 **Alternate Terms Disclaimed** The parties expressly disclaim any alternate terms and conditions accompanying drafts and/or purchase orders issued by Customer.
- 5.6 **Severability and Amendment** If any particular provision of this LA is determined to be invalid or unenforceable, that determination will not affect the other provisions of this LA, which will be construed in all respects as if the invalid or unenforceable provision were omitted. No extension, modification, or amendment of this LA will be effective unless it is described in writing and signed by the Parties.

AGREED AND ACCEPTED:

MaintStar ("MaintStar")

By: 

Printed: Dimitry Poretsky

Date: 06/29/18

Customer ("The Customer")

By: 

Printed: Jacob C. Vandenberg

Date: June 19, 2018

EXHIBIT A**Licensing Costs**

- Permitting (enterprise unlimited users) \$ 54,500.00
- Inspections (enterprise unlimited users)
- Code Enforcement (enterprise unlimited users)
- Business Licenses (enterprise unlimited users)
- Plan Review - EPlanSoft (20 Users - 10 Concurrent Users)

Implementation Services and Associated Connectivity - Including MaintStar and EPlanSoft

- MaintStar integration to ESRI GIS Integration through web services. (GIS will provide ArcServer 10.5 services including - map services, feature services, and cached services for display and viewing in MaintStar) \$ 25,000.00
- MaintStar Integration to Cartigraph (Inspection WO in Cartegraph and Return of WO complete status from Maintstar)
- MS Exchange Integration to MaintStar (Calendar, Email)
- MaintStar Integration to Tyler Cashiering and Back to MaintStar. (Note: Tyler Cashiering to update Eden Financials).
- MaintStar Integration to Firehouse RMS (Creating Inspection or Activity Record in Firehouse and Return of Complete Inspection status in MaintStar).
- Select Customer Credit Card Processing through MaintStar - (Tinley Park option to deploy a Public Web Portal in future to include Shopping Cart payments).
- Data Conversion and input of 60,000 or more legacy and exiting Transactions (permits, inspections, records) \$ 20,000.00
- Implementation \$ 10,000.00
- Forms, Reports, Screens, Templates, Less Master APO (price adjusted)
- Project Management \$ 0.00 (INCLUDED)
- On-Site Training (5 Days scheduled by Tinley Park) \$ 15,000.00
- Web/Remote Training (weekly telemeeting) \$ 0.00 (INCLUDED)
- On-Site Training Cutover Support Assistance (3 Days) \$ 0.00 (INCLUDED)

Total First Year Costs

- Not To Exceed \$ 124,500.00

HOSTING AGREEMENT

1. <u>Parties</u>	MAINTSTAR MaintStar, Inc. 28 Hammond, Unit D Irvine, California 92618 Attention: Contracts T: 949.458.7560 x206 F: 949.458.7626 e-Mail: james@maintstar.com	CUSTOMER Village of Tinley Park 16250 South Oak Park Avenue Tinley Park, IL 60477 Attention: Paula Wallrich T: 708-444-5100 F: 708-444-5099 Email: pwallrich@tinleypark.orgg
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This Hosting Agreement ("HA") is intended for the exclusive benefit of the Parties; nothing herein will be construed to create any benefits, rights, or responsibilities in any other parties. (This HA in conjunction with the Licensing Agreement ("LA") and Maintenance Agreement ("MA") shall be collectively referred to as ("Agreement Set")).

2. Term and Termination

2.1 Term and Termination are defined in Section 2 of the Licensing Agreement for this entire Agreement Set.

3. Hosting Services

3.1 Scope of Hosting Services MaintStar will provide the hosting services described in this Section and in Exhibit A for the following software products ("Hosted Applications"):

MaintStar LMS Enterprise Software - 2 Hosted Environments - Designated Sandbox and Production - Synchronized regularly as Directed by Tinley Park

3.2 System Administration and Security The Hosted Applications will be hosted by MaintStar on MaintStar-owned equipment at a physically-secure commercial third-party hosting facility. MaintStar will perform system administration duties as required to maintain the service levels described below and to facilitate timely restoration of Customer's data and operations, if necessary, following unanticipated interruptions of the Hosted Applications. MaintStar will implement suitable network security measures to minimize the likelihood of unanticipated interruptions of the Hosted Applications.

3.3 Infrastructure Availability MaintStar will endeavor to provide Customer with no less than twenty-four (24) hours' notice prior to Hosted Applications unavailability due to planned maintenance (other than during MaintStar's standard maintenance window between the hours of 9:00 PM [21:00] Thursday and 1:00 AM [1:00] Friday Pacific time); MaintStar will endeavor to provide as much notice as is practicable under the circumstances for updates and fixes which much be applied on a more urgent basis. MaintStar will provide five (5) business days' notice prior to any planned network, server hardware, operating environment, or database modifications of a material nature. Excluding the foregoing events, MaintStar warrants that the Hosted Applications will be generally-available no less than ninety-nine point nine percent (99.9%) of each calendar month. For each calendar month during which the availability of the Hosted Applications does not achieve the established standard, MaintStar will provide a credit to Customer's account as liquidated damages calculated pursuant to Subsection 3.5 below, provided that the substandard availability is identified by Customer in writing or by e-mail to MaintStar and can be objectively verified. Credits accumulated pursuant to this Section may be applied to additional MaintStar products and/or services, but will not be refunded to Customer.

- 3.4 **Warranty** MaintStar will commence and complete the obligations described in this HA in a good and workmanlike manner, consistent with the practices and standards of care generally-accepted within and expected of MaintStar's industry, to ensure that the operation and availability of the Hosted Applications does not materially differ from documented specifications. MaintStar may make repeated efforts within a reasonable time period to resolve operational issues. When an operational issue cannot be resolved, Customer's exclusive remedy will be damages in an amount equal to the total of hosting fees paid to MaintStar for the defective or non-conforming software products amongst the Hosted Applications during the twelve (12) calendar months immediately preceding the occurrence of the unresolved operational issue.
- 3.5 **System Availability and Performance** The performance requirements for the hosted system, excluding planned maintenance downtime, are set forth below. Uptime is calculated on a calendar month basis as $U=O/(M-P)*100$, where U is Uptime as used in the table below, O is the amount of operational uptime for the hosted system during a given calendar month, M is the number of minutes in said calendar month, and P is the number of minutes of planned downtime during said calendar month.

Uptime	Credit
Greater than or equal to 99.9%	None
Less than 99.9% but greater than or equal to	15% of pro-rated monthly hosting
Less than 99.0% but greater than or equal to	35% of pro-rated monthly hosting
Less than 95.0%	100% of pro-rated monthly hosting

4. Customer Property

Customer warrants that it exclusively owns its data and that it has both the right and the authority to provide such data to MaintStar. Customer retains full ownership of its data and grants to MaintStar a limited, nonexclusive, nontransferable license to use said data only to perform MaintStar's obligations in accordance with the terms and conditions of this HA. Throughout the term of this HA, upon the request of Customer, MaintStar will provide Customer with:

- (i) a copy of its data in an SQL database dump file, not more than once per calendar quarter,
- (ii) an LMS (land management data) property conversion upload, not more than twice per annual term, and
- (iii) a Crystal Report placement, not more than ten (10) times per annual term.

Within thirty (30) calendar days following termination or expiration of this HA, Customer may request that MaintStar provide a complete copy of Customer's data, as such may be updated or modified by Customer's use of the Hosted Applications, to Customer in a machine-readable format. MaintStar will comply in a timely manner with such request, provided that Customer a) pays all costs of and associated with such copying, as calculated at MaintStar's then-current time-and- materials rates; and b) pays all unpaid amounts due to MaintStar. If Customer elects to transition to another hosting option, including self-hosting or hosting by third parties, MaintStar will assist Customer during such transition to ensure uninterrupted access to Customer's data and the Hosted Applications, provided that Customer pays all costs of and associated with such services, as calculated at then current hosting and/or time-and-materials rates, as applicable.

5. Compensation

- 5.1 **Hosting Fee** In exchange for the Hosting Services described herein above, Customer will pay to MaintStar a hosting fee listed in Exhibit A. Said hosting fee is a fixed-price deliverable for which full payment is due upon signing.

6. Confidentiality

6.1 Definitions "Disclosing Party" and "Recipient" refer respectively to the party which discloses information and the party to which information is disclosed in a given exchange. Either MaintStar or Customer may be deemed Disclosing Party or Recipient depending on the circumstances of a particular communication or transfer of information. "Confidential Information" means all disclosed information relating in whole or in part to non-public data, proprietary data compilations, computer source codes, compiled or object codes, scripted programming statements, byte codes, or data codes, entity-relation or workflow diagrams, financial records or information, client records or information, organizational or personnel information, business plans, or works-in-progress, even where such works, when completed, would not necessarily comprise Confidential Information. The foregoing listing is not intended by the Parties to be comprehensive, and any information which Disclosing Party marks or otherwise designates as "Confidential" or "Proprietary" will be deemed and treated as Confidential Information. Information which qualifies as "Confidential Information" may be presented to Recipient in oral, written, graphic, and/or machine-readable formats. Regardless of presentation format, such information will be deemed and treated as Confidential Information. Notwithstanding, the following specific classes of information are not "Confidential Information" within the meaning of this Section:

- a) information which is in Recipient's possession prior to disclosure by Disclosing Party;
- b) information which is available to Recipient from a third party without violation of this HA or Disclosing Party's intellectual property rights;
- c) information disclosed pursuant to Subsection 6.4 below;
- d) information which is in the public domain at the time of disclosure by Disclosing Party, or which enters the public domain from a source other than Recipient after disclosure by Disclosing Party;
- e) information which is subpoenaed by governmental or judicial authority; and
- f) information subject to disclosure pursuant to a state's public records laws.

6.2 Confidentiality Terms The obligations described in this Section commence on the Effective Date and will continue until two (2) years following any termination or expiration of this HA ("Confidentiality Term").

6.3 Confidentiality Obligations During the Confidentiality Term, Recipient will protect the confidentiality of Confidential Information using the same degree of care that it uses to protect its own information of similar importance, but will in any case use no less than a reasonable degree of care to protect Confidential Information. Recipient will not directly or indirectly disclose Confidential Information or any part thereof to any third party without Disclosing Party's advance express written authorization to do so. Recipient may disclose Confidential Information only to its employees or agents under its control and direction in the normal course of its business and only on a need-to-know basis. In responding to a request for Confidential Information, Recipient will cooperate with Disclosing Party, in a timely fashion and in a manner not inconsistent with applicable laws, to protect the Confidential Information to the fullest extent possible.

6.4 Confidentiality Obligations During the term of this HA, including the term of any amendment hereto, MaintStar may publicly disclose its ongoing business relationship with Customer. Such disclosures may indicate Customer's identity and the MaintStar product(s) and services provided or contracted to be provided to Customer. These disclosures may include press releases or other communications to media, display on MaintStar web sites, or use in other marketing activities, but will not include non-public information or indicate Customer's express endorsement of MaintStar's products or services without Customer's prior written authorization.

7. Other Terms and Conditions

- 7.1 Limitation of Liability MaintStar provides no warranty whatsoever for any third-party hardware or software products. Third-party applications which utilize or rely upon the Application Services may be adversely affected by remedial or other actions performed pursuant to this HA; MaintStar bears no liability for and has no obligation to remedy such effects. Except as set forth herein, MaintStar provides all Hosting Services "as is" without express or implied warranty of any kind regarding the character, function, capabilities, or appropriateness of such services or deliverables. To the extent not offset by its insurance coverage and to the maximum extent permitted by applicable laws, in no event will MaintStar's cumulative liability for any general, incidental, special, compensatory, or punitive damages whatsoever suffered by Customer or any other person or entity exceed the fees paid to MaintStar by Customer during the twelve (12) calendar months immediately preceding the circumstances which give rise to such claim(s) of liability, even if MaintStar or its agents have been advised of the possibility of such damages.
- 7.2 Force Majeure MaintStar provides no warranty whatsoever for any third-party hardware or software products. Third-party applications which utilize or rely upon the Application Services may be adversely affected by remedial or other actions performed pursuant to this HA; MaintStar bears no liability for and has no obligation to remedy such effects. Except as set forth herein, MaintStar provides all Hosting Services "as is" without express or implied warranty of any kind regarding the character, function, capabilities, or appropriateness of such services or deliverables. To the extent not offset by its insurance coverage and to the maximum extent permitted by applicable laws, in no event will MaintStar's cumulative liability for any general, incidental, special, compensatory, or punitive damages whatsoever suffered by Customer or any other person or entity exceed the fees paid to MaintStar by Customer during the twelve (12) calendar months immediately preceding the circumstances which give rise to such claim(s) of liability, even if MaintStar or its agents have been advised of the possibility of such damages.
- 7.3 Dispute Resolution This HA is governed by the laws of the State of California and the State of Illinois. Any controversy or claim arising out of or relating to this HA, or the breach thereof, will be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, including the Emergency Interim Relief Procedures, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The place of arbitration will be in Cook County, Illinois. Either party may apply to the arbitrator for injunctive relief until the arbitration award is rendered or the controversy is otherwise resolved. Either party also may, without waiving any remedy under this HA, seek from any court having jurisdiction any interim or provisional relief that is necessary to protect the rights or property of that party, pending the arbitrator's determination of the merits of the controversy. Each party will initially bear its own expenses and an equal share of the costs of the arbitration, but the prevailing party may be awarded its expenses, reasonable attorneys' fees, and costs. The failure of either party to object to a breach of this HA will not prevent that party from thereafter objecting to that breach or any other breach of this HA.
- 7.4 Assignment MaintStar may assign its rights and obligations hereunder for purposes of financing or pursuant to corporate transactions involving the sale of all or substantially all of its stock or assets. MaintStar may subcontract with qualified third parties to provide portions of the Maintenance Services described herein above.
- 7.5 Survival The following provisions will survive the termination or expiration of this HA: Section 3.4, as to limitation of remedy; Section 5 and all subsections thereof, as to Customer's obligation to pay any fees accrued or due at the time of termination or expiration; Section 6 and all subsections thereof with the exception of Subsection 6.4; and Section 7 and all subsections thereof with the exception of Subsection 7.2.
- 7.6 Alternate Terms Disclaimed The parties expressly disclaim any alternate terms and conditions accompanying drafts and/or purchase orders issued by Customer.
- 7.7 Severability and Amendment If any particular provision of this HA is determined to be invalid or unenforceable, that determination will not affect the other provisions of this HA, which will be construed in all respects as if the invalid or unenforceable provision were omitted. No extension, modification, or amendment of this HA will be effective unless it is described in writing and signed by the Parties.

AGREED AND ACCEPTED:

MaintStar ("MaintStar")

By: 

Printed: Dimitry Poretsky

Date: 06/29/18

Customer ("The Customer")

By: 

Printed: Jacob C. Vandenberg

Date: June 19, 2018

EXHIBIT A**Hosting Costs - Including All Software MaintStar and Third Party (ePlanSoft)**

• First Year of Ownership, commencing from the first day of Agency (Village of Tinley Park) - Customer Operation	\$ 0.00
• Second Year	\$ 35,000.00
• Third Year	\$ 37,000.00
• Fourth Year	\$ 39,000.00
• Fifth Year	\$ 41,000.00

MAINTENANCE AGREEMENT

1. <u>Parties</u>	MAINTSTAR MaintStar, Inc. 28 Hammond, Unit D Irvine, California 92618 Attention: Contracts T: 949.458.7560 x206 F: 949.458.7626 e-Mail: james@maintstar.com	CUSTOMER Village of Tinley Park 16250 South Oak Park Avenue Tinley Park, IL 60477 Attention: Paula Wallrich T: 708-544-5100 F: 708-444-5099 Email: pwallrich@tinleypark.org
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This Maintenance Agreement ("MA") is intended for the exclusive benefit of the Parties; nothing herein will be construed to create any benefits, rights, or responsibilities in any other parties. (This HA in conjunction with the Licensing Agreement ("LA") and Maintenance Agreement ("MA") shall be collectively referred to as ("Agreement Set").

2. Term and Termination

2.1 Term and Termination are defined in Section 2 of the Licensing Agreement for this entire Agreement Set.

3. Scope of Maintenance

3.1 Maintenance Services

3.1.1 **Services Provided** MaintStar will provide as part of the ongoing annual support: (1) Full System Support including version upgrades, and (2) customer interface updates/upgrades (including, GIS, Email/MS Exchange, Tyler Eden, RMS FireHouse, Cartigraph. This annual support will additionally include (3) any updates to Forms, Reports, Customer Logos/Graphics as well as User Interface Screens.

3.1.2 **Telephone Support** MaintStar will provide Customer with a telephone number to contact MaintStar Customer Support, MaintStar's live technical support facility, which is available from 4:00 a.m. until 6:00 p.m. Pacific time Monday through Friday, excluding MaintStar's observed holidays (listed below):

1. New Years Day
2. Memorial Day
3. Independence Day
4. Labor Day
5. Thanksgiving
6. Day after Thanksgiving
7. Christmas
8. Misc. Floating Holiday

- 3.1.3 Email Support MaintStar will provide Customer with one or more electronic mail addresses to which Customer may submit routine or non-critical support requests, which MaintStar will address during its regular business hours.
- 3.1.4 Online Support MaintStar will provide Customer with access to archived software updates and other technical information in MaintStar's online support databases, which are continuously available.
- 3.1.5 Remote Support When required to properly resolve a maintenance request, MaintStar will provide remote assistance to Customer via a web conferencing environment or another mutually-acceptable remote communications method.
- 3.1.6 Onsite Support If Customer does not wish for MaintStar to resolve its maintenance requests remotely, MaintStar will provide on-site assistance to Customer at MaintStar's then-current time-and- materials rates. In addition to these charges, Customer will compensate MaintStar for associated airfare, lodging, rental transportation, meals, and other incidental expenses as such expenses accrue.
- 3.1.7 Software Updates Software Updates MaintStar will provide revisions of and enhancements to maintained software products to Customer as such updates are generally-released by MaintStar. Software updates will be delivered or made available to Customer for electronic download from MaintStar's File Transfer Protocol ("FTP") site.
- 3.2 Maintenance Limitations
- 3.2.1 Limitations Generally The following are not covered by this MA, but may be separately available at rates and on terms which may vary from those described herein:
- a) Services required due to misuse of the MaintStar-maintained software products;
 - b) Services required due to software corrections, customizations, or modifications not developed or authorized by MaintStar;
 - c) Services required by Customer to be performed by MaintStar outside of MaintStar's usual working hours;
 - d) Services required due to external factors including, but not necessarily limited to, Customer's use of software or hardware not authorized by MaintStar;
 - e) Services required due to the operation of interfaces between the MaintStar-maintained software products and other software products or systems, even where such interfaces were provided or implemented by MaintStar;
 - f) Services required to resolve or work-around conditions which cannot be reproduced in MaintStar's support environment;
 - g) Services which relate to tasks other than maintenance of Customer's existing implementation and configuration of the MaintStar-maintained software products including, but not necessarily limited to, enhancing or adapting such products for specific operating environments;
 - h) Services requested by Customer to implement software updates provided by MaintStar pursuant to this MA; and
 - i) New technology or applications introduced by MaintStar which are not originally specified in the original RFP specifications.
- 3.2.2 Legacy Releases MaintStar will provide maintenance support for the current release of each of its maintained software applications and for the release immediately preceding such current release. All other releases are deemed to be "Legacy Releases." MaintStar will respond to maintenance requests concerning Legacy Releases only using currently-available information. Services requiring additional research, engineering-level support, or coding or programming by MaintStar will not be provided pursuant to this MA, but may be separately available at rates and on terms which may vary from those described herein.

3.3 Warranty

MaintStar will commence and complete the maintenance obligations described in this MA in a good and workmanlike manner, consistent with the practices and standards of care generally-accepted within and expected of MaintStar's industry, to ensure that the operation of the maintained software products does not materially differ from documented specifications. MaintStar may make repeated efforts within a reasonable time period to resolve maintenance requests. When a maintenance request cannot be resolved, Customer's exclusive remedy will be damages in an amount equal to the total of maintenance fees paid to MaintStar for the defective or non-conforming software products for the twelve (12) calendar months immediately preceding Customer's maintenance request.

4. Confidentiality

4.1 Definitions "Disclosing Party" and "Recipient" refer respectively to the party which discloses information and the party to which information is disclosed in a given exchange. Either MaintStar or Customer may be deemed Disclosing Party or Recipient depending on the circumstances of a particular communication or transfer of information. "Confidential Information" means all disclosed information relating in whole or in part to non-public data, proprietary data compilations, computer source codes, compiled or object codes, scripted programming statements, byte codes, or data codes, entity-relation or workflow diagrams, financial records or information, client records or information, organizational or personnel information, business plans, or works-in-progress, even where such works, when completed, would not necessarily comprise Confidential Information. The foregoing listing is not intended by the Parties to be comprehensive, and any information which Disclosing Party marks or otherwise designates as "Confidential" or "Proprietary" will be deemed and treated as Confidential Information. Information which qualifies as "Confidential Information" may be presented to Recipient in oral, written, graphic, and/or machine-readable formats. Regardless of presentation format, such information will be deemed and treated as Confidential Information. Notwithstanding, the following specific classes of information are not "Confidential Information" within the meaning of this Section:

- a) information which is in Recipient's possession prior to disclosure by Disclosing Party;
- b) information which is available to Recipient from a third party without violation of this MA or Disclosing Party's intellectual property rights;
- c) information disclosed pursuant to Subsection 4.4 below;
- d) information which is in the public domain at the time of disclosure by Disclosing Party, or which enters the public domain from a source other than Recipient after disclosure by Disclosing Party;
- e) information which is subpoenaed by governmental or judicial authority; and
- f) information subject to disclosure pursuant to a state's public records laws.

4.2 Confidentiality Terms The obligations described in this Section commence on the Effective Date and will continue until two (2) years following any termination or expiration of this MA ("Confidentiality Term").

4.3 Confidentiality Obligations During the Confidentiality Term, Recipient will protect the confidentiality of Confidential Information using the same degree of care that it uses to protect its own information of similar importance, but will in any case use no less than a reasonable degree of care to protect Confidential Information. Recipient will not directly or indirectly disclose Confidential Information or any part thereof to any third party without Disclosing Party's advance express written authorization to do so. Recipient may disclose Confidential Information only to its employees or agents under its control and direction in the normal course of its business and only on a need-to-know basis. In responding to a request for Confidential Information, Recipient will cooperate with Disclosing Party, in a timely fashion and in a manner not inconsistent with applicable laws, to protect the Confidential Information to the fullest extent possible.

4.4 Publicity During the term of this MA, including the term of any amendment hereto, MaintStar may publicly disclose its ongoing business relationship with Customer. Such disclosures may indicate Customer's identity and the MaintStar product(s) and services provided or contracted to be provided to Customer. These disclosures may include press releases or other communications to media, display on MaintStar web sites, or use in other marketing activities, but will not include non-public information or indicate Customer's express endorsement of MaintStar's products or services without Customer's prior written authorization.

5. Other Terms and Conditions

- 5.1 Customer Obligations As required, Customer will provide MaintStar with appropriate access to Customer's facilities, data systems, and other resources. If security restrictions impair such access, Customer acknowledges that some maintenance services hereunder may not be provided to Customer. It is Customer's sole responsibility to maintain current backup copies of its data and of its implementation of MaintStar's software products. If Customer's failure to create proper backups substantially increases the difficulties of any remedial actions by MaintStar hereunder, MaintStar reserves the right to charge Customer for any extra work reasonably-attributable to such increased difficulty, as calculated at MaintStar's then-current time-and-materials rates.
- 5.2 Proprietary Rights The remedial methods, software updates, and product information provided to Customer pursuant to this MA are protected under the laws of the United States and the individual states and by international treaty provisions. MaintStar retains full ownership in such items and grants to Customer a limited, nonexclusive, nontransferable license to use the items, subject to the terms and conditions of this MA and other agreements between MaintStar and Customer.
- 5.3 Limitation of Liability MaintStar provides no warranty whatsoever for any third-party hardware or software products. Third-party applications which utilize or rely upon the application services may be adversely affected by remedial or other actions performed pursuant to this MA; MaintStar bears no liability for and has no obligation to remedy such effects. Except as set forth herein, MaintStar provides all Maintenance Services "as is" without express or implied warranty of any kind regarding the character, function, capabilities, or appropriateness of such services or deliverables. To the extent not offset by its insurance coverage and to the maximum extent permitted by applicable laws, in no event will MaintStar's cumulative liability for any general, incidental, special, compensatory, or punitive damages whatsoever suffered by Customer or any other person or entity exceed the fees paid to MaintStar by Customer during the twelve (12) calendar months immediately preceding the circumstances which give rise to such claim(s) of liability, even if MaintStar or its agents have been advised of the possibility of such damages.
- 5.4 Force Majeure If either party is delayed in its performance of any obligation under this MA due to causes or effects beyond its control, that party will give timely notice to the other party and will act in good faith to resume performance as soon as practicable.
- 5.5 Dispute Resolution This MA is governed by the laws of the State of California and the State of Illinois. Any controversy or claim arising out of or relating to this MA, or the breach thereof, will be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, including the Emergency Interim Relief Procedures, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The place of arbitration will be in Cook County, Illinois. Either party may apply to the arbitrator for injunctive relief until the arbitration award is rendered or the controversy is otherwise resolved. Either party also may, without waiving any remedy under this MA, seek from any court having jurisdiction any interim or provisional relief that is necessary to protect the rights or property of that party, pending the arbitrator's determination of the merits of the controversy. Each party will initially bear its own expenses and an equal share of the costs of the arbitration, but the prevailing party may be awarded its expenses, reasonable attorneys' fees, and costs. The failure of either party to object to a breach of this MA will not prevent that party from thereafter objecting to that breach or any other breach of this MA.
- 5.6 Assignment MaintStar may assign its rights and obligations hereunder for purposes of financing or pursuant to corporate transactions involving the sale of all or substantially all of its stock or assets. MaintStar may subcontract with qualified third parties to provide portions of the Maintenance Services described hereinabove.
- 5.7 Survival The following provisions will survive the termination or expiration of this MA: Section 2.1, as to Customer's obligation to pay any fees associated with a lapse in maintenance coverage upon resumption of such coverage; Section 3.3, as to limitation of remedy; Section 3.4 and all subsections thereof, as to Customer's obligation to pay any fees accrued or due at the time of termination or expiration; Section 4 and all subsections thereof; and Section 5 and all subsections thereof with the exceptions of Subsections 5.1 and 5.4.

5.8

Alternate Terms Disclaimed The parties expressly disclaim any alternate terms and conditions accompanying drafts and/or purchase orders issued by Customer. Severability and Amendment If any particular provision of this MA is determined to be invalid or unenforceable, that determination will not affect the other provisions of this MA, which will be construed in all respects as if the invalid or unenforceable provision were omitted. No extension, modification, or amendment of this MA will be effective unless it is described in writing and signed by the Parties

AGREED AND ACCEPTED:

MaintStar ("MaintStar")

By: 

Printed: Dimitry Poretsky

Date: 06/29/18

Customer ("The Customer")

By: 

Printed: Jacob C. Vandenberg

Date: June 19, 2018

EXHIBIT A

Maintenance and Ongoing Support Costs

Annual Maintenance Costs

Are included as part of the annual Hosting Agreement Exhibit A.

\$ 0.00 per annum
(Included in
Annual Hosting
Fee)