

Agreement No.

SOFTWARE LICENSE AGREEMENT AND RELATED HARDWARE PURCHASE

FOR AND IN CONSIDERATION of the mutual benefits accruing and expected to accrue hereunder, this Software License Agreement ("Agreement") is made as of the 1st day of January, 2018 ("Effective Date") by and between AssetWorks LLC a Delaware limited liability corporation with offices at 998 Old Eagle School Road, Suite 1215, Wayne, PA 19087 ("AssetWorks"), and the City of Corpus Christi, with offices at _____ ("CUSTOMER"). Intending to be legally bound, the parties hereby mutually agree to the following terms and conditions:

PURPOSE

- A. On or about December 10 2013, CUSTOMER was granted a perpetual license in proprietary software from AssetWorks Inc., a predecessor in interest to AssetWorks LLC. Since that time, AssetWorks and its predecessors in interest have provided CUSTOMER with revisions and upgrades to that software. The current version is listed on Schedule 1 ("Software").
- B. AssetWorks LLC is the exclusive owner and distributor of the Software.
- C. CUSTOMER has paid all license fees for the Software and no additional amounts are due under this Agreement. CUSTOMER may elect to order additional modules or licenses, which would be subject to additional fees.
- D. The parties wish to restate the 2013 license agreement to update the licensor to AssetWorks LLC and affirm the current Software as listed on Schedule 1.

Article I. HARDWARE PURCHASE AND SOFTWARE LICENSE

- A. Customer shall purchase the hardware listed on Schedule 1, if any. Title to the hardware shall pass upon shipment.
- B. AssetWorks grants to CUSTOMER a non-exclusive, perpetual (subject to Article V) non-transferable license for the number of users specified in Schedule 1 ("Users") to make use of the software specified in Schedule 1 (herein "Software") on the CUSTOMER's database servers and application servers ("Environment") Except as provided above, use of Software in excess of limits defined in Schedule 1 or other than on the Environment requires additional fees. CUSTOMER'S license is to use the Software in its own business; CUSTOMER has no right to use the Software in processing work for third parties.
- C. CUSTOMER shall have the right to use only one copy or image of the Software for production purposes to manage up to the number of Active Equipment Units identified in the Product Schedule (Schedule 1) and shall not copy or use the Software for any other purpose except (i) for archival purposes, (ii) in connection with a disaster recovery program, and (iii) for the purpose of testing the operation of the Software, provided such testing copy shall not be used in a live production environment. CUSTOMER may increase the number of authorized Active Equipment Units by executing a subsequent Product Schedule and paying in full the applicable fees. Upon signing the subsequent Product Schedule and paying in full the applicable fees, CUSTOMER shall have the right to monitor the revised number of Active Equipment Units as set forth in the subsequent Product Schedule. "Active Equipment Unit" shall mean any in service unit to which work orders, fuel tickets, or usage tickets are posted.

- D. If any third party software is provided to CUSTOMER pursuant to this Agreement, such license shall be in accordance with terms set forth in Schedule 1.
- E. Source Code shall mean software in human-readable form, including all appropriate programmer's comments, data files and structures, header and include files, macros, make files, object libraries, programming tools not commercially available, technical specifications, flowcharts and logic diagrams, schematics, annotations and documentation reasonably required or necessary to enable a competent independent third party programmer to create, operate, maintain, modify and improve such software without the help of any other person, and with data files containing Source Code in standard ASCII format readable by a text editor.
- F. Except as expressly authorized under this Agreement, CUSTOMER shall not (i) sell, rent, lease, timeshare, encumber, license, sublicense, transfer or assign the Software or Documentation; (ii) attempt to decompile, disassemble or reverse engineer the Software in whole or in part, or otherwise attempt to derive the Source Code of the software.

Article II. FEES AND PAYMENTS

- A. CUSTOMER shall pay AssetWorks the fees specified in Schedule 1. All fees are payable by CUSTOMER within thirty (30) days of receipt of invoice. Software is invoiced upon contract execution. Hardware is invoiced upon delivery.
- B. CUSTOMER shall be responsible for all taxes and charges assessed or imposed with respect to amounts payable hereunder, including, without limitation, state and local, occupation, sales, use or excise taxes paid or payable by AssetWorks, exclusive, however, of taxes imposed on AssetWorks' net income by the United States or any political subdivision thereof.
- C. AssetWorks reserves the right to apply a late payment charge of 1.5% per month to amounts outstanding more than thirty (30) days after the date of the invoice.

Article III. NON-DISCLOSURE

- A. Subject to the other paragraphs in this Article III, CUSTOMER agrees that the Software shall be held in confidence by CUSTOMER and shall not be disclosed to others without the prior written consent of AssetWorks, which may be withheld by AssetWorks in its sole discretion. This obligation to hold confidential does not apply to any portion of the Software (1) developed by CUSTOMER and in CUSTOMER's possession prior to the receipt of same from AssetWorks; (2) which at the time of disclosure is part of the public domain through no act or failure to act by CUSTOMER; or (3) which is lawfully disclosed to CUSTOMER without restriction on further disclosure by another party who did not acquire same from AssetWorks.
- B. AssetWorks provides documentation for the Software electronically. The CUSTOMER may copy, in whole or in part, any such documentation relative to the Software for CUSTOMER's internal use consistent with this Agreement.
- C. Any Software provided by AssetWorks in machine-readable form may be copied by CUSTOMER for use with the designated servers to the extent necessary for archive or emergency restart purposes, to replace a worn copy, or to understand the contents of such machine-readable material.
- D. CUSTOMER's records with regard to use of the Software shall be made available to AssetWorks at all reasonable times at AssetWorks' request to audit CUSTOMER's compliance with this Agreement, and CUSTOMER shall certify to the truth and accuracy of such records.

- E. AssetWorks understands that CUSTOMER is a Texas governmental entity subject to the Texas Public Information Act (Chapter 552 of the Texas Government Code). Should CUSTOMER receive a valid public information request for AssetWorks' confidential information, CUSTOMER will inform AssetWorks of such request and AssetWorks' ability to argue the confidentiality of the information and send the information to the Texas Attorney General in accordance with the Act. Compliance with the Texas Public Information Act shall not be considered a violation of this Agreement.

Article IV. WARRANTIES AND LIMITATION OF LIABILITY

- A. Hardware purchased under this Agreement has a limited one year warranty. This limited hardware warranty covers defects in materials and workmanship in hardware products. The warranty does not cover external causes such as accident, abuse, misuse, or problems with electrical power, servicing not authorized by AssetWorks, usage that is not in accordance with product instructions, failure to follow the product instructions or failure to perform preventive maintenance and normal wear and tear. ASSETWORKS'S RESPONSIBILITY FOR DEFECTS IN HARDWARE IS LIMITED TO REPAIR OR REPLACEMENT OF THE PRODUCT AS SET FORTH IN THIS WARRANTY STATEMENT. EXCEPT FOR THE LIMITED WARRANTY EXPRESSLY STATED HEREIN FOR HARDWARE, ASSETWORKS MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE, SUITABILITY, OR NON-INFRINGEMENT. ASSETWORKS EXPRESSLY DISCLAIMS ALL WARRANTIES NOT STATED IN THIS LIMITED WARRANTY.
- B. AssetWorks represents that it has the right to license the Software to CUSTOMER as provided in Article I. AssetWorks further represents that the Software will conform to the description contained in the documentation provided or published by AssetWorks ("Documentation") but, except as provided in this Article IV, AssetWorks makes no other representations, warranty, or guarantees, express or implied, with respect to the accuracy, completeness, or usefulness of the Software, INCLUDING EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. In the event the Software fails to conform to the description contained in the Documentation, AssetWorks' sole obligation shall be to correct the errors. This limited warranty is lieu of all liabilities or obligations of AssetWorks for damages arising out of or in connection with the delivery, use or performance of the Software.
- C. AssetWorks will defend, at its own expense, any action brought against CUSTOMER to the extent that it is based on a claim that the Software supplied by AssetWorks infringes a United States patent or copyright, and AssetWorks will pay those costs and damages finally awarded against CUSTOMER in any such action that are attributable to any such claim; provided, such defense and payments are conditioned on the following: (1) that AssetWorks shall be promptly notified in writing by CUSTOMER following its receipt of any such claim; (2) that Customer cooperates, as necessary, during the information gathering and defense; (3) should the Software become, or in AssetWorks' opinion is likely to become, the subject of a claim of infringement of a United States patent or copyright, then CUSTOMER shall permit AssetWorks, at its option and expense, either to (A) procure for CUSTOMER a non-infringing license to use the Software; (B) modify the Software so that it becomes non-infringing; (C) procure for CUSTOMER a depreciated credit for the Software and accept its return. Depreciation shall be an equal amount per year over the lifetime of the Software, which the parties agree shall be five (5) years. AssetWorks shall have no liability to CUSTOMER under any provision of this clause with respect to any claim of patent or copyright infringement that is based on CUSTOMER's unauthorized use or combination of the Software with software or data not supplied by AssetWorks as part of the Software.
- D. CUSTOMER agrees that AssetWorks total liability to Customer for any and all damages whatsoever arising out of or in any way related to this Contract from any cause, including but not limited to negligence, errors, omissions, strict liability, breach of contract or breach of warranty shall not, in the aggregate, exceed fees paid to AssetWorks.

- E. In no event shall AssetWorks be liable for special, indirect, incidental, economic, consequential or punitive damages, including but not limited to lost revenue, lost profits, replacement goods, loss of technology rights or services, loss of data, or interruption or loss of use of software or any portion thereof regardless of the legal theory under which such damages are sought even if AssetWorks has been advised of the likelihood of such damages, and notwithstanding any failure of essential purpose of any limited remedy.
- F. The warranty period for the Software shall extend for a period of 90 days from the date of delivery of the Software but in no event later than one year from the date of execution of this Agreement. During the warranty period, in the event that the CUSTOMER encounters an error and/or malfunction whereby the Software does not conform to the description in the Documentation, AssetWorks will respond as follows:
 - 1. In the event that, in the mutual and reasonable opinion of AssetWorks and the CUSTOMER, there exists an error or nonconformance to the Documentation, AssetWorks will take such steps as are reasonably required to correct the error with due dispatch.
 - 2. In the event that, in the mutual and reasonable opinion of AssetWorks and the CUSTOMER, the error or nonconformance to the Documentation does not constitute a serious impediment to the normal intended use of the Software, AssetWorks will correct the error and distribute the correction to the CUSTOMER in accordance with AssetWorks' normal Software revision schedule.

Article V. TERMINATION

- A. The license conveyed pursuant to Article I B may be terminated by AssetWorks in the event of breach or default by CUSTOMER under this Agreement provided AssetWorks notifies CUSTOMER in writing of the breach or default and CUSTOMER does not correct same within thirty (30) days of AssetWorks' written notice.
- B. In addition, CUSTOMER shall have the right to terminate this Agreement at any time; provided such termination shall not relieve CUSTOMER of its obligations (1) to pay any remaining unpaid balance for the total software license fee (as per Schedule 1), and (2) to honor the terms of the Professional Services Agreement or the Software Maintenance Agreement, which were independently executed and each of which must be terminated in accordance with its terms.
- C. All Software and Documentation shall be and will remain the property of AssetWorks. Upon termination of this Agreement, whatever the reason, such Software and Documentation and any copies thereof made by CUSTOMER pursuant to Article III B and C shall be promptly returned to AssetWorks.

Article VI. ASSIGNMENT

This Agreement shall not be assigned by either party without the prior written consent of the other party, and any attempted assignment without such consent shall be void. No assignment of this Agreement shall be valid until and unless consented to in writing by the consenting part and assumed by the assignee in writing. When duly assigned in accordance with the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the assignee.

Article VII. ENTIRE AGREEMENT

This Agreement supersedes all prior proposals, oral or written, all previous negotiations and all other communications or understandings between AssetWorks and CUSTOMER with respect to the subject matter hereof. It is expressly agreed that if CUSTOMER issues a purchase order or other document for the services provided under this Agreement, such instrument will be deemed for CUSTOMER'S internal use only, and any provisions contained therein shall have no effect whatsoever upon this Agreement. This Agreement sets forth the sole and entire

understanding between AssetWorks and CUSTOMER with respect to the subject matter. No amendments to this Agreement, either at the execution or subsequently, shall be binding on AssetWorks or CUSTOMER unless agreed to in writing by both parties.

Article VIII. SCHEDULES

Schedules 1 (Product Schedule) and any additional schedules specified below are hereby incorporated into this Agreement.

Article IX. GENERAL TERMS

- A. Neither AssetWorks nor CUSTOMER will assign or transfer its interest in this Agreement without the prior written consent of the other party.
- B. All provisions of this Agreement, which by their nature should survive termination of this Agreement, will so survive.
- C. No delay or failure by either party to exercise any right hereunder, or to enforce any provision of this Agreement will be considered a waiver thereof. No single waiver will constitute a continuing or subsequent waiver. To be valid, a waiver must be in writing, but need not be supported by consideration.
- D. If any provision of this Agreement is held to be illegal, invalid or unenforceable, in whole or in part, such provision will be modified to the minimum extent necessary to make it legal, valid and enforceable, and the remaining provisions of this Agreement will not be affected.
- E. This Agreement, including its interpretation and enforcement, will be governed by the substantive laws of the State of Texas excluding its conflict of laws rules.
- F. Any communication or notice hereunder must be in writing, and will be deemed given and effective: (i) when delivered personally with proof of receipt; (ii) when sent by e-mail; (iii) when delivered by overnight express; or (iv) three (3) days after the postmark date when mailed by certified or registered mail, postage prepaid, return receipt requested and addressed to a party at its address for notices. Each party's address for notices is stated below. Such address may be changed by a notice delivered to the other party in accordance with the provisions of this Section.

AssetWorks LLC
998 Old Eagle School Rd. - Suite 1215
Wayne, PA 19087

Attn: John Hines

Copy to:
Director of Contracts
AssetWorks LLC
998 Old Eagle School Rd. - Suite 1215
Wayne, PA 19087

CUSTOMER:
City of Corpus Christi
PO Box 9277
Corpus Christi, TX 78469-9277
Attn.: Tambra Milot, Asset Management

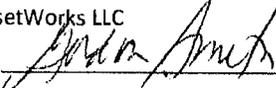
Copy to:
Jim Davis
City of Corpus Christi
PO Box 9277
Corpus Christi, TX 78469-9277

- G. In the event of any dispute arising in the performance of this Agreement, AssetWorks and the CUSTOMER will seek to resolve such dispute through good faith, amicable discussions and negotiations. In any action at law or in equity to enforce or interpret the terms of this Agreement, the parties will each be responsible for their own attorneys' fees, in addition to any other relief ordered by the court. Such fees and costs will include those incurred in connection with the enforcement of any resulting judgment or order, and any post judgment order will provide for the right to receive such attorneys' fees and costs.
- H. Neither party will be liable for any failure to perform or any delay in performing any of its obligations hereunder when such failure or delay is due to circumstances beyond its reasonable control and without its fault (Force Majeure), including without limitation, any natural catastrophe, fire, war, riot, strike, or any general shortage or unavailability of materials, components or transportation facilities, or any governmental action or inaction. Upon the occurrence of such event of Force Majeure, the affected party will immediately give notice to the other party with relevant details, and will keep the other party informed of related developments.
- I. This Agreement constitutes the entire agreement between the parties and supersedes all prior or contemporaneous oral, and all prior written, negotiations, commitments and understandings of the parties relating to the subject matter hereof. This Agreement may not be modified except by a writing executed by both parties.
- J. The continuation of this Agreement after the close of any fiscal year of the CUSTOMER, which fiscal year ends on September 30th annually, is subject to appropriations and budget approval specifically covering this Agreement as an expenditure in said budget, and it is within the sole discretion of the CUSTOMER'S City Council to determine whether or not to fund this Agreement. The City does not represent that this budget item will be adopted, as said determination is within the City Council's sole discretion when adopting each budget.
- K. In accordance with Chapter 2270, Texas Government Code, the CUSTOMER may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. The signatory executing this Agreement on behalf of AssetWorks verifies that the company does not boycott Israel and will not boycott Israel during the term of this Agreement.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have entered into this Agreement as of the Effective Date.

CUSTOMER

By: _____
 Name: _____
 Title: _____
 Date: _____

AssetWorks LLC
 By: 
 Name: Gordon Smith
 Title: Portfolio Manager
 Date: 10/29/2018

SCHEDULE 1 – Licensed Software

- **FleetFocus M5 licenses for up to 2,000 equipment units**
 - Including Ad-hoc Query, Crystal Reports, Replacement Analysis, KPI/Dashboards, Motor Pool, and Shop Activity modules and Smart Apps

- **FuelFocus Software**