enCodePlus, LLC
1415 Highway 6 South,
Suite A300 (CHANGED)
Sugar Land, TX 77478
(281) 302-5847
kim@enCodePlus.com
http://www.encodePlus.com

Handwritten: 100-4330-51350
V # 01439
C # 2019-0041

BILL TO
City of Menifee
Attn: Finance Department -
Accounts Payable
29844 Haun Road
Menifee, CA 92586

1699

DATE 07/01/2020   **TERMS** Due on receipt

DUE DATE 08/17/2020

CONTRACT VALUE	BILLED TO DATE	PAID TO DATE
PO#: 01579	$4,250.00	$0.00

DESCRIPTION	AMOUNT
MENIFEE, CA STANDARD 90 enCodePlus Implementation	
ADDRESS CHANGE: Suite number is now A300	
Standard 90 Degree Annual Software License Fee (September 1, 2020 to August 30, 2021)	4,250.00

Fee 15 days past due 10% x $4,250= $425.00
Fee 30 days past due 20% x $4,250= $850.00
45 days enCodePlus site shall be taken offline

If planning to pay via EFT, formal EFT instructions should only
be requested/received from our Finance Department
(kim@encodeplus.com). Additionally, it is your responsibility to
verbally verify EFT instructions with a member of our Finance
department prior to making an EFT payment for the first time,
and/or prior to submitting EFT payment(s) in the event updated
EFT instructions are provided to you.

If you have any questions please contact
Kim Keast @ (281) 721-4103 (direct line) or (281) 242-2960 ext
11.

We appreciate your business.

TOTAL DUE	$4,250.00
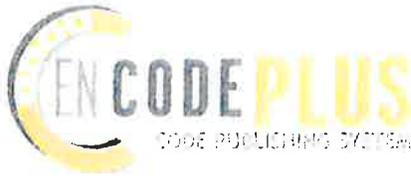
Fully CUSTOMIZABLE * Searchable ARCHIVES * INTEGRATE | D mapping * REAL-TIME code updates | * TIME-SAVING edit tools *
STYLIZED tables*IN-LINE graphics | D mapping * REAL-TIME code updates | * TIME-SAVING edit tools * STYLIZED tables*IN-LINE graphics

enCodePlus™
Software License

LICENSEE: City of Menifee, California

This Software License ("Agreement" or "License") is made as of the date of the last signature below, between enCodePlus, LLC, a Texas Limited Liability Company ("Licensor"), and the City of Menifee, a public body corporate and political subdivision of the State of California ("Licensee").

1. **License Grant.** This is an Agreement between Licensor and Licensee, with a term as set out in Section 3, below. Licensor grants licensee a non-transferable, non-exclusive, limited, non-assignable license with no right to sublicense, to use the software covered by this Agreement pursuant to the terms of this Agreement including payment of all applicable License Fees. This License gives only certain rights to Licensee. All other rights are reserved to Licensor.

2. **Software Covered by this License.** The terms of this Agreement apply to Licensee's use of the following software: Standard 90°.

3. **Term of License.**

   a. The term of this Agreement is the period from the effective date (shown on Page 6) ending 12 months later, and is automatically renewable annually thereafter, unless terminated as provided in Subsection 3.b. or 3.c., below.

   b. Either party may terminate this License by providing the other party with written notice of termination delivered at least 30 days prior to the date of termination. Upon receipt of any notice by the Licensee to terminate this Agreement, fees for such maintenance and support paid in advance, if any, shall be returned to the Licensee on a pro rata basis.

   c. Either party may terminate this license in the event of a material breach by the other party by giving notice of termination to the breaching party at least 30 days prior to the effective date of the termination, provided, however, no such termination shall become effective if the breaching party cures the breach within 30 days of the termination notice or, if it is not possible to fully cure the breach within said time period, commences cure and diligently pursues the same to conclusion.

   d. Licensor may terminate this License if, in Licensor's sole discretion, changes in Internet technologies (including software platforms, web browsers, and other technologies that allow the Software to operate) make Licensor's performance of this Agreement technically infeasible.

4. Upon termination of this Agreement, Licensor is not obligated to return Licensee's content to Licensee. Licensee has full, unlimited access to the content through its password-protected maintenance module. This access allows the City to export the content to Microsoft Word and Adobe PDF. Also, the Licensee may save the document at any time in HTML format or as a web archive file. A complete version of the

published code document is available at: http://online.**enCodePlus**.com/regs/Menifee-CA/maintain/allcodepub.asp. This document may be saved as a web archive file. Licensee is advised to keep backups of its content. For an additional fee based on Licensor's then-current technical support rates, Licensor may offer export services to convert content into other file formats and deliver them to Licensee electronically or on optical or other solid-state media.

5. **Build Fees.** The fee to build the site for the Zoning Ordinance rewrite project in the online format is $3,500. This includes design/build of a custom-branded site in HTML, including a stylesheet and auto-numbering system, rebuilding tables and graphics, and establishing all hyper-links. All upgrade Advanced 180º and Premium 360º are excluded from the build. The build fees are due in two installments, as follows:

   a. Execution of Agreement: 70% ($2,450)

   b. Delivery: 30% ($1,050)

6. **Exclusions.** The following features are expressly excluded from this license agreement: All upgrade Advanced 180º and Premium 360º features.

7. **License Fees.** The annual license fee, payable upon execution of this License and each subsequent year that this License is renewed, is $4,250.00. This fee is subject to change if there are upgrades to either Advance 180º or Premium 360º. Such license and software escrow fees shall be payable as follows:

   a. **Year 1:** The license fee of $4,250.00 is due upon execution of this agreement. This fee is for the license period from the effective date ending 12 months later..

   b. **Year 2:** The license fee of $4,250.00 is due 12 months following the effective date. This fee is for the license period from the renewal date ending 12 months later.

   c. **Subsequent years:** The license fee for each subsequent year, or part year, will be the standard license fee that enCodePlus, LLC charges for comparable Standard 90º implementations.

   d. In the event this Agreement is terminated by Licensee with six (6) months or more remaining on the current term, Licensee shall receive a pro-rated refund of the remaining fee. In the event Licensee terminates the Agreement with less than six (6) months remaining on the term of the License, Licensee shall not receive any refund of any fees.

   e. As applicable, the annual escrow fee payment set forth in Section 11 is due and payable with the annual license fee.

   f. If any payment due under this Agreement ("Payment Due") is more than 15 days past due, a fee of 10% (ten percent) of the Payment Due shall be paid by Licensee as an Administrative Fee in addition to the Payment Due. If Payment Due is more than 30 days late, the Administrative Fee shall be 20% (twenty percent) in addition to the Payment Due. If Payment Due is more than 45 days late, the enCodePlus site will be taken off line, and will not be restored until the Payments Due and any Administrative Fees associated with each Payment Due has been paid in full.
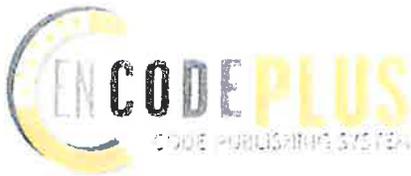
8. **Scope of License / Use of Software.** The Software is an Internet-based information processing and publication service that uses content created by Licensee, or by Licensor under separate agreement with Licensee. Licensor will provide Licensee access to the Internet-based interfaces, including password-protected access to maintenance features, as may be applicable to the Software. Licensee may use the Software through its Internet-based interfaces as follows:

   a. The software may be used to develop, view, access, use, print, copy, edit, publish, utilize, administer, amend, repeal, and solicit, and process comments on the Licensee's content; and

   b. Other uses as prescribed by this or subsequent agreements between Licensor and Licensee.

9. **Limitations on Use of Software.** Licensee **must not:**

   a. Reverse engineer, reverse assemble, decompile or disassemble the Software, or otherwise attempt to derive source code from the Software or any component thereof;

   b. Publish or distribute materials for which Licensee does not have intellectual property rights, or which are outside of the scope of this License;

   c. Access the server-side programs and source code upon which the Software is based, except to use the Internet-based interfaces provided by Licensor, and except for the HTML and browser-based script code that the server-side programs generate and deliver to end-users;

   d. Alter the functionality of the software including by composition or injection of unapproved software or services;

   e. Copy, reproduce, modify, sell, lease, sub-license, market, or commercially exploit in any way the Software or any component thereof (including the further distribution of blank forms or templates) other than as expressly agreed to in this Agreement; and

   f. Use, or permit the use of, the Software except within the scope set out in Section 8, Scope of License / Use of Software. Licensee agrees that it shall not provide access to or perform services for third parties using the Software including, but not limited to, any service bureau, time-sharing, lease, distribution or re-sale, rental, application service provider arrangement, or any other arrangement.

10. **Technical Support.**

   a. A total of three hours of support is included with the license following the training. Thereafter, Licensor will provide technical support at a rate of $150 per hour. For the license year on the third anniversary of the effective date, technical support fees are subject to annual adjustment, and will be based on the standard schedule of professional fees for the year in which the support occurs.

   b. Licensor agrees to provide telephone or web-based technical support regarding the use of service to Licensee within one business day of telephone contact by Licensee during Licensor's business hours, or at a mutually agreeable time. Duration to resolution is not bound and licensor may deem a request as unresolvable.
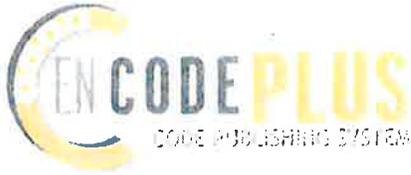
c. With respect to addressing errors which may arise in the Software, Licensor agrees to commence its best efforts to resolve such errors as soon as reasonably possible after notice by Licensee. Generally, Licensor will commence error resolution on the same day as the notice, and if reasonably practicable, will provide Licensee with Licensor's best good-faith estimate of the time which will be required to resolve the error. Licensee shall not be charged any technical support fee or other charge for addressing or correcting errors in the Software itself.

d. Failure of Licensor to achieve the technical support response times set out in Subsections 8.b. and 8.c. shall not constitute a material breach of this Agreement.

11. **Software Escrow.** If elected by Licensee, upon the execution of this Agreement, Licensor shall place all source code constituting and relating to the Software into an escrow account pursuant to the terms of an escrow agreement (the "Escrow Agreement") to be entered into between Licensor and the escrow agent (the "Escrow Agent") which shall name Licensee as a beneficiary; provided, however, that the Escrow Agreement shall contain substantially the following conditions with respect to release of escrow to Licensee: (i) Licensor is adjudged bankrupt, and/or (ii) in the event of a catastrophic loss which terminates Licensor's operations, then Licensee shall have a non-exclusive, royalty-free, perpetual, worldwide license to use the source code released from the escrow in its sole discretion, solely for its own internal use and not for any resell, license, or sub-license. **As applicable, in consideration of Licensor placing the source code in escrow, Licensee will pay an annual escrow fee of $1,000, plus a $250 escrow initiation fee, for the first license year and an annual source code escrow fee of $1,000 thereafter.** All charges for additional services which may be requested from the escrow company by Licensee as a beneficiary to the escrow agreement shall be payable by Licensee.

12. **Notices.**

a. *Generally.* Except as provided in Subsection 10.b., notices delivered pursuant to this Agreement shall be sent to the people and addresses shown in this Section. Generally, notices shall be delivered by First Class Mail or courier service. Such notice shall be deemed to have been given when deposited in the United States Mail or courier service properly addressed to the intended recipient.

To Licensor	To Licensee
Bret C. Keast, AICP, President enCodePlus, LLC 1415 Highway 6, Suite A-300 Sugar Land, TX 77478 Tel: (281) 302-5847 Fax: (281) 242-4115 Email: bret@enCodePlus.com *With copy to:*	Mayor 29714 Haun Road Menifee, CA 92586 Tel: 951-672-6777 Email: *With a copy to:*
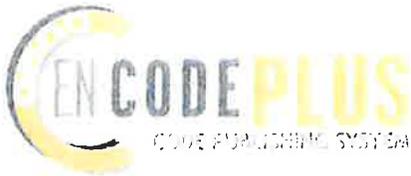
William G. Harger, Attorney at Law
William G. Harger & Associates, PLLC
704 Main Street
Richmond, Texas 77469
Tel: (281) 202-6000
Fax: (281) 715-4343 fax
Email: harger@hargerlaw.com m

b. *Upgrades, Maintenance, Service Interruptions, and Planned Outages.* Notices regarding upgrades, maintenance, service interruptions, and planned outages shall be delivered by electronic mail to the following individuals:

• Cheryl Kitzerow, Community Development Director

Licensee may change the individuals who receive notice pursuant to this subsection by electronic mail notice to Licensor.

13. **Assignment.** Licensor may not assign its rights and obligations under this Agreement without prior written notice to Licensee no less than 30 days prior to assignment. Licensee may thereafter continue with the terms of this Agreement attempt to renegotiate with the assignee, or terminate this license pursuant to the provisions of Section 3, Term of License.

14. **Third Party Beneficiaries.** There are no third-party beneficiaries to this Agreement.

15. **No Waiver.** The failure of either party to exercise or enforce any right or provision of this Agreement shall not constitute a waiver of such right or provision.

16. **Effective Date.** The effective date shall be the date on which the Licensee executes this Agreement, or such other date as may be agreed to by the parties and indicated as "Effective Date" below.

17. **Dispute Resolution; Choice of Law and Forum.** Licensor and Licensee agree that this Agreement shall be construed in accordance with the laws of the State of Indiana. Any legal dispute between the parties shall be resolved in the following manner:

a. The parties will attempt in good faith to resolve any controversy or claim arising out of or relating to this Agreement promptly by negotiation between senior executives of the parties who have the authority to settle the controversy.

b. The disputing party shall give the other party written notice of the dispute. The other party shall respond in writing within 10 days after receipt of said notice. The notice and response shall include: (1) a statement of the party's position and a summary of the facts and arguments supporting its position; and (2) the name and title of the executive who will represent the party. The executives shall meet at a mutually acceptable time and place within 20 days of the date of the disputing party's notice and thereafter as often as they reasonably deem necessary to exchange relevant information and to attempt to resolve the dispute.

c. If the controversy or claim has not been resolved within 30 days of the first meeting of the senior executives, the parties shall endeavor to settle the dispute by non-binding mediation.

d. If the matter has not been resolved pursuant to the aforesaid non-binding mediation procedures within 90 days of the commencement of such procedure, parties may bring their claim in a court of law. Venue for all actions brought pursuant to this agreement is in Riverside County, California; and all parties consent to Riverside County, California, being the exclusive jurisdiction to resolve said claims or controversies arising pursuant to this agreement.

e. Nothing in this Section shall prevent a Party from bringing an action for injunctive relief if such relief is necessary for the protection of a right or property or proprietary information which might be lost absent such relief.

18. **Integration.** This Agreement constitutes the entire agreement between the parties with regard to the subject matter hereof and thereof. This Agreement supersedes all previous agreements between or among the parties. There are no agreements, representations, or warranties between or among the parties other than those set forth in this Agreement or the documents and agreements referred to in this Agreement.

19. **Force Majeure.** Neither party shall not be deemed in default of this Agreement to the extent that performance of its obligations or attempts to cure any breach are delayed or prevented by reason of any act of God, fire, natural disaster, or act of government provided that written notice thereof is provided to the other party promptly upon discovery thereof and uses its best efforts to cure the delay.

20. **Amendments and Modifications.** No amendment, modification, or supplement to this Agreement shall be binding on any of the parties unless it is in writing and signed by the parties.

21. **General Interpretation.** The terms of this Agreement have been negotiated by the parties hereto and the language used in this Agreement shall be deemed to be the language chosen by the parties hereto to express their mutual intent. This Agreement shall be construed without regard to any presumption or rule requiring construction against the party causing such instrument or any portion thereof to be drafted, or in favor of the party receiving a particular benefit under the agreement. No rule of strict construction will be applied against any person.

22. **Further Assurances.** Each of the parties agree to take such further action to execute and deliver such additional documents as may be reasonably required to them to effectuate the purpose and intent of this Agreement.

23. **Severability.** If any term or provision of this Agreement is determined to be illegal, unenforceable, or invalid in whole or in part for any reason, such illegal, unenforceable, or invalid provisions or part thereof shall be stricken from this Agreement, and such provision shall not affect the legality, enforceability, or validity of the remainder of this Agreement. If any provision or part thereof of this Agreement is stricken in accordance with the provisions of this section, then this stricken provision shall be replaced, to the extent

possible, with a legal, enforceable, and valid provision that is as similar in tenor to the stricken provision as is legally possible.

AUGUST 13, 2018

Effective Date

City of Menifee

Licensee

Authorized Agent Signature

enCodePlus, LLC

Licensor

Authorized Agent Signature

Armando G. Villa, City Manager

Authorized Agent (Typed)

_8/13/18_

Date

Bret C. Keast, CEO | Owner

Authorized Agent (Typed)

_8/16/18_

Date

Approved as to Form

Jeffrey Melching, City Attorney

Attest:

Sarah A. Manwaring, City Clerk
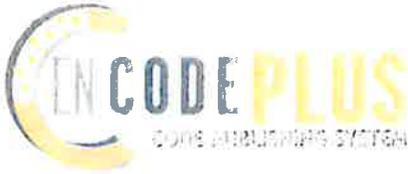
Exhibit A
Non-Disclosure Agreement and Request for Username and Password

The City of Menifee, California ("Licensee") requests that a new password be issued by enCodePlus, LLC ("Licensor") for the benefit of Licensee to enable the undersigned user ("User") to access and use the maintenance module and User Guide for the software program. Licensee and the undersigned agree to comply with the below provisions of the license agreement between Licensor and Licensee:

"Licensee agrees that each person having administrative or maintenance access to the Software, including but not limited to employees, contract workers, any third parties acting on behalf of Licensee or any other person or entity acting as an agent for Licensee in any capacity, shall be identified to Licensor and issued a unique password. Each person receiving a password must first complete and sign this non-disclosure agreement ("NDA"). Submission of such a completed NDA will constitute a request by Licensee for issuance of a new password for a particular individual, and upon receipt of a completed NDA, Licensor will issue a password for that individual user. Passwords are not transferable. When Licensee becomes aware that a user will no longer need a password, for any reason, Licensee agrees to immediately notify Licensor that the password is no longer active. Any replacement users will be issued a new password. Licensee assumes full responsibility for any improper use of a password issued at the request of Licensee, and indemnifies Licensor from any loss by or damage to Licensor that may occur as a result of an improper use of any such password.

Licensee assumes full responsibility for any **enCodePlus** User Guides ("Guide") used online by Licensee or anyone using a password issued for the benefit of Licensee. Licensee acknowledges that such Guides contain Confidential Information and proprietary information which is very valuable to Licensor, and could be used by competitors to the detriment of Licensor. Licensee agrees to keep such information in a secure location, and not allow any copies of such Guides or portions of such Guides to leave the premises of Licensee. Licensee agrees to use at least such security measures to protect the Guides, portions of the Guides, or any other information obtained through the use of a password issued at the request of Licensee, as secure as any other information under Licensee's possession or control which Licensee considers to be confidential, proprietary or sensitive.

Each party acknowledges that confidential and/or proprietary information (including trade secrets, software source code and functions and capabilities of the password-protected maintenance module accessible to Licensee, support services, technical user guide and training materials, one-time build fee structures, the contents of any negotiations of such confidential information between the parties to this Agreement, and confidential or proprietary technical, financial, and business information, including but not limited to material marked and identified as "confidential") (collectively, "Confidential Information") may be exchanged between the parties pursuant to this Agreement. Each party shall use no less than the same means it uses to protect its similar confidential and proprietary information, but in any event not less than reasonable means, to prevent the disclosure and to protect the confidentiality of the Confidential Information of the other party. Each party agrees that it will not disclose or use the Confidential Information of the other party to any other person or entity except as necessary

for the purposes of this Agreement. LICENSEE EXPRESSLY AGREES THAT, UNLESS ORDERED BY A COURT OF COMPETENT JURISDICTION, IT WILL NOT DISCLOSE ANY PROPRIETARY OR CONFIDENTIAL INFORMATION, AS SUCH IS IDENTIFIED IN THIS LICENSE AGREEMENT OR THE ATTACHED EXHIBIT A, WITHOUT FIRST OBTAINING THE APPROVAL OF LICENSOR IN WRITING. THIS SPECIFICALLY INCLUDES ANY KIND OF PUBLIC INFORMATION REQUEST. IT IS THE RESPONSIBILITY OF LICENSOR TO SEEK INJUNCTIVE RELIEF IF THE LICENSOR AND LICENSEE CANNOT AGREE ON WHAT IT PRODUCED IN RESPONSE TO AN OPEN RECORDS REQUEST. Licensee will promptly report to Licensor any disclosure of Licensor's Confidential Information that the Licensee becomes aware of and provide reasonable assistance to Licensor in the investigation and prosecution of any such unauthorized use or disclosure."

The undersigned supervisor agrees to enforce the above provisions and be responsible for the User's compliance with the above provisions.

SUPERVISOR

Printed name:_____

Date:_____

USER NO. 1

Printed name:_____

Date:_____

User's email address: _____

User's address:_____

_____

_____

User's relationship to Licensee:_____

Username: _____

User's password: Issued securely by user _____

USER NO. 2 ($500 PER USER PER YEAR)

Printed name:_____

Date:_____

User's email address: _____

User's address:_____

_____

_____

User's relationship to Licensee:_____

Username: _____

User's password: Issued securely by user _____

USER NO. 3 ($500 PER USER PER YEAR)

Printed name:_____

Date:_____

User's email address: _____

User's address:_____

_____

_____

User's relationship to Licensee:_____

Username: _____

User's password: Issued securely by user _____

USER NO. 4 ($500 PER USER PER YEAR)

Printed name:_____

Date:_____

User's email address: _____

User's address:_____

_____

_____

User's relationship to Licensee:_____

Username: _____

User's password: Issued securely by user _____

ENCODE PLUS

enCodePlus™
Software License

LICENSEE: Menifee

Licensed User Amendment Form

The City _ of Menifee _____ ("Licensee") requests that new users and new or revised passwords be issued by **enCode**Plus, LLC ("Licensor") for the benefit of Licensee to enable the undersigned users ("User") to access and use the maintenance module and User Guide for the software program. Licensee and the undersigned agree to comply with the provisions of the license agreement between Licensor and Licensee.

Permissions and Authorities. Below are the levels of permission and authority granted to staff, editors,

Role/Task	Levels of Permissions/Authorities			
	Staff	**Editors**	**Publishers**	**Managers**
Management Module Access	X	X	X	X
View Draft Regulations, Reports, Publishing Status, Comments	X	X	X	X
Edit Regulations, respond to comments		X	X	X
Approve Regulation changes			X	X
Publish Regulations			X	X
Manage Users (reset passwords, change names)				X

Supervisor Signature

Cheryl Kitzerow

Printed Name

1/30/2020

Date

USER NO. 1   ☐ Current User   ■ New User   ☐ Transfer User   ☐ Remove User

Stephanie Roseen

Printed Name

1/30/2020

Date

sroseen@cityofmenifee.us

User's Email Address

Username   Previous Username, *if applicable*

☐ Staff   ☐ Editor   ☐ Publisher   ■ Manager
Level of Permission / Authority (check one)

Stephanie Roseen

User Signature (not required to remove a user)

USER NO. 2   ☐ Current User   ■ New User   ☐ Transfer User   ☐ Remove User

Ryan Fowler

Printed Name

1/30/2020

Date

rfowler@cityofmenifee.us

User's Email Address

Username   Previous Username, *if applicable*

☐ Staff   ☐ Editor   ☐ Publisher   ■ Manager
Level of Permission / Authority (check one)

Ryan Fowler

User Signature (not required to remove a user)

ENCODE PLUS

1415 Highway 6 South, Suite D-100
Sugar Land, Texas 77478

USER NO. 3   □ Current User   □ New User   □ Transfer User   ■ Remove User

Lisa Gordon
_____
Printed Name

_____
Date

lgordon@cityofmenifee.us
_____
User's Email Address

_____
Username   Previous Username, _if applicable_

□ Staff   □ Editor   □ Publisher   ■ Manager
Level of Permission / Authority (check one)

_____
User Signature (not required to remove a user)

USER NO. 4   □ Current User   □ New User   □ Transfer User   ■ Remove User

Dan Wery
_____
Printed Name

_____
Date

_____
User's Email Address

_____
Username   Previous Username, _if applicable_

■ Staff   ■ Editor   ■ Publisher   ■ Manager
Level of Permission / Authority (check one)

_____
User Signature (not required to remove a user)

enCodePlus Licensed User Amendment   Page 3   2018

USER NO. 5   ☐ Current User   ☐ New User   ☐ Transfer User   ■ Remove User

Sara Allinder
Printed Name

_____
Date

_____
User's Email Address

_____
Username   Previous Username, *if applicable*

■ Staff   ■ Editor   ■ Publisher   ■ Manager
Level of Permission / Authority (check one)

_____
User Signature (not required to remove a user)

USER NO. 6   ☐ Current User   ☐ New User   ☐ Transfer User   ☐ Remove User

_____
Printed Name

_____
Date

_____
User's Email Address

_____
Username   Previous Username, *if applicable*

☐ Staff   ☐ Editor   ☐ Publisher   ☐ Manager
Level of Permission / Authority (check one)

_____
User Signature (not required to remove a user)