

# Council Business Meeting

June 18, 2019

Agenda Item	Approval of an Addendum to the Agreement with Cartegraph Systems, Inc.	
From	Paula C. Brown, PE Steve Burkhalter	Public Works Director Engineering Tech III
Contact	<a href="mailto:paula.brown@ashland.or.us">paula.brown@ashland.or.us</a> <a href="mailto:steve.burkhalter@ashland.or.us">steve.burkhalter@ashland.or.us</a>	541-552-2411

## **SUMMARY**

Before Council is an approval for an addendum to a computer software product and licensing agreement with Cartegraph Systems, Inc. for the subscription, support licensing and technical support in Operations Management Software (OMS) for up to 100 system users at a cost of \$114,581 for the 2019-21 Biennium.

## **POLICIES, PLANS & GOALS SUPPORTED**

City Council Goals (supported by this procurement):

- Goal 2: Analyze City departments/programs to gain efficiencies, reduce costs and improve services
  - Evaluate and communicate street program timelines and funding security
- Goal 3: Enhance and improve transparency and communication
- Maintain *Essential Services*

Department Goals:

- Maintain existing infrastructure to meet regulatory requirements and minimize life-cycle costs
- Deliver timely life cycle capital improvement projects

## **PREVIOUS COUNCIL ACTION**

Contracts are negotiated on a biennial basis. Council has approved similar addendums since the original acquisition in the late 1990s. In accordance with Ashland Municipal Code 2.50.090.I(2), this action is exempt from formal competitive procurement.

## **BACKGROUND AND ADDITIONAL INFORMATION**

Public Works and Electric Departments use Cartegraph to assist staff in the day-to-day operations, infrastructure management and inventory, mapping, scheduling, estimating, budgeting, data storage and reporting for state and federal requirements. Staff uses OMS to effectively and efficiently assist with developing maintenance timelines and work orders for timely infrastructure life cycle repairs.

## **FISCAL IMPACTS**

Funds are budgeted each fiscal year for the license renewal. Cartegraph Systems, Inc. has provided a quote for the software subscription, support licensing and technical support not to exceed the cost of \$114,581 for the two-year period; \$56,556 for FY20 and \$58,025 for FY21.

## **STAFF RECOMMENDATION**

Staff recommends Council, acting as the Local Contract Review Board, move to approve an addendum to the agreement with Cartegraph Systems, Inc. Systems, Inc. for the software subscription, support licensing and technical support.

### **ACTIONS, OPTIONS & POTENTIAL MOTIONS**

1. I move to approve an addendum to the agreement with Cartegraph Systems, Inc. for the software subscription, support licensing and technical support not to exceed the cost of \$114,581 for the 2019-21 biennium.
2. I move to request staff renegotiate the amount for the amended contract.
3. I recommend staff go out for a separate contract for software upgrades and abandon Cartegraph.

### **ATTACHMENTS**

Attachment 1: Addendum to Cartegraph Systems, Inc. Agreement

Attachment 2: Original Cartegraph Master Agreement No. MA276

**Addendum  
to  
CARTEGRAPH SOLUTIONS AGREEMENT (the “Agreement”)**

between

**CARTEGRAPH SYSTEMS, LLC, a limited liability company (“CARTEGRAPH”)  
and  
THE CITY OF ASHLAND, OREGON (“CUSTOMER”)**

To the extent this Addendum and the Terms and Conditions of the Agreement conflict, this Addendum shall control. This Addendum amends the Terms and Conditions of the Agreement as follows:

1. Amend Section 1, TERM, of the Agreement as follows, with ~~strikeout~~ wording deleted and underscored wording added:

**1. TERM.** The term of this Agreement shall begin upon the execution of an initial Purchase Agreement under this Agreement and, unless earlier terminated as permitted herein, shall continue for ~~the a period of two years time specified in that Purchase Agreement~~ (“Initial Term”). The execution of any subsequently added Purchase Agreement under this Agreement shall not extend the Initial Term unless otherwise expressly stated in that Purchase Agreement. ~~Unless otherwise stated in an applicable Purchase Agreement under this Agreement, the Initial Term of this Agreement shall automatically renew for successive additional 1 year renewal periods (each, a “Renewal Term”) unless either party provides the other party with written notice of its intent not to renew this Agreement at least 60 days before the end of the Initial Term or any such Renewal Term.~~

2. Amend Subsection 11.1, INDEMNIFICATION. GENERAL, of the Agreement as follows, with ~~strikeout~~ wording deleted and underscored wording added:

**11. INDEMNIFICATION.**

**11.1 GENERAL.** To the extent permitted by law, each ~~Each~~ party to this Agreement (the “Indemnifying Party”) will defend the other party and its officers, directors, employees, and agents (its “Related Parties”) from and against any claim, allegation or action (any “Action”) brought against the other party or one of its Related Parties by a third party (other than by the other party itself or another of its Related Parties) to the extent relating to, resulting from, or arising out of the ~~gross~~ negligence or willful misconduct of the Indemnifying Party in the performance (or failure to perform) any of its obligations under this Agreement. The Indemnifying Party will further pay those losses, liabilities, damages, fees, expenses, and costs (including reasonable attorneys' fees and court costs) (“Losses”) finally awarded against the other party or one of its Related Parties in any such Action or those Losses agreed to in a monetary settlement of such Action, as applicable.

3. Add the following new Section 20 to the Agreement as follows:

**20.** The following laws of the State of Oregon are hereby incorporated by reference into this Agreement: ORS 279B.220, ORS 279B.230, and ORS 279B.235.

4. Add the following new Section 21 to the Agreement as follows:

**21. CYBER LIABILITY COVERAGE:** CARTEGRAPH shall obtain and maintain throughout the term of this Agreement, at CARTEGRAPH'S sole expense, Cyber Liability and Technology Errors & Omissions insurance coverage with limits of not less than \$1,000,000 (one million U.S. dollars) covering any and all costs and expenses arising directly or indirectly out of CARTEGRAPH'S actions under this Agreement for any of the following:

- (a) Breach, access to, or disclosure of any confidential or personal information of CUSTOMER, including but not limited to, personal identifying information, financial account details, protected health information (PHI), passwords, or any other type of non-public information; and
- (b) The loss of, damage to, corruption of, inability to access, or manipulation of data; and
- (c) Any damages for notification costs, credit monitoring expenses, forensic expenses, public relations expenses, or any other loss; any damage to CUSTOMER'S hardware or software; or related costs or expenses; and
- (d) Loss of use of CUSTOMER'S data, hardware, or software.

5. Add the following new Section 22 to the Agreement as follows:

**22. OREGON TAX LAW.** CARTEGRAPH'S compliance with tax law:

22.1 CARTEGRAPH represents and warrants to the CUSTOMER that:

CARTEGRAPH shall, throughout the term of this Agreement, including any extensions hereof, comply with:

- (a) All tax laws of the State of Oregon, including but not limited to ORS 305.620 and ORS Chapters 316, 317, and 318;
- (b) Any tax provisions imposed by a political subdivision of the State of Oregon applicable to CARTEGRAPH; and
- (c) Any rules, regulations, charter provisions, or ordinances that implement or enforce any of the foregoing tax laws or provisions.

CARTEGRAPH, for a period of no fewer than six (6) calendar years preceding the Agreement Date, has faithfully complied with:

- (a) All tax laws of the State of Oregon, including but not limited to ORS 305.620 and ORS Chapters 316, 317, and 318;
- (b) Any tax provisions imposed by a political subdivision of the State of Oregon applicable to CARTEGRAPH; and
- (c) Any rules, regulations, charter provisions, or ordinances that implement or enforce any of the foregoing tax laws or provisions.

22.2 CARTEGRAPH'S failure to comply with the tax laws of the State of Oregon and all applicable tax laws of any political subdivision of the State of Oregon shall constitute a material breach of this Agreement.

Except as specifically modified by this Addendum, the Agreement shall remain in full force and effect.

**IN WITNESS WHEREOF** the parties have caused this Addendum to be signed in their respective names by their duly authorized representative as of the dates set forth below.

**THE CITY OF ASHLAND, OREGON**

**CARTEGRAPH SYSTEMS, LLC**

By: \_\_\_\_\_  
Kelly Madding, City Administrator

By: \_\_\_\_\_  
(must be Officer of the Company)

Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## Purchase Agreement

**Cartegraph** is pleased to present this Purchase Agreement for the implementation of world class technology solutions. This Purchase Agreement is made and entered into between **City of Ashland** (hereinafter referred to as "**Customer**") and **Cartegraph Systems LLC** (hereinafter referred to as "**Cartegraph**"). In the case that any terms or conditions provided in the Cartegraph Solutions Agreement differ from, are provided in more detail by, or are made irrelevant by the terms and conditions provided in this Purchase Agreement, the terms in this Purchase Agreement shall control. For all terms and conditions not addressed by this Purchase Agreement, the Cartegraph Solutions Agreement shall control.

Customer Bill To:	Customer Ship To:
City of Ashland 20 East Main Street Ashland, OR 97520	Same

### Investment Summary

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The Addendums attached hereto, include:

#### Addendum A – Support Services

**Cartegraph's** proposed fees for this project are included in the summary below.

**Today's Date:** January 31,  
2019

**Signature**     July 1, 2019  
**Expiration Date:**

**Purchase**     #PA1039  
**Agreement No.:**

	Purchase Type	Qty.	Unit Price	Total Price
<b>YEAR 1</b>				
<b>SOLUTIONS</b>				
Cartegraph OMS – Platform - Enterprise	Subscription, On-Premise, On Premise Support Fees Included, 7/31/19 – 7/30/20	1	\$13,797.00	\$13,797.00
Cartegraph OMS Extension	Advanced Work Management Subscription	1	\$3,102.00	\$3,102.00
Cartegraph OMS Extension	Advanced Asset Management Subscription	1	\$3,102.00	\$3,102.00
Cartegraph OMS Users	User Pack Subscription – 100 Named Users	1	\$18,025.00	\$18,025.00
<b>FIELD SERVICES</b>				
Orange Advantage	Fixed Fee Service	1	\$17,500.00	\$17,500.00
<b>TECHNICAL SUPPORT</b>				
System Integration Support	Technical Support, Q20170625, Fuel Integration – Petro Vend	1	\$1,030.00	\$1,030.00
<b>YEAR 1 SUB-TOTAL</b>				<b>\$56,556.00</b>

<b>YEAR 2</b>				
<b>SOLUTIONS</b>				
Cartegraph OMS – Platform - Enterprise	Subscription, On-Premise, On Premise Support Fees Included, 7/31/20 – 7/30/21	1	\$14,210.00	\$14,210.00
Cartegraph OMS Extension	Advanced Work Management Subscription	1	\$3,195.00	\$3,195.00
Cartegraph OMS Extension	Advanced Asset Management Subscription	1	\$3,195.00	\$3,195.00
Cartegraph OMS Users	User Pack Subscription – 100 Named Users	1	\$18,565.00	\$18,565.00
<b>FIELD SERVICES</b>				
Orange Advantage	Fixed Fee Service	1	\$17,500.00	\$17,500.00
<b>TECHNICAL SUPPORT</b>				
System Integration Support	Technical Support, Q20170625, Fuel Integration – Petro Vend	1	\$1,060.00	\$1,060.00
<b>YEAR 2 SUB-TOTAL</b>				<b>\$58,025.00</b>
<b>TOTAL COST (2-YEAR TERM)</b>				<b>\$114,581.00</b>

**NOTES:**

The pricing listed above does not include applicable sales tax.

The Cartegraph OMS pricing listed above does not include Esri ArcGIS licenses.

Offline with Cartegraph for iPad is not included in this price.

Hosting includes 50G of available file storage. If additional storage is required, the Customer can purchase in 50G increments.

This Purchase Agreement #PA1039 together with the Cartegraph Solutions Agreement, constitutes the final, complete and exclusive statement of the agreement between the Parties pertaining to their subject matter and supersedes any and all prior and contemporaneous understandings or agreements of the Parties.

## Payment Terms and Conditions

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In consideration for the Solutions and Services provided by **Cartegraph** to **Customer**, **Customer** agrees to pay **Cartegraph** the Fees in U.S. Dollars as described below:

1. **Delivery:** Customer shall be provided with the ability to access and use the Solutions upon execution of this Purchase Agreement. If applicable, Services will be scheduled and delivered upon your acceptance of this Purchase Agreement, which will be considered as your notification to proceed.
2. **Services Scheduling:** Customer agrees to work with Cartegraph to schedule Services in a timely manner. All undelivered Services shall expire 365 days from the signing of this Purchase Agreement.
3. **Solutions Invoicing:** The Fee for Solutions will be due in annual installments 15 days prior to the anniversary of the initial term as follows:
  - a. \$38,026.00 due upon execution of the Purchase Agreement.
  - b. \$39,165.00 due 15 days prior to 1st year anniversary of term start date.
4. **Orange Advantage Services:** Invoicing for Orange Advantage Services for Year 1 will be due as follows:
  - a. 25% upon execution of the Purchase Agreement
  - b. 25% 3 months from execution of Purchase Agreement
  - c. 25% 6 months from execution of Purchase Agreement
  - d. 25% 9 months from execution of Purchase Agreement
5. **Orange Advantage Services:** Invoicing for Orange Advantage Services after year 1 will be due in quarterly installments 15 days prior to the anniversary of the initial term as follows:
  - a. 25% due 15 days prior to 1<sup>st</sup> year anniversary of term start date.
  - b. 25% due 3 months from 1<sup>st</sup> year anniversary of term start date.
  - c. 25% due 6 months from 1<sup>st</sup> year anniversary of term start date.
  - d. 25% due 9 months from 1<sup>st</sup> year anniversary of term start date.
6. **Renewal Invoicing:** Invoicing for the Renewal fee shall occur upon the acceptance of this Purchase Agreement and shall be invoiced as follows:
  - a. \$1,030.00 due upon execution of the Purchase Agreement.
  - b. \$1,060.00 due 15 days prior to 1st year anniversary of term start date.
7. **Payment Terms:** All payments are due Net 30 days from start date of invoice.

BY SIGNING BELOW, THE PARTIES AGREE THAT ALL USE AND ACCESS TO THE SOLUTIONS DESCRIBED IN THIS PURCHASE AGREEMENT SHALL BE GOVERNED BY THE CARTEGRAPH SOLUTIONS AGREEMENT, WHICH CAN BE REVIEWED AT: <https://www.cartegraph.com/solutions-agreement/>. THE PARTIES AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THE CARTEGRAPH SOLUTIONS AGREEMENT AND THIS PURCHASE AGREEMENT REFERENCED HEREIN.

**CARTEGRAPH: Cartegraph Systems LLC**

**CUSTOMER: City of Ashland**

By \_\_\_\_\_  
(Signature)

By \_\_\_\_\_  
(Signature)

Mitch Bradley  
\_\_\_\_\_  
(Type or print name)

\_\_\_\_\_  
(Type or print name)

Title SVP of Sales & Marketing

Title \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_



**Cartegraph Systems LLC**  
**Addendum A - Support Services**  
**Cartegraph Support and Training Services – Scope of Work**

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The Support Services listed in the Investment Summary of the Purchase Agreement are specific Cartegraph Services which will be delivered to the Customer based on the descriptions below and on the terms and conditions and subject to the limitations set forth in this Addendum A, the applicable Purchase Agreement, and the Cartegraph Solutions Agreement. Cartegraph will coordinate with the Customer on service delivery expectations and timeframes.

***As part of Customer's subscription to access and use of the Cartegraph Solutions, Customer will receive:***

**1. Support Services**

**a. *Campus – [www.cartegraph.com/campus](http://www.cartegraph.com/campus)***

Our User Assistance area is a convenient and easily-shareable resource designed to help you and your co-workers better understand the functions and capabilities of your Cartegraph Solutions. Instantly access user tips, step-by-step guides, videos, and more.

**b. *Dedicated, Unlimited, Toll-free Phone Support - 877.647.3050***

When questions need answers and difficulties arise, count on our industry-leading Support team to provide the guidance and assistance you need. Reach us as often as you need Monday-Friday, 7:00 am-7:00 pm CT.

**c. *Secure, Live Remote Support***

If your challenge requires a more hands-on approach, we have the remote support tools to fix it. Let one of our Support Team members directly interact with your system to find a fast, effective solution.

**2. Training & Education Services**

**a. *Convenient Online Resources***

All the information you need, one click away. Take advantage of online training opportunities, tutorial videos, upcoming event information, and more.

**b. *Customer Led User Groups***

Meet and network with similar Cartegraph users in your region. Customer led User Groups allow you to find out what other organizations are doing to get more from their Cartegraph solutions and services.

**3. Releases & Upgrades**

**a. *New Releases***

Be the first to know about all new Cartegraph releases, enhancements, and upgrades.

- i.** Your cloud-hosted site will be automatically upgraded by our System Consultants after the release is available. This way, you'll experience increased system performance while gaining timely access to the latest features and functionality.
- ii.** For your on-Premises Installation, our Technical Consultants will work with your organization's IT staff to receive the latest software release in a timely manner. This way, you'll experience increased system performance while gaining prompt access to the latest features and functionality

**b. *Hot Fixes***

If an issue is determined to be a defect and falls outside the standard release cycle, Cartegraph will issue a hot fix and provide application specialists with detailed levels of product knowledge to work with you in achieving a timely and effective resolution

Cartegraph will provide the Support Services only to Customer, provided that Cartegraph reserves the right to contact any third party as necessary to facilitate the delivery of Support Services or other services relating to the Solutions. Said support applies only to the most current version of the product and the previous version in succession.

All Support Services are dependent upon the use by Customer of the Solutions in accordance with Cartegraph's documentation and specifications. Cartegraph is under no obligation to modify the Solutions so that the modified Solutions would depart from Cartegraph's published documentation and specifications for such Solutions.

## **Cartegraph Systems LLC**

### **Addendum B - Field Services** (Fee for Service)

#### **Cartegraph Field Services – Scope of Work**

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The Field Services listed in the Investment Summary of the Purchase Agreement are specific Cartegraph Services which will be delivered to the Customer based on the descriptions below and on the terms and conditions and subject to the limitations set forth in this Addendum B, the applicable Purchase Agreement, and the Cartegraph Solutions Agreement. Cartegraph will coordinate with the Customer on service delivery expectations and timeframes.

## **Cartegraph – Scope of Work**

The scope of work includes the following professional services:

### **Orange Advantage**

- Cartegraph will provide the following services on an annual basis for the duration of the contract terms:
  - Up to two (2) hours of new release training for each new version of Cartegraph
  - Up to ninety-six (96) hours of remote services for post-production system development. The deliverables will be defined, and agreed upon, by both your and Cartegraph's project managers. Topics may include any of the following:
    - Project or implementation consulting
    - System configuration for your current products
    - Training

Cartegraph will provide all services remotely via audio, video, and web conferences unless otherwise noted.

## **Exclusions**

The following service items are not included in the scope of this project:

- Implementation or support of any custom modification or integration developed by Cartegraph, your internal staff, or any third-party is not included in the scope of this project unless specifically listed above.
- Data conversion services from other software system(s) or sources (including Cartegraph Navigator databases) are not included in the scope of this project unless specifically listed above.
- Any service items discussed during demonstrations, conference calls, or other events are not included in the scope of this project unless specifically listed above.
- Implementation of any asset builder templates if the Advanced User Tools extension is not owned.

## **Customer/Cartegraph Responsibilities**

Project representatives from Customer and Cartegraph accepts responsibility for all aspects of project planning, management, and execution not specifically identified as the responsibility of Cartegraph in the Agreement or in the Purchase Agreement. Ongoing management of the day-to-day allocation of Customer and Cartegraph resources and management of project tasks is the responsibility of the Customer and Cartegraph project representatives. Customer and Cartegraph project representatives will provide overall guidance and direction for the project and will direct the project accordingly. Further, and with regard to the Cartegraph obligations listed in this Purchase Agreement, Customer understands that it is vital to the success of the project that Customer provides assistance in the following matters:

1. For those services listed under Field Services, Cartegraph personnel will conduct information gathering and evaluation sessions with various Customer Users and management. While Cartegraph respects the time and workload of Customer staff, dedicated time on the part of the appropriate Customer resources is necessary to complete these exercises.
2. The installation process requires the assistance of Customer personnel and suitable access to hardware and systems (e.g., security clearance). Customer is required to supervise the installation process while systems are accessible to Cartegraph. All hardware and software, for both personal computers and servers, is expected to be available, installed, and operating as specified in Cartegraph's system requirements documentation such that delivery and execution of Cartegraph Field Services will not be impeded.
3. Customer and Cartegraph understand that the successful performance of Field Services depends upon Customer fulfilling its responsibilities. The Project assumes that Customer will provide all personnel required to achieve a successful implementation, including a dedicated project manager responsible for reviewing the implementation scope of work, ensuring all attended meetings are attended by invited staff, and providing leadership and insight on all relevant internal issues such as policy/procedure, organizational structure, project stakeholders, technical architecture, data, and current systems. Customer responsibility also includes internal documentation, internal change management, task completion, staff coordination and schedule commitment.
4. Customer will provide Internet access and IT staff support as required. For those services that are web-based, Cartegraph utilizes WebEx Meeting (or similar) technology.
5. Customer shall ensure that their workstation platform and database meet Cartegraph system requirements as specified in the Cartegraph System Requirements documentation. Solutions will be supported within new versions of these workstation platforms and databases within a reasonable period of time from their release from their manufacturer. Cartegraph will discontinue support of its Solutions within older versions of these workstation platforms and databases as their support is discontinued by their manufacturers.
6. Customer agrees to work with Cartegraph to schedule Field Services in a timely manner. All undelivered Field Services shall expire 365 days from the execution of this Purchase Agreement, unless noted differently in Services Scope listed above. Upon expiration of services, the project may be cancelled at Cartegraph's discretion.

## **Not-to-Exceed Purchase Agreement**

Cartegraph will not exceed the total included in this Purchase Agreement without written approval from Customer. In the event it becomes apparent to Cartegraph that additional Service will be needed due to any changes in the scope of this Purchase Agreement, Cartegraph will notify Customer prior to exceeding the approved efforts and obtain written approval if additional Services are required.

# CARTEGRAPH SOLUTIONS AGREEMENT

Last Modified: 03/28/2018

[View previous versions of this agreement.](#)

This Cartegraph Solutions Agreement ("Agreement") is a contract between Cartegraph Systems LLC, a Delaware corporation, having its principal place of business at 3600 Digital Drive, Dubuque, Iowa 52003 ("Cartegraph") and you, or if you represent an entity or other organization, that entity or organization, (in either case, the "Customer"). Cartegraph and Customer may be referred to in this Agreement collectively as the "parties" or individually as a "party."

Cartegraph provides certain hosted operations management and asset management solutions (the "Cartegraph Solutions" or "Solutions"). Customer desires to purchase a subscription to access and use certain of the Cartegraph Solutions for Customer's own internal use and operations.

This Agreement sets forth the terms and conditions under which Cartegraph will agree to provide Customer with a subscription to access and use those Solutions specified in written Purchase Agreements referencing this Agreement entered into by Cartegraph and Customer (each, a "Purchase Agreement") and perform those services specified in each Purchase Agreement (the services provided by Cartegraph under this Agreement, including the services made available through the Solutions, the "Services"). All access to and use of the Solutions and the performance of all Services are subject to the terms of this Agreement.

This Agreement includes any Purchase Agreement entered into by the parties referencing this Agreement and any written Addendum attached to a Purchase Agreement, including descriptions of any Solutions or Services (each, an "Addendum"), all of which are hereby incorporated into and made a part of this Agreement. Unless you later enter into any other Agreement with Cartegraph regarding the Solutions and Services, this Agreement is the complete and exclusive statement of the agreement between the parties and supersedes any proposal or prior agreement, oral or written, and any other communications between the parties, in relation to the subject matter of this Agreement. Terms used in this Agreement will have the definitions given in this Agreement or, if not defined in this Agreement, will have their plain English (US) meaning.

PLEASE CAREFULLY READ THIS AGREEMENT. BY ACCEPTING THIS AGREEMENT, THROUGH THE EXECUTION OF A PURCHASE AGREEMENT THAT REFERENCES THIS AGREEMENT, OR BY CLICKING A BOX THAT STATES THAT YOU ACCEPT OR AGREE TO THIS AGREEMENT, YOU AGREE THAT YOU HAVE READ AND AGREE TO BE BOUND BY THIS AGREEMENT. IF YOU DO NOT AGREE TO THIS AGREEMENT, OR DO NOT MEET THE QUALIFICATIONS INCLUDED IN THIS AGREEMENT OR ANY PURCHASE AGREEMENT, CARTEGRAPH IS NOT WILLING TO PROVIDE YOU, AS CUSTOMER, WITH ACCESS TO OR USE OF CARTEGRAPH SOLUTIONS OR SERVICES, AND YOU MUST NOT ACCESS OR USE CARTEGRAPH SOLUTIONS OR SERVICES. IF YOU ACCESS OR USE CARTEGRAPH SOLUTIONS OR SERVICES, YOU ACKNOWLEDGE THAT YOU MEET THE QUALIFICATIONS INCLUDED IN THIS AGREEMENT AND ANY PURCHASE AGREEMENT, AND AGREE TO BE BOUND BY THE TERMS AND CONDITIONS HEREIN.

## 1. TERM.

The term of this Agreement shall begin upon the execution of an initial Purchase Agreement under this Agreement and, unless earlier terminated as permitted herein, shall continue for the period of time specified in that Purchase Agreement ("Initial Term"). The execution of any subsequently added Purchase Agreement under this Agreement shall not extend the Initial Term unless otherwise expressly stated in that Purchase Agreement. Unless otherwise stated in an applicable Purchase Agreement under this Agreement, the Initial Term of this Agreement shall automatically renew for successive additional 1 year renewal periods (each, a "Renewal Term") unless either party provides the other party with written notice of its intent not to renew this Agreement at least 60 days before the end of the Initial Term or any such Renewal Term.

## 2. SOLUTIONS.

### 2.1 FUNCTIONALITY.

The Solutions will include the functionality described in the applicable Purchase Agreement or Addendum for each Solution. Cartegraph may from time to time update, change, or revise the functionality of the Solutions, provided the functionality of the Solutions is not materially decreased from that described in the applicable Purchase Agreement or Addendum to a Purchase Agreement.

### 2.2 SUBSCRIPTION.

Subject to the terms and conditions of this Agreement, during the term of this Agreement Cartegraph will provide Customer with a non-exclusive, non-transferable, and non-sublicensable subscription to allow employees and independent contractors of Customer ("Users") to access and use the Solutions, solely for purposes of Customer's own internal use and operations. If Customer has purchased a per-user subscription, as indicated in the applicable Purchase Agreement, only the finite number of subscriptions indicated in each applicable Purchase Agreement have been purchased by Customer and only that finite number of Users may access and use the Solutions at any given time. If Customer has purchased an unlimited subscription, as indicated in the applicable Purchase Agreement, all Users associated with Customer are permitted to access and use the Solutions at any given time. In either case, the subscription applies only to the Users and does not allow access to or use of the Solutions by any affiliated entities or organizations, or any other entity unless approved in advance by Cartegraph in writing.

### 2.3 ACCESS.

Customer may access the Solutions solely through the account established for Customer (an "Account"). Customer will be permitted to establish user identifications and passwords through which individual Users may access the Solutions through Customer's Account ("User IDs"). Each User ID is issued to a specific User and may be used only by that User. Customer will ensure that all information about each User provided to Cartegraph in connection with establishing each User ID is accurate and complete and will maintain that information as accurate and complete throughout the term of this Agreement. Customer is and will remain solely responsible for all use of the Solutions by any User and for compliance by each User with the applicable terms of this Agreement. If Customer authorizes an independent contractor or consultant as a User, in addition to being responsible for such independent contractor's or consultant's actions as a User, Customer shall also require such independent contractor or consultant to agree to terms at least as protective of the Solutions as those contained in this Agreement prior to being granted access to the Solutions. Customer will ensure the security and confidentiality of each User ID and will use commercially reasonable efforts to prevent unauthorized access to or use of the Solutions. Customer will notify Cartegraph promptly of any such unauthorized access or use of the Solutions or if any User ID is lost, stolen, or otherwise compromised. Customer acknowledges that Customer is and will remain fully responsible for all costs, fees, liabilities, or damages incurred through any access to or use of the Solutions through Customer's Account or by any User (whether lawful or unlawful) and that any Services used or transactions facilitated through Customer's Account or under any User ID

will be deemed to have been completed by Customer. In no event will Cartegraph be liable for the foregoing obligations or any failure by Customer to fulfill such obligations.

## **2.4 RESTRICTIONS.**

The Solutions, the software, hardware, databases, and other technology used by or on behalf of Cartegraph to provide the Solutions (the "Cartegraph Technology"), and their structure, organization, and underlying data, information, and source code, constitute valuable trade secrets of Cartegraph and its licensors. As a condition to the use of and access to the Solutions, Customer will not, and will not permit any User or other third party to: (a) access or use the Solutions except as expressly permitted by this Agreement; (b) access or use the Cartegraph Technology directly, except through the Solutions as expressly provided in this Agreement; (c) use the Solutions in any unlawful or illegal manner or in any other manner that could damage, disable, overburden or impair the Cartegraph Technology; (d) use automated scripts to collect information from or otherwise interact with the Cartegraph Technology; (e) alter, modify, reproduce, create derivative works of the Cartegraph Technology; (f) distribute, sell, resell, lend, loan, lease, license, sublicense, transfer, or otherwise make available the Solutions or any of Customer's rights to access or use the Solutions or any Service to any third party; (g) reverse engineer, disassemble, decompile, or otherwise attempt to derive the source code or method of operation of or any trade secrets embodied in the Cartegraph Technology; (h) attempt to circumvent or overcome any technological protection measures intended to restrict access to any portion of the Cartegraph Technology; (i) use the Cartegraph Technology for purposes of monitoring their availability, performance or functionality, or for any other benchmarking, business intelligence, data mining, or competitive purposes; or (j) interfere in any manner with the operation or hosting of the Cartegraph Technology.

## **2.5 THIRD PARTY OFFERINGS.**

Customer agrees and acknowledges that certain portions of the Solutions may be provided by third party providers ("Third Party Offerings"). Customer's access to and use of any Third Party Offering is also subject to any other agreement separate from this Agreement that Customer may enter into (or may have entered into) relating to those Third Party Offerings ("Third Party Terms"). In addition to the terms of this Agreement, access to and use of each Third Party Offerings is also subject to the terms and conditions of any Third Party Terms applicable to that Third Party Offering. Except as set forth in this Agreement, any applicable Third Party Terms will control in the event of a conflict between the terms of this Agreement and those Third Party Terms. Except as expressly set forth in any Third Party Terms, You are granted no licenses or rights, whether by implication, estoppel, or otherwise, in or to any Third Party Offerings.

## **3. SERVICES.**

If Customer enters into a Purchase Agreement, including any applicable Addendum specifying any of the following Services, Cartegraph will use commercially reasonable efforts to provide those Services to Customer during the term of this Agreement. All such Services are provided subject to the terms and conditions of this Agreement. Cartegraph has no obligation to provide any of the following Services unless specified in a Purchase Agreement or Addendum to this Agreement.

### **3.1 ON-SITE INSTALLATION SERVICES.**

Cartegraph will provide Customer with deployment and installation Services for the Solutions if indicated in a Purchase Agreement ("On-Site Installation Services"). On-Site Installation Services will be subject to scheduling in cooperation with Customer. Customer will provide all equipment and hardware stated in such Purchase Agreement, and any additional equipment and hardware reasonably necessary for the operation of the Solutions. Customer shall be responsible for maintaining the equipment and hardware, which shall include providing sufficient resources (e.g., electricity, HVAC, or other resources) necessary for the equipment and hardware to properly operate. Cartegraph's warranties and indemnification obligations contained in this Agreement shall be limited to the extent that such obligation arises from Customer's equipment and hardware. Customer shall coordinate with Cartegraph to provide Cartegraph with the level of access to the equipment and hardware to perform On-Site Installation Services and any other Services as specified in a Purchase Agreement. If no level of access is specified in a Purchase Agreement, then all access by Cartegraph to the equipment and hardware shall be remote access. Unless otherwise specified in a Purchase Agreement, Cartegraph shall have no obligation to perform the On-Site Installation Services, or any other Services, on Customer's premises. If Cartegraph determines that it is necessary to perform any Services on Customer's premises, Cartegraph shall first receive approval from Customer prior to performing such Services on Customer's premises. Cartegraph shall have no responsibility to Customer for any liability to the extent that such liability arises from Customer's failure to provide Cartegraph sufficient or timely access to the equipment or hardware. Customer understands that Customer does not receive any rights to the Cartegraph Technology separate and apart from Customer's right to access the Solutions installed on-site by Cartegraph as described in this Agreement. If Customer requires additional rights to access the Solutions, Customer shall obtain Cartegraph's prior written consent. Upon termination or expiration of this Agreement, Customer will immediately either return to Cartegraph or, at Cartegraph's discretion, destroy any Cartegraph Technology then in Customer's possession or control and certify in writing signed by an officer of Customer that it has fully complied with the foregoing obligations.

### **3.2 SUPPORT SERVICES.**

Cartegraph will provide Customer with support Services for the Solutions as specified in Addendum A if such Addendum is attached to a Purchase Agreement ("Support Services").

### **3.3 FIELD SERVICES.**

Cartegraph will provide Customer with the field implementation Services for the Solutions as specified in Addendum B if such Addendum is attached to a Purchase Agreement ("Field Services"). Field Services will be subject to scheduling in cooperation with Customer.

### **3.4 DATA SERVICES.**

Cartegraph will provide Customer with the data collection Services for the Solutions as specified in Addendum C if such Addendum is attached to a Purchase Agreement ("Data Services"). Data Services will be subject to scheduling in cooperation with Customer.

### **3.5 PROFESSIONAL SERVICES.**

Cartegraph will perform any additional professional Services relating to the Solutions ("Professional Services") if specified in any written statement of work mutually agreed to by both parties under this Agreement. Cartegraph will perform all Professional Services at the rates for those Professional Services set forth in each applicable statement of work, or, if no rates are set forth in an applicable statement of work, at Cartegraph's then-current rates for those Professional Services. Professional

Services shall be performed during the working hours stated in the statement of work applicable to those Professional Services, or, if no working hours are stated, the Professional Services will be provided during the hours of 7:00 a.m. to 7:00 p.m., Central Standard or Central Daylight Time, whichever is applicable, Monday through Friday excluding holidays.

#### **4. SOFTWARE.**

Cartegraph may provide Customer with software in connection with the Solutions ("Software"). Unless any Software provided by Cartegraph in connection with the Solutions is subject to a license or other agreement separate from this Agreement that Customer has entered into (or may enter into) with Cartegraph (a "Software License Agreement"), Cartegraph grants Customer a limited, non-exclusive, non-transferrable, non-assignable, license solely to install and execute the Software in accordance with the instructions provided by Cartegraph for Customer's own internal use and operations in connection with Customer's access to and use of the Solutions. Except as expressly set forth in the foregoing sentence (or any applicable Software License Agreement), Customer is granted no licenses or rights, whether by implication, estoppel, or otherwise, in or to any Software, and Customer may not modify, reproduce, perform, display, create derivative works from, republish, post, transmit, transfer, sell, distribute, or in any way exploit any Software without the prior written permission of Cartegraph. Except as set forth in this Agreement, the terms of any Software License Agreement will control in the event of a conflict between the terms of this Agreement and that Software License Agreement. Customer agrees that use of the Software is limited as described in the Purchase Agreement, as either: (1) Browser Based User – Each browser based User is defined by User ID; or For Server Software – One copy of Software for each server. Customer agrees that Cartegraph may audit Customer's Software usage remotely or on-site upon reasonable notice and during standard business hours. Prevention of audit by Customer may be grounds for termination of this Agreement. Cartegraph and its licensors will not be responsible to Customer for loss of use of any Software or for any other liabilities arising from alterations, additions, adjustments, or repairs which are made to any Software by Customer or other third parties. Cartegraph reserves the right to terminate the licenses granted to any Software or any Services provided in connection with that Software upon written notice to Customer if any such alteration, addition, adjustment, or repair adversely affects Cartegraph's ability to render Services.

#### **5. FEES AND PAYMENT.**

##### **5.1 FEES.**

Customer agrees to pay Cartegraph all fees specified in any Purchase Agreement and as otherwise specified in this Agreement ("Fees").

##### **5.2 PAYMENT.**

All Fees will be invoiced in advance in accordance with the terms applicable to such Fees. If no terms for an applicable Fee are set forth in the applicable Purchase Agreement, such Fees will be invoiced on a monthly basis following the end of the month in which they were incurred. All Fees as set forth on each invoice issued by Cartegraph under this Agreement will be due and payable by Customer in immediately available U.S. funds within 30 days of the date of invoice. If Customer has not made payment within 30 days of the date of invoice, Customer shall be in default. Customer's default will constitute sufficient cause for Cartegraph to suspend Customer's access to the Solutions or any Services upon notice to Customer. All Fees will be non-refundable once paid to Cartegraph (including upon any termination or suspension of this Agreement). Until paid in full, all past due amounts will bear an additional charge of the lesser of 1½% per month or the maximum amount permitted under applicable law. If Cartegraph requires use of collection agencies, attorneys, or courts of law for collection on Customer's account, Customer will be responsible for those expenses. Customer will be responsible for all use, sales, and other taxes imposed on the Services provided under this Agreement.

##### **5.3 TAXES.**

The Fees do not include any local, state, provincial, federal or foreign taxes, levies, assessments, duties, or other governmental charges of any kind or nature, including, without limitation, any value-added tax (VAT), stamp or other similar tax, social security (or local equivalent), state or regional tax, or income or other federal tax ("Taxes"). Customer is responsible for paying all Taxes that may be imposed by way of the performance of either party under this Agreement, excluding only Taxes based on Cartegraph's net income. If Cartegraph is found or deemed to have a legal obligation to pay or collect any Taxes for which Customer is responsible under this Agreement, the appropriate amount shall be invoiced to and paid by Customer unless Customer provides Cartegraph with a valid tax exemption certificate authorized by the appropriate taxing authority.

##### **5.4 FEE INCREASES.**

Cartegraph may increase the Fees applicable to Customer to the then-current prices for the next Renewal Term by providing notice of such increase at least 60 days before the beginning of such Renewal Term. . If after receiving such notice Customer wishes not to renew the Agreement for the next Renewal Term, Customer must provide written notice to Cartegraph of Customer's intent not to renew this Agreement at least 60 days before the end of the Initial Term or any such Renewal Term.

##### **5.5 EXPENSES.**

Customer shall reimburse Cartegraph for reasonable expenses incurred during the provision of Services. Reasonable expenses include, but are not limited to, travel, lodging, and meals. Expenses are billed based on actual costs incurred. Estimated expenses shall be included in each Purchase Agreement. Cartegraph shall not exceed the estimated expenses without written approval from Customer.

#### **6. TERMINATION.**

##### **6.1 TERMINATION FOR CAUSE.**

Either party may terminate this Agreement immediately upon notice to the other party if the other party: (a) materially breaches this Agreement and fails to remedy such breach within 30 days after receiving notice of the breach from the other party; (b) materially breaches this Agreement in a manner that cannot be remedied; or (c) commences bankruptcy or dissolution proceedings, has a receiver appointed for a substantial part of its assets, or ceases to operate in the ordinary course of business.

##### **6.2 SERVICE DISCONTINUANCE.**

If Cartegraph at any time discontinues offering any Solutions or any Services to new customers, Cartegraph will give Customer reasonable advance notice of such discontinuation. Upon such date of discontinuation, Cartegraph will have the right to terminate this Agreement as to those Solutions or Services upon notice to Customer.

As of the date of termination, Cartegraph will credit to Customer, on a pro-rated basis, any pre-paid Fees under this Agreement and Cartegraph shall have no further obligation to provide the Solutions or any Service under this Agreement.

### **6.3 SUSPENSION.**

Without limiting Cartegraph's right to terminate this Agreement, Cartegraph may suspend Customer's access to the Solutions or any Services upon notice to Customer following any breach of this Agreement if deemed reasonably necessary by Cartegraph to prevent any damage, injury, or harm to Cartegraph, the Cartegraph Technology, any other Cartegraph customer, or any third party.

### **6.4 EFFECT OF TERMINATION.**

All Purchase Agreements shall terminate immediately upon termination of this Agreement. Upon termination or expiration of this Agreement for any reason, and following any applicable Transition Period: (a) Cartegraph may cease providing access to all Solutions and Services under this Agreement; (b) all subscriptions and other rights and licenses granted to Customer under this Agreement will terminate; (c) Customer will immediately cease all use of and access to all Solutions and Services; (d) all Fees and other amounts then owed by Customer under this Agreement will become immediately due and payable to Cartegraph; (e) Customer will immediately either return to Cartegraph or, at Cartegraph's discretion, destroy any Cartegraph Data and Cartegraph Confidential Information (each as defined below) then in Customer's possession or control; and (f) Cartegraph will either return to Customer or, at Customer's discretion, destroy any Customer Data and Customer Confidential Information) then in Cartegraph's possession or control. The following Sections will survive termination or expiration of this Agreement for any reason: 5 (Fees and Payment), 6.4(Effect of Termination), 7 (Ownership), 10 (Disclaimer), 11 (Indemnification), 12 (Limitation on Liability), 14 (Confidentiality), 15 (Governing Law), 16 (Non-Solicitation), 17 (Force Majeure), 18 (Notice), and 19 (Additional Terms).

### **6.5 TRANSITION SERVICES.**

Except in the case of a termination under Section 6.1 by Cartegraph, at any time prior to the effective date of any termination or expiration of this Agreement, Customer may request that Cartegraph continue to provide Customer with any Services then provided under this Agreement for purposes of transitioning and migrating Customer off of the Solutions ("Transition Services"). Upon such request, the parties will develop a mutually agreed to transition plan describing the Transition Services and each party's respective obligations in connection with the transition and migration of Customer off of the Solutions ("Transition Plan"). Cartegraph will provide the Transition Services for the period agreed to in the Transition Plan, such period not to exceed 180 days following termination or expiration of this Agreement (the "Transition Period"). Customer will compensate Cartegraph for all Transition Services at rates specified in the Transition Plan or, if no rates are agreed upon by the parties prior to the performance of the Transition Services, at Cartegraph's then current rates for the Services. All Transition Services will otherwise be subject to the terms of this Agreement.

## **7. OWNERSHIP.**

Cartegraph retains all right, title, and interest in and to the Solutions, Cartegraph Technology, Cartegraph Data, any additions, improvements, updates, new versions, or other modifications thereto created by either party, whether or not through the Services, alone, jointly, or with any third party, and all IPR (as defined below) therein and related thereto. Customer does not receive any ownership interest in or to any of the foregoing, and no right or license is granted to Customer to use any of the foregoing apart from Customer's right to access and use the Solutions under this Agreement. Customer will perform all acts reasonably necessary to assist Cartegraph in perfecting and defending Cartegraph's ownership interest in any of the foregoing. Without limiting the foregoing, Customer agrees to and does hereby make all assignments necessary to provide Cartegraph with the ownership rights set forth in this Section. All names and logos associated with the Solutions and other Services are trademarks of Cartegraph (or its third party providers) and no right or license is granted to Customer to use them. Any rights not expressly granted to Customer hereunder are reserved by Cartegraph. Customer will not remove or alter any proprietary rights legend on the Solutions, Cartegraph Technology, or Cartegraph Data. For purposes of this Agreement, "IPR" means any and all intellectual property and other proprietary rights throughout the world, including, all copyrights, trademarks, service marks, trade secrets, patent rights, moral rights, rights in data and databases, and contract rights.

## **8. DATA.**

### **8.1 CUSTOMER DATA.**

As between Customer and Cartegraph, Customer retains ownership of all data, information, and other content provided to Cartegraph or through the Solutions by or on behalf of Customer ("Customer Data"). Customer is responsible for all Customer Data, including the accuracy, quality, integrity, legality, reliability, and appropriateness thereof. Customer will obtain and maintain all authorizations, approvals, permissions, and other rights necessary for Cartegraph to use and process all Customer Data in the performance of the Services and any other obligations of Cartegraph under this Agreement. Customer will maintain an adequate back-up of all Customer Data and, except for any express obligations of Cartegraph to maintain back-up copies of Customer Data, Cartegraph will not be responsible or liable for any deletion, correction, destruction, damage, loss, or failure to store or back-up any of Customer Data.

### **8.2 CARTEGRAPH DATA.**

As between Cartegraph and Customer, Cartegraph retains ownership of all data, information, and other content provided to Customer through the Solutions and the other Services, excluding any Customer Data ("Customer Data"). Subject to the terms of this Agreement, Customer may access the Cartegraph Data without modification solely for Customer's own internal business purposes in connection with Customer's use of and access to the Solutions. Cartegraph uses commercially reasonable measures to ensure the accuracy and reliability of all Cartegraph Data, but except as expressly provided herein Cartegraph will not be responsible for any erroneous data, information, or content provided through the Solutions. Except as expressly provided in this Agreement, Customer is granted no rights in or to the Cartegraph Data.

### **8.3 DATA SECURITY.**

Cartegraph shall establish and maintain during the term an information security policy providing for reasonable administrative, technical, physical safeguards and security measures designed to protect against the unintended or unauthorized destruction, loss, alteration, or access of any Customer Data in the possession or control of Cartegraph, which safeguards and measures are compliant with applicable federal, state, provincial, or local laws, rules, and regulations ("Laws"). Customer will establish and maintain during the term reasonable and appropriate administrative, technical, and physical safeguards and security measures designed to protect against the unintended or unauthorized destruction, loss, alteration, or access of any Cartegraph Data in the possession or control of Customer, which safeguards and measures are

consistent with applicable Laws. Each party will promptly notify the other party of any data security breach or similar incident that has, or might have, compromised the privacy or security of any Customer Data or, in the case of Customer, any Cartegraph Data in the possession or control of such party. Each party will indemnify and hold harmless the other party from and against any damages or losses asserted against or incurred by the other party arising out of or related to a breach of a party's data security obligations.

## **8.4 DATA PRIVACY.**

Cartegraph may use and disclose data and information collected through the operation of the Solutions solely as described in this Agreement and in Cartegraph's then-current privacy policy applicable to the Solutions. Notwithstanding anything to the contrary in the privacy policy, Cartegraph will have the right to collect and analyze non-personal information (data or information that does not identify an entity or natural person as the source thereof) resulting from Customer's access to and use of the Solutions. To the extent any such non-personal information is collected or generated by Cartegraph, the data and information may be used by Cartegraph, or its permitted service providers, for any lawful business purpose, provided that the data and information is used only in an aggregated form, without directly identifying Customer, or any other User, as the source thereof.

## **9. REPRESENTATIONS AND WARRANTIES.**

### **9.1 GENERAL.**

Each party represents, warrants, and covenants to the other party that: (a) it has and will continue to have during the term hereof, all rights, power, and authority necessary to enter into this Agreement and perform all of its obligations under this Agreement; (b) the performance of its obligations under this Agreement does not and will not violate any Law applicable to such party's performance, any rights of any third party, or any agreement by which such party is bound; and (c) it will procure all rights, certificates, licenses, permits, or other approvals required for its performance under this Agreement.

### **9.2 PERFORMANCE.**

During the term of this Agreement, Cartegraph represents and warrants to Customer that Cartegraph will use commercially reasonable efforts to maintain and verify that the Solutions operate in accordance with the applicable documentation for the Solutions provided to Customer by Cartegraph and in accordance with any other levels of performance specified in this Agreement or applicable Purchase Agreement. Cartegraph's sole obligation and Customer's sole and exclusive remedy in the event of any failure of the Solutions to comply with any such performance levels will be for Cartegraph to, at its option: (a) remedy the failure or re-perform the affected Services; or (b) refund Customer the portion of any Fees applicable to the portion of the Solutions subject to the failure.

### **9.3 NON-INFRINGEMENT.**

Cartegraph represents and warrants to Customer that the use by Customer of the Solutions during the term and in accordance with this Agreement (the "Covered Services") will not infringe any third party U.S. patent or copyright or misappropriate any third party trade secret in existence under any Laws of any state within the U.S. As Cartegraph's sole obligation and Customer's sole and exclusive remedy for of any failure by Cartegraph to comply with the foregoing sentence, Cartegraph will defend Customer against any such failure as set forth in Section 11.2.

## **10. DISCLAIMER.**

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE SOLUTIONS AND ALL SERVICES UNDER THIS AGREEMENT, AND ALL CARTEGRAPH DATA PROVIDED THROUGH THE SOLUTIONS OR THOSE SERVICES, ARE PROVIDED TO CUSTOMER STRICTLY "AS IS" AND "AS AVAILABLE" AND CARTEGRAPH AND ITS PROVIDERS EXPRESSLY DISCLAIM, AND CUSTOMER DISCLAIMS ANY RELIANCE ON, ANY AND ALL WARRANTIES AND REPRESENTATIONS OF ANY KIND WITH REGARD THERETO OR TO ANY OTHER SUBJECT MATTER OF THIS AGREEMENT, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, TITLE, NON-INFRINGEMENT, AVAILABILITY OR ERROR-FREE OPERATION. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY CARTEGRAPH, ITS EMPLOYEES, DISTRIBUTORS, DEALERS, OR AGENTS WILL INCREASE THE SCOPE OF, OR CREATE ANY NEW WARRANTIES IN ADDITION TO, THE WARRANTIES EXPRESSLY SET FORTH IN THIS AGREEMENT.

## **11. INDEMNIFICATION.**

### **11.1 GENERAL.**

Each party (the "Indemnifying Party") will defend the other party and its officers, directors, employees, and agents (its "Related Parties") from and against any claim, allegation or action (any "Action") brought against the other party or one of its Related Parties by a third party (other than by the other party itself or another of its Related Parties) to the extent relating to, resulting from, or arising out of the gross negligence or willful misconduct of the Indemnifying Party in the performance (or failure to perform) any of its obligations under this Agreement. The Indemnifying Party will further pay those losses, liabilities, damages, fees, expenses, and costs (including reasonable attorneys' fees and court costs) ("Losses") finally awarded against the other party or one of its Related Parties in any such Action or those Losses agreed to in a monetary settlement of such Action, as applicable.

### **11.2 NON-INFRINGEMENT.**

Cartegraph will defend Customer from and against any Action brought against Customer by a third party (other than a Customer Related Party) that the use by Customer of the Covered Services infringes any U.S. patent, or copyright or misappropriates any trade secret in existence under any Laws of any state within the U.S. Cartegraph will pay those Losses finally awarded against Customer in any such Action or those Losses agreed to in a monetary settlement of such Action, as applicable. If Customer is, or Cartegraph reasonably believes Customer may be, enjoined from using any Covered Service due to an Action covered by this Section, Cartegraph may procure the right for Customer to continue using the Covered Service, replace or modify the Covered Service so that it becomes non-infringing, or terminate this Agreement and provide Customer a refund of any pre-paid amounts applicable to the Covered Service (if any). Cartegraph will have no obligation under this Section or otherwise with respect to any Action or Losses in the case of: (a) any use of any Covered Service other than by Customer; (b) any use of any Covered Service not under and in accordance with this Agreement; (c) any use of any Covered Service in combination with products, equipment, services, processes, software, data or information not supplied by Cartegraph; or (d) any modification of or enhancement to any Covered Service other than by Cartegraph. This Section constitutes Cartegraph's sole and exclusive liability, and Customer's sole and exclusive remedy, for any infringement or misappropriation of IPR or any other rights relating to the solutions.



### **11.3 BY CUSTOMER.**

Customer will defend Cartegraph and its Related Parties from and against any Action brought against Cartegraph or one of its Related Parties by a third party (other than by Cartegraph or another Cartegraph Related Party) to the extent relating to, resulting from, or arising out of any: (a) any violation of any Law caused by the use of or access to the Solutions by Customer; or (b) any claim or allegation by a User or other third party relating to use of or access to the Solutions or any Services by Customer. Customer will only pay those Losses finally awarded against Cartegraph in any such Action or those Losses agreed to in a monetary settlement of such Action, as applicable.

### **11.4 CONDITIONS.**

All obligation of each party to defend or indemnify the other party or any Related Party under this Agreement are conditioned upon the party seeking defense or indemnification (the "Indemnified Party") providing the other party with: (a) prompt notice of any such claim for indemnification or defense after receiving notice thereof; (b) sole control over the defense and settlement of such claim, provided that any settlement that will require the other party to assume any liability other than the payment of monies will be subject to the other party's prior written consent; and (c) reasonable assistance in such defense or settlement (at the indemnifying or defending party's expense).

### **12. LIMITATION ON LIABILITY.**

IN NO EVENT WILL CARTEGRAPH BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED, UNDER ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, STRICT LIABILITY OR TORT (INCLUDING NEGLIGENCE OR OTHERWISE), ARISING IN ANY WAY IN CONNECTION WITH OR OUT OF THIS AGREEMENT, INCLUDING THE USE OF OR ACCESS TO THE SOLUTIONS OR ANY SERVICES OR THE CARTEGRAPH TECHNOLOGY (OR ANY CARTEGRAPH DATA), EVEN IF CARTEGRAPH HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, INCLUDING ANY LOSS OF DATA, OPPORTUNITY, LOSS OF REVENUES OR PROFITS, BUSINESS INTERRUPTION, OR PROCUREMENT OF SUBSTITUTE SERVICES. CARTEGRAPH'S TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH THIS AGREEMENT, THE SOLUTIONS, AND ALL SERVICES PROVIDED UNDER THIS AGREEMENT, WHETHER IN CONTRACT OR TORT OR OTHERWISE, WILL NOT EXCEED THE FEES PAID TO CARTEGRAPH HEREUNDER IN THE 12 MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING CAUSE TO SUCH LIABILITY. CUSTOMER AGREES THAT THE FEES REFLECT THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND ACKNOWLEDGE THAT CARTEGRAPH WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT THESE LIMITATIONS ON ITS LIABILITY. IN JURISDICTIONS WHERE LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES IS NOT PERMITTED, CARTEGRAPH'S LIABILITY IS LIMITED TO THE MAXIMUM EXTENT PERMITTED BY LAW.

### **13. INSURANCE.**

If Cartegraph will provide Services at Customer's location, Cartegraph will carry commercial general liability insurance with a limit of \$1,000,000 per occurrence and a \$2,000,000 aggregate limit, business auto liability insurance with a limit of \$1,000,000 and workers compensation insurance with statutory coverage.

### **14. CONFIDENTIALITY.**

#### **14.1 PROTECTION.**

Each party (the "Receiving Party") may from time to time receive or otherwise obtain data or information regarding the business, finances, services, or technology of the other party (the "Disclosing Party"), including, without limitation, technical, advertising, marketing, sales, financial, pricing, employee, customer, and planning information, or any other information that by its very nature the Receiving Party should know is confidential ("Confidential Information"). The Receiving Party will not use any Confidential Information of the Disclosing Party for any purpose not expressly permitted by this Agreement, and will disclose the Confidential Information of the Disclosing Party only to the employees or permitted contractors of the Receiving Party who have a need to know such Confidential Information for purposes of this Agreement and who are under a duty of confidentiality no less restrictive than the Receiving Party's duty hereunder. The Receiving Party will protect the Disclosing Party's Confidential Information in the same manner as the Receiving Party protects its own confidential information of a similar nature and with no less than reasonable care.

#### **14.2 EXCEPTIONS.**

The Receiving Party's obligations with respect to any Confidential Information of the Disclosing Party will terminate if such information: (a) was already lawfully known to the Receiving Party as of the Effective Date; (b) is disclosed to the Receiving Party after the Effective Date by a third party who had the right to make such disclosure without any confidentiality restrictions; or (c) is, or through no fault of the Receiving Party becomes, generally available to the public. The Receiving Party may disclose the Confidential Information of the Disclosing Party if compelled or required to do so by a court of competent jurisdiction or other governmental entity having jurisdiction over the Receiving Party, provided that the Receiving Party provides the Disclosing Party with notice of such requirement and provides reasonable assistance to the Disclosing Party in any attempts to contest such disclosure or obtain a protective order or other applicable limitation with respect to such disclosure. In any event, the Receiving Party will be entitled to receive payment of its expenses and costs actually incurred in responding to such disclosure request and will disclose only such portion of any Confidential Information as it is legally compelled or required to disclose.

#### **14.3 RETURN OF CONFIDENTIAL INFORMATION.**

The Receiving Party will return to the Disclosing Party or destroy all Confidential Information of the Disclosing Party in the Receiving Party's possession or control and permanently erase all electronic copies of such Confidential Information promptly upon the request of the Disclosing Party or when such Confidential Information is no longer needed in connection with its performance under this Agreement, whichever comes first. At the Disclosing Party's request, the Receiving Party will certify in writing signed by an officer of the Receiving Party that it has fully complied with the foregoing obligations.

### **15. GOVERNING LAW.**

The interpretation of the rights and obligations of the parties under this Agreement, including, to the extent applicable, any negotiations, arbitrations or other proceedings hereunder, will be governed in all respects exclusively by the laws of the state/province where the Customer has its principal place of business. Each party agrees that it will bring any action or proceeding arising from or relating to this Agreement exclusively in a federal or state/provincial court in the state/province where the Customer has its principal place of business, and each party irrevocably submits to the personal jurisdiction and venue of any such court in any such action or proceeding or in any action or proceeding brought in such courts.

## **16. NON-SOLICITATION.**

During the term of this Agreement and for a period of 12 months thereafter, Customer will not, directly or indirectly, for itself or on behalf of or in conjunction with any other third party, solicit, induce, hire, contract with, or engage the employment of an employee of Cartegraph, unless Customer: (1) obtains the prior written consent of Cartegraph, as applicable; and (2) pays Cartegraph as applicable a fee to be mutually agreed upon. If Customer directly employs or contracts with an employee of Cartegraph without the prior written consent of Cartegraph, Customer shall pay as damages 2 times the then yearly salary of the employee in question. The parties acknowledge and agree that the foregoing is not intended as a penalty of any kind but as reasonable and adequate compensation to Cartegraph in the event Customer should directly employ or contract with an employee of Cartegraph without the prior written consent of Cartegraph.

## **17. FORCE MAJEURE.**

Neither party will be held responsible for failure or delay in the performance of any obligation under this Agreement, with the exception of the obligation to pay Fees, if such failure or delay is due to acts of God, war, terrorism, strikes, boycotts, labor disputes, fire or other loss of facilities, accident or any other cause beyond its control (each, a "Force Majeure"). If the performance of any obligation under this Agreement by either party is prevented, restricted or interfered with by reason of a Force Majeure event, the party whose performance is so affected, upon giving prompt notice to the other party, will be excused from such performance to the extent of such Force Majeure event, provided that the party so affected will take all reasonable steps to avoid or remove such causes of non-performance and will continue performance hereunder with dispatch whenever such causes are removed.

## **18. NOTICE.**

All notices, reports, consents, authorizations and approvals to be given by a party hereunder will be in writing and will either be via: (1) hand-delivery; (2) reputable overnight mail service; (3) facsimile transmission, provided that an original copy of a transmission will be delivered by some other means permitted under this Agreement; or (4) certified mail, return receipt requested, to the other party at its respective addresses set forth above. All notices will be effective upon receipt (or when delivery is refused), or 3 business days after being deposited in the mail as required above, whichever occurs sooner. Either party may change its address for notice by giving notice of the new address to the other party.

## **19. ADDITIONAL TERMS.**

Unless otherwise amended as provided herein, this Agreement will exclusively govern Customer's access to and use of the Solutions and all Services and is the complete and exclusive understanding and agreement between the parties, and supersedes any oral or written proposal, agreement or other communication between the parties. Except as expressly set forth in this Agreement, this Agreement may be modified or amended only in writing signed by both parties. If any provision of this Agreement is held to be unenforceable, that provision will be removed to the extent necessary to comply with the law, replaced by a provision that most closely approximates the original intent and economic effect of the original to the extent consistent with the law, and the remaining provisions will remain in full force. Neither this Agreement nor any rights or obligations of Customer hereunder may be assigned without the prior written approval of Cartegraph. Any assignment in violation of the foregoing will be null and void. Cartegraph may assign this Agreement to any party that assumes Cartegraph's obligations hereunder, including by sale, merger, consolidation, or operation of law or otherwise. Cartegraph may subcontract its obligations under this Agreement, provided that Cartegraph remains responsible for compliance with the applicable terms of this Agreement as to those obligations. The words "include," "includes" and "including" means "include," "includes" or "including," in each case, "without limitation." All waivers under this Agreement must be in writing. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion. The preprinted terms of a purchase order or any other similar document will not apply to or modify this Agreement. The parties hereto are independent parties, not agents, employees or employers of the other or joint venturers', and neither acquires hereunder any right or ability to bind or enter into any obligation on behalf of the other. In the event of any litigation or other proceeding between the parties relating to this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and other reasonable costs incurred in connection therewith and in pursuing collection, appeals, and other relief to which that party may be entitled. Customer gives Cartegraph permission to use Customer's name or logo for public press releases and customer stories. Cartegraph provides the Solutions, including related software and technology, for federal government end use as a "Commercial Item" as that term is defined at 48 C.F.R. §2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation", as those terms are used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202. Consistent with 48 C.F.R. §12.212 or 48 C.F.R. §227.7202-1 through 227.7202-4, as applicable, the Solutions are provided to the Customer with only those restricted rights as provided under the terms and conditions of this Agreement. If a government agency has a need for rights not conveyed under these terms, it must negotiate with Cartegraph to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement.

**ADDENDUM TO CARTEGRAPH MASTER AGREEMENT NO. MA276**

THIS ADDENDUM is dated July 17, 2017, and contains terms intended to supersede and clarify the terms set forth in that certain Cartegraph Master Agreement No. #MA276 to which this Addendum is attached and incorporated by this reference.

Section 9.D is hereby removed.

Section 9.E is hereby removed.

Section 9.F is hereby removed.

Section 12 is hereby amended to read as follows, "**Limitation of Liability.** TO THE MAXIMUM EXTENT ALLOWED UNDER APPLICABLE LAW, YET LIMITED BY ORS 30.260-30.300 OREGON TORT CLAIMS ACT."

Section 16.B is hereby amended to read as follows, "Subject to Oregon Public Records Law, ORS 192.410-192.505, Customer acknowledges and agrees that Cartegraph or Third Party Licensors shall suffer irreparable injury not compensable by money damages and therefore shall not have an adequate remedy at law in the event of an unauthorized use of proprietary rights or an unauthorized use or disclosure of any Confidential Information in breach of the provisions of this Agreement. Accordingly, Cartegraph or Third Party Licensors shall be entitled to injunctive relief to prevent or curtail any such breach, threatened or actual. The foregoing shall be in addition and without prejudice to such rights that Cartegraph or Third Party Licensors may have at law or in equity."

Section 18.C is hereby amended to read as follows, "Subject to ORS 30.160-30.300 (Oregon Tort Claims Act), Customer shall indemnify and hold Cartegraph and Third Party Licensors harmless from any loss, cost or expense suffered or incurred in connection with any claim, suit or proceeding brought against Cartegraph or Third Party Licensors so far as it is based on a claim that the use, sale or licensing of any Products delivered hereunder and modified or altered or combined with any products, device, or software not supplied by Cartegraph hereunder constitutes an infringement because of such modification, alteration or combination."

BY EXECUTING THIS ADDENDUM CUSTOMER ACKNOWLEDGES THAT IT HAS REVIEWED THE TERMS AND CONDITIONS ON THE FOLLOWING PAGES IN ADDITION TO ANY EXHIBITS AND PURCHASE AGREEMENTS AND CUSTOMER AGREES TO BE LEGALLY BOUND BY EACH SUCH AGREEMENT.

**Cartegraph Systems, Inc.**

By \_\_\_\_\_  
(Signature)

Tim McCool \_\_\_\_\_  
(Type or print name)

Title Director of Sales

Date \_\_\_\_\_

**City of Ashland**

By \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Type or print name)

Title \_\_\_\_\_

Date \_\_\_\_\_

**APPROVED AS TO FORM**

  
Ashland City Attorney

Date 7-19-17

This Agreement is by and between Cartegraph Systems, Inc., an Iowa corporation having its principal place of business at 3600 Digital Drive, Dubuque, Iowa, 52003 ("Cartegraph"), and City of Ashland ("Customer") with an address of 20 East Main Street, Ashland, OR 97520 dated July 6, 2017.

This Agreement is intended to serve as the primary controlling agreement between the parties. This Agreement includes the following terms and conditions, as well as all Exhibits and Addendums to this Agreement, Purchase Agreements, and all other future agreements referencing this Agreement which Cartegraph and Customer may execute from time to time for the purchase of Software, Support, Services and Hosting. Collectively these are referred to as "Products". The terms and conditions herein provided shall be controlling as between Cartegraph and Customer unless specifically superseded by an Exhibit to this Agreement, a contemporaneously or subsequently executed Purchase Agreement, or any other contemporaneously or subsequently executed agreement specifically referencing this Agreement.

BY EXECUTING THIS AGREEMENT, CUSTOMER ACKNOWLEDGES THAT IT HAS REVIEWED THE TERMS AND CONDITIONS ON THE FOLLOWING PAGES IN ADDITION TO ANY EXHIBITS AND PURCHASE AGREEMENTS AND CUSTOMER AGREES TO BE LEGALLY BOUND BY EACH SUCH AGREEMENT.

Cartegraph Systems, Inc.

By \_\_\_\_\_  
(Signature)

Tim McCool  
(Type or print name)

Title Director of Sales

Date \_\_\_\_\_

City of Ashland

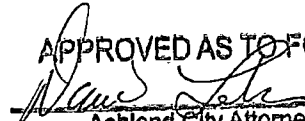
By \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Type or print name)

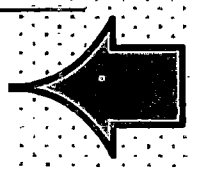
Title \_\_\_\_\_

Date \_\_\_\_\_

APPROVED AS TO FORM

  
Ashland City Attorney

Date 7-19-17



DATE

The following are the terms and conditions under which Cartegraph licenses its Software and provides Support, Services and Hosting as listed in the Exhibits and Purchase Agreements referencing this Agreement.

**1. Grant of License to Software.**

- A. Cartegraph is licensed by third parties ("Third Party Licensors") to sublicense certain third party software products to Customer and to offer services to Customer for these third party software products under this Agreement.
- B. Each Software product, including all data programs or set of programs, or routines and subroutines, consisting of a series of instructions or statements in machine readable form, and including any documentation relating to or describing such Software, such as, but not limited to manuals, online documentation and user instructions, flow charts, database schemas and improvements or updates provided by Cartegraph (collectively "Software"), is furnished to Customer under a personal, non-exclusive, nontransferable limited license solely for Customer's own internal use on Host Computer System (as defined below) and with Customer's Clients.
  - 1. Host Computer Systems, if applicable, are Servers owned or controlled by Cartegraph that Customer may access under this Agreement (the provision of this service is herein referred to as "Hosted" or "Hosting").
  - 2. Servers are personal computers, minicomputers, mainframes, workstations, and terminal devices that interact with Client Software and have been approved by Cartegraph or Third Party Licensors for operation of Software.
  - 3. Server Software is a copy of Software residing on a server, multiple servers, or a Host Computer System.
  - 4. Clients are personal computers, minicomputers, mainframes, workstations, mobile devices, and terminal devices that interact with Server Software and have been approved by Cartegraph or Third Party Licensors for operation of Software.
  - 5. Client Software is a copy of Software residing on a Client that interacts with Server Software.
  - 6. Data Files are those files which contain data that is input by the Customer during the use of the Software.
- C. Customer agrees that the number of users licensed will be listed in the Purchase Agreement and only that number of users may use the Software at any given time.
  - 1. If Customer has purchased a Per-User License, as indicated in the Purchase Agreement, only a finite number of licenses have been purchased by Customer and only that finite number of users may access and use the Software at any given time. The specific number of licenses purchased shall be identified in the Purchase Agreement.
  - 2. If Customer has purchased an Unlimited License, as indicated in the Purchase Agreement, all employees of Customer are considered to be licensed to access and use the Software at any given time. Such Unlimited License applies only to employees of Customer and does not allow the access or use of the Software by any independent contractors, affiliated entities or organizations, or any other individual, party, or entity that is not an employee of Customer.
- D. Customer agrees the Software license for the Software is limited as follows:
  - 1. Browser Based User – Each browser based user is defined by unique ID and password.
  - 2. For Server Software – one copy of Server Software for each Server or, if Hosted, no copies of Server Software for a Server that is not a Host Computer System.
- E. Customer agrees that this license does not permit Customer to: (1) use the Software for a service bureau application or (2) sublicense the Software.
- F. Except as set forth in this Agreement or as may be permitted in writing by Third Party Licensors, Customer shall not use, provide or otherwise make available the Software or any part or copies thereof to any third party.
- G. Customer shall not, and shall not permit others to:
  - 1. Reverse engineer, decompile, decode, decrypt, disassemble, or in any way derive source code from the Software;
  - 2. Modify, translate, adapt, alter, or create derivative works from the Software;
  - 3. Copy, (other than one back-up copy), distribute, publicly display, transmit, sell, rent, lease or otherwise exploit the Software; or
  - 4. Distribute, sublicense, rent, lease, loan (or grant any third party access to or use of) the Software to any third party.
- H. Customer may make copies of the Client Software for archival purposes. The Server Software may not be copied, in whole or in part.

**2. Title to Software and Data Files.**

- A. Ownership of the Software, any portions thereof and any modifications, translations, or derivatives thereof, even if unauthorized, remains with Cartegraph or Third Party Licensors, as do all applicable rights in patents, copyrights and trade secrets and any other proprietary rights in the Software. Software provided hereunder is valuable, proprietary and unique, and Customer agrees to be bound by and observe the proprietary nature thereof as provided herein.
- B. Customer acknowledges that unauthorized reproduction, use, or disclosure of the Software or any part thereof may cause irreparable injury to Cartegraph or Third Party Licensors, who may therefore be entitled to injunctive relief to enforce these license restrictions, in addition to any other remedies available at law, in equity, or under this Agreement.
- C. Customer agrees that Cartegraph or Third Party Licensors may audit Customer's Software usage remotely or on-site during Support, Services or Hosting or upon reasonable notice and during standard business hours. Prevention of audit by Customer may be grounds for termination of this Agreement.
- D. Cartegraph agrees that ownership of data in Data Files remains with Customer. However, Customer agrees that Cartegraph may access Data Files and grants Cartegraph a license to use the data for 1) internal business purposes to evaluate the use and operation of the Software, Support, Services or Hosting; and 2) marketing purposes provided that any information shared with third parties is anonymized and/or aggregated so that Customer cannot be identified from the information.

### **3. License Fees, Support Charges, Services and Hosting Charges.**

- A. Customer agrees to pay the license fees for the Software, Support charges, Services charges and Hosting charges as set forth in the Purchase Agreement for each Product.
- B. Cartegraph agrees that the total amount listed in the Purchase Agreement shall be considered the not-to-exceed price for the Software, Support, Services and Hosting included in that Purchase Agreement. Hosting includes 50G of available file storage. If additional storage is required, the Customer can purchase in 50G increments.
- C. Customer agrees that all payments are due 30 days from date of invoice and Customer shall be in default if amounts due have not been received in that time period. Customer's default will constitute sufficient cause for Cartegraph to suspend or terminate the Software license, Support, Services and Hosting under this Agreement.
- D. Customer shall be invoiced for Software, Support, Hosting and hardware upon delivery. Customer shall be invoiced for Services as set forth in the Purchase Agreement.
- E. Customer shall reimburse Cartegraph for reasonable expenses incurred during the provision of Support, Services or Hosting. Reasonable expenses include, but are not limited to, travel, lodging, and meals. Expenses are billed based on actual costs incurred. Estimated expenses shall be included in each Purchase Agreement and include the number of trips to customer site. Cartegraph shall not exceed the estimated expenses without written approval from Customer.

### **4. Delivery and Installation.**

#### **A. On-Site Installation**

- 1. This subsection "A" regarding On-Site Installation shall apply if Customer elects, as indicated in the Purchase Agreement, to have Software and Products installed on Customer's Servers and Client computers at Customer's facilities ("On-Site") instead of utilizing Cartegraph Hosting Services.
  - a. Execution of a Purchase Agreement by Customer shall be considered as Customer's notification to Cartegraph to proceed with delivery of the Products identified in the Purchase Agreement.
  - b. Delivery of Software and Support shall take place reasonably quickly after execution of the Purchase Agreement. Cartegraph shall provide access to the Software to Customer in a downloadable form. Notification by Cartegraph that Software is available for download shall constitute delivery of Software and Support, regardless of when Customer downloads the Software.
  - c. Customer shall be responsible for installation of the Client Software on Customer's Clients, unless agreed otherwise.
  - d. After execution of the Purchase Agreement, delivery of Services will be scheduled in cooperation with Customer. Customer shall remain responsible for Service charges even if Services are not delivered.
  - e. Any hardware included in the Purchase Agreement shall be ordered after execution of the Purchase Agreement. Delivery of hardware will be scheduled in cooperation with Customer.

#### **B. Hosting**

- 1. This subsection "B" regarding Hosting shall apply if Customer elects, as indicated in the Purchase Agreement, to utilize the Hosting services offered by Cartegraph instead of having the Software installed On-Site, as described in the previous subsection.

- a. Execution of a Purchase Agreement shall be considered as Customer's notification to Cartegraph to proceed with delivery of the Software and Services as indicated in the Purchase Agreement.
- b. Delivery of Software, Support, and Hosting shall take place reasonably quickly after execution of the Purchase Agreement. Cartegraph shall provide access to the Server Software to Customer on a Host Computer System. Notification by Cartegraph that Server Software is available for access shall constitute delivery of Server Software, Support and Hosting, regardless of when Customer first accesses the Server Software.
- c. Cartegraph shall be responsible for installation of the Server Software on Cartegraph's Host Computer System. Customer shall be responsible for installation of the Client Software on Customer's Clients, unless agreed otherwise.
- d. After execution of the Purchase Agreement, delivery of Services will be scheduled in cooperation with Customer. Customer shall remain responsible for Service charges even if Services are not delivered.
- e. Any hardware included in the Purchase Agreement shall be ordered after execution of the Purchase Agreement. Delivery of hardware will be scheduled in cooperation with Customer.

## 2. Hosting Services

- a. Cartegraph will install, and operate Server Software on one or more Host Computer Systems.
- b. Cartegraph will provide all equipment, software and services necessary for the operation, maintenance and support of one or more Host Computer Systems and the Server Software. Cartegraph may contract with third parties for all or part of such equipment, software and services ("Third Party Hosts"). Cartegraph reserves the right to change the configuration of the Host Computer System and the Server Software and to change or delete such equipment or software at any time, but Cartegraph shall make the Software compatible with such change or deletion without additional charge to Customer.
- c. Customer shall have access to and be permitted to use the Server Software via Clients.
- d. Customer shall provide a computing and networking environment that meets the minimum requirements set forth in Cartegraph's published specifications.
- e. Customer shall be responsible for all bandwidth between Host Computer System and Clients and in such amounts as to provide reasonable responsiveness of the system.
- f. Cartegraph shall perform a full back-up of data files on a daily basis. The daily full back-up will be retained for (14) fourteen days and then deleted unless customer contracts for additional days. Cartegraph's hosting services uses RAID 10 which both mirrors the data and stripes across multiple drives creating redundancy. Cartegraph hosting services have dual redundancy with offsite back-up storage and a back-up data centers
- g. The Host Computer System shall be used by Customer only for purposes relating to Customer's own use of the Software. Customer shall have no right to assign any of its rights under this section.
- h. Customer agrees that it shall be bound by the terms and conditions of any agreement between Cartegraph and any Third Party Hosts that relate to the use and operation of Host Computer Systems. Cartegraph will apprise Customer of the terms and conditions of such agreements from time to time.
- i. Cartegraph will take reasonable precautions to guard against unauthorized access to Data Files. However, Cartegraph assumes no responsibility that the Software will be used properly.
- j. Customer shall have the right to receive Data Files within sixty (60) days of termination of any Hosting on the condition that customer has paid all outstanding invoices owed to Cartegraph.

## 3. Availability of Host Computer System.

- a. If Cartegraph contracts with a Third Party Host to provide Hosting, the service level provided by the Third Party Host shall be the service level provided by Cartegraph to Customer, except as required for Cartegraph to provide Support under this Agreement.
- b. In general, Server Software will be available for use and access by Customer 24 hours a day, 7 days a week, except for scheduled maintenance to take place at commercially reasonable times. Furthermore, if access to the Server Software becomes a problem, then Cartegraph shall provide Support in view of the severity of the problem.
- c. Server Software will be available for use and access by Customer during back-up activities performed by Cartegraph.

## 5. Support.

- A. Scope of Support. Support includes the response to and resolution of Customer-encountered problems with the Software as reported to Cartegraph by Customer.
  - 1. Resolution of Customer-encountered problems shall, at Cartegraph's option, consist of (1) maintenance provided through telephone, email or remote access; (2) correction of the problem in the Software program; or (3) delivery of bug fixes or workarounds limited to the current or immediate prior Software release.
  - 2. Cartegraph will only support licensed Software located on Servers or Clients. Cartegraph will use commercially reasonable efforts to respond to Customer problems according to the priority level of the problem.
  - 3. Support may also include upgrades to Software.
- B. Support Limitations. Any Support is dependent upon the use by Customer of unmodified Software (except as authorized by Cartegraph) operated in accordance with Cartegraph's documentation. Support specifically excludes the following: (1) Support to a version of Software other than the current or immediate prior release; (2) efforts to restore a release of the Software beyond the current or immediate prior release; (3) efforts to restore a Customer Data File beyond the most recent back-up; and (4) efforts to convert a Customer Data File to another format.

As part of Support, Cartegraph is under no obligation to modify the Software so that the modified Software would depart from Cartegraph's published specifications for the Software.

## 6. Professional Services.

- A. The professional consulting services and deliverables to be performed or delivered by Cartegraph under this Agreement may include, but are not limited to: consulting, network engineering, systems integration, hardware installation, special studies, pre-installation support, installation of Client Software, installation support, training, custom Software modification, tools/utilities components, programming and documentation, data conversion, application design and development, systems analysis and design, conversions, implementing planning and implementation of the Software (collectively referred to as the "Services").
- B. Services shall only be provided as the result of a Purchase Agreement and any attached statements of work.
- C. Services will be provided during the hours of 7:00 a.m. to 7:00 p.m., Central Standard or Central Daylight Time, whichever is applicable, Monday through Friday excluding holidays.

## 7. Customer's Responsibilities.

- A. Customer is responsible for maintenance and installation of any Clients, common carrier equipment or communication equipment related to the operation of the Software and not furnished by Cartegraph. Before Customer introduces equipment not within Cartegraph's published specification, Cartegraph must approve the additional equipment.
- B. Customer is responsible for charges incurred for communication facilities at Customer's facilities, whether incurred by Customer or by Cartegraph Support representatives while performing Support on the Software.
- C. Customer is responsible for performing Software back-ups in accordance with published documentation.
- D. Customer shall notify Cartegraph of any problem and shall allow Cartegraph reasonable access to the Software for performing Support, Services or Hosting.
- E. Customer shall furnish Cartegraph, at Customer's expense, all technical data and information as may be necessary to furnish Support, Services or Hosting.
- F. Customer shall grant Cartegraph access to Servers and Clients as may be necessary for the adequate delivery of the Support, Services or Hosting.

- 8. **Software Modification.** Cartegraph and Third Party Licensors will not be responsible to Customer for loss of use of the Software or data or for any other liabilities arising from alterations, additions, adjustments or repairs which are made to the Software by Customer or third parties. Cartegraph reserves the right to terminate the Software license, Support, Services or Hosting under this Agreement upon written notice to Customer if any such alteration, addition, adjustment or repair adversely affects Cartegraph's ability to render Support, Services or Hosting.

## 9. Term.

- A. Unless terminated by Cartegraph in accordance with this Agreement, the term of the Software license, Support and Hosting shall begin upon the execution of a Purchase Agreement and shall continue for the period of time identified in that Purchase Agreement.
- B. Support for any subsequently added components or upgrades shall be either coterminous with the term of Support applicable to the Software initially covered or as otherwise agreed and stated in the Purchase Agreement.
- C. If Customer elects to purchase Services, then Services shall terminate as agreed in the appropriate Purchase Agreement.



- D. Unless otherwise stated in the most recently executed Purchase Agreement, this Agreement and the Purchase Agreement shall automatically renew at the then current rates for a one (1) year term beginning on the first day following the date identified in the Purchase Agreement as the end of the term of this Agreement. Such automatic renewal shall continue after the end of each successive year until a new Purchase Agreement is executed or until Customer or Cartegraph terminate this Agreement as provided for herein.
- E. If this Agreement and the most recently executed Purchase Agreement are automatically renewed under the terms of the previous paragraph "D", there shall be an automatic increase of up to five percent (5%) annually to all prices that were in effect during the immediately previous term.
- F. If Customer wishes not to renew this Agreement, Customer must provide written notice of Customer's intent not to renew this Agreement at least ninety (90) days prior to the end of the term then in effect.
- G. Notwithstanding anything to the contrary in this Section, Support, Services and Hosting shall terminate immediately upon termination of this Agreement.

#### 10. Termination.

- A. Notwithstanding the foregoing, Cartegraph shall have the right to terminate this Agreement if Customer fails to pay any and all required license fees, Support charges, Services charges, Hosting charges or otherwise fails to comply with this Agreement or the terms and conditions of any applicable Third Party Licensor agreement.
- B. Upon expiration of the license term or upon notice of such termination, Customer shall immediately return or destroy the Software and all portions and copies thereof as directed by Cartegraph or Third Party Licensors and, if requested by Cartegraph or Third Party Licensors, shall certify in writing as to the destruction or return of the same.
- C. Any termination of this Agreement shall automatically terminate Support, Services and Hosting provided under any Purchase Agreement or Statements of Work, unless otherwise agreed. All confidentiality and non-disclosure obligations shall survive any such termination.
- D. Customer shall have the right to terminate this Agreement, according to the terms provided herein, by returning or destroying the Software and all portions and copies thereof and certifying in writing as to the destruction or return of the same.
- E. If Customer wishes to terminate this Agreement prior to the end of the term of this Agreement as identified above or in the appropriate Purchase Agreement, Customer must provide Cartegraph with written notice of such intent to terminate at least ninety (90) days prior to such termination. Any such termination by Customer shall subject Customer to the cancellation fee identified below.
- F. If Customer terminates before the date set in the Purchase Agreement, Customer shall pay a cancellation fee equal to 80% of the remainder of licensing fees, Support charges and Hosting charges due under this Agreement. There shall be no cancellation fee for Services not yet performed. However, no matter the reason, Customer's termination shall not relieve it of the obligation to pay any amounts already due under this Agreement.
- G. Provided however, if Customer is a governmental entity and Software, Support, Services or Hosting are not funded for future fiscal years under the appropriate legal budgeting process for such governmental entity, Customer may terminate for future fiscal years with the cancellation fee identified in the previous paragraph reduced from 80% to 20%. There shall be no cancellation fee for Services not yet performed. However, no matter the reason, Customer's termination shall not relieve it of the obligation to pay any amounts already due under this Agreement.
- H. Cartegraph shall have the right to terminate Hosting, if Hosting services are being provided, by giving at least ninety (90) days written notice that Cartegraph cannot meet its obligations of availability of the Host Computer System.
- I. In addition to the right of termination provided to Cartegraph under other sections of this Agreement, Cartegraph shall have the right to terminate the Software license, Support, Services and/or Hosting upon the occurrence of any of the following events:
  - 1. Customer's oldest invoice is ninety (90) days past due. Support hold will be initiated when customer's oldest invoice is thirty (30) days past due or,
  - 2. Subject to applicable law, the appointment of a receiver, trustee in bankruptcy or similar officer for the equity or assets of Customer, or
  - 3. There is an assignment of this Agreement without the prior written consent of Cartegraph.
- J. Termination shall not be Cartegraph's exclusive remedy and termination shall not adversely affect any claim for damages against Customer.

#### 11. Limited Warranty.

- A. Cartegraph warrants that it has the right to sublicense the Software being licensed hereunder pursuant to the terms provided herein.
- B. Cartegraph warrants that the Software will conform to Cartegraph's published specifications until Support ends.

- C. Provided that the Software is used in a manner for which it was designed as set forth in the Software, Cartegraph's sole obligation and liability hereunder for the Software shall be to use reasonable efforts to remedy any substantial non-conformance which is reported to Cartegraph. In the alternative, Cartegraph may refund amounts paid by Customer pursuant to Purchase Agreements for such Software products.
  - D. THERE ARE NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT WITH RESPECT TO THE SOFTWARE LICENSED HEREUNDER.
  - E. SUPPORT, SERVICES AND HOSTING SET FORTH IN THIS AGREEMENT ARE IN LIEU OF ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SUPPORT, SERVICES AND HOSTING PROVIDED UNDER THIS AGREEMENT DO NOT ASSURE THE UNINTERRUPTED OPERATION OF THE SOFTWARE.
  - F. CUSTOMER'S SOLE AND EXCLUSIVE REMEDY SHALL BE TO TERMINATE THE SOFTWARE LICENSE, SUPPORT OR SERVICES. THE REMEDY SET FORTH IN THIS SECTION IS CARTEGRAPH'S SOLE LIABILITY, AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY, IN LIEU OF ALL OTHERS, FOR ANY BREACH BY CARTEGRAPH OF ITS SOFTWARE, SUPPORT, SERVICES AND HOSTING WARRANTIES HEREUNDER.
12. **Limitation of Liability.** TO THE MAXIMUM EXTENT ALLOWED UNDER APPLICABLE LAW:
- A. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR LOSS OF DATA, HOWEVER ARISING, EVEN IF THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES;
  - B. EXCEPT FOR DAMAGES RESULTING FROM BODILY INJURY OR PATENT OR COPYRIGHT INFRINGEMENT, AS DISCUSSED BELOW, IN NO EVENT SHALL THE MAXIMUM CUMULATIVE LIABILITY OF EITHER PARTY TO THE OTHER UNDER THIS AGREEMENT, UNDER ANY CAUSE OF ACTION OR THEORY OF LIABILITY, EXCEED THE AMOUNT PAID BY CUSTOMER TO CARTEGRAPH DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING CAUSE TO SUCH LIABILITY.
  - C. If Cartegraph will provide Support or Services at Customer's location, liability of Cartegraph arising out of bodily injury, shall not in any event exceed the limits of its insurance coverage.
13. **Insurance.** If Cartegraph will provide Support or Services at Customer's location, Cartegraph will carry commercial general liability insurance with a limit of \$1,000,000 per occurrence and a \$2,000,000 aggregate limit, business auto liability insurance with a limit of \$1,000,000 and workers compensation insurance with statutory coverage. Cartegraph agrees to hold harmless and defend Customer and its agents, officials and employees from bodily injury and property damage claims related to or caused by the sole negligence of Cartegraph employees or contractors.
14. **U.S. Government Restricted Rights.** The Software is commercial software and the Software is provided with restricted rights. Use, duplication or disclosure by the Government is subject to restrictions as set forth in paragraph (c)(1)(ii) of the Rights in Technical Data and Computer Software Clause at DFARS 252.227-7013 of subparagraphs (c)(1) and (2) of the Commercial Computer Software-Restricted Rights at 48 CFR 52.227-19, as applicable.
15. **Employees and Conflicts of Interest.** This Agreement shall not prevent Cartegraph from performing similar services or restrict Cartegraph's use of the employees or contractors provided under this Agreement.
16. **Proprietary Rights and Confidential Information of Cartegraph.**
- A. Certain information and materials supplied by Cartegraph with the Products, such as, without limitation, deliverables, manuals, diagrams, drawings, plans, flowcharts, software, technical processes and formulae, source codes, product designs, sales, costs and other unpublished financial information, product and business plans, usage rates, relationships, projects and data, are Cartegraph's or Third Party Licensors' confidential or proprietary trade secrets (the "Confidential Information") and Cartegraph furnishes them solely to assist Customer in the installation, operation and use of Software. Customer must not reproduce, copy or disclose such Confidential Information except as is reasonable and necessary to properly use Software. Nothing herein shall restrict Customer from complying with its obligations under any law requiring disclosure, but Customer shall give Cartegraph five days prior notice before any release of Confidential Information.
  - B. Customer acknowledges and agrees that Cartegraph or Third Party Licensors shall suffer irreparable injury not compensable by money damages and therefore shall not have an adequate remedy at law in the event of an unauthorized use of proprietary rights or an unauthorized use or disclosure of any Confidential Information in breach of the provisions of this Agreement. Accordingly, Cartegraph or Third Party Licensors shall be entitled to injunctive relief to prevent or curtail any such breach, threatened or actual. The foregoing shall be in addition and without prejudice to such rights that Cartegraph or Third Party Licensors may have at law or in equity.
17. **Proprietary Information of Customer.**
- A. In order to provide Products under this Agreement, Customer may, from time to time, disclose to Cartegraph certain information respecting Customer's technical, financial, statistical and personnel data, (hereinafter "Information"). Any

such Information which is submitted in writing to Cartegraph by the Customer and which is clearly and conspicuously marked as confidential shall be protected by Cartegraph against unauthorized disclosure by using the same degree of care and discretion that Cartegraph uses with similar Information which Cartegraph does not want disclosed to third parties. However, Cartegraph shall not be required to protect Information which (a) is or becomes publicly available, (b) is already in Cartegraph's or its related companies' possession, (c) is independently developed by Cartegraph outside the scope of this Agreement, or (d) is rightfully obtained from third parties. Cartegraph's obligations under this Section shall cease immediately upon return to Customer or destruction by Cartegraph of such Information.

- B. Cartegraph shall not be required to protect any ideas, concepts, know-how, or techniques relating to data, electronic document processing and image processing developed or resulting from the Information or the Services provided under this Agreement.

#### **18. Infringement Indemnification.**

- A. Cartegraph or Third Party Licensors will defend any action, suit or proceeding brought against Customer if based on a claim that Products infringe any United States patent or copyright of any third party ("Intellectual Property") provided that Customer promptly notifies Cartegraph or Third Party Licensors immediately and gives Cartegraph or Third Party Licensors full authority, information and assistance for the action's defense. Cartegraph or Third Party Licensors will pay all damages and costs awarded therein against Customer, but shall not be responsible for any compromise made without its consent. Cartegraph or Third Party Licensors may, at any time it is concerned over the possibility of such an infringement, at its option and expense, replace or modify Products so that infringement will not exist. In the alternative, Cartegraph may remove a component of Products involved and refund to Customer the price as depreciated by an equal annual amount over five (5) years.
- B. Cartegraph and Third Party Licensors shall have no liability to Customer if any Intellectual Property infringement or claim thereof is based upon the use of Products in connection or in combination with equipment, devices, or software not supplied by Cartegraph or used in a manner not expressly authorized by this Agreement or in a manner for which Products were not designed, or if the claim of infringement would have been avoided but for Customer's use of software other than the latest, unmodified release of Software made available to Customer by Cartegraph.
- C. Customer shall indemnify and hold Cartegraph and Third Party Licensors harmless from any loss, cost or expense suffered or incurred in connection with any claim, suit or proceeding brought against Cartegraph or Third Party Licensors so far as it is based on a claim that the use, sale or licensing of any Products delivered hereunder and modified or altered or combined with any products, device, or software not supplied by Cartegraph hereunder constitutes an infringement because of such modification, alteration or combination.

#### **19. Miscellaneous.**

- A. Taxes. Customer shall pay all taxes, levies and similar governmental charges, however designated, and all liabilities with respect thereto which may be imposed by any jurisdiction, including, without limitation, customs, privilege, excise, sales, use, value-added and property taxes levied or based on gross revenue or operation of this Agreement, except those taxes based upon Cartegraph's net income.
- B. Relationship of the Parties: Cartegraph and Customer are independent of each other. This Proposal does not and is not intended to create in any way or manner or for any purpose an employee/employer relationship or a principal-agent relationship. Neither party is authorized to enter into agreements for or on behalf of the other, to create any obligation or responsibility, express or implied, for or on behalf of the other, to accept payment of any obligation due or owed the other, or to accept service of process for the other. Cartegraph is an independent contractor, customarily engaged in the performance of similar services for other parties.
- C. Attorney's Fees/Legal Proceedings: In the event of any litigation or other proceeding between the parties relating to this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and other reasonable costs incurred in connection therewith and in pursuing collection, appeals and other relief to which that party may be entitled.
- D. Export. Customer agrees that the Software, Support, Services and Hosting purchased hereunder will not be exported directly or indirectly, separately or as part of any system, without first obtaining a license from the U.S. Department of Commerce or any other appropriate agency of the U.S. Government, as required.
- E. Assignment. Customer may not assign, voluntarily or by operation of law, any of its rights or obligations in this Agreement except with Cartegraph's prior written consent. This Agreement will be binding on and inure to the benefit of the parties hereto and their respective successors and permitted assigns.
- F. Waiver. The parties' rights and remedies are separate and cumulative. Neither parties' waiver nor failure to exercise in any respect any right or remedy provided in this Agreement is a waiver of any future right or remedy hereunder.
- G. Force Majeure. If any cause beyond Cartegraph's reasonable control prevents Cartegraph from performing under this Agreement by a given date or time, Cartegraph's performance will be automatically postponed.

- H. Choice of Law. Cartegraph agrees that jurisdiction and venue are proper in the state where the Customer has its principal place of business and that the law of the state where the Customer has its principal place of business shall govern any litigation that results from this Agreement.
- I. Severability. The invalidity of any provision of this Agreement will not affect the validity and binding effect of any other provision.
- J. Notice. Notices hereunder must be sent to the addresses on the face of this Agreement, or to such other addresses as specified by a notice complying with this provision. Notice is effective on the earlier of actual receipt or five days after deposit in the mail. Notices in the form of a fax or email are acceptable. Notices must be sent to the attention of the person signing on behalf of the party.
- K. Entire Agreement. This Agreement constitutes the entire agreement between the parties on the subject matter hereof and supersedes all prior or contemporaneous agreements, negotiations, representations and proposals, written or oral between Cartegraph and Customer. This Agreement is not an acceptance of any conflicting terms and conditions and will prevail over any conflicting Customer's terms and conditions. Notwithstanding the foregoing, Customer agrees and acknowledges that the license(s) granted hereunder to Customer may be subject to additional terms and conditions of certain Third Party Licensors, which terms and conditions may be subject to change from time to time without notice at the sole discretion of such Third Party Licensors. A current copy of all such Third Party Licensor terms and conditions can be found at <http://www.cartegraph.com/privacy-policy/#third-party-licenses>.
- L. Amendment. Only a writing executed by authorized representatives of the parties and referenced as an amendment to this Agreement may modify, supplement, or change this Agreement.
- M. Customer gives Cartegraph permission to use customer's organization name and/or logo for promotional purposes, including, but not limited to industry announcements, public press releases, and customer stories.

# Purchase Agreement

**Cartegraph** is pleased to present this Purchase Agreement for the implementation of world class technology solutions. This Purchase Agreement is made and entered into between City of Ashland (hereinafter referred to as "**Customer**" or "**Licensee**") and **Cartegraph Systems, Inc.** (hereinafter referred to as "**Cartegraph**"). This Purchase Agreement is intended to supplement, clarify, and amend the Master Agreement previously executed between **Cartegraph** and **Customer**. In the case that any terms or conditions provided in the Master agreement differ from, are provided in more detail by, or are made irrelevant by the terms and conditions provided in this Purchase Agreement, the terms in this Purchase Agreement shall control. For all terms and conditions not addressed by this Purchase Agreement, the Master Agreement, #MA276 dated July 6, 2017 shall control.

Customer Bill To:	Customer Ship To:
Steven Burkhalter City of Ashland 90 North Mountain Ashland, OR 97520 541-552-2347	Same

## Investment Summary

Cartegraph's proposed fees for this project are included in the summary below.

**Date:** July 6, 2017

**Purchase Agreement** August 24, 2017  
**Signature Expiration**  
**Date:**

**Purchase** #PA567  
**Agreement**  
**No.:**

	Purchase Type	Citizen/Qty.	Unit Price	Total Price
<b>YEAR 1</b>				
<b>SOFTWARE PRODUCTS</b>				
Cartegraph OMS – Platform - Enterprise	Per-citizen Subscription, On-Premise, 7/31/17 – 7/30/18	20,078	\$0.50	\$10,039.00
Cartegraph OMS Extension	Advanced Work Management per-citizen Subscription	20,078	\$0.15	\$3,011.70
Cartegraph OMS Extension	Advanced Asset Management per-citizen Subscription	20,078	\$0.15	\$3,011.70
Cartegraph OMS Users	User Pack Subscription – 50 Named Users	1	\$10,000.00	\$10,000.00
<b>FIELD SERVICES</b>				
Implementation Services	Fixed Fee Service	1	\$59,500.00	\$59,500.00
Systems Integration Service	Fixed Fee Service, Q20170627, Fuel Integration, PetroVend	1	\$6,000.00	\$6,000.00
<b>ESTIMATED EXPENSES</b>				<b>\$8,400.00</b>
<b>YEAR 1 SUB-TOTAL</b>				<b>\$99,962.40</b>

<b>YEAR 2</b>				
<b>SOFTWARE PRODUCTS</b>				
Cartegraph OMS – Platform - Enterprise	Per-citizen Subscription, On-Premise, 7/31/18 – 7/30/19	20,078	\$0.50	\$10,039.00
Cartegraph OMS Extension	Advanced Work Management per-citizen Subscription	20,078	\$0.15	\$3,011.70
Cartegraph OMS Extension	Advanced Asset Management per-citizen Subscription	20,078	\$0.15	\$3,011.70
Cartegraph OMS Users	User Pack Subscription – 50 Named Users	1	\$10,000.00	\$10,000.00
<b>TECHNICAL SUPPORT</b>				
System Integration Support	Technical Support, Q20170627, Fuel Integration, PetroVend	1	\$1,000.00	\$1,000.00
<b>YEAR 2 SUB-TOTAL</b>				<b>\$27,062.40</b>
<b>TOTAL COST (2-YEAR TERM)</b>				<b>\$127,024.80</b>

<b>NOTES:</b>	<p>The pricing listed above does not include applicable sales tax.</p> <p>The Cartegraph OMS pricing listed above does not include Esri ArcGIS licenses.</p>
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## Payment Terms and Conditions

In consideration for the Services and Products provided by **Cartegraph** to **Customer**, **Customer** agrees to pay **Cartegraph** Software Costs and Professional Service Fees in U.S. Dollars as described below:

1. **Delivery:** Software Products shall be licensed upon acceptance of this Purchase Agreement. If applicable, Services will be scheduled and delivered upon your acceptance of this Purchase Agreement, which will be considered as your notification to proceed.
2. **Services Scheduling:** **Customer** agrees to work with **Cartegraph** to schedule Services in a timely manner. All undelivered Services shall expire 365 days from the signing of this Purchase Agreement.
3. **Software Invoicing:** The Software Subscription Licenses fee will be due in annual installments 15 days prior to the anniversary of the initial term as follows:
  - a. \$26,062.40 due upon execution of the Purchase Agreement.
  - b. \$26,062.40 due 15 days prior to 1st year anniversary of term start date.
4. **Field Services Invoicing:** Invoicing for the Field Services fee shall occur upon the acceptance of this Purchase Agreement and shall be invoiced as follows:
  - a. Invoicing for the Field Services will be due as follows:
    - i. 25% upon execution of the Purchase Agreement.
    - ii. 25% at the completion of the Assessment/delivery, or 3 months from execution of Purchase Agreement, whichever is sooner
    - iii. 25% at the Completion of the test deployment, or 4 months from execution of Purchase Agreement, whichever is sooner
    - iv. 25% at the completion productive deployment, or 6 months from execution of Purchase Agreement, whichever is sooner
5. **Renewal Invoicing:** Invoicing for the Renewal fee shall occur upon the acceptance of this Purchase Agreement and shall be invoiced as follows:
  - a. \$1,000.00 due 15 days prior to 1st year anniversary of term start date.
6. **Expenses:** In providing the field services included in this Purchase Agreement, **Cartegraph** shall be reimbursed for any reasonable out-of-pocket costs, including, but not limited to, travel, lodging, meals, and cancellation fees. Out-of-pocket expenses are billed based on actual costs incurred and are due separately.
7. **Payment Terms:** All payments are due Net 30 days from date of invoice.

BY EXECUTING THIS PURCHASE AGREEMENT, CUSTOMER ACKNOWLEDGES THAT IT HAS REVIEWED THE TERMS, CONDITIONS, FEES AND CHARGES PROVIDED HEREIN AND IN THE MASTER AGREEMENT, AS WELL AS ANY OTHER EXHIBITS TO THE MASTER AGREEMENT, AND CUSTOMER AGREES TO BE LEGALLY BOUND BY EACH SUCH AGREEMENT.

**Cartegraph Systems, Inc.**

By \_\_\_\_\_  
(Signature)

Tim McCool  
(Type or print name)

Title Director of Sales

Date \_\_\_\_\_

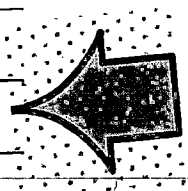
**City of Ashland**

By \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Type or print name)

Title \_\_\_\_\_

Date \_\_\_\_\_



**APPROVED AS TO FORM**

DM  
Ashland Asst. City Attorney

Date 07/11/17

## **Cartegraph Systems, Inc.**

### **Addendum A - Software Products**

Cartegraph hereby pledges to issue software licenses in the agreed upon quantities specified in your Investment Summary. The "Software," as defined in Master Agreement #MA276, consists of developed and supported technology products available from Cartegraph.

***In addition to full access to Cartegraph licensed software, your organization will receive:***

#### **1. Support**

**a. *Campus – [www.cartegraph.com/campus](http://www.cartegraph.com/campus)***

Our User Assistance area is a convenient and easily-shareable resource designed to help you and your co-workers better understand the functions and capabilities of your Cartegraph applications. Instantly access user tips, step-by-step guides, videos, and more.

**b. *Dedicated, Unlimited, Toll-free Phone Support - 877.647.3050***

When questions need answers and difficulties arise, count on our industry-leading Support team to provide the guidance and assistance you need. Reach us as often as you need Monday-Friday, 7:00 am-7:00 pm CT.

**c. *Secure, Live Remote Support***

If your challenge requires a more hands-on approach, we have the remote support tools to fix it. Let one of our Support Team members directly interact with your system to find a fast, effective solution.

#### **2. Training & Education**

**a. *Convenient Online Resources***

All the information you need, one click away. Take advantage of online training opportunities, tutorial videos, upcoming event information, and more.

**b. *User Groups***

Meet and network with similar Cartegraph users in your region. User Groups allow you to find out what other organizations are doing to get more from their Cartegraph Systems.

#### **3. Software Releases & Upgrades**

**a. *New Software Releases***

Be the first to know about all new Cartegraph releases, enhancements, and upgrades. Your cloud-hosted site will automatically be upgraded by our System Consultants in a timely manner after the release is available. This way you gain timely access to the latest features and functionality, and increased system performance.

**b. *Hot Fixes***

If an issue is determined to be a software defect and falls outside the standard release cycle, Cartegraph will issue a hot fix and provide application specialists with detailed levels of product knowledge to work with you in achieving a timely and effective resolution.



BY EXECUTING THIS PURCHASE AGREEMENT, CUSTOMER ACKNOWLEDGES THAT IT HAS REVIEWED THE TERMS, CONDITIONS, FEES AND CHARGES PROVIDED HEREIN AND IN THE MASTER AGREEMENT, AS WELL AS ANY OTHER EXHIBITS TO THE MASTER AGREEMENT, AND CUSTOMER AGREES TO BE LEGALLY BOUND BY EACH SUCH AGREEMENT.

**Cartegraph Systems, Inc.**

By \_\_\_\_\_  
(Signature)

Tim McCool  
(Type or print name)

Title Director of Sales

Date \_\_\_\_\_

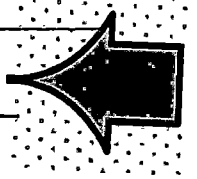
**City of Ashland**

By \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Type or print name)

Title \_\_\_\_\_

Date \_\_\_\_\_



APPROVED AS TO FORM  
[Signature]  
Ashland Asst. City Attorney  
Date 07/11/17

## Cartegraph Systems, Inc.

### Addendum B - Field Services (Fee for Service)

The Fee for Field Service Implementation Services as listed in the *Investment Summary* of the Purchase Agreement are specific Cartegraph services which will be delivered to the Customer based on the descriptions below and any descriptions that may be found in the Purchase Agreement's Exhibits. Cartegraph will coordinate with the Customer on service delivery expectations and timeframes. This is an addendum to Customer's Master Agreement #MA276.

## Cartegraph OMS – Implementation Scope of Work

Implementation of the Operations Management System (OMS) includes the following professional services:

### Setup

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- Cartegraph will provide a review, typically up to two (2) hours, of our technical specifications with your technical staff to answer any questions and verify your environment is ready for the software's installation.
- Cartegraph will guide your technical staff through the installation and setup of Cartegraph software in your test and/or production environment.
- Cartegraph will provide an overview, up to two (2) hours, of Cartegraph and ArcGIS Online user-based logins and User/Role functionality.
- Cartegraph will provide a template file to be utilized by your staff to populate Roles and Users to be utilized for OMS.
- Cartegraph will utilize the template to create users and roles in OMS. (Note: Subsequent User and/or Role changes will be your administrator's responsibility.)
- Cartegraph will provide documentation and guidance, up to four (4) hours, for your technical GIS staff to configure Esri Basemap Services for OMS integration. Guidance will be geared towards OMS/Esri integration functionality and requirements.
- Cartegraph will setup the OMS Platform, including the Request, Work, Resource, and Asset Management areas of the software. *Asset Management solutions will be setup for all solutions referenced in the Assets section of the scope unless otherwise noted.*

### Consulting

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- Cartegraph will provide a three-day (3-day) onsite requirement gathering workshop to increase our understanding of your business and functional goals. Through workshops and interviews, Cartegraph will identify best fit scenarios for OMS and provide a brief including any challenges as well as recommendations for OMS best practices relevant to your implementation.

### Training

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- Cartegraph will provide remote train-the-trainer training, up to four (4) hours, on overall system navigation and functionality to help familiarize your staff with the software environment and its common functions. Training topics include:
  - Home Screen
  - Logins/Permission
  - Layers
  - Filters
  - Maps
  - Grids

- System Navigation
  - Views (List & Detail)
  - Standard Reports
  - Attachments
  - Requests, Work, Assets, Resources, Reports, and Administrator Tabs
- Cartegraph will provide remote train-the-trainer training, up to two (2) hours, on OMS Esri integration functionality. Training topics include:
    - OMS Esri integration configuration options
    - Integration functionality (basemap and feature)
    - Overall Esri integration requirements, considerations, and Cartegraph recommended best practices
  - Cartegraph will provide a three-day (3-day) onsite "train-the-trainer" training event. The training agenda will be defined and agreed upon by both Cartegraph and your project manager. Topics may include any of the following:
    - Request Management:
      - Requests
      - Requesters
      - Task Creation from Requests
      - Issue library (including settings such as Applies to Asset and Non-Location)
      - Cartegraph recommended best practices for Request and Requester Management
    - Work Management:
      - Create Task(s) (Asset/Non-Asset)
      - Assignments (Add, Edit, Remove)
      - Task Menu Actions
      - Related Work Items
      - Create Work Order
      - Associate Task to WO
      - Repeat Work Orders
      - Work Order Menu Actions
      - Enter Resources
      - Timesheets
      - Activity library (including settings such as Applies to Asset, Inspection, Key Dates, Cost, and Productivity)
      - Cartegraph recommended best practices for Work Management
    - Asset Management:
      - Asset Details
      - Inspections
      - Linked assets (if applicable)
      - Container/Component Relationships (if applicable)
      - Cartegraph recommended best practices for Asset Management

*To avoid redundancy, and to utilize service time efficiently, training may cover a subset of the assets listed in the Asset section of the scope.*

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- Resource Management:
    - Resource Details
    - Labor/Equipment Rates
    - Material Management (Stock, Usage, Adjustments)
    - Vendor Price Quotes

- Cartegraph recommended best practices for Resource Management
- Cartegraph for iPad:
  - Overall system functionality (Navigation, Interface, Maps, Attachments, Sorting)
  - Work Management
    - Create and Update Tasks (Asset/Non-Asset)
    - Assign Tasks
    - Enter Resources
    - Inspections
  - Asset Management
    - Create and Update Assets
  - Request Management
    - View and Update Requests
    - View Requester information
    - Create Task from Request
  - Cartegraph recommended best practices for mobile device use
- Administrator:
  - Administrator:
    - User Administration, Role Administration, Import/Export, Error Log
  - Settings:
    - System Settings, Base Map Administration, Geocode Settings, GIS Integration Settings, Background Task Scheduler, Asset Color Manager
  - Manager:
    - Layout Manager, Library Manager, Preventative Maintenance, Asset Condition Manager, Notification Manager, Structure Manager
- Cartegraph will provide remote train-the-trainer training, up to six (6) hours, on OMS Reporting functionality. Training topics include:
  - Security/Roles
  - Report Designer
    - Report Types, Report Styling, Filtering\Parameters, Basic Formulas, Grouping/Sorting
  - Report Viewer
  - Reporting best practices and solution tips/tricks.

## Extensions

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- Cartegraph will provide remote train-the-trainer training, up to eight (8) hours, on Advanced Asset functionality. Training topics include:
  - Preventative Maintenance
  - Performance Management
    - Prediction Groups
    - Minimum Condition Groups
    - Activities and Impacts
    - Criticality Factor
    - Install/Replaced Dates
  - Cartegraph recommended best practices for advanced asset management

*To avoid redundancy, and to utilize service time efficiently, training may cover a subset of the assets listed in the Asset section of the scope.*

- Cartegraph will provide remote train-the-trainer training, up to sixteen (16) hours, on Advanced Work functionality. Training topics include:
  - Scenario Builder
    - Settings:
      - Prediction Groups
      - Minimum Condition Groups
      - Activities and Impacts
      - Criticality Factor
      - Install/Replaced Dates
    - Scenarios:
      - Scenario Types
      - Plan Years and Budgets
      - Protocols
      - Data Exports
    - Cartegraph recommended best practices for advanced work management

*To avoid redundancy, and to utilize service time efficiently, training may cover a subset of the assets listed in the Asset section of the scope.*

## Go-Live Support

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- Cartegraph will provide a three-day (3-day) onsite event for Go-Live Support. The agenda will be defined, and agreed upon, by both your and Cartegraph's project managers. Topics may include any of the following:
  - Refresher training for items listed in the scope of work
  - Software and process support for staff during production roll out
  - Field, Layout, and Report configuration guidance, if applicable

## Data Services

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- Cartegraph will provide one test and one production data load service through standard import/export functionality. Cartegraph will provide template documents for data population. Once populated by your staff, Cartegraph will load the data into your test or production OMS environment. Data loads may include data such as:
  - Parent level asset records
  - Asset location (spatial x/y) attributes
  - Parent level resource (Labor, Equipment Material, Vendor) records
  - Resource Rate (Labor, Equipment, Material) records
  - Standard system libraries
- Cartegraph will provide one test and one production Standard Data Conversion service to assist with your migration from the latest version of Cartegraph Navigator to Cartegraph OMS. The Standard Data Conversion service includes the following:
  - Assets
    - Parent records and associated parent-level attributes
    - Child records and associated child-level attributes
    - Current Inspection record, including:

- Date
  - OCI
  - Condition Category and Index records
  - Note: Cartegraph OMS does not support Bridge NBI or Storm/Sewer NASSCO inspection methodology. This data is not included in the Standard Data Conversion service.
- Open work events in Navigator's Asset Event table
- Events with Key Date and/or Impact settings in Navigator, if applicable
- Resources (Labor, Equipment, Material)
  - Parent record and associated parent-level attributes
  - Current Default Rate record
    - Note: Customer is responsible for creating additional rate records to account for overtime, overhead, and/or FEMA rates, if applicable
  - Equipment
    - Fleet Events, if applicable
  - Material
    - Current Quantity-on-Hand
    - Vendor Price Quotes
  - Vendor
    - Parent record and associated parent-level attributes
    - Contacts
- Libraries
  - Standard and custom library data – not specifically excluded below
- Attachment Paths
  - The file paths for Attachments will be updated to refer to the OMS project home. Your internal staff will be responsible for physically relocating files to the project home folder structure required for OMS. Cartegraph will transfer attachment files to the project home folder structure for hosted customers. However, files must be provided in the previously mentioned OMS project home folder structure.
- **Standard Conversion Exclusions**
  - Work Orders
    - Labor, Equipment, Material Logs
  - Worksheets
  - Requests
  - Citizen data
  - Assets:
    - Bridge: NBI inspection data
    - Storm/Sewer: NASSCO inspection data
    - Pavement: Detailed Distress inspection data
  - PAVEMENTview Plus: Budgets, Scenarios, Models, and associated settings
  - Libraries:
    - Overall Ratings
    - Condition Category Ratings
  - Attachment Files
  - Custom attachment fields or tables

## Integration Services

- Cartegraph staff will provide a uni-directional (one-way) Integration Service between Petro Vend and Cartegraph. The integration includes:
  - A one-way integration of data from the source system to Cartegraph
  - Up to 12 fields in the same Cartegraph recordset (IE: Equipment table and Equipment's Fuel Log table)
  - A sync using a unique ID
    - If ID exists; information will be updated
    - If ID does not exist; Cartegraph will create a record or produce an error message
  - A customer-configurable runtime interval for the sync

All data must be accessible to the Cartegraph service from a SQL DB, SQL View, or a Comma Delimited File

## Assets

Asset implementation includes the following professional services:

- Cartegraph will provide installation and training on the following twenty-six (26) asset types:
  - Storm (7)
    - Storm Culvert; Storm Facility; Storm Inlet; Storm Manhole; Storm Outlet; Storm Pipe; Storm Channel
  - Storm (7)
    - Water Hydrant; Water Lateral; Water Main; Water Meter; Water Pump; Water Storage Tank; Water Valve
  - Water (4)
    - Sewer Lateral; Sewer Main; Sewer Manhole; Sewer Pump
  - Transportation (4)
    - Marking; Pavement; Sign; Support
  - Other (4)
    - Tree; Sidewalk; Park; Code Compliance
- Cartegraph will provide up to five (5) field configurations for each asset type listed above.

Cartegraph will provide all services remotely via audio, video, and web conferences unless otherwise noted.

## Customer Responsibility

For the project, you will be responsible for appointing a dedicated project manager that will be responsible for:

- Reviewing the implementation scope of work
- All internal aspects of the project including, but not limited to, internal change management, internal documentation, staff coordination, task completion, and schedule commitment

- Ensuring all scheduled meetings are attended by invited staff
- Partnering with the Cartegraph Project Manager to ensure project success
- Providing leadership and insight on all relevant internal issues such as policy/procedure, organizational structure, project stakeholders, technical architecture, data, and current systems

## Exclusions

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The following service items are not included in the scope of this project:

- Implementation of any custom modification or integration developed by Cartegraph, your internal staff, or any third-party is not included in the scope of this project unless specifically listed above.
- Data conversion services from other software system(s) or sources (including Cartegraph Navigator databases) are not included in the scope of this project unless specifically listed above.
- Any service items discussed during demonstrations, conference calls, or other events are not included in the scope of this project unless specifically listed above.

## Customer/Cartegraph Responsibilities

Project representatives from Customer and Cartegraph accept responsibility for all aspects of project planning, management, and execution not specifically identified as the responsibility of Cartegraph in the Master Agreement or in this Purchase Agreement. Ongoing management of the day-to-day allocation of Customer and Cartegraph resources and management of project tasks is the responsibility of the Customer and Cartegraph project representatives. Customer and Cartegraph project representatives will provide overall guidance and direction for the project and will direct the project accordingly. Further, and with regard to the Cartegraph obligations listed in this Purchase Agreement, Customer understands that it is vital to the success of the project that Customer provides assistance in the following matters:

1. For those services listed under Field Services, Cartegraph personnel will conduct information gathering and evaluation sessions with various Customer users and management. While Cartegraph respects the time and workload of Customer staff, dedicated time on the part of the appropriate Customer resources is necessary to complete these exercises.
2. The installation process requires the assistance of Customer personnel and suitable access to hardware and systems (e.g., security clearance). Customer is required to supervise the installation process while systems are accessible to Cartegraph. All hardware and software, for both Personal Computers and servers, is expected to be available, installed, and operating as specified in Cartegraph's System Requirements documentation such that delivery and execution of Cartegraph Field Services will not be impeded.
3. Customer and Cartegraph understand that the successful performance of Field Services depends upon Customer fulfilling its responsibilities. The Project assumes that Customer will provide all personnel required to achieve a successful implementation.
4. Customer will provide Internet access and IT staff support as required. For those services that are web-based, Cartegraph utilizes WebEx Meeting (or similar) technology.

Customer shall ensure that their workstation platform and database meet Cartegraph system requirements as specified in the Cartegraph System Requirements documentation. Cartegraph Software will be supported within new versions of these workstation platforms and databases within a reasonable period of time from their release from their manufacturer. Cartegraph will discontinue support of its Software within older versions of these workstation platforms and databases as their support is discontinued by their manufacturers.

5. Customer agrees to work with Cartegraph to schedule Field Services in a timely manner. All undelivered Field Services shall expire 365 days from the execution of this Purchase Agreement, unless noted differently in Services Scope listed above. Upon expiration of services, the project may be cancelled at Cartegraph's discretion.



## Not-to-Exceed Proposal

Cartegraph will not exceed the total included in this Purchase Agreement without written approval from Customer. In the event it becomes apparent to Cartegraph that additional service efforts will be needed due to any changes in the scope of this Purchase Agreement, Cartegraph will notify Customer prior to exceeding the approved efforts and obtain written approval if additional Software or services are required.

BY EXECUTING THIS PURCHASE AGREEMENT, CUSTOMER ACKNOWLEDGES THAT IT HAS REVIEWED THE TERMS, CONDITIONS, FEES AND CHARGES PROVIDED HEREIN AND IN THE MASTER AGREEMENT, AS WELL AS ANY OTHER EXHIBITS TO THE MASTER AGREEMENT, AND CUSTOMER AGREES TO BE LEGALLY BOUND BY EACH SUCH AGREEMENT.

**Cartegraph Systems, Inc.**

By \_\_\_\_\_  
(Signature)

Tim McCool

(Type or print name)

Title Director of Sales

Date \_\_\_\_\_

**City of Ashland**

By \_\_\_\_\_  
(Signature)

(Type or print name)

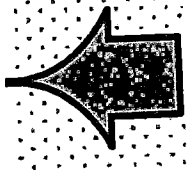
Title \_\_\_\_\_

Date \_\_\_\_\_

APPROVED AS TO:

[Signature]  
Ashland Asst. City Attorney

Date 07/11/17



## ADDENDUM TO CARTEGRAPH MASTER AGREEMENT NO. MA276

THIS ADDENDUM is dated July 7<sup>th</sup>, 2017, and contains terms intended to supersede and clarify the terms set forth in that certain Cartegraph Master Agreement No. MA276, to which this Addendum is attached and incorporated by this reference.

BY EXECUTING THIS ADDENDUM CUSTOMER ACKNOWLEDGES THAT IT HAS REVIEWED THE TERMS AND CONDITIONS ON THE FOLLOWING PAGES IN ADDITION TO ANY EXHIBITS AND PURCHASE AGREEMENTS AND CUSTOMER AGREES TO BE LEGALLY BOUND BY EACH SUCH AGREEMENT.

**Cartegraph Systems, Inc.**

By \_\_\_\_\_  
(Signature)

Tim McCool  
(Type or print name)

Title Director of Sales

Date \_\_\_\_\_

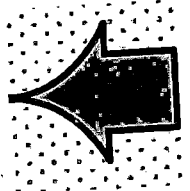
**City of Ashland, OR**

By \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Type or print name)

Title \_\_\_\_\_

Date \_\_\_\_\_



**SOLE-SOURCE DETERMINATION AND WRITTEN FINDINGS****GOODS AND SERVICES  
Greater than \$100,000**

**To:** City Council, Local Contract Review Board

**From:** *Mike Faught*

**Date:** 07/20/2017

**Re:** Sole Source Determination and Written Findings for Goods and Services

In accordance with AMC 2.50.090(F), the Department Head shall determine in writing that there is only one provider of a product or service of the quality and type required available.

**Estimated total value of contract:** \$127,024.80

**Project name:** *Cartegraph OMS Enterprise Upgrade*

**Description of goods and services:** *Installation and implementation upgrade to the new Cartegraph OMS Enterprise platform suite of software.*

**Background:**

*The City of Ashland is preparing to purchase the next iteration of Cartegraph Operations Management Software. The Cartegraph software is used primarily within the following departments, Water Distribution Division, Wastewater Collection Division, Street Division Operations, Street Division Collections, Electric Division and the Fleet/ Facilities Division.*

*To assist staff in the day to day operations, infrastructure management and inventory, mapping, scheduling, estimating, budgeting, reporting for state and federal requirements and data storage; staff requires an Operations Management System (OMS). In the late 90's we purchased software from Cartegraph Systems, Inc., for this purpose. The software modules currently being used for the above divisions are: Work Director, SewerView, StormView, WaterView, Pavement Management, VersaView, LightView, GEODATAconnect-Personal GIS Director, Fleet/Facilities, and SignView. During the course of the year, occasional problems may arise that requires staff to contact Cartegraph Systems. Cartegraph will also assist our staff with any questions regarding training issues as needed. The annual maintenance agreement is vital in our ability to function as a department.*

*It's the Agency's intent to have installed and implement this new platform of software, by September 30, 2017*

*This sole source justification applies to the purchase of the Cartegraph Software which is currently in use.*

*This contract is for the installation of the new software platform, data conversion, implementation, training, support and license renewal.*

*The estimated cost is \$127,024.80*

**Findings:**

[The findings below must include factual information supporting the determination.]

**Market Research Overall finding:** N/A

[In accordance with ORS 279B.075, these are the examples of findings that should be addressed. Select at least one of the findings and prepare the determination as it specifically relates to the good or service being procured. More than one finding can be addressed. The findings are as follows.]

**Pursuant to ORS 279B.075 (2)(a): Provide findings supporting your determination that the efficient utilization of existing goods requires the acquisition of compatible goods or services from only one source.** *It is in the best interest of the city to upgrade and continue using the Cartegraph Systems Inc software due to the complexity and volume of critical information that has been collected and used daily for 18+ years. The software is integrated with other critical software systems and is being used by many of the cities' departments and staff. The size and amount of data that has been collected is substantial, by updating the software to continuing using Cartegraph would be the most cost effective use of the cities' finances.*

**Pursuant to ORS 279B.075 (2)(b): Provide findings supporting your determination that the goods or services required for the exchange of software or data with other public or private agencies are available from only one source.** N/A

**Pursuant to ORS 279B.075 (2)(c): Provide findings supporting your determination that the goods or services are for use in a pilot or an experimental project.** N/A

**Pursuant to ORS 279B.075 (2)(d): Any other findings that support the conclusion that the goods or services are available from only one source.** N/A

## **PUBLIC NOTICE:**

Pursuant to OAR 137-047-0275 (2), a Contracting Agency shall give public notice of the Contract Review Authority's determination that the Goods and Services or class of Goods and Services are available from only one source in a manner similar to the public notice of Competitive Sealed Bids under ORS 279B.055(4) and OAR 137-047-0300. The public notice shall describe the Goods or Services to be acquired by a Sole Source Procurement. The Contracting Agency shall give such public notice at least seven days before Award of the Contract.

After the Sole Source Procurement has been approved by the City Council, the following public notice will be posted on the City's website to allow for the seven (7) day protest period.

**Date Public Notice first appeared on** www.ashland.or.us - *[Enter date]*

### **PUBLIC NOTICE**

#### **Approval of a Sole Source Procurement**

**First date of publication:** *[Enter date]*

A request for approval of a Sole Source procurement was presented to and approved by the City Council, acting as the Local Contract Review Board, on *[Enter date]*.

It has been determined based on written findings that the following Goods and Services are available from only one source.

*[Enter description of goods and services, name of prospective supplier and/or service provider, cost, terms of contract, etc.]*

The contract terms, conditions and specifications may be reviewed upon request by contacting *[Enter City contact name, department, and telephone number]*

An affected person may protest the determination that the personal services are available from only one source in accordance with OAR 137-047-0710. A written protest shall be delivered to the following address: City of Ashland, *[Enter department name, contact name, and complete address]*. The seven (7) day protest period will expire at 5:00pm on *[Enter date-seven calendar days from first date of publication]*

This public notice is being published on the City's Internet World Wide Web site at least seven days prior to the award of a public contract resulting from this request for approval of a Sole Source procurement.