

## **SERVICE PROVIDER AGREEMENT**

THIS SERVICE PROVIDER AGREEMENT ("Agreement") is entered into this 1<sup>st</sup> day of July, 2016, by and between CITY OF ALAMEDA, a municipal corporation (the "City"), and Digital Map Products, (a California corporation), whose address is 18831 Von Karman Avenue Ste 200, Irvine, CA 92612, (the "Provider"), in reference to the following:

### **RECITALS:**

- A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of the City.
- B. The City is in need of the following services: GIS Service Software program and property assessor information.
- C. Provider possesses the skill, experience, ability, background, certification and knowledge to provide the services described in this Agreement on the terms and conditions described herein.
- D. City and Provider desire to enter into an agreement for one year, upon the terms and conditions herein.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

### **1. TERM:**

The term of this Agreement shall commence on the 1st day of July, 2016, and shall terminate on the 30th day of June 30, 2017, unless terminated earlier as set forth herein.

This Agreement may be mutually extended on a year-by-year basis, for up to four (4) additional years, at the sole discretion of the Information Technology Director, based, at a minimum, upon satisfactory performance of all aspects of this Agreement. The Information Technology Director may submit written notice that the Agreement is to be extended at the same terms and compensation as the existing Agreement.

### **2. SERVICES TO BE PERFORMED:**

Provider agrees to do all necessary work at its own cost and expense, to furnish all labor, tools, equipment, materials, except as otherwise specified, and to do all necessary work included in Exhibit A as requested. The Provider acknowledges that the work plan included in Exhibit A is tentative and does not commit the City to request Provider to perform all tasks included therein.

### **3. COMPENSATION TO PROVIDER:**

- a. Consultant shall be compensated for the Services performed in accordance with this Agreement at the annual rate set forth in Exhibit A. The total compensation for the work under this Agreement is not to exceed **\$36,000.00**.

4. **TIME IS OF THE ESSENCE:**

Provider and City agree that time is of the essence regarding the performance of this Agreement.

5. **STANDARD OF CARE:**

Provider agrees to perform all services hereunder in a manner commensurate with the prevailing standards of like professionals or service providers, as applicable, in the San Francisco Bay Area and agrees that all services shall be performed by qualified and experienced personnel who are not employed by the City.

6. **INDEPENDENT PARTIES:**

Provider hereby declares that Provider is engaged as an independent business and Provider agrees to perform the services as an independent contractor. The manner and means of conducting the services and tasks are under the control of Provider, except to the extent they are limited by statute, rule or regulation and the express terms of this Agreement. No civil service status or other right of employment will be acquired by virtue of Provider's services. None of the benefits provided by City to its employees, including but not limited to unemployment insurance, workers' compensation plans, vacation and sick leave are available from City to Provider, its employees or agents. Deductions shall not be made for any state or federal taxes, FICA payments, PERS payments, or other purposes normally associated with an employer-employee relationship from any compensation due to Provider. Payments of the above items, if required, are the responsibility of Provider.

7. **IMMIGRATION REFORM AND CONTROL ACT (IRCA):**

Provider assumes any and all responsibility for verifying the identity and employment authorization of all of its employees performing work hereunder, pursuant to all applicable IRCA or other federal, or state rules and regulations. Provider shall indemnify, defend, and hold City harmless from and against any loss, damage, liability, costs or expenses arising from any noncompliance of this provision by Provider.

8. **NON-DISCRIMINATION:**

Consistent with City's policy and state and federal law that harassment and discrimination are unacceptable conduct, Provider agrees that harassment or discrimination directed toward a job applicant, a City employee, or a citizen by Provider or Provider's employee on the basis of race, religious creed, color, national origin, ancestry, handicap, disability, marital status, pregnancy, sex, age, or sexual orientation will not be tolerated. Provider agrees that any and all violations of this provision shall constitute a material breach of this Agreement.

9. **HOLD HARMLESS:**

a. Provider shall indemnify, defend, and hold harmless the City, its City Council, boards, commissions, officials, employees, and volunteers ("**Indemnitees**") from and against any and all loss, damages, liability, claims, suits, costs and expenses whatsoever, including reasonable attorneys' fees ("**Claims**"), arising from or in any manner connected to Provider's negligent act or omission, whether alleged or actual, regarding performance of services or work conducted or performed pursuant to this Agreement. If Claims are filed against Indemnitees which allege

negligence on behalf of the Provider, Provider shall have no right of reimbursement against Indemnites for the costs of defense even if negligence is not found on the part of Provider. However, Provider shall not be obligated to indemnify Indemnites from Claims arising from the sole negligence or willful misconduct of Indemnites.

b. **Indemnification for Claims for Professional Liability Only:** As to Claims for professional liability only, Provider's obligation to defend Indemnites (as set forth above) is limited to the extent to which its professional liability insurance policy will provide such defense costs.

c. Provider's obligation to indemnify, defend and hold harmless Indemnities shall expressly survive the expiration or early termination of this Agreement.

#### 10. **INSURANCE:**

a. On or before the commencement of the terms of this Agreement, Provider shall furnish the City's Risk Manager with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of insurance coverage in compliance with subsections 10A, B, C and D. Such certificates, which do not limit Provider's indemnification, shall also contain substantially the following statement:

"Should any of the above insurance covered by this certificate be canceled or coverage reduced before the expiration date thereof, the insurer affording coverage shall provide ten (10) days' advance written notice to the City of Alameda. Attention: Risk Manager."

b. It is agreed that Provider shall maintain in force at all times during the performance of this Agreement all appropriate coverage of insurance required by this Agreement with an insurance company that is acceptable to City and licensed to do insurance business in the State of California. Endorsements naming the City, its City Council, boards, commissions, officials, employees, and volunteers as additional insured shall be submitted with the insurance certificates.

##### A. **COVERAGE:**

Provider shall maintain the following insurance coverage:

(1) **Workers' Compensation:**

Statutory coverage as required by the State of California.

(2) **Liability:**

Commercial general liability coverage in the following minimum limits:

Bodily Injury:                      \$1,000,000 each occurrence  
   \$2,000,000 aggregate - all other

Property Damage:                \$1,000,000 each occurrence  
   \$2,000,000 aggregate

If submitted, combined single limit policy with aggregate limits in the amounts of \$2,000,000 will be considered equivalent to the required minimum limits shown above.

(3) Automotive:

Comprehensive automobile liability coverage (any auto) in the following minimum limits:

Bodily injury:	\$1,000,000 each occurrence
Property Damage:	\$1,000,000 each occurrence

or

Combined Single Limit:	\$2,000,000 each occurrence
------------------------	-----------------------------

(4) Professional Liability:

Professional liability insurance which includes coverage for the professional acts, errors and omissions of Provider in the amount of at least \$2,000,000.

B. SUBROGATION WAIVER:

Provider agrees that in the event of loss due to any of the perils for which it has agreed to provide comprehensive general and automotive liability insurance, Provider shall look solely to its insurance for recovery. Provider hereby grants to City, on behalf of any insurer providing comprehensive general and automotive liability insurance to either Provider or City with respect to the services of Provider herein, a waiver of any right to subrogation which any such insurer of said Provider may acquire against City by virtue of the payment of any loss under such insurance.

C. FAILURE TO SECURE:

If Provider at any time during the term hereof should fail to secure or maintain the foregoing insurance, City shall be permitted to obtain such insurance in the Provider's name or as an agent of the Provider and shall be compensated by the Provider for the costs of the insurance premiums at the maximum rate permitted by law and computed from the date written notice is received that the premiums have not been paid.

D. ADDITIONAL INSURED:

City, its City Council, boards, commissions, officials, employees, and volunteers shall be named as an additional insured under all insurance coverages, except worker's compensation and professional liability insurance. The naming of an additional insured shall not affect any recovery to which such additional insured would be entitled under this policy if not named as such additional insured. An additional insured named herein shall not be held liable for any premium, deductible portion of any loss, or expense of any nature on this policy or any extension thereof. Any other insurance held by an additional insured shall not be required to contribute anything toward any loss or expense covered by the insurance provided by this policy.



E. SUFFICIENCY OF INSURANCE:

The insurance limits required by City are not represented as being sufficient to protect Provider. Provider is advised to consult Provider's insurance broker to determine adequate coverage for Provider.

11. CONFLICT OF INTEREST:

Provider warrants that it is not a conflict of interest for Provider to perform the services required by this Agreement. Provider may be required to fill out a conflict of interest form if the services provided under this Agreement requires Provider to make certain governmental decisions or serve in a staff capacity as defined in Title 2, Division 6, Section 18700 of the California Code of Regulations.

12. PROHIBITION AGAINST TRANSFERS:

a. Provider shall not assign, sublease, hypothecate, or transfer this Agreement, or any interest therein, directly or indirectly, by operation of law or otherwise, without prior written consent of the City Manager. Provider shall submit a written request for consent to transfer to the City Manager at least thirty (30) days in advance of the desired transfer. The City Manager may consent or reject such request in his/her sole and absolute discretion. Any attempt to do so without said consent shall be null and void, and any assignee, sublessee, hypothecate or transferee shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer. However, claims for money against the City under this Agreement may be assigned by Provider to a bank, trust company or other financial institution without prior written consent.

b. The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of Provider, or of the interest of any general partner or joint venturer or syndicate member or cotenant, if Provider is a partnership or joint venture or syndicate or cotenancy, which shall result in changing the control of Provider, shall be construed as an assignment of this Agreement. Control means fifty percent or more of the voting power of the corporation.

13. APPROVAL OF SUB-PROVIDERS:

a. Only those persons and/or businesses whose names and resumes are attached to this Agreement shall be used in the performance of this Agreement. However, if after the start of this Agreement, Provider wishes to use sub-providers, at no additional costs to the City, then Provider shall submit a written request for consent to add sub-providers including the names of the sub-providers and the reasons for the request to the City Manager at least five (5) days in advance. The City Manager may consent or reject such requests in his/her sole and absolute discretion.

b. Each sub-provider shall be required to furnish proof of workers' compensation insurance and shall also be required to carry general, automobile and professional liability insurance (as applicable) in reasonable conformity to the insurance carried by the Provider. In addition, any tasks or services performed by sub-providers shall be subject to each provision of this Agreement.

c. The requirements in this Section 13 shall not apply to persons who are merely providing materials, supplies, data or information which the Provider then analyzes and incorporates into its work product.

**14. PERMITS AND LICENSES:**

Provider, at its sole expense, shall obtain and maintain during the term of this Agreement, all appropriate permits, certificates and licenses, including a City Business License that may be required in connection with the performance of the services and tasks hereunder.

**15. REPORTS:**

a. Each and every report, draft, work product, map, record and other document produced, prepared or caused to be prepared by Provider pursuant to or in connection with this Agreement shall be the exclusive property of City.

b. No report, information or other data given to or prepared or assembled by Provider pursuant to this Agreement shall be made available to any individual or organization by Provider without prior approval of the City Manager or his/her designee.

c. Provider shall, at such time and in such form as City Manager or his/her designee may require, furnish reports concerning the status of services and tasks required under this Agreement.

**16. RECORDS:**

a. Provider shall maintain complete and accurate records with respect to the services, tasks, work, documents and data in sufficient detail to permit an evaluation of the Provider's performance under the Agreement, as well as maintain books and records related to sales, costs, expenses, receipts and other such information required by City that relate to the performance of the services and tasks under this Agreement (collectively the "**Records**").

b. All Records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Provider shall provide free access to the Records to the representatives of City or its designees during regular business hours upon reasonable prior notice. The City has the right to examine and audit the Records, and to make copies or transcripts therefrom as necessary, and to allow inspection of all proceedings and activities related to this Agreement. Such Records, together with supporting documents, shall be kept separate from other documents and records and shall be maintained by Provider for a period of three (3) years after receipt of final payment.

c. If supplemental examination or audit of the Records is necessary due to concerns raised by City's preliminary examination or audit of records, and the City's supplemental examination or audit of the records discloses a failure to adhere to appropriate internal financial controls, or other breach of this Agreement or failure to act in good faith, then Provider shall reimburse the City for all reasonable costs and expenses associated with the supplemental examination or audit.

**17. NOTICES:**

a. All notices shall be in writing and delivered: (i) by hand; or (ii) sent by registered, express, or certified mail, with return receipt requested or with delivery confirmation requested from the U.S. postal service; or (iii) sent by overnight or same day courier service at the party's respective address listed in this Section.

b. Each notice shall be deemed to have been received on the earlier to occur of: (x) actual delivery or the date on which delivery is refused; or (y) three (3) days after notice is deposited in the U.S. mail or with a courier service in the manner described above (Sundays and City holidays excepted).

c. Either party may, at any time, change its notice address (other than to a post office box address) by giving the other party three (3) days prior written notice of the new address.

d. All notices, demands, requests, or approvals from Provider to City shall be addressed to City at:

City of Alameda  
Information Technology Department  
2263 Santa Clara Ave., Room 320  
Alameda, CA 94501  
Attention: Information Technology Director  
Ph: (510) 747-7495

All notices, demands, requests, or approvals from City to Provider shall be addressed to Provider at:

Digital Map Products  
Account Manager, Major Accounts  
18831 Von Karman Ave. Ste. 200  
Irvine CA 92612  
Attention: Account Manager, Major Accounts  
Ph: (949) 555-5147 / Fax: (949) 333-5112

**18. SAFETY:**

a. The Provider will be solely and completely responsible for conditions of all vehicles owned or operated by Provider, including the safety of all persons and property during performance of the services and tasks under this Agreement. This requirement will apply continuously and not be limited to normal working hours. In addition, Provider will comply with all safety provisions in conformance with U.S. Department of Labor Occupational Safety and Health Act, any equivalent state law, and all other applicable federal, state, county and local laws, ordinances, codes, and any regulations that may be detailed in other parts of the Agreement. Where any of these are in conflict, the more stringent requirements will be followed. The Provider's failure to thoroughly familiarize itself with the aforementioned safety provisions will not relieve it from compliance with the obligations and penalties set forth herein.

b. The Provider will immediately notify the City within 24 hours of any incident of death, serious personal injury or substantial property damage that occurs in connection with the performance of this Agreement. The Provider will promptly submit to the City a written report of all incidents that occur in connection with this Agreement. This report must include the following information: (i) name and address of injured or deceased person(s); (ii) name and address of Provider's employee(s) involved in the incident; (iii) name and address of Provider's liability insurance carrier; (iv) a detailed description of the incident; and (v) a police report.

#### **19. TERMINATION:**

a. In the event Provider fails or refuses to perform any of the provisions hereof at the time and in the manner required hereunder, Provider shall be deemed in default in the performance of this Agreement. If such default is not cured within two (2) business days after receipt by Provider from City of written notice of default, specifying the nature of such default and the steps necessary to cure such default; City may thereafter immediately terminate the Agreement forthwith by giving to the Provider written notice thereof.

b. The foregoing notwithstanding, City shall have the option, at its sole discretion and without cause, of terminating this Agreement by giving seven (7) days' prior written notice to Provider as provided herein.

c. Upon termination of this Agreement either for cause or for convenience, each party shall pay to the other party that portion of compensation specified in this Agreement that is earned and unpaid prior to the effective date of termination. The obligation of the parties under this Section 19.c. shall survive the expiration or early termination of this Agreement.

#### **20. ATTORNEY'S FEES:**

In the event of the bringing of any action or suit by a party hereto against the other party by reason of any breach of any covenants, conditions, obligation or provision arising out of this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party all of its costs and expenses of the action or suit, including reasonable attorneys' fees, experts' fees, all court costs and other costs of action incurred by the prevailing party in connection with the prosecution or defense of such action and enforcing or establishing its rights hereunder (whether or not such action is prosecuted to a judgment). For the purposes of this Agreement, reasonable fees of attorneys of the Alameda City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the Alameda City Attorney's services were rendered who practice in Alameda County in law firms with approximately the same number of attorneys as employed by the Alameda City Attorney's Office.

#### **21. COMPLIANCE WITH ALL APPLICABLE LAWS:**

During the Term of this Agreement, Provider shall keep fully informed of all existing and future state and federal laws and all municipal ordinances and regulations of the City of Alameda which affect the manner in which the services or tasks are to be performed by the Provider, as well as all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same. Provider shall comply with all applicable laws, state and federal and all ordinances, rules and regulations enacted or issued by City.

**22. CONFLICT OF LAW:**

This Agreement shall be interpreted under, and enforced by the laws of the State of California without regard to any choice of law rules which may direct the application of laws of another jurisdiction. The Agreement and obligations of the parties are subject to all valid laws, orders, rules, and regulations of the authorities having jurisdiction over this Agreement (or the successors of those authorities.) Any suits brought pursuant to this Agreement shall be filed with the courts of the County of Alameda, State of California.

**23. WAIVER:**

A waiver by City of any breach of any term, covenant, or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained herein, whether of the same or a different character.

**24. INTEGRATED CONTRACT:**

The Recitals and Exhibits are a material part of this Agreement and are expressly incorporated herein. This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions hereof. Any modification of this Agreement will be effective only by written execution signed by both City and Provider.

**25. CAPTIONS:**

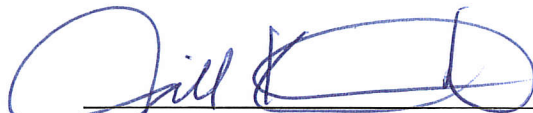
The captions in this Agreement are for convenience only, are not a part of the Agreement and in no way affect, limit or amplify the terms or provisions of this Agreement.

IN WITNESS WHEREOF, the parties have caused the Agreement to be executed on the day and year first above written.


DIGITAL MAPS  
(A California corporation)

  
\_\_\_\_\_  
James Skurzynski  
CEO


CITY OF ALAMEDA  
A Municipal Corporation

  
\_\_\_\_\_  
Jill Keimach  
City Manager

RECOMMENDED FOR APPROVAL

  
\_\_\_\_\_  
Carolyn Hogg  
Information Technology Director

APPROVED AS TO FORM:  
City Attorney

  
\_\_\_\_\_  
Janet C. Kern  
City Attorney





18831 Von Karman Avenue Suite 200, Irvine, CA 92612 (949) 333-5111

Date: 3/23/2016

Account Manager: Mary Kane

Agreement #: Alameda-MK160701GCCV

(OFFICE USE ONLY)

### GovClarity™ / CommunityView™ Order Form

CONTACT INFORMATION		BILLING INFORMATION	
Agency Name: City of Alameda	Contact Name: Leon King	Contact Name: Leon King	
Contact Name: Leon King	Street Address: (Same)	Street Address: (Same)	
Position: IT Manager	City, State & Zip:	City, State & Zip:	
Street Address: 2263 Santa Clara Avenue	Phone:	Phone:	
City, State & Zip: Alameda, CA 94501	E-mail:	E-mail:	
Phone: (510) 747-7599	Agreement Term: 07/01/16	Agreement Term: 07/01/16	thru 06/30/19
E-mail: <a href="mailto:lking@alamedaca.gov">lking@alamedaca.gov</a>	Billing Start Date: 07/01/16	Billing Start Date: 07/01/16	Term: 3 years
TECHNICAL ACCOUNT LIAISON	Billing Frequency: Annual	Billing Frequency: Annual	
Contact Name: Leon King	Billing Method: Invoiced (Email)	Billing Method: Invoiced (Email)	*Option
E-mail: <a href="mailto:lking@alamedaca.gov">lking@alamedaca.gov</a>	Payment Method: Check	Payment Method: Check	Terms: 1 & 2 years
Phone: (510) 747-7599	Payment Terms: Net 30	Payment Terms: Net 30	
Population: 76,419	# of Users: Agency-wide	# of Users: Agency-wide	

ORDER DETAIL			
<b>GovClarity™ Enterprise Agency-wide Access</b>	<b>Term</b>	<b>X</b>	<b>Annual Total</b>
<b>Option A (3 yrs) 2016-2019</b>	<input type="checkbox"/>	Year 1	<b>\$35,000</b>
		Year 2	<b>\$35,500</b>
		Year 3	<b>\$36,000</b>
<b>Option B (2 yrs) 2016-2018</b>	<input type="checkbox"/>	Year 1	\$35,500
		Year 2	\$36,000
<b>Option C (1 yr) 2016-2017</b>	<input type="checkbox"/>		\$36,000

Available Content All Items listed below are available in GovClarity™ Enterprise		Annual Price
<b>CommunityView™</b>		<b>Included</b>
Full Access to API and Integrations	Special Quote	Not Included
Assigned Customer Success Resource	Special Quote	Not Included
(1) On-Site Training session (Annually)	\$2,500	Not Included
<b>Property Information - Owner name, situs address, APN, owner address</b>	\$5,041	<b>Included</b>
<b>Tax Maps</b>		<b>Included</b>
<b>Support: Live* (888) 322-MAPS (6277) x2 <a href="mailto:support@digmap.com">support@digmap.com</a></b>		<b>Included</b>
<b>Training Resources: On-Line   On-Demand <a href="http://digmap.com/onlinehelp/localgov/localgovernmenthelp.html">http://digmap.com/onlinehelp/localgov/localgovernmenthelp.html</a></b>		<b>Included</b>

Additional Premium Services & Data Content All Items listed below are available in GovClarity™ Enterprise		
Custom Success Plan - GIS Consulting Services	Special Quote	Not Included
Foreclosure Data	Special Quote	Not Included
Demographic Data	Special Quote	Not Included
Premium Points of Interest (POI) Data	Special Quote	Not Included
TimeView Satellite Imagery Library	Special Quote	Not Included
Custom Imagery Upload - Imagery supplied by City	Special Quote	Not Included
Option A (3) yrs - ANNUAL TOTAL YEAR 1		<b>\$35,000</b>
ANNUAL TOTAL YEAR 2		<b>\$35,500</b>
ANNUAL TOTAL YEAR 3		<b>\$36,000</b>



18831 Von Karman Avenue Suite 200, Irvine, CA 92612 (949) 333-5111

Date: 3/23/2016

Account Manager: Mary Kane

Agreement #: Alameda-MK160701GCCV

(OFFICE USE ONLY)

#### DIGITAL MAP PRODUCTS - ACCOUNT MANAGER

Contact: Mary Kane

Title: Account Manager, Major Accounts

Phone: 949.555.5147

E-mail: [mkane@digmap.com](mailto:mkane@digmap.com)

#### DIGITAL MAP PRODUCTS - TECHNICAL CONTACT

Contact: Karen Figgins

Title: Sr Customer Success Manager | Product Advocate

Phone: 949.333.5184

E-mail: [kfiggins@digmap.com](mailto:kfiggins@digmap.com)

#### DIGITAL MAP PRODUCTS - BUSINESS INFORMATION

Address: Digital Map Products, Inc.  
18831 Von Karman Avenue, Suite 200  
Irvine, CA 92612

Phone: 949-333-5111

Fax: 949-333-5112

DUNS: 87971961

NAICS / SIC: 541512

Small Bus Cert: 50399

Website: <http://www.digmap.com>


Processing Instructions (INTERNAL USE ONLY): Renew GovClarity Enterprise account and datasets as indicated above.

The parties agree to the terms contained herein including all exhibits. This Agreement may be executed in counterparts with the same force and effect as if executed in one complete document.

#### SIGNATURES

  
City of Alameda, Authorized Signature


  
Digital Map Products, Inc. Signature


  
Printed Name

James Skurzynski  
Printed Name

CEO | President  
Title

  
Title

  
Date

  
Date





## Web Application Subscription Terms and Conditions

By executing the Order Form that references this agreement and initialing these Web Application Subscription Terms and Conditions (collectively, the "Agreement"), You agree that the Agreement terms govern Your purchase and use of Digital Map Products ("DMP") Web Application and Content. If You are entering into this Agreement on behalf of a company or other legal entity, You represent that You have the authority to bind such entity and its affiliates to these terms, in which case the terms "You" or "Your" shall refer to the entity and its affiliates. If You do not have such authority, or if You do not agree with these terms and conditions, You must not accept the Agreement and may not use the Web Application or Content.

This Agreement was last updated on June 2<sup>nd</sup>, 2014. It is effective as of the date You signed the Order Form.

### 1. DEFINITIONS

**"Content"** means any content provided through the Web Application (whether created by Us or Our third-party licensors), and includes but is not limited to any information portrayed or rendered in any manner through the Web Application, including maps, data, analysis and images of any kind.

**"Order Form"** means an ordering document specifying the specifics of what is being provided hereunder that is entered into between You and Us, including any addenda and supplements thereto. By entering into an Order Form hereunder, an affiliate agrees to be bound by the terms of this Agreement as if it were an original party hereto.

**"User"** means an individual who is authorized by You to use the Web Application, for whom You have ordered the Web Application, and to whom You (or We at Your request) have supplied a user identification and password.

**"We," "Us" or "Our"** means Digital Map Products, Inc. or its affiliates.

**"Web Application"** means the product You have requested access to and that has been ordered by You under this Agreement and has been made available by Us, excluding any third-party web sites, content, or applications that our products and services link to. Any use of the term Web Application shall be assumed to include Content.

**"You" or "Your"** means the company or other legal entity for which you are accepting this Agreement, and Affiliates of that company or entity.

**"Your Data"** means electronic data and information submitted by or for You to be incorporated into the Web Application.

### 2. WEB APPLICATION, CONTENT, AND USAGE

**2.1. Web Application and Content.** We will (a) make the Web Application available to You pursuant to this Agreement and the Order Form, (b) provide support for the Web Application to You pursuant to any such indication on the Order Form. Unless expressly provided otherwise, the Web Application is purchased as a subscription, and subject to usage limits, including, for example, the number of Users and the geographic coverage areas specified in the Order Form. Unless otherwise specified, the Web Application may not be accessed by more than the number of Users indicated, a User's password may not be shared with any other individual, and Users will not attempt to access information or functionality outside of the purchased geographic coverage areas.

**2.2 Your Responsibilities.** You will (a) be responsible for Users' compliance with this Agreement, (b) be responsible for the accuracy, quality, and legality of Your Data and the means by which You acquired Your Data, (c) use commercially reasonable efforts to prevent unauthorized access to or use of the Web Application, and notify Us promptly of any such unauthorized access or use, and (d) use the Web Application in accordance with any applicable laws and government regulations.

**2.3 Usage Restrictions.** You will not (a) make the Web Application available to, or use the Web Application for the benefit of, anyone other than You or Users, (b) sell, resell, license, sublicense, distribute, rent, or lease any portion of the Web Application, (c) use the Web Application to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (d) interfere or disrupt the integrity or performance of the Web Application or third-party data, (e) copy the Web Application or any part, feature, function, or user interface thereof, (f) copy,

extract, or store Content except as expressly permitted, (g) frame or mirror any part of the Web Application, other than framing on Your own intranets or otherwise for Your own internal business purposes, (h) process, extract, conduct load testing on, or place undue load on any part of the Web Application except as expressly permitted, or (i) access the Web Application in order to build or enhance a competitive product or service.

**2.4. Future Functionality, Updates, and Beta Services.** You agree that Your purchase of use of the Web Application is not contingent on the delivery of any future functionality or content, nor dependent on any oral or written public comments made by Us regarding future functionality or content. You agree that We may make changes to the Web Application over time for any reason, without limitation, and that We may not continue to provide or support older versions of the Web Application. We may invite You to try other Web Applications and options to Web Applications. Any such additional Web Applications and options may be subject to additional or separate terms and fees. In the event that such other Web Applications and options are trials or beta products, we will have no liability for any harm or damage arising out of Your use of such.

### **3. FEES, PAYMENT, AND TERM**

**3.1. Fees and Payment.** You will pay all fees specified in the Order Form plus any applicable taxes, levies, duties, or similar governmental assessments of any nature. Except as otherwise specified herein or in an Order Form, (a) fees are based on the purchased use and not actual incremental usage, (b) payment obligations are non-cancelable and fees paid are non-refundable, (c) fees shall be made in advance in accordance with the frequency stated in the Order Form, (d) quantities or add-ons purchased cannot be decreased during the relevant subscription term, and (e) unless otherwise stated in the Order Form, invoiced charges are due net 30 days from the invoice date. You are responsible for providing complete and accurate billing and contact information and notifying Us of any changes to such information.

**3.2. Non-Payment or Failure to Pay.** A charge of 1.5% per month may be assessed on any outstanding and past due invoices until paid in full. You will be charged for any cost of collections including, but not limited to, agent fees, legal fees and costs, and other associated expenses. If Your access and use is terminated or suspended due to nonpayment or non-compliance, You shall nonetheless still be responsible for any fees as set forth in this Agreement. If We do not receive from You payment for the invoiced amount within thirty (30) days of its due date, We may suspend Your access and use of the Web Application, until You bring Your account current.

**3.3. Term of Agreement.** This Agreement will continue for the period defined in the Order Form. Thereafter, this Agreement shall automatically renew for additional twelve (12) month periods unless either party notifies the other party in writing at least sixty (60) days prior to the expiration of the then current term of its intent not to renew. Upon termination, any licenses granted by Us under this Agreement are immediately revoked.

### **4. PROPRIETARY RIGHTS, LICENSES, AND CONFIDENTIALITY**

**4.1. Reservation of Rights.** Subject to the limited rights expressly granted hereunder, We and Our licensors reserve all of Our/their rights, titles, and interests in and to the Web Application, including all of Our/their related intellectual property rights. You understand that We may at our sole discretion replace vendors or suppliers related to Content or Web Application functionality at any time without notice. You agree that any works commissioned or undertaken by Us pursuant to or in supplement to this Agreement shall be and remain Our property. No rights are granted to You hereunder other than as expressly set forth herein.

**4.2. Preservation of Notices.** You agree to include, and not to remove or obscure, any copyright, trademark, patent, or other notices appearing within our Web Application including any visual or printed depictions of the same.

**4.3. License to Host Your Data.** You grant Us a limited-term license to host, copy, adapt, modify, transmit, and display Your Data, as necessary for Us to provide the Web Application to You. You reserve all title, interest and intellectual property rights to Your Data.

**4.4. License to Collect Data and Use Feedback.** You agree that We may collect and use information gathered as part of the Web Application to improve Our technology, products, and internal processes. You grant Us a worldwide, perpetual, irrevocable, royalty-free license to use and incorporate into the Web Application any suggestion, enhancement request, recommendation, correction, or other feedback provided by You or Your Users.

### **5. CONFIDENTIALITY**

**5.1. Trade Secrets and Confidential Information.** The Web Application is based on and includes Our proprietary trade secrets and confidential information. You will not modify, adapt, translate, reverse engineer, decompile, attempt unauthorized access to, or disassemble any portion of the Web Application. You will treat the Web Application with at least the same degree of care



(and no less than a reasonable degree of care) as that which You would treat Your own trade secrets and confidential information. You will not disclose the terms of this Agreement or any Order Form to any third party.

## 6. REPRESENTATIONS, WARRANTIES, EXCLUSIVE REMEDIES AND DISCLAIMERS

**6.1. Our Warranties.** EXCEPT FOR ANY EXPRESS WARRANTIES PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, OR OTHERWISE. WE PROVIDE THE WEB APPLICATION ON AN "AS IS," "AS AVAILABLE" BASIS. WE MAKE NO REPRESENTATION, WARRANTY, OR COVENANT WHATSOEVER REGARDING PERFORMANCE, FUNCTIONALITY, AVAILABILITY, ACCURACY, OR SECURITY OF THE WEB APPLICATION OR YOUR DATA. WE MAY ALTER, REDUCE THE FUNCTIONALITY OR CONTENT OF, AND/OR TERMINATE THE WEB APPLICATION AT ANY TIME WITHOUT CAUSE IN OUR SOLE DISCRETION. NO AGENT OF DMP IS AUTHORIZED TO ALTER OR EXCEED THE WARRANTY OBLIGATIONS OF DMP AS SET FORTH HEREIN.

NEITHER US NOR ANY THIRD PARTY PROVIDERS, PARTNERS OR AFFILIATES WARRANT THAT THE WEB APPLICATION, SERVERS, OR ANY E-MAIL SENT ARE FREE OF ERRORS, OMISSIONS, VIRUSES OR OTHER HARMFUL COMPONENTS. BY ACCEPTING THIS AGREEMENT, YOU DISCLAIM ALL LIABILITY AND INDEMNIFICATION OBLIGATIONS OF OURS AND ANY OF OUR THIRD PARTY PROVIDERS, PARTNERS, OR AFFILIATES EXCEPT AS EXPRESSLY PROVIDED HEREIN.

**6.2. Limitation of Liability.** Our aggregate and maximum liability in connection with any claim arising out of or relating to this Agreement shall be limited to a refund of fees paid by You to Us up to a limit of one year's worth of fees. We shall not be liable for any special, indirect, incidental, or consequential damages of any kind (including attorneys' fees) arising in connection with Your use of the Web Application, or any failure by Us to perform our obligations, regardless of any negligence alleged.

**6.3. Indemnification.** We will defend and indemnify You against a third-party action, suit, or proceeding against You to the extent such claim is based upon an allegation that the Web Application or Content under this Agreement infringes a valid United States patent or copyright or misappropriates a third party's trade secret. If a third party alleges that Your Data or your use of the Web Application in breach of this Agreement infringes or misappropriates intellectual property rights or violates law, You will defend and indemnify Us and Our third party providers, partners, and affiliates against any such claim, demand, suit, or proceeding, including any judgments, settlements, and attorney fees.

## 7. ADDITIONAL PROVISIONS

**7.1. Non-Assignability.** Neither party may assign or transfer this Agreement without the prior written consent of the other party. Any unauthorized assignment or transfer will be null and void, and enables termination. This Agreement is binding upon any authorized successor or assignee.

**7.2. Entire Understanding.** This Agreement is the parties' entire agreement relating to its subject, and supersedes any prior or contemporaneous agreement. Any amendment must be in writing and expressly state that it is amending this Agreement.

**7.3. Governing Law & Arbitration.** This Agreement is governed by California law, excluding California's choice of law rules. All disputes relating to this Agreement will be subject to binding arbitration pursuant to the rules of The American Arbitration Association or the Judicial Arbitration And Mediations Services, Inc. The exclusive place of the arbitration shall be Orange County, California. Judgment on the arbitration award may be entered in any court having jurisdiction thereof. For the purpose of entry of judgment on such an award, the parties consent to personal jurisdiction in the courts of Orange County, California.

**7.4. Headings Not Controlling.** All captions and headings in this Agreement are for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions.

**7.5. Severability.** If any provision of this contract is held to be illegal, invalid, or unenforceable, such provision is fully separable, and the remaining provisions of the contract shall remain in full force and effect.



Initials



Date

## Amendment to Web Application Terms and Conditions

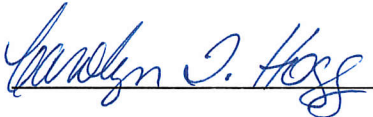
(Amendment to Agreement No Alameda-MK160701GCCV )

This Amendment is made by and between the City of Alameda ("Licensee") and Digital Map Products, Inc., in order to modify certain terms of the standard Content Solutions Terms and Conditions by mutual assent of the parties. The terms are amended as follows:

- Section 7.3 ("Governing Law & Arbitration"): Replace Orange County, California as the location of arbitration with Alameda, California.

By:

Licensee



Signature

CAROLYN T. HOGG

Name

Information Technology Director

Title

Digital Map Products, Inc.



Signature

JAMES SKUBANSKI

Name

CEO

Title