

SECOND AMENDMENT TO AGREEMENT

ORIGINAL

This Amendment of the Agreement, entered into this 10<sup>th</sup> day of September, 2018, by and between the CITY OF ALAMEDA, a municipal corporation (hereinafter "City") and DIGITAL MAP PRODUCTS, a California corporation whose address is 5201 California Ave., Suite 200, Irvine CA 92617, (hereinafter "Provider"), is made with reference to the following:

RECITALS:

A. On July 1, 2016, an agreement was entered into by and between City and Provider (hereinafter "Agreement") in an amount not to exceed \$36,000.

B. On July 13, 2017, an amendment was entered into by and between City and Provider (hereinafter "First Amendment") in an amount not to exceed \$36,000

C. City and Provider desire to modify the Agreement on the terms and conditions set forth herein, including the Web Application Subscription Terms and Conditions (Exhibit B).

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

1. Paragraph 1 of the Agreement is modified to read as follows:

TERM: The term of this Agreement shall commence on the 1<sup>st</sup> day of July, 2016 and shall terminate on the 1st day of July, 2021, unless terminated earlier as set forth herein.

2. Paragraph 3 of the Agreement is modified to read as follows:

COMPENSATION TO PROVIDER: Provider shall be compensated for the Services performed in accordance with this Amendment at the annual rate set forth in Exhibits A and A-1. The total compensation for the work under this second Amendment is not to exceed \$108,000.00.

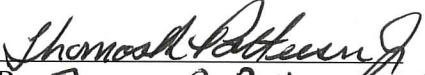
Total compensation for this Agreement shall not exceed \$180,000.00.


3. Except as expressly modified herein, all other terms and covenants set forth in the Agreement shall remain the same and shall be in full force and effect.

*Signatures on following page*

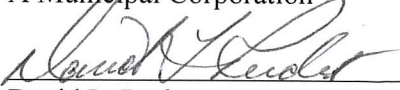
IN WITNESS WHEREOF, the parties hereto have caused this modification of Agreement to be executed on the day and year first above written.

DIGITAL MAP PRODUCTS  
A California Corporation

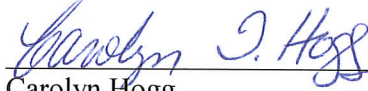
  
By Thomas R. Patterson, Jr.  
Title COO, SVP, Finance

  
By James S. Kurzynski  
Title President

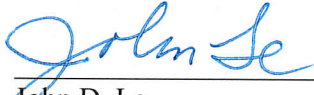
CITY OF ALAMEDA  
A Municipal Corporation

  
David L. Rudat  
Interim City Manager

RECOMMENDED FOR APPROVAL:

  
Carolyn Hogg  
Information Technology Director

APPROVED AS TO FORM:  
City Attorney

  
John D. Le  
Assistant City Attorney

# Exhibit A-1



Date:	2018-07-01
Solution Specialist:	Mary Kane
Agreement #:	
(OFFICE USE ONLY)	

## Order Header

**Company Name** Alameda, City of  
**Company DBA**  
**Contact Name** Leon King  
**Position** IT Manager  
**Street Address** 2263 Santa Clara Avenue  
**City St Zip** Alameda, CA 94501  
**Phone** (510) 747-7599  
**Email** lking@alamedaca.gov

**BILLING INFORMATION** (If different from Company)  
**Contact Name** Leon King  
**Street Address** 2263 Santa Clara Avenue  
**City St Zip** Alameda, CA 94501  
**Phone** (510) 747-7599  
**Email** lking@alamedaca.gov  
**Agreement Term** 2018-07-01 thru 2019-06-30  
**Billing Start Date** 2018-07-08  
**Contract Term** 12  
**Billing Frequency** Yearly  
**Billing Method** Email  
**Payment Method** Check

**ACCOUNT LIAISON**  
**Contact Name** Allen Tai  
**Email** atai@alamedaca.gov  
**Phone** 510-747-6888

**Billing Note:** If Payment Method by credit card or electronic funds transfer, then the Initial invoice will be the first full period, plus the pro-rated period from the start of the Agreement Term to the Billing Start Date. If Payment Method is by check and the Billing Frequency is Monthly, then the Initial invoice will be the first two full months, plus the pro-rated period from the start of the Agreement Term to the Billing Start Date.

## Subscription

Quantity	Product Name	Total Price
1	GovClarity Enterprise	\$ 36,000.00
1	Assessor Maps Enterprise	\$ Included
1	CommunityView Enterprise	\$ Included

## Professional Services

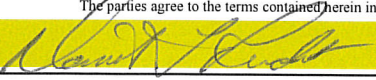
Quantity	Product Name	Total Price
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## Totals


	Total Price
Subscription Total	\$ 36,000.00
Professional Services Total	\$ 0.00
Gross Price Total	\$ 36,000.00
Annual Prepay Discount	\$ (0.00)
Other Charges and Adjustments	\$ (0.00)
Annual Contract Price Total	\$ 36,000.00

**Processing Instructions (INTERNAL USE ONLY)**  
Renew GovClarity Enterprise with CommunityView. Includes one (1) on-site annual training.

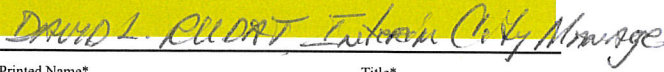
The parties agree to the terms contained herein including the attached Web Application Subscription Terms and Conditions and all exhibits.



Authorized Signature

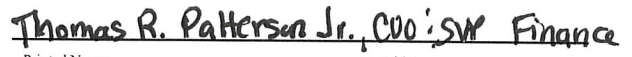


Digital Map Products, Inc. Signature



Printed Name\*

Title\*

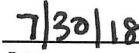


Printed Name

Title



Date



Date

Approved as to Form

CITY ATTORNEY

By:   
Assistant City Attorney





## Web Application Subscription Terms and Conditions

By executing 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.

### 1. DEFINITIONS

**"Agreement"** means the combination of the Service Provider Agreement, effective July 1, 2016, Order Form and these Web Application Subscription Terms and Conditions. In the event of any conflict between these Web Application Subscription Terms and Conditions and the Order Form, these Web Applications Subscription Terms and Conditions will apply.

**"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.

**"Effective Date"** The effective of these Web Application Subscription Terms and Conditions is as of the date of the last signature of the parties on both the Order Form and these Web Application Subscription Terms and Conditions.

**"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, (i) the number of Users and the geographic coverage areas specified in the Order Form and (ii) You may not extract more than 30,000 property records per month without a separate data license. 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



**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.** Except as to Our indemnity obligations set forth in section 6.3 (Indemnification) below, 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 Indemnitees, within the meaning of the Service Provider Agreement against a third-party claim, demand, action, suit, or proceeding, including any judgments, settlements, and attorney fees against Indemnitees to the extent such claim is based upon an allegation that the Web Application or Content under this Agreement infringes a 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 Alameda 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 Alameda 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 Agreement is held to be illegal, invalid, or unenforceable, such provision is fully separable, and the remaining provisions of the Agreement shall remain in full force and effect.

**On behalf of Digital Map Products, Inc.:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name & Title

\_\_\_\_\_  
Date

**On behalf of \_\_\_\_\_:**

Company Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name & Title

\_\_\_\_\_  
Date

Approved as to Form

CITY ATTORNEY

By: \_\_\_\_\_

Assistant City Attorney