

## FIRST AMENDMENT TO AGREEMENT

This Amendment of the Agreement, entered into this 13<sup>th</sup> day of July, 2017, by and between the CITY OF ALAMEDA, a municipal corporation (hereinafter "City") and DIGITAL MAP PRODUCTS, a California corporation, whose address is 18831 Von Karman Avenue, Ste 200, Irvine, CA 92612 (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") with compensation not to exceed \$36,000.

B. City and Provider desire to modify the Agreement on the terms and conditions set forth herein.

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 30<sup>th</sup> day of June, 2018, unless terminated earlier as set forth herein.

This Agreement may be mutually extended on a year-by-year basis, for up to three (3) 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. 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 Agreement at the annual rate set forth in Exhibit A. The total compensation for the work under this Amendment is not to exceed \$36,000.

Total compensation for this Agreement is \$72,000.


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

CITY OF ALAMEDA  
A Municipal Corporation

By   
Title JAMES SKURZYNSKI  
CEO + President


  
Jill Keimach  
City Manager

RECOMMENDED FOR APPROVAL:

By \_\_\_\_\_  
Title \_\_\_\_\_

  
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

Agency Name: City of Alameda

Contact Name: Leon King

Position: IT Manager

Street Address: 2263 Santa Clara Avenue

City, State &amp; Zip: Alameda, CA 94501

Phone: (510) 747-7599

E-mail: [lking@alamedaca.gov](mailto:lking@alamedaca.gov)

## TECHNICAL ACCOUNT LIAISON

Contact Name: Leon King

E-mail: [lking@alamedaca.gov](mailto:lking@alamedaca.gov)

Phone: (510) 747-7599

Population: 76,419 # of Users: Agency-wide

## BILLING INFORMATION

Contact Name: Leon King

Street Address: (Same)

City, State &amp; Zip:

Phone:

E-mail:

Agreement Term: 07/01/16

thru 06/30/19

Billing Start Date: 07/01/16

Term: 3 years

Billing Frequency: Annual

Billing Method: Invoiced (Email)

\*Option

Terms: 1 &amp; 2 years

Payment Method: Check

Payment Terms: Net 30

## ORDER DETAIL

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

## Available Content All Items listed below are available in GovClarity™ Enterprise

## Annual Price

CommunityView™	Annual Price	Included
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
Property Information - Owner name, situs address, APN, owner address	\$5,041	Included
Tax Maps		Included
Support: Live* (888) 322-MAPS (6277) x2 <a href="mailto:support@digmap.com">support@digmap.com</a>		Included
Training Resources: On-Line   On-Demand <a href="http://digmap.com/onlinehelp/localgov/localgovernmenthelp.html">http://digmap.com/onlinehelp/localgov/localgovernmenthelp.html</a>		Included

## Additional Premium Services &amp; 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 \$35,000

ANNUAL TOTAL YEAR 2 \$35,500

ANNUAL TOTAL YEAR 3 \$36,000





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)

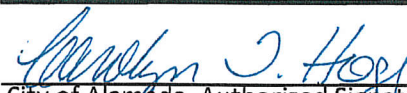
DIGITAL MAP PRODUCTS - ACCOUNT MANAGER	DIGITAL MAP PRODUCTS - TECHNICAL CONTACT
Contact: Mary Kane	Contact: Karen Figgins
Title: Account Manager, Major Accounts	Title: Sr Customer Success Manager   Product Advocate
Phone: 949.555.5147	Phone: 949.333.5184
E-mail: <a href="mailto:mkane@digmap.com">mkane@digmap.com</a>	E-mail: <a href="mailto:kfiggins@digmap.com">kfiggins@digmap.com</a>


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
Website: <a href="http://www.digmap.com">http://www.digmap.com</a>	DUNS: 87971961 NAICS / SIC: 541512 Small Bus Cert: 50399

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

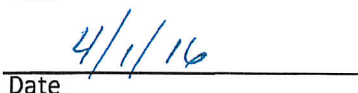
The parties agree to the terms contained herein including all exhibits. This Agreement may be executed in counterparts with the same force and effect as if executed in one complete document.

#### SIGNATURES


  
\_\_\_\_\_  
City of Alameda, Authorized Signature


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

  
\_\_\_\_\_  
Title

  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Digital Map Products, Inc. Signature

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

  
\_\_\_\_\_  
Title

  
\_\_\_\_\_  
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 )

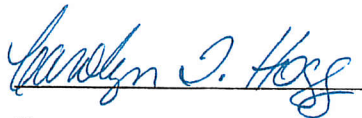
This Amendment is made by and between the City of Alameda ("Licensee") and Digital Map Products, Inc., in order to modify certain terms of the standard Content Solutions Terms and Conditions by mutual assent of the parties. The terms are amended as follows:

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

By:

Licensee

Digital Map Products, Inc.



Signature



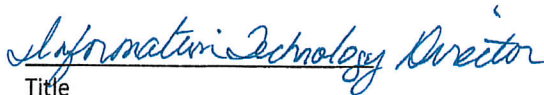
Signature



Name



Name



Title



Title