

CONTRACT NO. MA-012-14011169
BETWEEN
COUNTY OF ORANGE
AND
LATITUDE GEOGRAPHICS GROUP LTD.

This AGREEMENT, hereinafter referred to as (“Contract”) is made and entered into as of the date fully executed by and between the County of Orange – OC Community Resources/OC Parks, a political subdivision of the State of California; hereinafter referred to as (“County”), and Latitude Geographics Group Ltd., with a place of business at 200 – 1117 Wharf Street, Victoria, BC Canada V8W 1T7; hereinafter referred to as (“Contractor”), which are sometimes individually referred to as (“Party”), or collectively as (“Parties”).

RECITALS

WHEREAS, the Contractor is qualified and experienced to provide Software Licenses, Software Services, and Maintenance and Support Services as further set forth in this Contract; and

WHEREAS, the Contractor agrees to provide Software Licenses, Software Services, and Maintenance and Support Services as more fully detailed, attached hereto and incorporated herein as Attachment A, Products and Price List; and

WHEREAS, County agrees to pay Contractor the fees as further set forth in Compensation and Payment, attached hereto as Attachment B and incorporated herein; and

WHEREAS, the County Board of Supervisors has authorized the Purchasing Agent or his designee to enter into a Contract to purchase Software Licenses, Software Services, Maintenance and Support Services;

NOW, THEREFORE, in consideration of the mutual obligations set forth herein, the Parties agree as follows:

ARTICLES

I. Contract Specific Terms and Conditions:

1. **Scope of Contract:** This Contract specifies the contractual terms and conditions by which County will procure from Contractor as more fully detailed herein, attached hereto as Attachment A and incorporated herein by this reference.
2. **Term of Contract:** The Contract shall commence upon approval by the County Board of Supervisors or upon execution of all necessary signatures, whichever occurs later and expires one-year from that date pending options to Attachment A.
3. **Conflict of Interest:** Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interest of the County.
4. **Default:**
 - A. **Contractor.** If Contractor is in default of any of its obligations hereunder and Contractor has not commenced cure within ten days and cured such default within 30 days after receipt of written notice of default from County, County shall immediately be entitled, or otherwise under law, to either commence resolution in accordance with this paragraph or to terminate this Contract by giving notice to take effect immediately and begin negotiation with a third-party Contractor to provide services.

The right of either party to terminate this Contract hereunder shall not be affected in any way by its waiver of or failure to take action with respect to any previous default.

Nothing in this section shall affect in any way County's right to terminate the Contract pursuant to Section K herein.

- B. Software. In the event any software or service furnished by the Contractor in the performance of this Contract should fail to conform to the specifications therein, the County may reject same, and it shall become the duty of the Contractor to reclaim and remove the items without expense to the County and to immediately replace all such rejected software or service with others conforming to such specifications, provided that should the Contractor fail, neglect or refuse to do so, the County shall have the right to purchase on the open market a corresponding quantity of any such software or service and to deduct from any monies due or that may thereafter become due to the Contractor the difference between the price specified in this Contract and the actual cost to the County.

In the event the Contractor shall fail to make prompt delivery as specified of any software or service, the same conditions as to the rights of the County to purchase on the open market and to reimbursement set forth above shall apply, except as otherwise provided in this Contract.

In the event of the cancellation of this Contract, either in whole or in part, by reason of the default or breach by the Contractor, any loss or damage sustained by the County in procuring any software or service which the Contractor agreed to supply under this Contract shall be borne and paid for by the Contractor.

The rights and remedies of the County provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.

5. **Breach of Contract**: The failure of the Contractor to comply with any of the provisions, covenants or conditions of this Contract shall be a material breach of this Contract. In such event the County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract

- A. Afford the Contractor written notice of the breach and ten calendar days or such shorter time that may be specified in this Contract within which to cure the breach;
- B. Discontinue payment to the Contractor for and during the period in which the Contractor is in breach; and
- C. Offset against any monies billed by the Contractor but yet unpaid by the County those monies disallowed pursuant to the above.
- D. County may terminate the Contract immediately without penalty.

6. **Disputes**:

- A. The Parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute concerning a question of fact arising under the terms of this Contract is not disposed of in a reasonable period of time by the contractor's project manager and the County's project manager, such matter shall be brought to the attention of the County Purchasing Agent by way of the following process:
 - i. The Contractor shall submit to the agency/department assigned buyer a written demand for a final decision regarding the disposition of any dispute between the Parties arising under, related to, or

involving this Contract, unless the County, on its own initiative, has already rendered such a final decision.

- ii. The Contractor's written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the Contract, the Contractor shall include with the demand a written statement signed by a senior official indicating that the demand is made in good faith, that the supporting data are accurate and complete, and that the amount requested accurately reflects the Contract adjustment for which the Contractor believes the County is liable.

- B. Pending the final resolution of any dispute arising under, related to, or involving this Contract, the Contractor agrees to diligently proceed with the performance of this Contract, including the delivery of goods and/or provision of services. The Contractor's failure to diligently proceed shall be considered a material breach of this Contract.

Any final decision of the County shall be expressly identified as such, shall be in writing, and shall be signed by the County Purchasing Agent or his designee. If the County fails to render a decision within 90 days after receipt of the Contractor's demand, it shall be deemed a final decision adverse to the Contractor's contentions. The County's final decision shall be conclusive and binding regarding the dispute unless the Contractor commences action in a court of competent jurisdiction to contest such decision within 90 days following the date of the County's final decision or one year following the accrual of the cause of action, whichever is later.

7. **Software Acceptance:** The County shall be deemed to have accepted each software product unless the County, within 30 days from the installation date, gives Contractor written notice to the effect that the software product fails to substantially conform to the functional and performance specifications, which, if not attached, are incorporated by reference. The Contractor will, upon receipt of such notice, investigate the reported deficiencies. The right of the Parties shall be governed by the following:

If it is found that the software product fails to substantially conform to the specifications and the Contractor is unable to remedy the deficiency with 60 days, the County shall return all material furnished hereunder and this Contract shall be terminated.

If it is found that the software product fails to substantially conform to the specifications and the Contractor, within 60 days of receipt of the above said notice, corrects the deficiencies in the software product, the County will provide the Contractor with written acknowledgement of its acceptance of said software product.

The County's acceptance of the software product is contingent upon the software product substantially conforming to function and performance specifications and the Contractor delivering adequate users manuals within 30 days from the installation date.

8. **Termination:**

- A. **General.** In addition to any other remedies or rights it may have by law, County has the right to terminate this Contract without penalty immediately with cause, or after 30 days' written notice without cause, unless otherwise specified. Cause shall be defined as any breach of Contract, any misrepresentation or fraud on the part of the Contractor. Exercise by County of its right to terminate the Contract shall relieve County of all further obligations. Contractor has the right to terminate this Contract without penalty after written notice to County that County has breached a non-permitted use of the software as set out in Section 14: Software Licenses.

- B. Convenience of the County. The provision of services under this Contract may be terminated by the County in whole, or the remaining part, whenever the County shall determine that such termination is in the best interest of the County. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which provision of services under the Contract are terminated, and date upon which termination will become effective.

After receipt of the Notice of Termination except as otherwise directed by County, Contractor shall: 1) stop performing under the Contract on the date specified and to the extent specified in the Notice of Termination; 2) place no further orders or subcontracts for materials, services or facilities except as may necessary for the completion of such portion of the work under the Contract that is not terminated; 3) terminate all orders and subcontracts to extent that they relate to the work terminated; and 4) continue to provide services as directed by the County; and, 5) take such action as is necessary, or as the County may direct, for the protection and preservation of the property related to this Contract which is in the possession of the Contractor and in which the County has or may acquire interest.

Thereafter, but in no event later than sixty (60) days from the effective date of termination, unless one or more extensions are granted by the County upon the request of the Contractor made in writing within the 60-day period or extensions thereof authorized, Contractor shall submit a termination claim to the County, if applicable.

Upon termination County agrees to pay the Contractor for products provided and services performed prior to termination which meet the requirements of the Contract, provided, however, that such compensation plus previously paid compensation shall not exceed the total compensation set forth in the Contract.

- C. Termination – Default. If Contractor is in default of any of its obligations under this Contract and has not commenced cure within ten days after receipt of a written notice of default from County and cured such default within the time specified in the notice, the County shall immediately be entitled to either commence resolution in accordance with this paragraph or to terminate this Contract by giving written notice to take effect immediately. Default shall include failure to carry out any of the requirements of this Contract, including, but not limited to not providing enough properly skilled workers or proper materials, persistently disregarding laws and or ordinances, not proceeding with the work as agreed to herein, or otherwise substantially violating any provision of this Contract. Upon termination of the Contract with Contractor, the County may begin negotiations with a third-party Contractor to provide goods and/or services as specified in this Contract.

The right of either party to terminate this Contract hereunder shall not be affected in any way by its waiver of or failure to take action with respect to any previous default.

- D. Termination – Orderly. Upon termination or other expiration of this Contract, each party shall promptly return to the other party all papers, materials, and other properties of the other held by each for purposes of execution of the Contract. In addition, each party will assist the other party in orderly termination of this Contract and the transfer of all assets, tangible and intangible, as may be necessary for the orderly, non-disruptive business continuation of each party.

9. Software Warranty: The Contractor shall warrant all software and/or products purchased under this Contract for 90 days from the date of application acceptance by the County.

Each item of software shall be warranted for the period(s) specified herein to substantially conform to the specifications set forth in this Contract, provided such software is used in a manner consistent with any applicable software configuration specifications set forth herein. If said specifications are not set forth in this Contract, then the software shall be warranted to conform to the then current published functional

specifications, provided such software is used in a manner consistent with any applicable software configuration specifications set forth herein.

Contractor warrants that all software provided by Contractor in accordance with this Contract is substantially free from defects and/or imperfections that would prevent full system performance in accordance with the specifications set forth in this Contract for the periods specified in this Contract from the date of system acceptance which shall be certified by the County in writing upon successful completion of acceptance testing.

While under warranty, Contractor will use best efforts to correct such defects or imperfections (bugs) in the unmodified software in a timely manner, at no cost to the County.

10. Warranty Remedies: If, during the specified warranty periods, the County discovers that the services performed by the Contractor under this Contract have not been performed in accordance with the express warranties set forth herein and notifies Contractor in writing of such faulty services, then Contractor shall, without cost to the County, perform such services to the extent necessary to correct the fault therein. The rights and remedies in the above warranty clauses are in addition to any other rights or remedies provided in law, equity or under this Contract.

11. Unrequested Software Enhancements or Additions: Should Contractor expand software functional or performance capabilities beyond those required as part of this Contract, it is the option of the County to accept or reject installation and use of the software changes.

12. Maintenance:

A. Maintenance during Year 1. Contractor shall provide maintenance for all software provided under this Contract from installation through final system acceptance and for the first year at no cost to the County as set out in Attachment A.

B. Maintenance after Year 1. After the expiration of Year 1, should the County desire to contract for maintenance, the County may contract for maintenance as set out in Attachment A.

13. Software Installation: The installation date for the software products shall be established in accordance with the provisions below:

A. If the County elects to install the software products, the County will have 30 days from the date of receipt of the software products to initially install and evaluate the software. The date of expiration of this period shall hereafter be known as the "installation date."

The County agrees to provide such access to its computer system as may be required by the Contractor to properly install and test the software products. The County further agrees to provide, at no cost to the Contractor, systems and production support as may be required by the Contractor during installation.

14. Software Licenses: The Contractor hereby grants to the County of Orange and the County accepts from the Contractor, subject to the terms and conditions of this agreement, a non-exclusive, non-transferable license to use the software products list in this agreement, hereinafter referred to as "software products." The license granted above authorizes the County to use the software products in machine-readable form on a single computer system, designed in writing by the County to the Contractor, provided that if the designated CPU is inoperative due to malfunction, license herein granted shall be temporarily extended to authorize the County to use the software products in machine-readable form on any other County CPU until the designated CPU is returned to operation. By prior written notice to the Contractor the County

may redesignate the CPU in which the software products are to be used and must do so if the redesignation is permanent.

When encryption/CPU ID authorization codes are required to operate the software products, the Contractor will provide all codes to the County with shipment of the software. In the case of an inoperative CPU, as defined above, Contractor will provide a temporary encryption/CPU ID authorization code to the County for use on a temporarily authorized CPU until the designated CPU is returned to operation. When changes in designated CPUs occur, the Contractor will issue to the County within 24 hours of notification a temporary encryption/ID authorization code for use on the newly designated CPU until such time a permanent code is assigned.

County will not decompile or disassemble any software provided under this Contract or modify software which bears a copyright notice of any third party without written authorization.

County shall not redistribute the software to third-parties, in whole or in part, including, but not limited to, extensions, components, or DLLs without prior written approval of Contractor.

County shall not sell, rent, lease, sublicense, lend, assign, transfer, translate, export, or time-share the Software or Documentation. County shall not act as a service bureau or commercial Application Service Provider (ASP) that allows third-party access to the software, data, web services, and documentation. A commercial ASP means a licensee who uses software, data, web services, and documentation for a site or service, and operates the site or the service for a profit, or generates revenue by charging for access to the site or service.

County shall not, to the extent within its control, use this software for purposes or actions that are in contravention of the UN Declaration of Human Rights, the Geneva Conventions of 1949, or the Geneva Protocols of 1977.

The software and documentation are not fault-tolerant and are not designed, manufactured, or intended for resale or use in insurance underwriting or with critical health and safety or online control equipment in hazardous environments that require fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation, or communication systems, air traffic control, real-time emergency response, real-time terrorism prevention or response, life support, or weapons systems ("Fault-Intolerant Activities"). CONTRACTOR SPECIFICALLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR USE IN FAULT-INTOLERANT ACTIVITIES.

Internet Disclaimer – BOTH PARTIES EXPRESSLY ACKNOWLEDGE AND AGREE THAT THE INTERNET IS A NETWORK OF PRIVATE AND PUBLIC NETWORKS, AND THAT (1) THE INTERNET IS NOT A SECURE INFRASTRUCTURE, (2) NEITHER PARTY HAS CONTROL OVER THE INTERNET, AND (3) NEITHER PARTY IS LIABLE FOR DAMAGES UNDER ANY THEORY OF LAW RELATED TO THE DISCONTINUANCE OF OPERATION OF ANY PORTION OF THE INTERNET OR POSSIBLE REGULATION OF THE INTERNET THAT MIGHT RESTRICT OR PROHIBIT THE OPERATION OF THE WEB SERVICE.

- 15. Software Protection:** The County agrees that all material appropriately marked or identified as proprietary, whether oral or written, and furnished hereunder are provided for County's exclusive use for the purposes of this agreement only and will be held in confidence. All proprietary data shall remain the property of the Contractor. County agrees to take all reasonable steps to ensure that such data are not disclosed to others without prior written consent of the Contractor. The County will ensure, prior to disposing of any media, that any licensed materials contained thereon have been erased or otherwise destroyed.

The County agrees that it will take appropriate action by instruction, agreement or otherwise with its employees or other persons permitted access to licensed programs and/or optional materials to satisfy its obligations under this agreement with respect to use, copying, modification and protection and security of licensed programs and optional materials.

- 16. Documentation:** The Contractor agrees to provide to the County the County-designated number of all manuals and other associated printed materials and updated versions thereof, which are necessary or useful to the County in its use of the equipment or software provided hereunder. The County will designate the number of copies for production use and the number of copies for disaster recovery purposes and will provide this information to the Contractor.

If additional copies of such documentation are required, the Contractor will provide such manuals at the request of the County. The requesting agency/department shall be billed for the manuals and any associated costs thereto by invoice. The Contractor agrees to provide such additional manuals at prices not in excess of charges made by the Contractor to its best customers for similar publications.

The Contractor further agrees that the County may reproduce such manuals for its own use in maintaining the equipment or software provided hereunder. The County agrees to include the Contractor's copyright notice on any such documentation reproduced in accordance with copyright instructions to be provided by the Contractor.

- 17. Copyright Access:** Notwithstanding anything to the contrary, the County shall have a royalty-free nonexclusive and irrevocable license to publish, translate, or use, now and hereafter, all material developed specifically for, or by, the County under this Contract.

18. Ownership:

A. Documents. All reports, graphics, working papers and other incidental work or materials furnished hereunder shall become and remains the property of the County, and may be used by County as it may require without any additional cost to County. No reports shall be used by the Contractor without the express written consent of County.

B. Software and/or Work Products. County and Contractor agree that Contractor and its suppliers own the software and/or work products and all proprietary rights, including, but not limited to, patent, copyright, trade secret, trademark and other proprietary rights, in and to the software and work products, whether made by Contractor or any third party. The software and work products are protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. No ownership rights in the software or work products are transferred to County. County agrees that nothing in this Contract or associated documents gives it any right, title or interest in the software or work products.

- 19. Title to Data:** All materials, documents, data or information obtained from the County data files or any County medium furnished to the Contractor in the performance of this Contract will at all times remain the property of the County. Such data or information may not be used or copied for direct or indirect use by the Contractor after termination of this Contract without the express written consent of the County.

All Parties to the Contract acknowledge that the County shall maintain ownership and control of all data files and the related indexes and pointers to those data files.

20. Notices: Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of the Parties' project managers' routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate Party at the address stated herein or such other address as the Parties hereto may designate by written notice from time to time in the manner aforesaid.

Contractor: Latitude Geographics™
Latitude Geographics Group Ltd.
Attn: James Van Dyk
200 – 1117 Wharf Street
Victoria, BC Canada
V8W 1T7
Phone: 250.381.8130 | Fax: 250.381.8132
Mobile: 250.220.0273
Email: jvandyk@latitudegeo.com
Website: www.latitudegeo.com

County: County of Orange
OC Community Resources | OC Parks
Purchasing & Contract Services
Attn: Diana Lin, Procurement Contract Specialist
13042 Old Myford Rd.
Irvine, CA 92602
Phone: 949.585.6464 | Fax: 714.667.6522
Email: Diana.Lin@ocparks.com

Cc: County of Orange
OC Community Resources | OC Parks
Attn: Cameron Smith, GIS Manager
13042 Old Myford Rd.
Irvine, CA 92602
Phone: 949.923.3724
Email: Cameron.Smith@ocparks.com

21. Fiscal Appropriations: This Contract is subject to and contingent upon applicable budgetary appropriations being approved by the County of Orange Board of Supervisors for each fiscal year during the term of this Contract. If such appropriations are not approved, the Contract will be terminated without penalty to the County. County agrees that if the provisions of the paragraph above are invoked, all equipment and software furnished by the Contractor under the terms of this Contract which are not the property of the County shall be returned to the Contractor in substantially the same condition in which it was delivered to the County, subject to normal wear and tear. County further agrees to pay for packing, crating, transportation to the Contractor's nearest facility, and reimbursement to the Contractor for expenses incurred for their assistance in such packing and crating.

22. Contractor's Records: Contractor shall keep true and accurate accounts, records, books and data which shall correctly reflect the business transacted by the Contractor in accordance with generally accepted accounting principles. These records shall be stored in Orange County for a period of three years after

final payment is received from the County. Storage of records in another County will require written approval from the County of Orange Deputy Purchasing Agent.

- 23. Applicable Terms and Conditions:** This Contract and any of its noted attachments contain the entire understanding between the Contractor and the County. All previous proposals, offers, discussions, preliminary understandings and other communications relative to this Contract, oral or written, are hereby superseded, except to the extent that they have been incorporated into this Contract. The only terms and conditions that will be applicable to the interpretation of this Contract are those issued by the OCCR Purchasing & Contract Services of the County of Orange. No future waiver of or exception to any of the terms, conditions and provisions of this Contract shall be considered valid, unless specifically agreed to in writing.

No addition to, or alteration of the scope of work and technical specifications, or terms and conditions of this Contract or any of its noted attachments, whether written or verbal, by the Parties, their officers, employees or agents, shall be valid unless made in the form of a written Modification to this Contract, which shall be formally approved and executed by both Parties.

- 24. County of Orange Child Support Enforcement:** All contractors are required to comply with the child support enforcement requirements of the County of Orange. Failure of the Contractor to comply with all federal, state, and local reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of the Contract.

- 25. Cooperative Agreement:** Other tax-supported entities in the state of California who have not contracted for their own requirements may desire to participate in this Contract. The Contractor will be requested to service these entities and will be given the opportunity to accept or reject the additional requirements. If the Contractor elects to supply the other entities, orders will be placed directly by the entity, and each entity will make payment directly to the Contractor. These entities will hold harmless the County of Orange from all claims, demands, actions or causes of actions of every kind resulting directly or indirectly, arising out of, or in any way connected with the use of this Contract. The cooperative entities are responsible for obtaining all certificates of insurance. The Contractor is responsible for providing each cooperative entity a copy of the Contract upon request by the cooperative entity. The County of Orange makes no guarantee of usage by other users of this Contract.

II. General Terms and Conditions

- A. Governing Law and Venue:** This Contract has been negotiated and executed in the state of California and shall be governed by and construed under the laws of the state of California. In the event of any legal action to enforce or interpret this Contract, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the Parties specifically agree to waive any and all rights to request that an action be transferred for trial to another county.
- B. Entire Contract:** This Contract, including Attachments and Exhibit, incorporated herein by this reference as if fully set forth, when accepted by the Contractor either in writing or by the shipment of any article or other commencement of performance hereunder, contains the entire Contract between the Parties with respect to the matters herein, and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on County of Orange unless authorized by County in writing. Electronic acceptance of any additional terms, conditions or supplemental Contracts by any County employee or agent, including but not limited to installers of software, shall not be valid or binding on

County unless accepted in writing by County's Purchasing Agent or his designee.

- C. **Amendments:** No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the Parties; no oral understanding or agreement not incorporated herein shall be binding on either of the Parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.
- D. **Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax.
- E. **Delivery:** Time of delivery of goods is of the essence in this Contract. County reserves the right to refuse any goods and to cancel all or any part of the goods not conforming to applicable specifications, drawings, samples or descriptions. Acceptance of any part of the order shall not bind County to accept future shipments nor deprive it of the right to return goods already accepted at Contractor's expense. Overshipments and undershipments shall be only as agreed to in writing by County. Delivery shall not be deemed to be complete until goods have actually been received and accepted in writing by County.
- F. **Acceptance/Payment:** Unless otherwise agreed to in writing by the County, 1) acceptance shall not be deemed complete unless in writing and until all the goods have actually been received, inspected, and tested to the satisfaction of County, and 2) payment shall be made in arrears after satisfactory acceptance.
- G. **Warranty:** Contractor expressly warrants that the goods covered by this Contract are 1) free of liens or encumbrances, 2) merchantable and good for the ordinary purposes for which they are used, and 3) fit for the particular purpose for which they are intended. Acceptance of this order shall constitute an agreement upon Contractor's part to indemnify, and hold County and its indemnitees as identified in paragraph "HH" below, and as more fully described in paragraph "HH", harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by County by reason of the failure of the goods to substantially conform to such warranties, faulty work performance, negligent or unlawful acts, and non-compliance with any applicable state or federal codes, ordinances, orders, or statutes, including the Occupational Safety and Health Act (OSHA) and the California Industrial Safety Act. Such remedies shall be in addition to any other remedies provided by law.
- H. **Patent/Copyright Materials/Proprietary Infringement:** Unless otherwise expressly provided in this Contract, Contractor shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this Contract. Contractor warrants that any software as modified by Contractor through services provided hereunder will not infringe upon or violate any U.S. patent, property right, or trade secret right of any third party. Contractor agrees that, in accordance with the more specific requirement contained in paragraph "HH" below, it shall indemnify, defend and hold County and County Indemnitees harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, but not limited to, attorney's fees, costs and expenses.

Unless otherwise expressly provided in this Contract, Contractor shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this Contract.

If Contractor believes that the software or documentation is or will become the subject of an infringement claim, or in the event that use of the software or documentation is enjoined, Contractor, at its own expense, may either (i) obtain the right for the County to continue using the software or documentation or (ii) modify the software, or documentation to make it noninfringing while maintaining substantially similar software functionality or data/informational content. If neither of such alternatives is commercially reasonable, the infringing items shall be returned to Contractor, the license shall terminate, and Contractor's sole liability shall be to indemnify Licensee pursuant to this Section H and refund

license fees paid by County prorated on a five (5) year, straight line depreciation basis beginning from the initial date of delivery.

Contractor shall have no obligation hereunder to defend County or pay any resulting costs, damages, or reasonable attorney's fees for or with respect to any claims, actions, or demands alleging (i) infringement that arises by reason of combination of noninfringing items, however acquired, with any items not supplied by Contractor; (ii) infringement to the extent arising from material alteration of the software or documentation by anyone other than Contractor, its agents, or its contractors; (iii) continued allegedly infringing activity by County after it has been notified of the possible infringement; or (iv) continued allegedly infringing activity by County to the extent it arises from failure of County to use the updated or modified software or documentation provided by Contractor for avoiding infringement.

- I. Assignment or Sub-Contracting:** The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the Parties. Furthermore, neither the performance of this Contract nor any portion thereof may be assigned or sub-Contracted by Contractor without the express written consent of County, which shall not be unreasonably withheld. Any attempt by Contractor to assign or sub-Contract the performance or any portion thereof of this Contract without the express written consent of County shall be invalid and shall constitute a breach of this Contract.
- J. Non-Discrimination:** In the performance of this Contract, Contractor agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any sub-Contractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Contractor acknowledges that a violation of this provision shall subject Contractor to all the penalties imposed for a violation of Section 1720 et seq. of the California Labor Code.
- K. Termination:** Notwithstanding any other provision of this Contract, County may at any time and without cause terminate in whole or in part, upon not less than (30) thirty days written notice to Contractor. Such termination shall be effected by delivery to Contractor a Notice of Termination specifying effective date of termination, whether Contract shall be terminated in whole or in part and if applicable the portion of work to be terminated.

Contractor shall immediately stop work in accordance with Notice of Termination and comply with any other direction as may be specified in Notice of Termination or provided subsequently by County. County shall pay Contractor for work completed and accepted by County prior to effective date of termination and such payment shall be Contractor's sole remedy.

In addition to any other remedies or rights it may have by law, County has the right to terminate this Contract without penalty immediately with cause, unless otherwise specified. Cause shall be defined as any breach of Contract, any misrepresentation or fraud on the part of Contractor. Exercise by County of its right to terminate Contract shall relieve County of all further obligations.

Under no circumstances will either Party be entitled to anticipatory or unearned profits, consequential damages or any other damages of any sort as a result of a termination in whole or in part under this provision. Contractor shall insert in all subcontracts that subcontractors shall stop work on the date of and if applicable the portion of work to be terminated in a Notice of Termination, and shall require sub-consultant's to insert the same condition in any lower tier subcontracts.

- L. Consent to Breach Not Waiver:** No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether express

or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.

- M. Remedies Not Exclusive:** The remedies for breach set forth in this Contract are cumulative as to one another and as to any other provided by law, rather than exclusive; and the expression of certain remedies in this Contract does not preclude resort by either party to any other remedies provided by law.
- N. Independent Contractor:** Contractor shall be considered an independent Contractor and neither Contractor, its employees, nor anyone working under Contractor shall be considered an agent or an employee of County. Neither Contractor, its employees nor anyone working under Contractor shall qualify for workers' compensation or other fringe benefits of any kind through County.
- O. Performance:** Contractor shall perform all work under this Contract, taking necessary steps and precautions to perform the work to County's satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other goods furnished by the Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and workman-like manner; shall furnish all labor, supervision, machinery, equipment, materials, and supplies necessary therefore; shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the work; and, if permitted to subcontract, shall be fully responsible for all work performed by subcontractors.
- P. Insurance Provisions:** Prior to the provision of services under this Contract, the Contractor agrees to purchase all required insurance at Contractor's expense and to deposit with the County Certificates of Insurance, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Contract have been complied with and to keep such insurance coverage and the certificates therefore on deposit with the County during the entire term of this Contract. In addition, all subcontractors performing work on behalf of Contractor pursuant to this Contract shall obtain insurance subject to the same terms and conditions as set forth herein for Contractor.

All self-insured retentions (SIRs) and deductibles shall be clearly stated on the Certificate of Insurance. If no SIRs or deductibles apply, indicate this on the Certificate of Insurance with a 0 by the appropriate line of coverage. Any self-insured retention (SIR) or deductible in excess of \$25,000 (\$5,000 for automobile liability), shall specifically be approved by the County Executive Office (CEO)/Office of Risk Management. If the Contractor fails to maintain insurance acceptable to the County for the full term of this Contract, the County may terminate this Contract.

Qualified Insurer

Minimum insurance company ratings as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com** shall be A- (Secure A.M. Best's Rating) and VIII (Financial Size Category).

The policy or policies of insurance must be issued by an insurer licensed to do business in the state of California (California Admitted Carrier). If the carrier is a non-admitted carrier in the state of California, CEO/Office of Risk Management retains the right to approve or reject carrier after a review of the company's performance and financial ratings. If the non-admitted carrier meets or exceeds the minimum A.M. Best rating of A-/VIII, the agency can accept the insurance.

The policy or policies of insurance maintained by the Contractor shall provide the minimum limits and coverage as set forth below:

<i>Coverage</i>	<i>Minimum Limits</i>
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 limit per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence

Required Coverage Forms

The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing liability coverage as broad.

Required Endorsements

The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of insurance:

- 1) An Additional Insured endorsement using ISO form CG 2010 or CG 2033 or a form at least as broad naming the County of Orange, its elected and appointed officials, officers, employees, agents as Additional Insureds.
- 2) A primary non-contributing endorsement evidencing that the Contractor's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

All insurance policies required by this Contract shall waive all rights of subrogation against the County of Orange and members of the Board of Supervisors, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the County of Orange, and members of the Board of Supervisors, its elected and appointed officials, officers, agents and employees.

All insurance policies required by this Contract shall give the County of Orange 30 days' notice in the event of cancellation and 10 days for non-payment of premium. This shall be evidenced by policy provisions or an endorsement separate from the Certificate of Insurance.

The Commercial General Liability policy shall contain a severability of interests clause, also known as a "separation of insureds" clause (standard in the ISO CG 001 policy).

Insurance certificates should be forwarded to the agency/department address listed on the solicitation.

If the Contractor fails to provide the insurance certificates and endorsements within seven days of notification by CEO/County Procurement Office (CPO) or the agency/department purchasing division, award may be made to the next qualified vendor.

County expressly retains the right to require Contractor to increase or decrease insurance of any of the above insurance types throughout the term of this Contract. Any increase or decrease in insurance will be as deemed by County of Orange CEO-Risk Manager as appropriate to adequately protect County.

County shall notify Contractor in writing of changes in the insurance requirements. If Contractor does not deposit copies of acceptable certificates of insurance and endorsements with County incorporating such changes within thirty days of receipt of such notice, this Contract may be in breach without further notice to Contractor, and County shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this Contract, nor act in any way to reduce the policy coverage and limits available from the insurer.

- Q. Bills and Liens:** Contractor shall pay promptly all indebtedness for labor, materials and equipment used in performance of the work. Contractor shall not permit any lien or charge to attach to the work or the premises, but if any does so attach, Contractor shall promptly procure its release and, in accordance with the requirements of paragraph "HH" below, indemnify, defend, and hold County harmless and be responsible for payment of all costs, damages, penalties and expenses related to or arising from or related thereto.
- R. Changes:** Contractor shall make no changes in the work or perform any additional work without the County's specific written approval.
- S. Change of Ownership:** Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract and County agrees to assign this Contract to new owners, the new owners shall be required under terms of sale or other transfer to assume Contractor's duties and obligations contained in this Contract and complete them to the satisfaction of County.
- T. Force Majeure:** Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County within 36 hours of the start of the delay and Contractor avails himself of any available remedies.
- U. Confidentiality:** Contractor agrees to maintain the confidentiality of all County and County-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor's staff, agents and employees.
- V. Compliance with Laws:** Contractor represents and warrants that the services to be provided under this Contract shall fully comply, at Contractor's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements of paragraph "P" above and "HH" below, Contractor agrees that it shall defend, indemnify and hold County and County Indemnitees harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.
- W. Freight (F.O.B. Destination):** Contractor assumes full responsibility for all transportation scheduling, packaging, handling, insurance, and other services associated with delivery of all products deemed necessary under this Contract.

- X. Pricing:** The Contract bid price shall include full compensation for providing all required goods, in accordance with required specifications, or services, as specified herein or when applicable, and no additional compensation will be allowed therefore, unless otherwise provided for in this Contract.
- Y. Waiver of Jury Trial:** Each party acknowledges that it is aware of and has had the opportunity to seek advice of counsel of its choice with respect to its rights to trial by jury, and each party, for itself and its successors, creditors, and assigns, does hereby expressly and knowingly waive and release all such rights to trial by jury in any action, proceeding or counterclaim brought by any party hereto against the other (and/or against its officers, directors, employees, agents, or subsidiary or affiliated entities) on or with regard to any matters whatsoever arising out of or in any way connected with this Contract and/or any other claim of injury or damage.
- Z. Terms and Conditions:** Contractor acknowledges that it has read and agrees to all terms and conditions included in this Contract.
- AA. Headings:** The various headings and numbers herein, the grouping of provisions of this Contract into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.
- BB. Severability:** If any term, covenant, condition or provision of this Contract is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
- CC. Calendar Days:** Any reference to the word “day” or “days” herein mean calendar day or calendar days, respectively, unless otherwise expressly provided.
- DD. Attorney Fees:** In any action or proceeding to enforce or interpret any provisions of this Contract, or where any provisions hereof is validly asserted as a defense, each party shall bear its own attorney’s fees, costs and expenses.
- EE. Interpretation:** This Contract has been negotiated at arm’s length and between persons sophisticated and knowledgeable in the matters dealt with in this Contract. In addition, each party has been represented by experienced and knowledgeable independent legal counsel of their own choosing or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each party further acknowledges that they have not been influenced to any extent whatsoever in executing this Contract by any other party hereto or by any person representing them, or both. Accordingly, any rule or law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Contract against the party that has drafted it is not applicable and is waived. The provisions of this Contract shall be interpreted in a reasonable manner to effect the purpose of the Parties and this Contract.
- FF. Authority:** The Parties to this Contract represent and warrant that this Contract has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.
- GG. Employee Eligibility Verification:** The Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The Contractor shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The Contractor shall retain

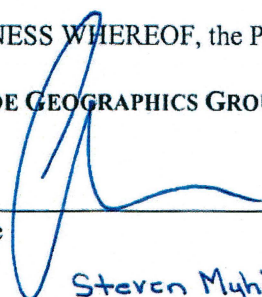
all such documentation for all covered employees for the period prescribed by the law. The Contractor shall indemnify, defend and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.

HH. Indemnification Provisions: Contractor agrees to indemnify, and hold County harmless, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by Contractor pursuant to this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.

CONTRACT SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties hereto have executed this Contract on the date preceding the signature.

LATITUDE GEOGRAPHICS GROUP LTD.*:



 Signature

 Steven Myhill - Jones

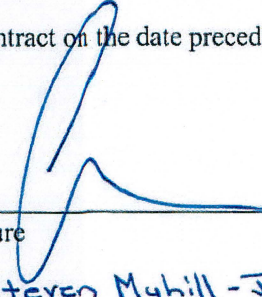
 Print Name

 President

 Title

 March 12, 2014

 Date



 Signature

 Steven Myhill - Jones

 Print Name

 CEO

 Title

 March 12, 2014

 Date

* Pursuant to California Corporations Code Section 313, If the Contracting party is a corporation, (2) two signatures are required: one (1) signature by the Chairman of the Board, the President or any Vice President; and one (1) signature by the Secretary, any Assistant Secretary, the Chief Financial Officer of any Assistant Treasurer. The signature of one person alone is sufficient to bind a corporation, as long as he or she holds corporate offices in each of the two categories described above. For County purposes, proof of such dual office holding will be satisfied by having the individual sign the instrument twice, each time indicating his or her office that qualifies under the above described provision. *In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution demonstrating the legal authority of the signatory to bind the corporation.*

COUNTY OF ORANGE
a political subdivision of State of California

 Signature

 Diana Lin

 Print Name

 Procurement Contract Specialist

 Title

 Date

 Signature

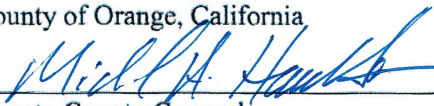
 Print Name

 Purchasing Manager

 Title

 Date

APPROVED AS TO FORM
Office of the County Counsel
County of Orange, California



 Deputy County Counsel

 3/13/14

 Date

**ATTACHMENT A
PRODUCTS AND PRICE LIST**

<i>Product Description</i>	<i>Units</i>	<i>Rate</i>	<i>Cost</i>
GXESS4P – Geocortex Essentials Standard Edition Includes source files, compiled binaries, configuration files, images, HTML documents, documentation, with: -Production <u>license</u> for up to four (4) server cores -Two (2) Geocortex Essentials Developer Seats -One (1) year Complimentary Maintenance/Support*	1	\$18,500.00	\$18,500.00
Geocortex Essentials Virtual Product Training – 4 Day Class/per person	1	\$2,000.00	\$2,000.00
Prepaid Technical Support (Hours)	16	\$115.00	\$1,840.00
Annual Total:			\$22,340.00

<i>Annual Maintenance and Support</i> (included in Yr. 1; Not to Exceed 20% of current license fee thereafter)	<i>Cost</i>
Geocortex Essentials Standard Edition – Year 2	\$3,700.00
Geocortex Essentials Standard Edition – Year 3	\$4,000.00
Geocortex Essentials Standard Edition – Year 4	\$4,250.00
Geocortex Essentials Standard Edition – Year 5	\$4,500.00

ATTACHMENT B
COMPENSATION AND PAYMENT TERMS

- I. Compensation:** This is a fixed fee price Contract for each annual period between the County and the Contractor for Software licenses, Software Services, Maintenance and Support Services as set forth provided in Attachment A, Products and Price List.
- II. Fees and Charges:** Upon completion of installation and acceptance of software products by the County, the County will pay the license fee or recurring charge for the software products as set forth in this Contract. Charges will commence on the installation date as specified in this Contract. The Contractor shall render invoices for recurring charges or a single charge for the month for which the charges were incurred. Fees for a partial month's use will be prorated based on a thirty-day month. Invoices are to be submitted in arrears to the user agency/department to the ship-to address, unless otherwise directed in this Contract.
- III. Payment Terms:** Payment will be paid in arrears. Payment will be net 30 days after receipt of an invoice in a format acceptable to the County. Invoices shall be verified and approved by the County and subject to routine processing requirements. The responsibility for providing an acceptable invoice to the County for payment rests with the Contractor. Incomplete or incorrect invoices are not acceptable and will be returned to the Contractor for correction.

Billing shall cover services and/or goods not previously invoiced. The Contractor shall reimburse the County for any monies paid to the Contractor for goods or services not provided or when goods or services do not meet the Contract requirements. Payments made by the County shall not preclude the right of the County from thereafter disputing any items or services involved or billed under this Contract and shall not be construed as acceptance of any part of the goods or services.

- A. Software License Fees. Contractor shall invoice for all Software License Fees in full upon activation of the software.
- B. Maintenance and Support Services Fees. Contractor shall invoice for Annual Maintenance Fees for each maintenance period at least ninety (90) days prior to the end of the then current maintenance period of said Contract.

Payments made by the County shall not preclude the right of the County from thereafter disputing any items, or services involved or billed under this Contract, and shall not be construed as acceptance of any part of the products or related services contracted for hereunder.

- IV. Invoicing Instructions:** The Contractor will provide an invoice on the Contractor's letterhead. Each invoice will have a unique number and will include the following information:
- a. Contractor's name and address
 - b. Contractor's remittance address, if different from (a), above
 - c. Name of County Agency/Department
 - d. Contract number: MA-012-14011169 (must list on **ALL** invoices)
 - e. Deliverables / Service description
 - f. Total
 - g. Federal Taxpayer I.D. number

All invoices and support documentation are sent by U.S. Mail to the address listed below:

OC Community Resources
Attn: Accounts Payable
1770 N. Broadway, 4th Floor
Santa Ana, CA 92706

The responsibility for providing all acceptable invoice(s) to the County for payment rests with the Contractor. Incomplete or incorrect invoices are not acceptable and will be returned to the Contractor for correction. The County's Project Manager, or designee, is responsible for approval of invoices and subsequent submittal of invoices to the Auditor-Controller for processing of payment.

EXHIBIT 1

**COUNTY OF ORANGE CHILD SUPPORT ENFORCEMENT
CERTIFICATION REQUIREMENTS**

All contractors are required to comply with the child support enforcement requirements of the County of Orange. Failure of the Contractor to comply with all federal, state, and local reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of the Contract. In order to comply with the child support enforcement requirements of the County of Orange, all bidders/proposers must furnish to the contract administrator, the Purchasing Agent, or the agency/department deputy purchasing agent:

- A. In the case of an individual contractor, his/her name, date of birth, Social Security number, and residence address;
- B. In the case of a contractor doing business in a form other than as an individual, the name, date of birth, Social Security number, and residence address of each individual who owns an interest of 10 percent or more in the contracting entity;
- C. A certification that the contractor has fully complied with all applicable federal and state reporting requirements regarding its employees; and
- D. A certification that the contractor has fully complied with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment and will continue to so comply.

Failure to cure such breach within 60 calendar days of notice from the County shall constitute grounds for termination of the Contract.

The certifications will be stated as follows:

*"I certify that **Latitude Geographics Group Ltd.** is in full compliance with all applicable federal and state reporting requirements regarding its employees and with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments and will continue to be in compliance throughout the term of Contract Number **MA-012-14011169** with the County of Orange. I understand that failure to comply shall constitute a material breach of the Contract and that failure to cure such breach within ten (10) calendar days of notice from the County shall constitute grounds for termination of the Contract."*

Signature	Name (Print)
-----------	--------------

Title	Date
-------	------

Latitude Geographics Group Ltd.	
Company Name	

MA-012-14011169	\$22,340.00
Contract Number	Contract Amount

*Two signatures required if corporation.