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**SOFTWARE LICENSE AND SERVICES AGREEMENT BETWEEN  
SNOHOMISH COUNTY AND CARTEGRAPH SYSTEMS, INC.**

**THIS SOFTWARE LICENSE AND SERVICES AGREEMENT** is made this 25<sup>th</sup> day of Sept., 2015, by and between Snohomish County, a home rule charter county and a political subdivision of the State of Washington (the “County”) and Cartegraph Systems, Inc., incorporated under the laws of the State of Iowa, and duly licensed to conduct business in Washington State (the “Contractor” or “Cartegraph”).

**1. Recitals**

Whereas,

**The Contractor has developed and owns certain proprietary software called Operations Management System (OMS) for use in Asset and Maintenance Management. The County desires to obtain a license to use such software and have the Contractor develop certain modifications and enhancements for the County and provide ongoing support and maintenance services. The Contractor desires to license such software to the County and perform the services on the terms and conditions set forth herein.**

Now therefore, in consideration for the mutual covenants and agreements herein, the parties agree as follows:

**2. Definitions**

**Acceptance of the System** (Acceptance) shall occur only when: (a) the Contractor has provided to the County all Deliverables required to be provided to the County; (b) the Contractor provides to the applicable County Project Manager a written notice stating that all Material Defects have been corrected; and (c) the County notifies the Contractor in writing that all acceptance testing for the System has been completed successfully in accordance with the Software Acceptance Plan and the terms of this Agreement. Nothing else, including payment for any portion of the System or the County’s use of the System, or any portion thereof, in a live, operational environment, shall constitute Acceptance (under contract law or the Uniform Commercial Code of the State of Washington) of any portion of the System.

**County Data** means all data provided to the Contractor and loaded into the System in the Contractor’s performance of this Agreement. County Data includes any such data that is loaded into, or located in, any data files, tables, objects or other storage medium.

**Critical Defect** means any Defect that (1) severely impacts the County’s ability to use the Software or the System or the Contractor’s ability to provide Services, or (2) has a significant financial impact on the County.

**Defect** means (1) any failure of the Software to operate in accordance with the Documentation, Functional Specifications, or Performance Standards; and/or (2) any failure of the Contractor to perform the Services in accordance with the Service Level Standards.

**Deliverable** means the Hardware, Software, Documentation, and Services to be delivered under this Agreement.

**Documentation** means collectively: (a) all of the written, printed, electronic, or other format materials published or otherwise made available by the Contractor that relate to the functional, operational, and/or performance capabilities of the System and/or any Software; (b) all user, operator, system administration, technical, support, and other manuals and all other written, printed electronic, or other format materials published or otherwise made available by the Contractor that describe the functional, operational, and/or performance capabilities of the System and/or any Software, including but not limited to the Functional Specifications and Software Acceptance Plan; and (c) any other Deliverable that is not Hardware or Software. Documentation shall not include Source Code.

**Functional Specifications** shall mean those specifications to which the Software and the System shall conform as set forth in the Contractor Response to RFP 14-14 and Exhibit A.

**License(s)** shall mean any license or licenses granted by the Contractor to the County under this Agreement.

**Material Defect** means Critical Defect.

**Object Code** shall mean the binary machine-readable version of the Software.

**Performance Standards** means, collectively the warranties and performance standards set forth in Section [11] and Exhibits A and B.

**Services** means, individually or collectively, all installation, implementation, integration, testing, development, conversion, training, consulting, Support and Maintenance Services, and any other professional or other services that may be provided by the Contractor to the County under this Agreement.

**Service Level Standards** means the service level standards set forth in Section [11] and Exhibit B.

**Site** shall mean the County's facilities in Snohomish County, Washington.

**Software** means the aggregate of the Standard Software and the Custom Software: all upgrades, maintenance releases, bug fixes or patches, and other modifications or additional provided under this Agreement.

**Software [or System] Acceptance Plan** shall mean that plan set forth in Exhibit A and this Master Agreement.

**“Source Code”** means computer software in the form of source statements for the Software (excluding all Third Party Software) including, without limitation, all software in the form of electronic and printed human-readable, mnemonic or English-like program listings, including printed and on-line descriptions of the design of such software including, without limitation, data definition models, indices, structure tables, system flow charts, program flow charts, defined terms, file layouts, program narratives, global documentation (including global variables) and program listings.

**Standard Software** means those Deliverables that are classified, in Exhibit A as Standard Software, as well as the documentation furnished therewith by the Contractor or its subcontractors in the normal course of business.

**System** means the Deliverables to be installed and integrated so as to be operational at the County Site.

**Warranty Period** means the period commencing upon Acceptance and continuing for the duration of the subscription.

**Work Product** means all devices, techniques, know-how, algorithms, procedures, discoveries or inventions, and all materials, texts, drawings, specifications, and other recorded information, in preliminary or final form and on any whatsoever, that are conceived, reduced to practice, developed, discovered, authored, designed, programmed, invented or otherwise created or made by Contractor (whether solely or jointly with others) in connection with or as a result of its performance of the Services.

### 3. **Scope of This Agreement**

**Scope.** This agreement defines the terms and conditions, under which the Contractor will design, develop, integrate, deliver, install, train, and support the Software and other Deliverables.

**Turn-key Basis.** The parties acknowledge that the performance by the Contractor of its obligations under this Agreement is to be done on a “turn-key basis.” This expression is understood to mean that the Contractor is fully responsible, pursuant to the terms and conditions of this Agreement, for the delivery of the Deliverables in full conformity with the terms and conditions hereof, and that the Deliverables shall function in conformity with the performance criteria stipulated herein upon delivery, upon Acceptance of the System, throughout the Warranty Period, and throughout the term of the ongoing Support and Maintenance Services.

### 4. **Software and Services**

**License Grant.** The Contractor hereby grants the County a nonexclusive, nontransferable subscription license to use the Software and Documentation. In the

event any of the Escrow conditions, set forth in Exhibit D to this Master Agreement, are triggered this license will convert to perpetual.

**Additional Licensing.** As part of the agreement with the County, Cartegraph will provide 500 additional Esri ArcGIS Online Identities. The County may purchase additional Esri ArcGIS Online Identities through Cartegraph as specified in Exhibit C.

**Work Product.**

**Ownership.** The County will be the exclusive owner of all Work Product. To the extent permitted under the U.S. Copyright Act (17 USC § 101 et seq., and any successor statute thereto), Work Product will constitute “works made for hire,” and the ownership of such Work Product will vest in the County at the time they are created. In any event, Contractor hereby assigns and transfers to the County, without separate compensation, all right, title and interest that the Contractor may now or hereafter have in the Work Product, including, without limitation, all copyright, trademark, trade secret, patent and other intellectual property and proprietary rights (collectively, “Intellectual Property Rights”) therein. To the maximum extent allowed, the Contractor hereby irrevocably and unconditionally waives, in perpetuity, any rights it may have with respect to the Work Product under any law relating to “the moral rights of authors” or any similar law throughout the world. The Contractor will promptly disclose to the County all Work Product.

**Non-Employees.** If any individual or entity who is not a direct employee of Contractor performs or otherwise participates in any Services, Contractor will obtain from such non-employee a legally binding, written assignment sufficient to transfer to the County all of the non-employee’s rights, title and interest in and to the Work Product. Upon the County’s request, Contractor will provide the County with copies of all such assignments.

**Further Acts.** Contractor, its employees, agents, subcontractors and affiliates, will take such action as the County reasonably may request to evidence, transfer, and vest or confirm the County’s right, title and interest in the Work Product.

**Use.** Except as required for Contractor’s performance of the Services or as authorized in writing by the County, Contractor will not use, disclose, publish or distribute any Work Product. Contractor will hold all Work Product in trust for the County and will deliver them to the County upon request and in any event upon the expiration of termination of this Agreement.

**Reverse Engineering.** Except as expressly provided in this Agreement, the County shall not translate, reverse engineer, decompile, recompile, update, or modify all or any part of the Software or merge the Software into any other software.

**Service Level Standards.** The Contractor shall provide the Software and Services according to the performance criteria and Service Level Standards set forth in this Master Agreement and Exhibit B.

**Prime Contractor.** Cartegraph shall act as Prime Contractor and guarantor for all products and services covered by this Agreement, including all actions of subcontractors. Any sub-contract executed after execution of this Agreement must be approved, in advance, by the County.

## 5. Term of Agreement

**Term of Agreement.** The initial term of the Agreement shall commence upon execution and continue for five (5) year(s) from the date of Acceptance of Phase 1 Milestone “Testing Sign-Off – Complete” (per the Project Schedule, Exhibit A-2) (“Initial Term”), and may be extended by the County for five (5) additional one (1) year option terms by providing written notice subject to termination as provided in this Agreement.

The maximum term for this Agreement, consisting of the initial term and all option term(s), is ten (10) years from Acceptance unless extended by written agreement signed by all parties.

### **Termination.**

Termination for Default. If the Contractor defaults by failing to perform any of the obligations of the Agreement or becomes insolvent or is declared bankrupt or commits any act of bankruptcy or insolvency or makes an assignment for the benefit of creditors, the County may terminate the Agreement if the Contractor has not cured following a thirty (30) day written notice to the Contractor sent certified mail, return receipt requested. If the Agreement is terminated for default, the County may obtain performance of the work elsewhere, and the Contractor shall not be entitled to receive any further payments under the Agreement until all work called for has been fully performed. The Contractor shall only be paid for work delivered and accepted, or work performed in accordance with the manner of performance set forth in the Agreement less any extra cost or damages to the County caused by or arising from such default(s), which shall be deducted from any money due or coming due to the Contractor. The termination of this Agreement for default shall in no way relieve the Contractor from any of its obligations under this Agreement or as outlined in Exhibit F. If a notice of termination for default has been issued and it is later determined for any reason that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the notice of termination had been issued as a Termination for Convenience.

Termination for Convenience. The County for its convenience may terminate this Agreement, in whole or in part, at any time prior to Acceptance of the System (Go-Live) by providing written notice sent certified mail, return receipt requested, to the Contractor. After receipt of a Notice of Termination, and

except as directed by the County, the Contractor shall immediately stop work as directed in the notice, and comply with all other requirements in the notice. Whenever the Agreement is terminated for convenience, the Contractor shall be entitled to payment for actual work satisfactorily performed up to the date of termination at unit contract prices for completed items of work and an equitable portion thereof the partially completed items, but shall not be entitled to payment for loss or anticipated profit on deleted or uncompleted work. The Contractor shall promptly submit its request or termination payment, together with detailed supporting documentation. If the Contractor has any property in its possession belonging to the County, the Contractor shall account for the same and dispose of it in the manner the County directs. All termination payment requests may be subject to determine reasonableness and compliance with the Agreement, applicable laws and regulations.

Termination by the Contractor for Default. If the County violates any material term or condition of this Agreement or fails to fulfill in a timely and proper manner its obligations under this Agreement, then the Contractor may terminate the agreement if the County has not cured following a thirty (30) day written notice to the County sent certified mail, return receipt requested. The County will correct the violation or failure within thirty (30) calendar days or as otherwise mutually agreed. If the failure or violation is not corrected the Agreement may be terminated immediately by written notice from the Contractor to the County.

Termination for Non-Appropriation. In the event that sufficient funds are not appropriated or allocated for payment under this Agreement for any future fiscal period, the County may terminate this contract as a matter of public convenience as provided herein and as specified in Exhibit F. The County will not be obligated to make payments for services or amounts incurred after the end of the current fiscal period, provided the County provides the Contractor written notice prior to the end of the current fiscal period that non-allocation of funds is probable and provides a Notice of Termination within 14 days after the end of the fiscal period.

Effect of Termination. The termination of this Agreement shall not affect the accrued rights of the County under any other section or paragraph of this Agreement or limit the rights and remedies of the County hereunder in any manner.

Suspension of Work. The County may, at any time, instruct the Contractor in writing to stop work effective immediately, or as directed, pending either further instructions from the County to resume the work, or a notice from the County of breach or termination under this Agreement.

## **6. Acceptance Testing.**

Within ten (10) business days of the Contractor providing notice to the County that the System has been installed and County personnel have been trained in accordance with the Agreement, the County shall begin the Acceptance testing process at the County Site according to the Software Acceptance Plan.

The Acceptance testing shall include thirty (30) days of continuous operation of the System, per the contracted deliverables, without Material Defect in accordance with all Functional Specifications, Performance Standards, and Documentation in the County's fully implemented production environment.

If the County accepts the work, the County will send a notice of Acceptance to the Contractor.

If the County determines that the work is not acceptable, the County shall notify the Contractor in writing and subsequently provide a written description of the deficiencies.

The Contractor shall either provide a detailed, written plan to achieve Acceptance, make correction or replacements, or submit change order documentation within a mutually agreed upon time. Corrections or replacements to achieve Acceptance shall be made with no charge to the County, unless there is a change in scope. Should a change order be required due to a change in scope, additional charges may occur. The Contractor shall submit change order documentation clearly defining the County's non-acceptance as a change in scope and detail any additional charges required to affect the change. Should both parties agree non-acceptance is a result of a change in scope, the County will either provide notice to proceed with the change order or re-evaluate Acceptance based on the existing scope of work. The parties shall mutually agree on a start date for beginning another Acceptance testing period.

Another thirty (30) day successful operation period shall follow any corrections, replacements or change orders. A third or additional Acceptance testing period may occur if mutually agreed to by the parties.

If the County accepts the System following a second or subsequent Acceptance testing period, the County will send a notice of Acceptance to the Contractor.

The County shall send written notice of Acceptance or non-Acceptance within five (5) business days of completing the any 30-day Acceptance testing period. If the County notifies Cartegraph the work is not acceptable, the County shall subsequently provide a written description of the deficiencies.

If the Contractor does not correct or replace the unacceptable aspects of the contracted System deliverables, the County may declare a breach of the Agreement.

## **7. Price and Payment.**

The County shall pay the Contractor Five Hundred, Eleven Thousand, Four Hundred Ninety Two Dollars and Eighty Cents (\$511,492.80)) for the Deliverables required to be provided by the Contractor through the end of the Acceptance Period as stated in the



schedule of payments described in Exhibit A. Annual recurring charges for Subscription, Support and Maintenance Services in years two (2) through five (5) shall not exceed One Hundred Sixty Three Thousand, Eight Hundred Dollars (\$163,800.00) per year or a total of Six Hundred Fifty Five Thousand, Two Hundred Dollars (\$655,200.00).

Where the Contractor requires payments by Snohomish County, payment shall be based upon invoices, supported by documentation of amounts earned, and the total dollar payment requested. Unless specifically stated in Exhibit A, or approved in writing in advance by the official executing this Agreement for Snohomish County, (hereinafter referred to as the "Contracting Officer"), the County will not reimburse the Contractor for any costs or expenses incurred by the Contractor in the performance of this contract.

The County shall, upon receipt of appropriate documentation, compensate the Contractor through the County voucher system for the Contractor's service pursuant to the fee schedule set forth in Exhibit C. Payment shall be made on a Net Thirty (30) day basis. This is a "Fixed-Price" contract based upon the Deliverables identified in Exhibit A.

**Dispute.** Should the County dispute any of the charges on an invoice, it shall notify Contractor of such disputed charges in writing. The notice shall set forth all details concerning the disputed charges and reasons for the dispute. The Contractor and the County shall attempt in good faith to resolve any objection to the invoiced amount prior to the payment due date, the County shall pay the invoiced amount minus the disputed amount on the due date of original invoice. If the dispute is subsequently resolved in favor of the Contractor, the Contractor shall re-invoice the disputed amount owed then, including interest at the annual rate of one percent (1%) from the original due date, and the County shall pay all amounts agreed or found to be owing to the Contractor within (30) days of the date of the reissued invoice.

**8. Support Services.**

**Training Services.** The Contractor will provide training services as outlined in Exhibit A.

**9. Confidentiality and Public Disclosure.**

**Confidential Data.** The Contractor acknowledges that it may be provided access to confidential data of the County that is not subject to public disclosure pursuant to Washington State RCW Chapter 42.56 (the Public Disclosure Act). The Contractor shall use its best efforts: (1) not to, at any time, disclose or disseminate confidential data provided by the County to the Contractor to any other person, firm, organization, or employee who does not need to obtain access thereto consistent with the Contractor's obligations under this Agreement; (2) not to disclose or disseminate such confidential data to any third party not affiliated with this Agreement or for any purpose not required by the Agreement; and (3) to ensure that all persons working for the Contractor, or provided access to the County's data for any reason, protect the County's confidential

data against unauthorized use, dissemination, or disclosure. The Contractor's obligations under this section shall not apply to any information that is or becomes available without restriction to the general public by acts attributable to the County or its employees.

**Public Disclosure.** In the event that the County receives a request pursuant to the Public Records Act to disclose the Contractor's proprietary software, software documentation, or other information identified by the Contractor in writing as confidential, the County's sole obligations shall be to: (1) notify the Contractor and (2) refrain from disclosing such records for a period of up to ten business days to allow the Contractor an opportunity to seek legal protection against disclosure from a court of competent jurisdiction. The County will not withhold requested records beyond the ten business days unless it may do so based on good faith reliance upon an exception to disclosure under the Public Records Act. The County may but shall not be required to join in any legal proceedings relating to the requested disclosure unless required to do so by the court. In the event that the Contractor initiates legal proceedings, or the County initiates legal proceedings or withholds requested records at the Contractor's request, the Contractor shall indemnify and hold the County harmless against all proceedings and/or withholding of the records. The County shall not be liable to the Contractor for any loss, cost or expense relating to the disclosure of requested records if the Contractor fails to obtain legal protection against disclosure and the County releases the records in good faith.

Contractor shall indemnify and hold harmless the County, its officials, agents and employees from all loss or expense, including, but not limited to settlements, judgments, set-offs, attorneys' fees and costs resulting from Contractor's breach of this provision.

#### **10. Reproduction of Documentation and Object Code**

**Documentation.** The County shall have the right, at no additional charge, to reproduce solely for its own internal use, all Documentation furnished by the Contractor pursuant to this Agreement regardless of whether such Documentation is copyrighted by the Contractor. All Copies of Documentation made by the County shall include any proprietary notice or stamp that has been affixed by the Contractor. Contractor shall furnish for each license purchased by the County, and at no additional charge to customer, one (1) copy of the documentation sufficient to enable the County to operate the Software. All documentation shall be in the English Language.

**Object Code.** The County may reproduce one copy of the Object Code, at no additional charge, solely for back-up or archival purposes.

#### **11. Warranty Provisions.**

Unless otherwise extended or limited, the warranties and commitments contained in this Section shall remain in full force and effect throughout the term of this Agreement.

**General Warranties.** Contractor warrants that it owns all rights, title, and interest in and to the Software, or that in the case of any third party software that it has the right to grant a sublicense to use such third party software, that all Software shall conform to the Functional Specifications and Documentation, and that the Software and Services shall

be free from material defects in workmanship and materials. This warranty coverage shall include any modifications made to the Software by the Contractor and shall survive the expiration or termination of this Agreement.

**System.** The Contractor represents and warrants to the County that the System shall function without Defect in accordance with the applicable specifications, Performance Standards, and Documentation.

**Software Performance.** Contractor represents and warrants to the County that the Software or System, as applicable, shall meet the Performance Standards set forth in Exhibit B, including the maximum response times and availability, provided the County systems meet the Contractors requirements for use of its software and the system is implemented according to the Contractors recommendations. The Contractor shall correct any failure of the applicable Software and/or System to operate in accordance with the performance warranties set forth in this Section by providing all additional software, equipment, and/or services to the County at no additional cost to the County. In the event the Contractor is unable to correct such failure or propose an acceptable solution within thirty (30) calendar days after being notified of the failure by the County, an Event of Default shall be deemed to have occurred.

**Services.** The Contractor represents and warrants to the County that it shall perform the Services and provide the Deliverables required by this Agreement in a workmanlike manner, in accordance with the standards of care and diligence and the level of skill, knowledge, and judgment normally practiced by nationally recognized information technology services firms in performing services of a similar nature, provided, however, that where this Agreement specifies a particular standard or criteria for performance, this warranty is not intended to and does not diminish that standard or criteria for performance. Further, the Contractor represents, warrants, and covenants that it shall provide the services or create any Deliverables using only proven current technology or methods unless otherwise mutually agreed by the parties.

**Documentation.** The Contractor represents and warrants to the County that it has provided to the County all Documentation for the Software and the System and that such Documentation is detailed and complete and accurately describes the functional and operation characteristics of the software and the System. The Contractor further represents and warrants that it will provide to the County updated versions of all such Documentation when It provides updates and other required Maintenance Services and that all such updated Documentation will be complete and accurate and will be at least as detailed as the Documentation issued to the County with the initial version of the Software and the System. The warranty and commitments contained in this Section shall remain in full force and effect for as long as the County continues to receive Support and Maintenance Services from the Contractor.

**Compatibility.** The Contractor warrants that the Software will be compatible with the County's technical environment, including hardware, operating system(s), software application(s), CPU's, and networks specified by the County in Request for Proposal RFP-14-14.

**Future Compatibility.** The Contractor warrants that all updates, upgrades, and revisions to the Software furnished hereunder will be implemented in such a manner as to maintain backward compatibility with the previous version or release of the Software furnished under the Agreement, so that such previous versions or releases shall continue to be operable with the Software as updated, upgraded, or revised, in materially the same manner and with materially equivalent performance. Without limiting the foregoing, Contractor further warrants that future Support, Maintenance and other Services will not degrade the Software, cause a breach of any other warranty, or require the County to purchase new or additional hardware or software for continued operation of the Software or the System.

**Software Obsolescence.** The Contractor acknowledges that the County is making a significant resource commitment in order to acquire the Software and that the County does not want to move involuntarily to a new system for the term of this agreement. Having acknowledged the foregoing, the Contractor represents and warrants to the County that it will continue to enhance the Software (meaning adding new features and functionality, in addition to ordinary course defect corrections), as long as the County continues to receive Subscription and Maintenance and Support Services from the Contractor.

**Latest Versions.** Contractor warrants that all Software as delivered will be the most current release or version that the Contractor has made commercially available to its customers, unless the County, after being advised by the Contractor of the availability of a newer release or version, expressly elects to acquire and deploy an older one.

**Virus Warranty.** The Contractor warrants that the Software does not contain any malicious code, program or other internal component (e.g., computer virus, computer worm, computer time bomb, or similar component), that could damage, destroy, or alter any computer program, firmware, or hardware or which could, in any manner, reveal damage, destroy, or alter any data or other information accessed through or processed by the Software in any manner. The Contractor shall immediately advise the County, in writing, upon reasonable suspicion or actual knowledge that the Software may result in the harm described above. The Contractor shall indemnify and hold the County harmless from any damage resulting from the harm described above. This warranty shall survive the expiration or termination of this Agreement.

**Disabling or Restrictive Code.** Without limiting any other provision to the Agreement, the Contractor warrants that the Software does not contain and the Contractor will not introduce any code, data block, time-bomb, Trojan horse, encrypted software keys, back door, or remote disabling function that may restrict the County's use of or access to the Software or the System or related data or equipment, with the exception of a shutoff that can only be used in the event of County default for non-payment, the details of which are described in Exhibit E. The Contractor understands and agrees that the County's inability to use the Software or System or its related data or equipment will cause substantial injury or harm to the public health or safety or grave harm to the public interest substantially affecting third persons. No limitation of liability, whether

contractual or statutory, shall apply to a breach of this warranty. This warranty shall survive the expiration or termination of this Agreement.

**Media.** Contractor warrants that through the period ending 90 days from the date of Acceptance that the media used to store and deliver the Software to the Customer shall be free from defects in manufacture and material. Should the media fail to be free of defects in manufacture or material during the warranty period, the Contractor shall replace the defective media. Defective media shipped to the Contractor with a shipping date within the warranty period will be replaced at no charge including shipping.

**Intellectual Property.** The Contractor represents and warrants to the County that the County's use of the Software does not and shall not infringe upon any United States or Canadian patent, trademark, copyright, trade secret or other intellectual property, or proprietary right of any third party, and there is currently no actual or threatened suit against the Contractor by any third party based on an alleged violation of such right. This warranty shall survive the expiration or termination of this Agreement.

**Ownership of County Data.** County Data shall be the property of the County and shall be delivered to the County or otherwise disposed of by the Contractor either as the Contracting Officer may from time to time direct during the progress of the work or, in any event, as the Contracting Officer shall direct upon completion or termination of the contract. The County retains all rights to access all County Data for any purpose even in the event that this Agreement shall be terminated for any reason. The Contractor shall not use any means to prevent the County's access to County Data.

**Third Party Warranties and Indemnities.** For any third party Software provided by the Contractor to the County, Contractor hereby assigns to the County all end-user warranties and indemnities relating to such third party Software. To the extent that the Contractor is not permitted to assign any of such end-user warranties and indemnities through to the County, the Contractor shall enforce such warranties and indemnities on behalf of the County to the extent the Contractor is permitted to do so under the terms of the applicable third party agreements. This warranty shall survive the expiration or termination of this Agreement.

**Authority.** Each Party represents and warrants to the other that it has the right to enter into this Agreement. Contractor further represents and warrants that there are no outstanding assignments, grants, licenses, encumbrances, obligations, or agreements (whether written, oral, or implied) that are inconsistent with this Agreement and the rights granted or transferred herein. This warranty shall survive the expiration or termination of this Agreement.

**Privacy.** Contractor acknowledges that the County data may contain personal data, health data, and/or medical records data, the use of which data is subject to various Privacy Laws, including all state, federal, and international laws and regulations and state, federal, and national government agency orders and decrees to which the County may be subject ("Privacy Laws"), as well as certain restrictions imposed on the County data by the data subjects or other third party data providers. The Contractor agrees to

strictly abide by all such restrictions pertaining to County Data, as they are promulgated and applied, currently and in the future. Furthermore, Contractor shall in good faith execute any and all agreements that the County is required to have the Contractor execute in order that the County may comply with any Privacy Laws. If the Contractor's use (whether directly or indirectly) of the County data is contrary to any Privacy Law, or contrary to any of the restrictions set forth in this Agreement, the County shall have the right to: (1) terminate this Agreement for cause if such breach has not been cured within five (5) days of receipt by the Contractor of written notice, and (2) pursue any other legal and equitable remedies.

## **12. Indemnification.**

**General Indemnification.** The Contractor shall hold harmless from and indemnify the County, its elected and appointed officials, employees, and agents, against all claims, losses, suits, actions, costs, counsel fees, litigation costs, expenses, damages, judgments, or decrees by reason of damage to any property of any person or party and/or any death, injury or disability to or of any person or party, including any employee, arising out of or suffered, directly or indirectly, by reason of the performance of this Agreement or any act, error or omission of the Contractor, Contractor's employees, agents, or subcontractors, whether by negligence or otherwise; provided, that if the claims for damages arise out of bodily injury to persons or damage to property and caused by or result from the concurrent negligence: (1) of the County and its elected or appointed officials, employees, or agents, and (2) the Contractor and its agents, employees, or subcontractors, the hold harmless and indemnity provisions of this Agreement shall be valid and enforceable only to the extent of the negligence of the Contractor, its agents, employees, or subcontractors. The Contractor's obligation shall include, but not be limited to, investigating, adjusting, and defending all claims alleging loss from action, error, or omission or breach of any common law, statutory or other delegated duty by the Contractor, Contractor's employees, agents, or subcontractors.

With respect to the performance of this Agreement and as to claims against the County, its officers, agents and employees, the Contractor expressly waives its immunity under Title 51 of the Revised Code of Washington, the Industrial Insurance Act, and any similar law of any other jurisdiction, for injuries to its employees and agrees that the obligations to indemnify, defend and hold harmless provided in this Agreement extend to any claim brought by or on behalf of any employee of the Contractor. This waiver is mutually negotiated by the parties to this Agreement.

### **Patent and Other Proprietary Rights Indemnification.**

Indemnification. Contractor will indemnify and hold the County harmless from and against any and all claims, losses, liability, damages, costs, and expenses (including attorney's fees, expert witness fees, and court costs) directly or indirectly arising from or related to any actual or alleged infringement (including contributory infringement), misappropriation, or violation of any third party's patents, copyrights, trade secret rights, trademarks, or other intellectual property or proprietary rights of any nature in any jurisdiction in the

world, resulting from the use of the Software by the County. If the County's continued use of the Software is restricted or prohibited as a result of any such infringement, misappropriation, or violation of third party rights, the Contractor shall, at the County's option and at no charge to the County, and in addition to the County's other rights and remedies, (1) secure for the County the right to continue using the Software as allowed under this Agreement, (2) modify or replace the infringing components of the software so that they are non-infringing with no loss or degradation of features, functionality, or performance, or (3) refund to the County all amounts paid by the County for the Software.

Exclusions. Notwithstanding the foregoing, the Contractor will not be obligated to indemnify the County to the extent that an infringement or misappropriation claim is based upon (1) use of the Software in breach of this Agreement, if such infringement or misappropriation would not have occurred but for such breach; (2) use of the Software in combination with other products not supplied or recommended by the Contractor or specified by the Contractor as being compatible with the software, if such infringement or misappropriation would not have occurred but for such combined use; (3) use of any release of the Software other than the most current release made available to the County, if the most current release was furnished to the County Specifically to avoid such infringement or misappropriation and if such infringement or misappropriation would have been avoided by use of the most current release; or (4) any modification of the Software made by the County (other than at the Contractor's direction), if such infringement or misappropriation would not have occurred but for such modification.

### **13. Insurance.**

**No Limitation.** Contractor's maintenance of insurance as required by this Agreement shall not be construed to limit the liability of the Contractor to the coverage provided by insurance or to limit the County's recourse to any remedy indemnification and payment to the County under the terms of a required insurance policy.

**Minimum Scope of Insurance and Limits.** The Contractor shall obtain and maintain continuously and for the duration of the Agreement, and for three years following termination, the following insurance:

Commercial General Liability Insurance with a minimum limit of \$1,000,000 per occurrence, \$2,000,000 general aggregate, and endorsed to include Snohomish County, its officers, elected officials, agents, and employees as an additional insured with respect to the work performed for the County. Insurance shall be written on ISO occurrence form CG 00 01 or a substitute form providing equivalent coverage.

Worker's Compensation Coverage as required by the industrial Insurance laws of the State of residency. The Contractor's obligation shall extend to itself and any subcontractors working on behalf of the Contractor and must be obtained

before performing any work under the Agreement. The County will not be responsible for payment of workers' compensation premiums or for any other claim or benefit for the Contractor, its employees, consultants, or subcontractor that might arise under the residency state's Industrial Insurance laws, howsoever named.

Professional Technical Liability insurance appropriate to the Contractor's profession with limits of \$1,000,000 per claim and \$1,000,000 policy aggregate limit. The policy shall have a retroactive date prior to or coincident with the date of the Agreement, and the Contractor shall maintain coverage for the duration of the Agreement and for three years following termination of the Agreement.

**Other Insurance Provisions.** The required Commercial General Liability Insurance and Professional Technical Liability Policies shall meet the following requirements:

The Contractor's insurance coverage shall be placed with insurance carriers licensed to do business in the state of Washington with a current A.M. Best rating of not less than A:VII.

The Contractor's insurance coverage shall be primary insurance with respect to the County. Any insurance or self-insurance coverage maintained by the County shall be excess of the Contractor's insurance and shall not contribute with it. The County reserves the right to receive a certified copy of required insurance policies and to approve any deductible.

The Contractor's insurance shall be endorsed to state that the insurer shall provide at least thirty days prior written notice by certified mail, return receipt requested, of any impending cancellation, non-renewal, expiration, or reduction in coverage.

Contractor shall furnish the County with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Contractor before commencement of the work. The County reserves the right to receive a certified copy of required insurance policies and to approve any deductible.

#### **14. Obligations that Survive Termination.**

In addition to any other specific provisions that so state, the parties recognize and agree that their obligations under Sections 7 (Price and Payment), 9 (Confidentiality and Public Disclosure), 12 (Indemnification), 16 (Assignment and Transfer), 17 (Independent Contractor), 19 (Compliance with Laws), 21 (Governing Law and Venue), 22 (Applicability of Uniform Commercial Code), 23 (No Waiver), 26 (Covenant of Good Faith), 28 (Third Party Beneficiaries), 29 (No Construction Against Drafter), and 31 (Records) of this Agreement survive the cancellation, termination, or expiration of this Agreement.



**15. Amendments.**

No modification or amendment to this Agreement will be valid or binding unless reduced to writing and duly executed by authorized representatives of both parties.

**16. Assignment and Transfer.**

No party may assign, delegate, or otherwise transfer of any rights or obligations under this Agreement without the prior written consent of the other party, which may be granted or withheld in the other party's sole discretion. In the event that Contractor assigns, or otherwise transfers this Agreement, or any part hereof, or delegates any of its duties hereunder to any Third Party or Affiliate and, within eighteen (18) months after such transfer, the County, in its sole discretion, is not satisfied with the level of service provided under this Agreement, the County shall have the right to terminate this Agreement for convenience and transition to a new vendor. All Services provided by Contractor's transferee during the transition Period shall be provided at no cost.

**17. Independent Contractor.**

All work performed by the Contractor in connection with the Software and/or Services described in this Agreement shall be performed by the Contractor as an independent contractor and not as the agent or employee of the County. All persons furnished by the Contractor shall be for all purposes solely Contractor's employees or agents and shall not be deemed to be employees of the County for any purpose whatsoever. The Contractor shall furnish, employ, and have exclusive control of all persons to be engaged in performing Services under this Agreement and shall prescribe and control the means and methods of performing such Services by providing adequate and proper supervision. The Contractor shall be solely responsible for compliance with all rules, laws, and regulations relating to employment of labor, hours of Social Security, and other payroll taxes including applicable contributions from such persons when required by law.

**18. Acceptance and Removal of Contractor Personnel and Subcontractors.**

All Contractor personnel, representatives, agents and subcontractors assigned to perform Services hereunder will be subject to acceptance by the County in the County's sole discretion. Services will be performed at a location specified by the County. The County in its discretion may request removal of any Contractor personnel, representative, agents or subcontractor providing Services hereunder, and Contractor will remove said personnel or subcontractor in accordance with each such request. The County may immediately remove any Contractor personnel, representative, agents or subcontractor in the County's sole discretion. Contractor will manage the transition of replacement personnel or subcontractor to minimize impact on any given project. Contractor may not subcontract the Services or any portion of the Services under this Agreement to any third party (including any independent contractor) without the prior written consent of the County, which consent may be withheld in the County's sole discretion. If the County consents to the use of a subcontractor, then (1) Contractor guarantees the subcontractor's

performance, (2) Contractor remains obligated under this Agreement for the performance of the subcontracted Services, (3) Contractor must enter into a written agreement with the subcontractor obligating the subcontractor to comply with Contractor's obligations under this Agreement, and (4) the County has no obligations under this Agreement to the subcontractor and the subcontractor has no rights or remedies against the County under this Agreement or otherwise. Contractor may not impose on the County a surcharge for any subcontractor fees.

**19. Compliance with Laws.**

The Contractor each shall with all applicable federal, state, county and local laws, ordinances, regulations, and codes including, but not limited to, its obligations as an employer with regard to health, safety, and payment of its employees, and identification and procurement of required permits, certificates, approvals, and inspections in the Contractor's performance of this Agreement.

**20. Non-Discrimination**

It is the policy of the County to reject discrimination which denies equal treatment to any individual because of his or her race, creed, color, national origin, families with children, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability as provided in Washington's Law against Discrimination, Chapter 49.60 RCW, and the Snohomish County Human Rights Ordinance, Chapter 2.460 SCC. These laws protect against specific forms of discrimination in employment, credit transactions, public accommodation, housing, county facilities and services, and county contracts.

The Contractor shall comply with Chapter 2.460 SCC, which is incorporated herein by this reference. Execution of this contract constitutes a certification by the Contractor of the Contractor's compliance with the requirements of Chapter 2.460 SCC. If the Contractor is found to have violated this provision, or furnished false or misleading information in an investigation or proceeding conducted pursuant to Chapter 2.460 SCC, this contract may be subject to a declaration of default and termination at the County's discretion. This provision shall not affect the Contractor's obligations under other federal, state, or local laws against discrimination.

**Federal Non- Discrimination.** The County assures that no persons shall on the grounds of race, color, national origin, or sex as provided by Title VI of the Civil Rights Act of 1964 (Pub. L. No. 88-352), as amended, and the Civil Rights Restoration Act of 1987 (Pub. L. No. 100-259) be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any County sponsored program or activity. Snohomish County further assures that every effort will be made to ensure nondiscrimination in all of its programs and activities, whether those programs and activities are federally funded or not.

**21. Security, Access, and Safety Requirements.**

The Contractor shall instruct its employees, agents, and subcontractors that they shall comply with the County's security, access, and safety requirements for the protection of the County's facilities and employees while on the County's premises.

**22. Governing Law and Venue.**

The validity, construction, interpretation, and performance of this Agreement shall be governed by and construed in accordance with the domestic laws of the State of Washington, except as to its principals of conflicts of laws, and the parties hereto irrevocably submit to the exclusive venue of the Superior Court, Snohomish County, Washington to resolve any disputes arising hereunder or related hereto, except that the County may waive the exclusive venue provision and submit a dispute to any state superior court or federal district court of competent jurisdiction in the State of Washington.

**23. Applicability of Uniform Commercial Code.**

To the extent this Agreement entails the delivery of Software or Software Products, such Software or Software Products, shall be deemed "goods" within the meaning of Article 2 of the Uniform Commercial Code, Title 62A RCW, except when deeming services as "goods" would cause an unreasonable result. This Agreement shall control where there is a conflict with the UCC.

**24. No Waiver.**

No action or failure to act by the County shall constitute a waiver of any right or duty afforded to the County under the Agreement, nor shall any such action or failure to act by the County constitute an approval of, or acquiescence in, any breach hereunder, except as may be specifically provided in writing and signed by and authorized representative of the County.

**25. Force Majeure.**

Neither party shall be responsible for any delay or failure in performance of any part of this Agreement to the extent that such delay or failure is caused by fire, flood, explosion, war, embargo, civil or military authority, act of God, or other similar causes beyond its control. If any party is rendered unable, wholly or in part by such a force majeure event to perform or comply with any obligation or condition of this Agreement, upon giving notice and reasonably full particulars to the other party, such obligation or condition shall be suspended only for the time and to the extent commercially practicable to restore normal operations. In the event the Contractor ceases to be excused pursuant to this provision, then the County shall be entitled to exercise any remedies otherwise provided for in this Agreement, including Termination for Default. Whenever a force majeure event causes the Contractor to allocate limited resources between or among the Contractor's customers, the County shall receive no less priority in respect to such allocation than any of the Contractor's other customers.

**26. Disaster Recovery [if applicable]. This section was intentionally deleted.**

**27. Covenant of Good Faith.**

Each party agrees that, in its respective dealings with the other party under or in connection with this Agreement, it shall act in good faith.

**28. Time is of the Essence.**

The parties acknowledge that the performance by the Contractor and the County of their obligations hereunder is to be done on a “time is of the essence” basis. This expression is understood to mean that the Contractor and the County are to deliver their respective Deliverables no later than the delivery dates.

**29. Third Party Beneficiaries.**

This Agreement is entered into solely for the benefit of the County and the Contractor. No third party shall have the right to make any claim or assert any right under it, and no third party shall be deemed a beneficiary of this Agreement and, as such, [list exception] is entitled, subject to the terms and conditions of this Agreement, to all remedies entitled to third-party beneficiaries under law.

**30. No Construction against Drafter.**

The parties agree that any principle of construction or rule of law that provides that an agreement shall be construed against the drafter of the agreement in the event of any inconsistency or ambiguity in such agreement shall not apply to the terms and conditions of this Agreement.

**31. Notices.**

All notices, demands, or other communications herein provided to be given or that may be given by any party to the other under this Agreement shall be deemed to have been duly given when made in writing and delivered in person or upon the date of recorded receipt if deposited in the United States mail, postage prepaid, certified mail, return receipt requested, as follows:

Snohomish County:

David Baxter  
Snohomish County Public Works  
3000 Rockefeller MS 607  
Everett WA 98201

or to such address as the parties may provide by notice to each other from time to time.

**32. Access to Books and Records.**

The Contractor agrees that an authorized representative of the County shall, upon reasonable notice, have access to and the right to examine any pertinent books and records of the Contractor related to the performance of this Agreement. The Contractor

shall maintain such books and records for this purpose for no less than three (3) years after the termination or expiration of this Agreement.

**33. Source Code Escrow.**

Contractor agrees to place current copies of its Source Code, including all relevant commentary, explanations and other documentation as well as instructions to compile the Source Code, plus all revisions to the software source code encompassing all corrections, changes, modifications and enhancements made to the Software by the Contractor (the "Escrowed Material") into an escrow account with an escrow agent, subject to the terms of a software escrow Agreement that must first be approved by the County. The Contractor shall also place into the escrow account a license key or other means to disable the Cartegraph Salesforce Licensing Mechanism as described in Exhibit D. The Contractor shall update these copies within forty-five (45) calendar days of each major product release and all product fixes installed in the County System. The Contractor will provide the Escrowed Material as required herein before Acceptance. The County may access the Escrowed Material upon the occurrence of any one of the following instances of default:

- a. Contractor is no longer in business as a software developer; or,
- b. Contractor discontinues the ongoing development and resale of the OMS Product; or,
- c. Contractor sells substantially all of its assets to another company or merges with another company, and the current OMS product is discontinued; or,
- d. Contractor fails to offer ongoing Support and Maintenance Services; or,
- e. All or any material part of the source code is generally made available, with or without costs, to other users of comparable software; or
- f. Bankruptcy, receivership, insolvency, reorganization, dissolution, liquidation, or other similar proceedings are executed by or against the Contractor under any federal or state law and such proceeding is not dismissed within thirty (30) days; or,
- g. By mutual agreement of the parties.

Any escrowed material furnished under this provision shall be considered licensed perpetually under this Agreement.

**34. Severability.**

Whenever possible, each provision of this Agreement shall be interpreted to be effective and valid under applicable law. If any provision is found to be invalid, illegal or

unenforceable, then such provision or portion thereof shall be modified to the extent necessary to render it legal, valid and enforceable and have the intent and economic effect as close as possible to the invalid, illegal and unenforceable provision., If it is not possible to modify the provision to render it legal, valid and enforceable, then the provision shall be severed from the rest of this Agreement. The invalidity, illegality or unenforceability of any provision shall not affect the validity, legality or enforceability of any other provision of this Agreement, which shall remain valid and binding.

**35. Incorporation of Exhibits.**

Exhibits A through F, referred to in this Agreement and attached hereto are integral parts of this Agreement and are incorporated herein by this reference.

**36. Entire Agreement and Order of Precedence.**

The Contractor was selected through the County's RFP process (RFP-14-14). The RFP and the Contractor's response are incorporated herein by this reference. This written Agreement, its corresponding Exhibits, RFP-14-14, and the Contractor's response to RFP-14-14, constitutes the entire agreement between the parties with respect to the subject matter contained herein, superseding all previous agreements, statements or understandings pertaining to such subject matter. In the event of any conflict between this Master Agreement and any of the attached Exhibits, the precedence of Documents shall be as follows:

Master Agreement

Exhibit A – Requirements Analysis Report

Exhibit A-1 – Project Charter

Exhibit A-2 – Project Schedule

Exhibit B – Software Support

Exhibit C – Payment Terms

Exhibit D – Escrow Agreement

Exhibit E – Cartegraph OMS Licensing Mechanism

Exhibit F – Limited Unsupported Use of the System

RFP 14-14

Contractor Response to RFP 14-14

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day of the year first written above.

**COUNTY OF SNOHOMISH:**

**CONTRACTOR:**

**LENDA CRAWFORD**  
Deputy County Executive

*[Signature]* 9/25/15  
By: John Lovick Date  
Snohomish County Executive

*[Signature]* 9/15/2015  
By: Randy L. Skemp Date  
Title: Vice President of Sales

**Approved as to Form:**

*[Signature]* 9/16/2015  
Deputy Prosecuting Attorney Date

**Recommended for Approval:**

*[Signature]* 9/16/15  
Risk Management Date

COUNCIL USE ONLY  
Approved: 9-23-15  
Docfile: D-12

**Recommended for Approval:**

*[Signature]* 9/16/15  
Information Services Date  
for Gayle Andrews