Council Meeting of September 10, 2014

Agenda Item No. 7b

REQUEST FOR COUNCIL ACTION

SUBJECT: Cartegraph Master Agreement – Pavement Management Software

SUMMARY: Approve a three year agreement with Cartegraph for Cartegraph Software Costs and Professional Service Fees, in an amount not-to-exceed $52,700.00 ($34,700 year one, and $9,000 for each of the following two years).

FISCAL **IMPACT:** Funding is available in the Capital Projects Roads fund.

STAFF RECOMMENDATION:

Staff recommends the City Council approve the attached three year agreement with Cartegraph for Cartegraph Software Costs and Professional Service Fees, in an amount not-to-exceed $52,700.00.

MOTION RECOMMENDED:

"I move to approve Resolution No. 14-175 authorizing the Mayor to execute a three year agreement with Cartegraph for Cartegraph Software Costs and Professional Service Fees, in an amount not-to-exceed $52,700.00.

Roll Call vote required.

Prepared by:

David Murphy, P.E.
Manager of Capital Projects

Reviewed by:

Wendell T. Rigby, P.E.
Director of Public Works

Reviewed as to Legal Sufficiency:

Jeffery Robinson
City Attorney

Recommended by:

Bryce Haderlie
Interim City Manager

BACKGROUND DISCUSSION:

The Capital Projects group uses the Cartegraph software program to monitor the condition of each of the roads in West Jordan and to determine what roads are in need of chip seal, crack seal, slurry seal, or other surface treatments, up to thin and thick overlay and reconstruction. This agreement will provide 3 user licenses for the updated Web based pavement management software Cartegraph OMS-Advanced Edition at a cost of $9,000 per year, and an initial $23,700.00 for implementation services.

The first year services includes addition of multiple streets that have been built since the last software update and need to be added to the overall street network. The work also includes integration of the existing database with the new Cityworks asset management system software.

Attachments:

Resolution

Cartegraph Master Agreement

THE CITY OF WEST JORDAN, UTAH

A Municipal Corporation

RESOLUTION NO. 14-175

A RESOLUTION AUTHORIZING THE MAYOR TO SIGN THE CARTEGRAPH MASTER AGREEMENT

Whereas, the City Council of the City of West Jordan has reviewed the Cartegraph Master Agreement between Cartegraph and the City of West Jordan for software costs and professional service fees in amount of $52,700.00; and

Whereas, the City Council desires to approve the Cartegraph Master Agreement which agreement shall not be binding upon the City of West Jordan unless and until the agreement is fully executed by the parties; and

Whereas, the proposed Master Agreement between the City of West Jordan and Cartegraph (a copy of which is attached as **Exhibit A**) for software costs and professional service fees in amount of $52,700.00 has been reviewed; and

Whereas, the City Council of the City of West Jordan has determined that the attached Master Agreement with Cartegraph for an amount not-to-exceed $52,700.00 is acceptable for the purpose of providing software and professional services.

NOW, THEREFORE, IT IS RESOLVED BY THE CITY COUNCIL OF WEST JORDAN, UTAH:

Section 1. After approval as to legal form, the Mayor is hereby authorized to execute the Master Agreement between Cartegraph and the City of West Jordan for software costs and professional service fees in amount of $52,700.00.

Section 2. This Resolution shall take effect immediately.

Adopted by the City Council of West Jordan, Utah, this 10th day of September 2014.

_____
Kim V. Rolfe
Mayor

ATTEST:

_____
Melanie S. Briggs, MMC
City Recorder

RESOLUTION NO. 14-175

A RESOLUTION AUTHORIZING THE MAYOR TO SIGN THE CARTEGRAPH MASTER AGREEMENT

Voting by the City Council	"AYE"	"NAY"
Jeff Haaga	____	____
Judy Hansen	____	____
Chris McConnehey	____	____
Chad Nichols	____	____
Ben Southworth	____	____
Justin D. Stoker	____	____
Mayor Kim V. Rolfe	____	____

This Agreement is by and between **Cartegraph Systems, Inc.**, an Iowa corporation having its principal place of business at **3600 Digital Drive, Dubuque, Iowa, 52003** ("Cartegraph"), and **City of West Jordan** ("Customer") with an address of **8000 South Redwood Road, West Jordan, UT 84088** dated **August 18, 2014.**

This Agreement is intended to serve as the primary controlling agreement between the parties. This Agreement includes the following terms and conditions, as well as all Exhibits and Addendums to this Agreement, Purchase Agreements, and all other future agreements referencing this Agreement which Cartegraph and Customer may execute from time to time for the purchase of Software, Support, Services and Hosting. Collectively these are referred to as "Products". The terms and conditions herein provided shall be controlling as between Cartegraph and Customer unless specifically superseded by an Exhibit to this Agreement, a contemporaneously or subsequently executed Purchase Agreement, or any other contemporaneously or subsequently executed agreement specifically referencing this Agreement.

BY EXECUTING THIS AGREEMENT, CUSTOMER ACKNOWLEDGES THAT IT HAS REVIEWED THE TERMS AND CONDITIONS ON THE FOLLOWING PAGES IN ADDITION TO ANY EXHIBITS AND PURCHASE AGREEMENTS AND CUSTOMER AGREES TO BE LEGALLY BOUND BY EACH SUCH AGREEMENT.

Cartegraph Systems, Inc.

By _____
(Signature)

Randy L. Skemp
(Type or print name)

Title Executive Vice President/CRO

Date _____

City of West Jordan

By _____
(Signature)

_____
(Type or print name)

Title _____

Date _____

APPROVED AS TO LEGAL FORM
West Jordan City Attorney
By: Daniel Olson Date: 9/3/14

The following are the terms and conditions under which Cartegraph licenses its Software and provides Support, Services and Hosting as listed in the Exhibits and Purchase Agreements referencing this Agreement.

1. Grant of License to Software.

A. Cartegraph is licensed by third parties ("Third Party Licensors") to sublicense certain third party software products to Customer and to offer services to Customer for these third party software products under this Agreement.

B. Each Software product, including all data programs or set of programs, or routines and subroutines, consisting of a series of instructions or statements in machine readable form, and including any documentation relating to or describing such Software, such as, but not limited to manuals, online documentation and user instructions, flow charts, database schemas and improvements or updates provided by Cartegraph (collectively "Software"), is furnished to Customer under a personal, non-exclusive, nontransferable limited license solely for Customer's own internal use on Host Computer System (as defined below) and with Customer's Clients.

1. Host Computer Systems, if applicable, are Servers owned or controlled by Cartegraph that Customer may access under this Agreement (the provision of this service is herein referred to as "Hosted" or "Hosting").

2. Servers are personal computers, minicomputers, mainframes, workstations, and terminal devices that interact with Client Software and have been approved by Cartegraph or Third Party Licensors for operation of Software.

3. Server Software is a copy of Software residing on a server, multiple servers, or a Host Computer System.

4. Clients are personal computers, minicomputers, mainframes, workstations, mobile devices, and terminal devices that interact with Server Software and have been approved by Cartegraph or Third Party Licensors for operation of Software.

5. Client Software is a copy of Software residing on a Client that interacts with Server Software.

6. Data Files are those files which contain data that is input by the Customer during the use of the Software.

C. Customer agrees that the number of users licensed will be listed in the Purchase Agreement and only that number of users may use the Software at any given time.

1. If Customer has purchased a Per-User License, as indicated in the Purchase Agreement, only a finite number of licenses have been purchased by Customer and only that finite number of users may access and use the Software at any given time. The specific number of licenses purchased shall be identified in the Purchase Agreement.

2. If Customer has purchased an Unlimited License, as indicated in the Purchase Agreement, all employees of Customer are considered to be licensed to access and use the Software at any given time. Such Unlimited License applies only to employees of Customer and does not allow the access or use of the Software by any independent contractors, affiliated entities or organizations, or any other individual, party, or entity that is not an employee of Customer.

D. Customer agrees the Software license for the Software is limited as follows:

1. Browser Based User – Each browser based user is defined by unique ID and password.

2. For Server Software – one copy of Server Software for each Server or, if Hosted, no copies of Server Software for a Server that is not a Host Computer System.

E. Customer agrees that this license does not permit Customer to: (1) use the Software for a service bureau application or (2) sublicense the Software.

F. Except as set forth in this Agreement or as may be permitted in writing by Third Party Licensors, Customer shall not use, provide or otherwise make available the Software or any part or copies thereof to any third party.

G. Customer shall not reverse engineer, decompile or disassemble the Software or any portion thereof, nor otherwise attempt to create or derive the source code.

H. Customer may make copies of the Client Software for archival purposes. The Server Software may not be copied, in whole or in part.

2. Title to Software and Data Files.

A. Ownership of the Software, any portions thereof and any modifications, translations, or derivatives thereof, even if unauthorized, remains with Cartegraph or Third Party Licensors, as do all applicable rights in patents, copyrights and trade secrets and any other proprietary rights in the Software. Software provided hereunder is valuable, proprietary and unique, and Customer agrees to be bound by and observe the proprietary nature thereof as provided herein.

B. Customer acknowledges that unauthorized reproduction, use, or disclosure of the Software or any part thereof may cause irreparable injury to Cartegraph or Third Party Licensors, who may therefore be entitled to injunctive relief to enforce these license restrictions, in addition to any other remedies available at law, in equity, or under this Agreement.

C. Customer agrees that Cartegraph or Third Party Licensors may audit Customer's Software usage remotely or on-site during Support, Services or Hosting or upon reasonable notice and during standard business hours. Prevention of audit by Customer may be grounds for termination of this Agreement.

D. Cartegraph agrees that ownership of data in Data Files remains with Customer. However, Customer agrees that Cartegraph may access Data Files and grants Cartegraph a license to use the data for 1) internal business purposes to evaluate the use and operation of the Software, Support, Services or Hosting; and 2) marketing purposes provided that any information shared with third parties is anonymized and/or aggregated so that Customer cannot be identified from the information.

3. License Fees, Support Charges, Services and Hosting Charges.

A. Customer agrees to pay the license fees for the Software, Support charges, Services charges and Hosting charges as set forth in the Purchase Agreement for each Product.

B. Cartegraph agrees that the total amount listed in the Purchase Agreement shall be considered the not-to-exceed price for the Software, Support, Services and Hosting included in that Purchase Agreement.

C. Customer agrees that all payments are due 30 days from date of invoice and Customer shall be in default if amounts due have not been received in that time period. Customer's default will constitute sufficient cause for Cartegraph to suspend or terminate the Software license, Support, Services and Hosting under this Agreement.

D. Customer shall be invoiced for Software, Support, Hosting and hardware upon delivery. Customer shall be invoiced for Services as set forth in the Purchase Agreement.

E. Customer shall reimburse Cartegraph for reasonable expenses incurred during the provision of Support, Services or Hosting. Reasonable expenses include, but are not limited to, travel, lodging, and meals. Expenses are billed based on actual costs incurred. Estimated expenses shall be included in each Purchase Agreement and include the number of trips to customer site. Cartegraph shall not exceed the estimated expenses without written approval from Customer.

4. Delivery and Installation.

A. **On-Site Installation**

1. This subsection "A" regarding On-Site Installation shall apply if Customer elects, as indicated in the Purchase Agreement, to have Software and Products installed on Customer's Servers and Client computers at Customer's facilities ("On-Site") instead of utilizing Cartegraph Hosting Services.

   a. Execution of a Purchase Agreement by Customer shall be considered as Customer's notification to Cartegraph to proceed with delivery of the Products identified in the Purchase Agreement.

   b. Delivery of Software and Support shall take place reasonably quickly after execution of the Purchase Agreement. Cartegraph shall provide access to the Software to Customer in a downloadable form. Notification by Cartegraph that Software is available for download shall constitute delivery of Software and Support, regardless of when Customer downloads the Software.

   c. Customer shall be responsible for installation of the Client Software on Customer's Clients, unless agreed otherwise.

   d. After execution of the Purchase Agreement, delivery of Services will be scheduled in cooperation with Customer. Customer shall remain responsible for Service charges even if Services are not delivered.

   e. Any hardware included in the Purchase Agreement shall be ordered after execution of the Purchase Agreement. Delivery of hardware will be scheduled in cooperation with Customer.

B. **Hosting**

1. This subsection "B" regarding Hosting shall apply if Customer elects, as indicated in the Purchase Agreement, to utilize the Hosting services offered by Cartegraph instead of having the Software installed On-Site, as described in the previous subsection.

   a. Execution of a Purchase Agreement shall be considered as Customer's notification to Cartegraph to proceed with delivery of the Software and Services as indicated in the Purchase Agreement.

   b. Delivery of Software, Support, and Hosting shall take place reasonably quickly after execution of the Purchase Agreement. Cartegraph shall provide access to the Server Software to Customer on a Host Computer System. Notification by Cartegraph that Server Software is available for access shall constitute delivery of Server Software, Support and Hosting, regardless of when Customer first accesses the Server Software.

   c. Cartegraph shall be responsible for installation of the Server Software on Cartegraph's Host Computer System. Customer shall be responsible for installation of the Client Software on Customer's Clients, unless agreed otherwise.

d. After execution of the Purchase Agreement, delivery of Services will be scheduled in cooperation with Customer. Customer shall remain responsible for Service charges even if Services are not delivered.

e. Any hardware included in the Purchase Agreement shall be ordered after execution of the Purchase Agreement. Delivery of hardware will be scheduled in cooperation with Customer.

2. Hosting Services

a. Cartegraph will install, and operate Server Software on one or more Host Computer Systems.

b. Cartegraph will provide all equipment, software and services necessary for the operation, maintenance and support of one or more Host Computer Systems and the Server Software. Cartegraph may contract with third parties for all or part of such equipment, software and services ("Third Party Hosts"). Cartegraph reserves the right to change the configuration of the Host Computer System and the Server Software and to change or delete such equipment or software at any time, but Cartegraph shall make the Software compatible with such change or deletion without additional charge to Customer.

c. Customer shall have access to and be permitted to use the Server Software via Clients.

d. Customer shall provide a computing and networking environment that meets the minimum requirements set forth in Cartegraph's published specifications.

e. Customer shall be responsible for all bandwidth between Host Computer System and Clients and in such amounts as to provide reasonable responsiveness of the system.

f. Cartegraph shall perform a full back-up of data files on a daily basis. The daily full back-up will be retained for (14) fourteen days and then deleted unless customer contracts for additional days. Cartegraph's hosting services uses RAID 10 which both mirrors the data and stripes across multiple drives creating redundancy. Cartegraph hosting services have dual redundancy with offsite back-up storage and a back-up data centers

g. The Host Computer System shall be used by Customer only for purposes relating to Customer's own use of the Software. Customer shall have no right to assign any of its rights under this section.

h. Customer agrees that it shall be bound by the terms and conditions of any agreement between Cartegraph and any Third Party Hosts that relate to the use and operation of Host Computer Systems. Cartegraph will apprise Customer of the terms and conditions of such agreements from time to time.

i. Cartegraph will take reasonable precautions to guard against unauthorized access to Data Files. However, Cartegraph assumes no responsibility that the Software will be used properly.

j. Customer shall have the right to receive Data Files within sixty (60) days of termination of any Hosting on the condition that customer has paid all outstanding invoices owed to Cartegraph.

3. Availability of Host Computer System.

a. If Cartegraph contracts with a Third Party Host to provide Hosting, the service level provided by the Third Party Host shall be the service level provided by Cartegraph to Customer, except as required for Cartegraph to provide Support under this Agreement.

b. In general, Server Software will be available for use and access by Customer 24 hours a day, 7 days a week, except for scheduled maintenance to take place at commercially reasonable times. Furthermore, if access to the Server Software becomes a problem, then Cartegraph shall provide Support in view of the severity of the problem.

c. Server Software will be available for use and access by Customer during back-up activities performed by Cartegraph.

5. Support.

A. Scope of Support. Support includes the response to and resolution of Customer-encountered problems with the Software as reported to Cartegraph by Customer.

1. Resolution of Customer-encountered problems shall, at Cartegraph's option, consist of (1) maintenance provided through telephone, email or remote access; (2) correction of the problem in the Software program; or (3) delivery of bug fixes or workarounds limited to the current or immediate prior Software release.

2. Cartegraph will only support licensed Software located on Servers or Clients. Cartegraph will use commercially reasonable efforts to respond to Customer problems according to the priority level of the problem.

3. Support may also include upgrades to Software.

B. Support Limitations. Any Support is dependent upon the use by Customer of unmodified Software (except as authorized by Cartegraph) operated in accordance with Cartegraph's documentation. Support specifically excludes the following: (1) Support to a version of Software other than the current or immediate prior release; (2) efforts to restore a release of the Software beyond the current or immediate prior release; (3) efforts to restore a Customer Data File beyond the most recent back-up; and (4) efforts to convert a Customer Data File to another format.

As part of Support, Cartegraph is under no obligation to modify the Software so that the modified Software would depart from Cartegraph's published specifications for the Software.

6. **Professional Services.**

A. The professional consulting services and deliverables to be performed or delivered by Cartegraph under this Agreement may include, but are not limited to: consulting, network engineering, systems integration, hardware installation, special studies, pre-installation support, installation of Client Software, installation support, training, custom Software modification, tools/utilities components, programming and documentation, data conversion, application design and development, systems analysis and design, conversions, implementing planning and implementation of the Software (collectively referred to as the "Services").

B. Services shall only be provided as the result of a Purchase Agreement and any attached statements of work.

C. Services will be provided during the hours of 7:00 a.m. to 7:00 p.m., Central Standard or Central Daylight Time, whichever is applicable, Monday through Friday excluding holidays.

7. **Customer's Responsibilities**.

A. Customer is responsible for maintenance and installation of any Clients, common carrier equipment or communication equipment related to the operation of the Software and not furnished by Cartegraph. Before Customer introduces equipment not within Cartegraph's published specification, Cartegraph must approve the additional equipment.

B. Customer is responsible for charges incurred for communication facilities at Customer's facilities, whether incurred by Customer or by Cartegraph Support representatives while performing Support on the Software.

C. Customer is responsible for performing Software back-ups in accordance with published documentation.

D. Customer shall notify Cartegraph of any problem and shall allow Cartegraph reasonable access to the Software for performing Support, Services or Hosting.

E. Customer shall furnish Cartegraph, at Customer's expense, all technical data and information as may be necessary to furnish Support, Services or Hosting.

F. Customer shall grant Cartegraph access to Servers and Clients as may be necessary for the adequate delivery of the Support, Services or Hosting.

8. **Software Modification.** Cartegraph and Third Party Licensors will not be responsible to Customer for loss of use of the Software or data or for any other liabilities arising from alterations, additions, adjustments or repairs which are made to the Software by Customer or third parties. Cartegraph reserves the right to terminate the Software license, Support, Services or Hosting under this Agreement upon written notice to Customer if any such alteration, addition, adjustment or repair adversely affects Cartegraph's ability to render Support, Services or Hosting.

9. **Term.**

A. Unless terminated by Cartegraph in accordance with this Agreement, the term of the Software license, Support and Hosting shall begin upon the execution of a Purchase Agreement and shall continue for the period of time identified in that Purchase Agreement.

B. Support for any subsequently added components or upgrades shall be either coterminous with the term of Support applicable to the Software initially covered or as otherwise agreed and stated in the Purchase Agreement.

C. If Customer elects to purchase Services, then Services shall terminate as agreed in the appropriate Purchase Agreement.

D. Unless otherwise stated in the most recently executed Purchase Agreement, this Agreement and the Purchase Agreement shall automatically renew at the then current rates for a one (1) year term beginning on the first day following the date identified in the Purchase Agreement as the end of the term of this Agreement. Such automatic renewal shall continue after the end of each successive year until a new Purchase Agreement is executed or until Customer or Cartegraph terminate this Agreement as provided for herein.

E. If this Agreement and the most recently executed Purchase Agreement are automatically renewed under the terms of the previous paragraph "D", there shall be an automatic increase of up to five percent (5%) annually to all prices that were in effect during the immediately previous term.

F. If Customer wishes not to renew this Agreement, Customer must provide written notice of Customer's intent not to renew this Agreement at least ninety (90) days prior to the end of the term then in effect.

G. Notwithstanding anything to the contrary in this Section, Support, Services and Hosting shall terminate immediately upon termination of this Agreement.

10. Termination.

A. Notwithstanding the foregoing, Cartegraph shall have the right to terminate this Agreement if Customer fails to pay any and all required license fees, Support charges, Services charges, Hosting charges or otherwise fails to comply with this Agreement.

B. Upon expiration of the license term or upon notice of such termination, Customer shall immediately return or destroy the Software and all portions and copies thereof as directed by Cartegraph or Third Party Licensors and, if requested by Cartegraph or Third Party Licensors, shall certify in writing as to the destruction or return of the same.

C. Any termination of this Agreement shall automatically terminate Support, Services and Hosting provided under any Purchase Agreement or Statements of Work, unless otherwise agreed. All confidentiality and non-disclosure obligations shall survive any such termination.

D. Customer shall have the right to terminate this Agreement, according to the terms provided herein, by returning or destroying the Software and all portions and copies thereof and certifying in writing as to the destruction or return of the same.

E. If Customer wishes to terminate this Agreement prior to the end of the term of this Agreement as identified above or in the appropriate Purchase Agreement, Customer must provide Cartegraph with written notice of such intent to terminate at least ninety (90) days prior to such termination. Any such termination by Customer shall subject Customer to the cancellation fee identified below.

F. If Customer terminates before the date set in the Purchase Agreement, Customer shall pay a cancellation fee equal to 80% of the remainder of licensing fees, Support charges and Hosting charges due under this Agreement. There shall be no cancellation fee for Services not yet performed. However, no matter the reason, Customer's termination shall not relieve it of the obligation to pay any amounts already due under this Agreement.

G. Provided however, if Customer is a governmental entity and Software, Support, Services or Hosting are not funded for future fiscal years under the appropriate legal budgeting process for such governmental entity, Customer may terminate for future fiscal years with the cancellation fee identified in the previous paragraph reduced from 80% to 20%. There shall be no cancellation fee for Services not yet performed. However, no matter the reason, Customer's termination shall not relieve it of the obligation to pay any amounts already due under this Agreement.

H. Cartegraph shall have the right to terminate Hosting, if Hosting services are being provided, by giving at least ninety (90) days written notice that Cartegraph cannot meet its obligations of availability of the Host Computer System.

I. In addition to the right of termination provided to Cartegraph under other sections of this Agreement, Cartegraph shall have the right to terminate the Software license, Support, Services and/or Hosting upon the occurrence of any of the following events:

1. Customer's oldest invoice is ninety (90) days past due. Support hold will be initiated when customer's oldest invoice is thirty (30) days past due or,

2. Subject to applicable law, the appointment of a receiver, trustee in bankruptcy or similar officer for the equity or assets of Customer, or

3. There is an assignment of this Agreement without the prior written consent of Cartegraph.

J. Termination shall not be Cartegraph's exclusive remedy and termination shall not adversely affect any claim for damages against Customer.

11. Limited Warranty.

A. Cartegraph warrants that it has the right to sublicense the Software being licensed hereunder pursuant to the terms provided herein.

B. Cartegraph warrants that the Software will conform to Cartegraph's published specifications until Support ends.

C. Provided that the Software is used in a manner for which it was designed as set forth in the Software, Cartegraph's sole obligation and liability hereunder for the Software shall be to use reasonable efforts to remedy any substantial non-conformance which is reported to Cartegraph. In the alternative, Cartegraph may refund amounts paid by Customer pursuant to Purchase Agreements for such Software products.

D. THERE ARE NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT WITH RESPECT TO THE SOFTWARE LICENSED HEREUNDER.

E. SUPPORT, SERVICES AND HOSTING SET FORTH IN THIS AGREEMENT ARE IN LIEU OF ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OR

FITNESS FOR A PARTICULAR PURPOSE. SUPPORT, SERVICES AND HOSTING PROVIDED UNDER THIS AGREEMENT DO NOT ASSURE THE UNINTERRUPTED OPERATION OF THE SOFTWARE.

F. CUSTOMER'S SOLE AND EXCLUSIVE REMEDY SHALL BE TO TERMINATE THE SOFTWARE LICENSE, SUPPORT OR SERVICES. THE REMEDY SET FORTH IN THIS SECTION IS CARTEGRAPH'S SOLE LIABILITY, AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY, IN LIEU OF ALL OTHERS, FOR ANY BREACH BY CARTEGRAPH OF ITS SOFTWARE, SUPPORT, SERVICES AND HOSTING WARRANTIES HEREUNDER.

12. Limitation of Liability. TO THE MAXIMUM EXTENT ALLOWED UNDER APPLICABLE LAW:

A. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR LOSS OF DATA, HOWEVER ARISING, EVEN IF THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES;

B. EXCEPT FOR DAMAGES RESULTING FROM BODILY INJURY OR PATENT OR COPYRIGHT INFRINGEMENT, AS DISCUSSED BELOW, IN NO EVENT SHALL THE MAXIMUM CUMULATIVE LIABILITY OF EITHER PARTY TO THE OTHER UNDER THIS AGREEMENT, UNDER ANY CAUSE OF ACTION OR THEORY OF LIABILITY, EXCEED THE AMOUNT PAID BY CUSTOMER TO CARTEGRAPH DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING CAUSE TO SUCH LIABILITY.

C. If Cartegraph will provide Support or Services at Customer's location, liability of Cartegraph arising out of bodily injury, shall not in any event exceed the limits of its insurance coverage.

13. Insurance. If Cartegraph will provide Support or Services at Customer's location, Cartegraph will carry commercial general liability insurance with a limit of $1,000,000 per occurrence and a $2,000,000 aggregate limit, business auto liability insurance with a limit of $1,000,000 and workers compensation insurance with statutory coverage. Cartegraph agrees to hold harmless and defend Customer and its agents, officials and employees from bodily injury and property damage claims related to or caused by the sole negligence of Cartegraph employees or contractors.

14. U.S. Government Restricted Rights. The Software is commercial software and the Software is provided with restricted rights. Use, duplication or disclosure by the Government is subject to restrictions as set forth in paragraph (c)(1)(ii) of the Rights in Technical Data and Computer Software Clause at DFARS 252.227-7013 of subparagraphs (c)(1) and (2) of the Commercial Computer Software-Restricted Rights at 48 CFR 52.227-19, as applicable.

15. Employees and Conflicts of Interest. This Agreement shall not prevent Cartegraph from performing similar services or restrict Cartegraph's use of the employees or contractors provided under this Agreement.

16. Proprietary Rights and Confidential Information of Cartegraph.

A. Certain information and materials supplied by Cartegraph with the Products, such as, without limitation, deliverables, manuals, diagrams, drawings, plans, flowcharts, software, technical processes and formulae, source codes, product designs, sales, costs and other unpublished financial information, product and business plans, usage rates, relationships, projects and data, are Cartegraph's or Third Party Licensors' confidential or proprietary trade secrets (the "Confidential Information") and Cartegraph furnishes them solely to assist Customer in the installation, operation and use of Software. Customer must not reproduce, copy or disclose such Confidential Information except as is reasonable and necessary to properly use Software. Nothing herein shall restrict Customer from complying with its obligations under any law requiring disclosure, but Customer shall give Cartegraph five days prior notice before any release of Confidential Information.

B. Customer acknowledges and agrees that Cartegraph or Third Party Licensors shall suffer irreparable injury not compensable by money damages and therefore shall not have an adequate remedy at law in the event of an unauthorized use of proprietary rights or an unauthorized use or disclosure of any Confidential Information in breach of the provisions of this Agreement. Accordingly, Cartegraph or Third Party Licensors shall be entitled to injunctive relief to prevent or curtail any such breach, threatened or actual. The foregoing shall be in addition and without prejudice to such rights that Cartegraph or Third Party Licensors may have at law or in equity.

17. Proprietary Information of Customer.

A. In order to provide Products under this Agreement, Customer may, from time to time, disclose to Cartegraph certain information respecting Customer's technical, financial, statistical and personnel data, (hereinafter "Information"). Any such Information which is submitted in writing to Cartegraph by the Customer and which is clearly and conspicuously marked as confidential shall be protected by Cartegraph against unauthorized disclosure by using the same degree of care and discretion that Cartegraph uses with similar Information which Cartegraph does not want disclosed to third parties. However, Cartegraph shall not be required to protect Information which (a) is or becomes publicly available, (b) is already in Cartegraph's or its related companies' possession, (c) is independently developed by Cartegraph outside the scope of this Agreement, or (d) is rightfully obtained from third parties. Cartegraph's obligations under this Section shall cease immediately upon return to Customer or destruction by Cartegraph of such Information.

B. Cartegraph shall not be required to protect any ideas, concepts, know-how, or techniques relating to data, electronic document processing and image processing developed or resulting from the Information or the Services provided under this Agreement.

18. Infringement Indemnification.

A. Cartegraph or Third Party Licensors will defend any action, suit or proceeding brought against Customer if based on a claim that Products infringe any United States patent or copyright of any third party ("Intellectual Property") provided that Customer promptly notifies Cartegraph or Third Party Licensors immediately and gives Cartegraph or Third Party Licensors full authority, information and assistance for the action's defense. Cartegraph or Third Party Licensors will pay all damages and costs awarded therein against Customer, but shall not be responsible for any compromise made without its consent. Cartegraph or Third Party Licensors may, at any time it is concerned over the possibility of such an infringement, at its option and expense, replace or modify Products so that infringement will not exist. In the alternative, Cartegraph may remove a component of Products involved and refund to Customer the price as depreciated by an equal annual amount over five (5) years.

B. Cartegraph and Third Party Licensors shall have no liability to Customer if any Intellectual Property infringement or claim thereof is based upon the use of Products in connection or in combination with equipment, devices, or software not supplied by Cartegraph or used in a manner not expressly authorized by this Agreement or in a manner for which Products were not designed, or if the claim of infringement would have been avoided but for Customer's use of software other than the latest, unmodified release of Software made available to Customer by Cartegraph.

C. Customer shall indemnify and hold Cartegraph and Third Party Licensors harmless from any loss, cost or expense suffered or incurred in connection with any claim, suit or proceeding brought against Cartegraph or Third Party Licensors so far as it is based on a claim that the use, sale or licensing of any Products delivered hereunder and modified or altered or combined with any products, device, or software not supplied by Cartegraph hereunder constitutes an infringement because of such modification, alteration or combination.

19. Miscellaneous.

A. Taxes. Customer shall pay all taxes, levies and similar governmental charges, however designated, and all liabilities with respect thereto which may be imposed by any jurisdiction, including, without limitation, customs, privilege, excise, sales, use, value-added and property taxes levied or based on gross revenue or operation of this Agreement, except those taxes based upon Cartegraph's net income.

B. Relationship of the Parties: Cartegraph and Customer are independent of each other. This Proposal does not and is not intended to create in any way or manner or for any purpose an employee/employer relationship or a principal-agent relationship. Neither party is authorized to enter into agreements for or on behalf of the other, to create any obligation or responsibility, express or implied, for or on behalf of the other, to accept payment of any obligation due or owed the other, or to accept service of process for the other. Cartegraph is an independent contractor, customarily engaged in the performance of similar services for other parties.

C. Attorney's Fees/Legal Proceedings: In the event of any litigation or other proceeding between the parties relating to this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and other reasonable costs incurred in connection therewith and in pursuing collection, appeals and other relief to which that party may be entitled.

D. Export. Customer agrees that the Software, Support, Services and Hosting purchased hereunder will not be exported directly or indirectly, separately or as part of any system, without first obtaining a license from the U.S. Department of Commerce or any other appropriate agency of the U.S. Government, as required.

E. Assignment. Customer may not assign, voluntarily or by operation of law, any of its rights or obligations in this Agreement except with Cartegraph's prior written consent. This Agreement will be binding on and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

F. Waiver. The parties' rights and remedies are separate and cumulative. Neither parties' waiver nor failure to exercise in any respect any right or remedy provided in this Agreement is a waiver of any future right or remedy hereunder.

G. Force Majeure. If any cause beyond Cartegraph's reasonable control prevents Cartegraph from performing under this Agreement by a given date or time, Cartegraph's performance will be automatically postponed.

H. Choice of Law. Cartegraph agrees that jurisdiction and venue are proper in the state where the Customer has its principal place of business and that the law of the state where the Customer has its principal place of business shall govern any litigation that results from this Agreement.

I. Severability. The invalidity of any provision of this Agreement will not affect the validity and binding effect of any other provision.

J. Notice. Notices hereunder must be sent to the addresses on the face of this Agreement, or to such other addresses as specified by a notice complying with this provision. Notice is effective on the earlier of actual receipt or five days after deposit in the mail. Notices in the form of a fax or email are acceptable. Notices must be sent to the attention of the person signing on behalf of the party.

K. Entire Agreement. This Agreement constitutes the entire agreement between the parties on the subject matter hereof and supersedes all prior or contemporaneous agreements, negotiations, representations and proposals, written or oral between Cartegraph and Customer. This Agreement is not an acceptance of any conflicting terms and conditions and will prevail over any conflicting Customer's terms and conditions.

L. Amendment. Only a writing executed by authorized representatives of the parties and referenced as an amendment to this Agreement may modify, supplement, or change this Agreement.

Purchase Agreement

Cartegraph is pleased to present this Purchase Agreement for the implementation of world class technology solutions. This Purchase Agreement is made and entered into between City of West Jordan (hereinafter referred to as **"Customer"** or **"Licensee"** and **Cartegraph Systems, Inc.** (hereinafter referred to as **"Cartegraph"**). This Purchase Agreement is intended to supplement, clarify, and amend the Master Agreement previously executed between **Cartegraph** and **Customer**. In the case that any terms or conditions provided in the Master agreement differ from, are provided in more detail by, or are made irrelevant by the terms and conditions provided in this Purchase Agreement, the terms in this Purchase Agreement shall control. For all terms and conditions not addressed by this Purchase Agreement, the Master Agreement dated August 18, 2014 shall control.

Customer Bill To:	**Customer Ship To:**
Greg Davenport City of West Jordan 8000 South Redwood Road West Jordan, UT 84088 801-869-5700	Same

Investment Summary

Cartegraph's proposed fees for this project are included in the summary below.

Date: August 18, 2014 **Purchase Agreement Expiration Date:** November 28, 2014 **Purchase Agreement No.:** #PA017

	Purchase Type	Qty.	Unit Price	Total Price
YEAR 1				
SOFTWARE PRODUCTS				
Cartegraph OMS – Advanced Edition	Per-user Subscription License, On-Premise	3	$3,000.00	$9,000.00
FIELD SERVICES				
Implementation Services	Fixed Fee Service	1	$23,700.00	$23,700.00
ESTIMATED EXPENSES				**$2,000.00**
			YEAR 1 SUB-TOTAL	**$34,700.00**
YEAR 2				
SOFTWARE PRODUCTS				
Cartegraph OMS – Advanced Edition	Per-user Subscription License, On-Premise	3	$3,000.00	$9,000.00
			YEAR 2 SUB-TOTAL	**$9,000.00**
YEAR 3				
SOFTWARE PRODUCTS				
Cartegraph OMS – Advanced Edition	Per-user Subscription License, On-Premise	3	$3,000.00	$9,000.00
			YEAR 3 SUB-TOTAL	**$9,000.00**
TOTAL COST (3-YEAR TERM)				**$52,700.00**

Payment Terms and Conditions

In consideration for the Services and Products provided by **Cartegraph** to **Customer, Customer** agrees to pay **Cartegraph** Software Costs and Professional Service Fees in U.S. Dollars as described below:

1. **Delivery:** Software Products shall be licensed upon acceptance of this Purchase Agreement. If applicable, Services will be scheduled and delivered upon your acceptance of this Purchase Agreement, which will be considered as your notification to proceed.
2. **Services Scheduling: Customer** agrees to work with **Cartegraph** to schedule Services in a timely manner. All undelivered Services shall expire 365 days from the signing of this Purchase Agreement.
3. **Software Invoicing:** The Software Subscription Licenses fee will be due in annual installments 15 days prior to the anniversary of the initial term as follows:
    a. $9,000.00 due 15 days prior to 1/20/2015.
    b. $9,000.00 due 15 days prior to 1st year anniversary of term start date.
    c. $9,000.00 due 15 days prior to 2nd year anniversary of term start date.
4. **Field Services Invoicing:** Invoicing for the Field Services fee shall occur upon the acceptance of this Purchase Agreement and shall be invoiced as follows:
    a. Invoicing for the Field Services will be due in four (4) equal consecutive monthly payments beginning at the date of the execution of the Purchase Agreement. If the service is completed prior to the installments being paid then the entire remaining balance will become due.
5. **Expenses:** In providing the services included in this Purchase Agreement, **Cartegraph** shall be reimbursed for any reasonable out-of-pocket costs, including, but not limited to, travel, lodging, and meals. Out-of-pocket expenses are billed based on actual costs incurred and are due separately.
6. **Payment Terms:** All payments are due Net 30 days from date of invoice.

BY EXECUTING THIS PURCHASE AGREEMENT, CUSTOMER ACKNOWLEDGES THAT IT HAS REVIEWED THE TERMS, CONDITIONS, FEES AND CHARGES PROVIDED HEREIN AND IN THE MASTER AGREEMENT, AS WELL AS ANY OTHER EXHIBITS TO THE MASTER AGREEMENT, AND CUSTOMER AGREES TO BE LEGALLY BOUND BY EACH SUCH AGREEMENT.

Cartegraph Systems, Inc.	**City of West Jordan**
By _____ (Signature)	By _____ (Signature)
Randy L. Skemp (Type or print name)	_____ (Type or print name)
Title Executive Vice President/CRO	Title _____
Date _____	Date _____

APPROVED AS TO LEGAL FORM
West Jordan City Attorney
By: Dane Allen Date: 9/3/14

Cartegraph Systems, Inc.
Addendum A - Software Products

Cartegraph hereby pledges to issue software licenses in the agreed upon quantities specified in your Investment Summary. The "Software," as defined in Master Agreement #MA017, consists of developed and supported technology products available from Cartegraph.

In addition to full access to Cartegraph licensed software, your organization will receive:

1. **Unlimited Technical Support**

   Mon – Fri, 7am – 7pm (Central time)

   a. Phone: 877 647.3050 (toll free)

   b. Email: support@cartegraph.com

2. **User Assistance**

   a. ***Remote Assistance***
   Use the WebEx Remote Assistance link at cartegraph.com and get hands-on Technical Support delivered via the web.

   b. ***Live Chat***
   Get your technical questions answered quickly and conveniently using the Live Chat option located in the Client Center and your Cartegraph Operations Management System.

   c. ***Email***
   Send Application Log and trace files electronically and let Cartegraph staff analyze how the system was being used when the issue arose.

   d. ***File Transfer Protocol (FTP)***
   Easily exchange large files and communicate with Cartegraph staff using our secure FTP site.

3. **Updates and Enhancements**

   a. Priority notification about upgrades and enhancements available for your Cartegraph software.

   b. Complimentary assistance from Cartegraph Technical Support staff as you navigate the software upgrade process.

4. **Client Center Access**

   a. Visit the Client Center at cartegraph.com to search and browse the extensive library of Cartegraph learning resources, including technical documents and instructional videos.

b. Sign-up for free online Cartegraph training sessions focused on topics that will help you and your staff use the software more effectively.

5. **User Events**

a. Get live training and meet other Cartegraph users in your region at free Cartegraph User Group meetings.

BY EXECUTING THIS PURCHASE AGREEMENT, CUSTOMER ACKNOWLEDGES THAT IT HAS REVIEWED THE TERMS, CONDITIONS, FEES AND CHARGES PROVIDED HEREIN AND IN THE MASTER AGREEMENT, AS WELL AS ANY OTHER EXHIBITS TO THE MASTER AGREEMENT, AND CUSTOMER AGREES TO BE LEGALLY BOUND BY EACH SUCH AGREEMENT.

Cartegraph Systems, Inc.

By _____
(Signature)

Randy L. Skemp
(Type or print name)

Title Executive Vice President/CRO

Date _____

City of West Jordan

By _____
(Signature)

_____
(Type or print name)

Title _____

Date _____

Cartegraph Systems, Inc.

Addendum B - Field Services (Fee for Service)

The Fee for Field Service Implementation Services as listed in the *Investment Summary* of the Purchase Agreement are specific Cartegraph services which will be delivered to the Customer based on the descriptions below and any descriptions that may be found in the Purchase Agreement's Exhibits. Cartegraph will coordinate with the Customer on service delivery expectations and timeframes. This is an addendum to Customer's Master Agreement #MA017.

Implementation of our Operations Management System (OMS) - Advanced On-Premise Edition includes the following:

- Installation support
- System navigation training
- Security roles training and support
- Implementation and training on the Work Management portion of the system, not including Equipment or Materials
- Implementation and training on one Asset Application - Pavement
- Implementation and training on Cartegraph for iPad
- Training on system reports and on-screen analytics
- Create up to two reports
- Use of either Google or ESRI mapping within the system
- Dedicated Cartegraph Project Manager to facilitate the resource scheduling, timing and other project tasks
- Training and consultation done via web and during one 3-day customer on-site
- Conversion of Cartegraph database (v.8.3 or higher) to OMS specific to the following:
    - Asset listed above
        - Parent Records
        - Attachments
        - Events
        - Inspections
            - Survey Categories
        - Startup Data
            - Prediction Groups
            - Minimum Conditions
            - Deterioration Curves
            - Condition Categories
            - Ranking
            - Impacts
    - Labor, Equipment, Materials
        - Attachments
        - Current Rates
    - Vendors
        - Attachments
        - Contracts
    - Routes
    - Special Libraries
        - Citizen

During the duration of the project, the client will appoint a project coordinator to be responsible for the following aspects of the project:

- Approve the Project Status Report
- Authorize the project work
- Acceptance of deliverables defined in the Project Status Report
- Ensure the project is in compliance with and satisfies the requirements of the Project Status Report
- Consult with the Cartegraph Project Manager on a continuing basis
- Provide leadership on all issues related to the client, such as policy, organization, staff, technical architecture, data, and current systems.

- Monitor progress of the project, including the review of Cartegraph regular status reports and managing internal resources.

Cartegraph staff will provide the following services to convert Detailed Distresses from Navigator v.8.3 or higher to OMS:

- Use 1 sample area equal to the length of the segment for each inspection
- Import distresses, severities, and deduct points relevant to the collected inspection samples

Customer/Cartegraph Responsibilities

Project representatives from Customer and Cartegraph accepts responsibility for all aspects of project planning, management, and execution not specifically identified as the responsibility of Cartegraph in the Master Agreement or in this Purchase Agreement. Ongoing management of the day-to-day allocation of Customer and Cartegraph resources and management of project tasks is the responsibility of the Customer and Cartegraph project representatives. Customer and Cartegraph project representatives will provide overall guidance and direction for the project and will direct the project accordingly. Further, and with regard to the Cartegraph obligations listed in this Purchase Agreement, Customer understands that it is vital to the success of the project that Customer provides assistance in the following matters:

1. For those services listed under Field Services, Cartegraph personnel will conduct information gathering and evaluation sessions with various Customer users and management. While Cartegraph respects the time and workload of Customer staff, dedicated time on the part of the appropriate Customer resources is necessary to complete these exercises.

2. The installation process requires the assistance of Customer personnel and suitable access to hardware and systems (e.g., security clearance). Customer is required to supervise the installation process while systems are accessible to Cartegraph. All hardware and software, for both Personal Computers and servers, is expected to be available, installed, and operating as specified in Cartegraph's System Requirements documentation such that delivery and execution of Cartegraph Field Services will not be impeded.

3. Customer and Cartegraph understand that the successful performance of Field Services depends upon Customer fulfilling its responsibilities. The Project assumes that Customer will provide all personnel required to achieve a successful implementation.

4. Customer will provide Internet access and IT staff support as required. For those services that are web-based, Cartegraph utilizes WebEx Meeting (or similar) technology.

   Customer shall ensure that their workstation platform and database meet Cartegraph system requirements as specified in the Cartegraph System Requirements documentation. Cartegraph Software will be supported within new versions of these workstation platforms and databases within a reasonable period of time from their release from their manufacturer. Cartegraph will discontinue support of its Software within older versions of these workstation platforms and databases as their support is discontinued by their manufacturers.

5. Customer agrees to work with Cartegraph to schedule Field Services in a timely manner. All undelivered Field Services shall expire 365 days from the execution of this Purchase Agreement. Upon expiration of services, the project may be cancelled at Cartegraph's discretion.

Not-to-Exceed Proposal

Cartegraph will not exceed the total included in this Purchase Agreement without written approval from Customer. In the event it becomes apparent to Cartegraph that additional service efforts will be needed due to any changes in the scope of this Purchase Agreement, Cartegraph will notify Customer prior to exceeding the approved efforts and obtain written approval if additional Software or services are required.

BY EXECUTING THIS PURCHASE AGREEMENT, CUSTOMER ACKNOWLEDGES THAT IT HAS REVIEWED THE TERMS, CONDITIONS, FEES AND CHARGES PROVIDED HEREIN AND IN THE MASTER AGREEMENT, AS WELL AS ANY OTHER EXHIBITS TO THE MASTER AGREEMENT, AND CUSTOMER AGREES TO BE LEGALLY BOUND BY EACH SUCH AGREEMENT.

Cartegraph Systems, Inc.

By _____
(Signature)

Randy L. Skemp
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Title Executive Vice President/CRO

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Title _____

Date _____