



VENDOR CONTRACT

The City of Seattle
PURCHASING SERVICES

Key Tower
700 Fifth Avenue, Suite 4112
P.O. Box 94687
Seattle, WA 98124-4687

Vendor Contract # 000001404	Date July 19, 2011	Change Order # 3
Payment Terms Net 30	Freight Terms N/A	
Buyer: Vivian Uno	FAX: 206-233-5155	Phone: 206-684-0449

Vendor #: 0000191000
ActiveG, LLC
P.O. Box 957
Mesa, AZ 85211

Contact: Don Anderson
Phone: 480-610-0839
Fax: 480-835-6835
E-Mail: don.anderson@activeG.com

Ship To: Seattle Public Utilities

Bill To:
Seattle Public Utilities
700 Fifth Avenue, #4900
Seattle, WA 98104
(If using US mail, mail to PO Box 34018, Seattle, WA 98124-4018)

Active G, LLC was awarded a negotiated contract for providing the City of Seattle with ActiveG Maximo MapEngineWeb™GIS Integration as described in "Agreement for ActiveG Maximo MapEngineWeb™ GIS Integration to the City of Seattle" executed 10/29/04. Change Order #3 is being issued to extend the Vendor Contract Term through October 29, 2016. The term of this contract may be extended as required to support the existing Seattle Public Utilities system. In all other respects the contract remains unchanged.

ActiveG, LLC is awarded a contract extension effective October 30, 2011 through October 29, 2016 to furnish activeG MAXIMO MapEngineWeb™GIS Services to The City of Seattle.

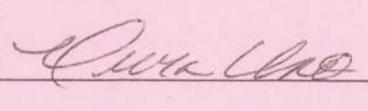
Contract Term: 10-29-2004 – 10-29-2007
Change Order #1: 10-30-2007 – 10-29-2009 (Extends the Contract for two years)
Change Order #2: 10-30-2009 – 10-29-2011 (Extends the Contract for two years)
Change Order #3: 10-30-2011 – 10-29-2016 (Extends the Contract for five years)

All contractual matters shall be referred to:

Vivian Uno, Sr. Buyer, 206-684-0449

This Vendor Contract is subject to the "AGREEMENT FOR ACTIVEG MAXIMO MAPENGINEWEB™ GIS INTEGRATION TO THE CITY OF SEATTLE" (In receipt) and "AMENDMENT 1 TO AGREEMENT FOR ACTIVEG MAXIMO MAPENGINEWEB™ GIS INTEGRATION TO THE CITY OF SEATTLE".

Authorized Signature/Date

 7/19/2011



VENDOR CONTRACT

The City of Seattle PURCHASING SERVICES

Key Tower
700 Fifth Avenue, Suite 4112
P.O. Box 94687
Seattle, WA 98124-4687

Vendor Contract # 000001404	Date October 6, 2009	Change Order # 2
Payment Terms Net 30	Freight Terms N/A	
Buyer: Vivian Uno	FAX: 206-233-5155	Phone: 206-684-0449

Vendor #: 0000191000
ActiveG, LLC
P.O. Box 957
Mesa, AZ 85211

Contact: Don Anderson
Phone: 480-610-0839
Fax: 480-835-6835
E-Mail: don.anderson@activeG.com

Ship To: Seattle Public Utilities

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700 Fifth Avenue, #4900
Seattle, WA 98104
(If using US mail, mail to PO Box 34018, Seattle, WA 98124-4018)

Active G, LLC was awarded a negotiated contract for providing the City of Seattle with ActiveG Maximo MapEngineWeb™ GIS Integration as described in "Agreement for ActiveG Maximo MapEngineWeb™ GIS Integration to the City of Seattle" executed 10/29/04. Change Order #2 is being issued to extend the Vendor Contract Term through October 29, 2011 and include "Amendment 1 to Agreement for ActiveG Maximo MapEngineWeb™ GIS Integration to the City of Seattle. The term of this contract may be extended as required to support the existing Seattle Public Utilities system. In all other respects the contract remains unchanged.

ActiveG, LLC is awarded a contract extension effective October 30, 2009 through October 29, 2011 to furnish activeG MAXIMO MapEngineWeb™ GIS Services to The City of Seattle.

Contract Term: 10-29-2004 – 10-29-2007
Change Order #1: 10-30-2007 – 10-29-2009 (Extends the Contract for two years)
Change Order #2: 10-30-2009 – 10-29-2011 (Extends the Contract for two years)

All contractual matters shall be referred to:

Vivian Uno, Sr. Buyer, 206-684-0449

This Vendor Contract is subject to the "AGREEMENT FOR ACTIVEG MAXIMO MAPENGINEWEB™ GIS INTEGRATION TO THE CITY OF SEATTLE" (In receipt) and "AMENDMENT 1 TO AGREEMENT FOR ACTIVEG MAXIMO MAPENGINEWEB™ GIS INTEGRATION TO THE CITY OF SEATTLE".

Authorized Signature/Date

Vivian Uno 10/6/09

AMENDMENT 1 TO
AGREEMENT FOR ACTIVEG MAXIMO
MAPENGINEWEB™ GIS INTEGRATION
TO THE CITY OF SEATTLE

Whereas, the City and ActiveG, LLC entered into "Agreement for ActiveG Maximo MapEngineWeb™ GIS Integration to the City of Seattle" ("Agreement"), effective 10/29/04 that sets forth the terms and conditions for furnishing ActiveG Maximo MapEngineWeb™ Integration, future maintenance and optional services if required and ordered by the City;

Whereas, the City requires a term extension beyond the limits of the Agreement;

1. Now, therefore, it is agreed the following revised Section 1.2 Term, replaces and supersedes, Agreement, Section 1.2 Term:

1.2 Term

This Agreement shall be effective for an initial term commencing on the Effective Date and extending for three (3) years after the City's Final Acceptance with the option to extend the contract term for a period as long as required by the City to purchase products and services to support its existing ActiveG Maximo MapEngineWeb™ system.

2. Authority

Each party has full power and authority to enter into and perform this Amendment, and the person signing this amendment on behalf of each party has been properly authorized and empowered to enter into this Amendment. Each party further acknowledges that it has read this Amendment, understands it, and agrees to be bound by it.

THE CITY OF SEATTLE

ACTIVEG, LLC

By: *[Signature]* 10/6/09
Signature Date

By: _____
Signature Date

Printed Name: VIVIAN UNO

Printed Name: _____

Title: PROCUREMENT SUPERVISOR

Title: _____



The City of Seattle
PURCHASING SERVICES

Key Tower
 700 Fifth Avenue, Suite 4112
 P.O. Box 94687
 Seattle, WA 98124-4687

VENDOR CONTRACT

Vendor Contract # 0000001404		Date July 19, 2007	Change Order # 1
Payment Terms Net 30	Freight Terms N/A		
Buyer: Vivian Uno	FAX: 206-233-5155	Phone: 206-684-0449	

Vendor #: 0000191000
 ActiveG, LLC
 P.O. Box 957
 Mesa, AZ 85211

Contact: Don Anderson
 Phone: 480-610-0839
 Fax: 480-835-6835
 E-Mail: don.anderson@activeG.com

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 Seattle, WA 98104
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CONTRACT CHANGE ORDER #1 REVISES THE CONTRACT TO EXTEND THE TERM OF THE CONTRACT FOR AN ADDITIONAL TWO YEARS THROUGH OCTOBER 29, 2009. IN ALL OTHER RESPECTS THE CONTRACT REMAINS UNCHANGED.

ActiveG, LLC is awarded a contract extension effective October 30, 2007 through October 29, 2009 to furnish activeG MAXIMO MapEngineWeb™ GIS Integration to The City of Seattle.

Contract Term: 10-29-2004 – 10-29-2007
 Change Order #1: 10-30-2007 – 10-29-2009

All contractual matters shall be referred to:

Vivian Uno, Sr. Buyer, 206-684-0449

This Vendor Contract is subject to the "AGREEMENT FOR ACTIVEG MAXIMO MAPENGINEWEB™ GIS INTEGRATION TO THE CITY OF SEATTLE" (In receipt)

Authorized Signature/Date

Vivian Uno 7/20/07

AMENDMENT 1 TO
AGREEMENT FOR ACTIVEG MAXIMO
MAPENGINEWEB™ GIS INTEGRATION
TO THE CITY OF SEATTLE

Whereas, the City and ActiveG, LLC entered into "Agreement for ActiveG Maximo MapEngineWeb™ GIS Integration to the City of Seattle" ("Agreement"), effective 10/29/04 that sets forth the terms and conditions for furnishing ActiveG Maximo MapEngineWeb™ Integration, future maintenance and optional services if required and ordered by the City;

Whereas, the City requires a term extension beyond the limits of the Agreement;

1. Now, therefore, it is agreed the following revised Section 1.2 Term, replaces and supersedes, Agreement, Section 1.2 Term:

1.2 Term

This Agreement shall be effective for an initial term commencing on the Effective Date and extending for three (3) years after the City's Final Acceptance with the option to extend the contract term for a period as long as required by the City to purchase products and services to support its existing ActiveG Maximo MapEngineWeb™ system.

2. Authority

Each party has full power and authority to enter into and perform this Amendment, and the person signing this amendment on behalf of each party has been properly authorized and empowered to enter into this Amendment. Each party further acknowledges that it has read this Amendment, understands it, and agrees to be bound by it.

THE CITY OF SEATTLE

ACTIVEG, LLC

By: [Signature] 10/6/09
Signature Date

By: [Signature] 10/16/2009
Signature Date

Printed Name: VIVIAN UNO
Title: PROCUREMENT SUPERVISOR

Printed Name: Donald C. Anderson
Title: Managing Partner



VENDOR CONTRACT

The City of Seattle
PURCHASING SERVICES

Key Tower
700 Fifth Avenue, Suite 4112
P.O. Box 94687
Seattle, WA 98124-4687

Vendor Contract # 0000001404	Date October 29, 2004	Change Order #
Payment Terms Net 30	Freight Terms N/A	
Buyer: Vivian Uno	FAX: 206-233-5155	Phone: 206-684-0449

Vendor #: 0000001404
ActiveG, LLC
P.O. Box 957
Mesa, AZ 85211

Contact: Don Anderson
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Ship To: Seattle Public Utilities

Bill To:
Seattle Public Utilities
700 Fifth Avenue, #4900
Seattle, WA 98104
(If using US mail, mail to PO Box 34018, Seattle, WA 98124-4018)

ActiveG, LLC is awarded a contract to furnish activeG MAXIMO MapEngineWeb™ GIS Integration to The City of for a three-year term effective October 29, 2004 through October 29, 2007. This vendor contract may be extended at the City's option for an additional two-year period.

All contractual matters shall be referred to:

Vivian Uno, Sr. Buyer, 206-684-0449

This Vendor Contract is subject to the "AGREEMENT FOR ACTIVEG MAXIMO MAPENGINEWEB™ GIS INTEGRATION TO THE CITY OF SEATTLE"

Authorized Signature/Date

VU
10/29/04
Lawrence
10/29/04

AGREEMENT FOR ACTIVEG MAXIMO
MAPENGINEWEB™ GIS INTEGRATION
TO THE CITY OF SEATTLE

1.1 Parties

THIS AGREEMENT is made and entered into by and between THE CITY OF SEATTLE (“City”), a municipal corporation of the State of Washington and ActiveG, LL (“Vendor”), a limited liability company organized and existing under the laws of the State of Arizona and authorized to do business in the State of Washington.

1.2 Term

This Agreement shall be effective for an initial term commencing on the Effective Date and extending for three (3) years after the City’s Final Acceptance with the option to extend the term for an additional two-year period.

1.3 Statement of Work

The vendor shall furnish activeG MAXIMO MapEngineWeb™ GIS Integration to the City of Seattle and first year maintenance in accordance with Appendix A titled: “activeG MAXIMO MapEngineWeb™ GIS Integration for City of Seattle”. The vendor shall furnish to the City in aggregate as a single, complete transaction and not as separate items the goods and services identified in the work order. Vendor shall furnish future year’s software maintenance and optional services if required and ordered by the City at the prices quoted in Appendix A..

1.4 Payment

Vendor may invoice monthly for work-to-date starting after the first month of work.. All payments will be made thirty (30) days after the City’s receipt and approval of vendor’s invoice and service delivery report documenting what progress has been made on the work to be performed under this Agreement, since the date of the invoice most recently submitted by the vendor. The final 10% payable to the vendor will be paid to the vendor upon final acceptance of the system by the City. The aggregate amount set forth in the City’s work order will represent the full and final amount to be paid by the City for all hardware, software, and/or services rendered and for all investigation, analysis, design, and supervision performed, and all labor, supplies, materials, equipment or use thereof provided, and for all other expenses incurred and incidentals necessary to complete the work to provide a fully integrated and operational System.

The City shall not be obligated to pay any other compensation, fees, charges, prices or costs, nor shall vendor charge any additional compensation for completing the work order of the Statement of Work. All costs invoiced to the City, shall be associated with an active and open work order.

Invoices for hardware and software installed in City facilities and other work performed under this Agreement shall be submitted, in writing to the City's Project Director. In addition to agreed upon charges, invoices shall include such information as is necessary for the City to determine the exact nature of all expenditures and shall reference this Agreement. Additional payment terms or invoice instructions may be mutually agreed upon by the City and the vendor.

If between the date of this Agreement and the date the System is delivered to the City, the vendor announces a reduction in the price for any of the System equipment or software contained herein, then the price for such System equipment or software shall be decreased by an amount equal to the general reduction in the price for such System equipment or software.

Payment does not constitute whole or partial acceptance of the System; City acceptance of the System shall only occur by formal written notice to that effect.

1.5 Taxes

The City shall pay sales and use taxes imposed on the City's acquisition of Software licensed hereunder. The vendor shall pay all other applicable state, local or federal taxes including, but not limited to, state and local business and occupational tax, taxes on the vendor's gross or net income, and personal property taxes levied or assessed on personal property to which the City does not hold title.

1.6 License for Use

As part of the price of the System, the vendor hereby grants to the City, and the City accepts from the vendor, for so long as the City continues to use the System, a non-exclusive, perpetual license to use of the Software and related documentation for use on the System acquired by the City under this Agreement.

1.7 Ownership of Deliverables

Except for the licensed System Software specifically identified in this Agreement, and its related documentation, all Deliverables produced under this Agreement, shall be the exclusive property of the City. Intellectual Property shall remain with activeG-City shall not share nor commercialize this work without the vendor's written consent.

1.8 Risk of Loss

The vendor shall bear the risk of loss or damage to the Deliverables during the period of transportation, installation and Acceptance Testing up to the date of the City's acceptance of the System, except when said loss or damage is due to the sole fault or negligence of the City.

1.9 Protection of Persons and Property

1.9.1 Property

The vendor shall take reasonable steps to protect the City's property from injury or loss arising in connection with the vendor's performance or failure of performance under this Agreement.

1.9.2 Persons

The vendor and the City shall each take reasonable precautions for the safety of employees of the other, and shall each comply with all applicable provisions of federal, state, and local laws, codes and regulations to prevent or avoid any accident or injury to a person on, about or adjacent to any premises where work under this Agreement is being performed.

1.9.3 Cleaning Up

The vendor shall ensure that project work sites are maintained in a clean and orderly fashion. Immediately after completion of the work contemplated in this Agreement, the vendor shall clean up and remove all refuse and unused materials resulting from such work.

Upon the vendor's failure to complete such clean-up and removal activity within twenty-four (24) hours after having been notified in writing by the City of the vendor's obligation to complete such activity, the clean-up and removal activity may be done by one or more other parties at the direction of the City. The cost of all such clean-up and removal activity performed by a person or entity other than the vendor shall be charged to the vendor or deducted from any payment due to the vendor.

1.9.4 No Smoking

The vendor shall not allow any employee of the vendor or any subcontractor or agent thereof to smoke inside any City facility.

1.9.5 OSHA/WISHA

The vendor certifies that it is in compliance with the conditions of the Federal Occupational Safety and Health Act of 1970 (OSHA), the Washington Industrial Safety and Health act of 1973 (WISHA), and the standards and regulations issued thereunder and certifies that all items furnished or purchased under this Agreement will conform to and comply with said standards and regulations. The vendor shall indemnify, defend, and hold the City harmless from all damages assessed against the City as a result of the vendor's failure to comply with the OSHA and WISHA and the standards issued thereunder and for the failure of any of the items furnished to the City under this Agreement to so comply.

1.10 Termination

1.10.1 Termination for Default

1.10.1.1 Vendor's Default

In the event the vendor fails to comply with a provision of this Agreement (“Default”) and such Default has not been cured by the vendor within the time specified below for such cure, the City may immediately terminate this Agreement by delivering written notice of such termination to the vendor. The vendor shall have thirty (30) days to effect a cure of any Default involving the delivery of any Hardware or Software item that is to be delivered to the City and ten (10) days to effect a cure of any other Default. Each such cure period shall commence upon the vendor’s receipt of the City’s notice specifying such Default and demand for its correction.

1.10.1.2 City Default

The City shall not be in default unless the City fails to perform an obligation required of it within a reasonable time, which time shall not extend more than thirty (30) days after written notice by the vendor to the City specifying the particular obligation that the City has failed to perform.

1.10.1.3 Extension of Cure Period

Notwithstanding the time deadlines established in Subsections 1.10.1.1 and 1.10.1.2, if the nature of either obligation is such that more than thirty (30) days are required for performance, then such party shall not be in default if it commences performance within such specified period and thereafter diligently prosecutes the same to completion.

1.10.2 Termination for Convenience of the City

The City may terminate this Agreement at any time by giving thirty (30) days written notice to the vendor of such termination, and the effective date thereof. The vendor shall be paid for all services performed to the satisfaction of the City up to the effective date of termination at the rates set forth in the Statement of Work. The amount paid shall in no event exceed the total Agreement amount for the services rendered.

1.10.3 Acts of Insolvency

The City may terminate this Agreement by written notice to the vendor if the vendor becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, becomes subject to any proceeding under any bankruptcy or insolvency law whether domestic or foreign, or is wound up or liquidated, voluntarily or otherwise.

1.10.4 Force Majeure; Suspension and Termination

In the event that either party is unable to perform all of its obligations under this Agreement or to enjoy any of its benefits because of a natural disaster or action or decree of a superior governmental body (hereinafter referred to as a "Force Majeure Event" or "Event"), the party that has been so affected immediately shall give notice to the other party and shall do everything possible to resume performance.

Upon receipt of such notice, the affected party shall be excused from such performance as is affected by the Force Majeure Event for the period of such Event; but if the period of the non-performance exceeds fifteen (15) days from the date of the other party's receipt of the notice of the Force Majeure Event, the party that has not had its ability to perform so affected may terminate this Agreement by giving written notice of termination to the party suffering from the effect of the Event. If such Event affects the delivery date or warranty provisions of this Agreement, such date or warranty period shall automatically be extended for a period equal to the duration of such Event.

1.10.5 Notice of Termination

Termination of this Agreement may only occur under the conditions specified herein, and must be by written notice to the other party specifying the date when the termination shall be effective.

1.11 Insurance

1.11.1 Insurance Required; Insurance Documentation Required

Prior to undertaking any work under this Agreement, the vendor shall obtain, and shall thereafter maintain continuously, at no expense to the City, and file with the City's Purchasing Services and the City's Risk Management Administrator in the Contracting Services Division, evidence of a policy or policies of insurance as specified below.

1.11.1.1 Commercial General Liability Insurance

A policy of commercial general liability insurance, written on an occurrence form, including all the usual coverages known as:

- Premises/Operations Liability
- Products/Completed Operations
- Personal/Advertising Injury
- Contractual Liability
- Independent Contractors Liability
- Stop Gap or Employers Contingent Liability

- Fire Damage Legal

Such policy(ies) must provide the following minimum coverage:

Bodily Injury and Property Damage

\$1,000,000	General Aggregate
\$1,000,000	Products & Completed Operations Aggregate
\$1,000,000	Personal & Advertising Injury
\$1,000,000	Each Occurrence
\$ 100,000	Fire Damage

Stop Gap/Employers Liability

\$1,000,000	Each Accident
\$1,000,000	Disease – Policy Limit
\$1,000,000	Disease – Each Employee

1.11.1.2 Business Automobile Liability Insurance

A policy of Business Automobile Liability, including coverage for owned, non-owned, leased or hired vehicles written on an insurance industry standard form (CA 00 01) or equivalent.

Such policy(ies) must provide the following minimum limit:

Bodily Injury and Property Damage

\$ 300,000	per accident
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1.11.1.3 Errors and Omissions Liability Insurance

A policy of Errors and Omissions Liability Insurance appropriate to the vendor's profession. Coverage should be for a professional error, act or omission arising out of the scope of services shown in the contract. The minimum limit of coverage shall be \$1,000,000 per Claim/Aggregate.

1.11.1.4 Worker's Compensation

A policy of Worker's Compensation. As respects Workers' Compensation insurance in the state of Washington, the vendor shall secure its liability for industrial injury to its employees in accordance with the provisions of Title 51 RCW. If the vendor is qualified as a self-insurer in accordance with Chapter 51.14 RCW, vendor shall so certify by delivering to the Risk Management Administrator in the City's Contracting Services Division a letter signed by an authorized representative of the vendor indicating that the vendor is a qualified self-Insured, and setting forth the limits of any policy of excess insurance covering

its employees; or any similar coverage required. **The vendor further waives, with respect to the City only, its immunity under RCW Title 51, Industrial Insurance.**

1.11.1.5 Assumption of Risk

Vendor hereby assumes all risk of damage to its property, or injury to its officers, directors, agents, contractors, or invitees, in or about the Property from any cause, and hereby waives all claims against the City.

1.11.1.6 Other Requirements for Vendor's Insurance

The insurance provided pursuant to Sections 1.11.1.1 and 1.11.1.2, shall be endorsed to include The City of Seattle, its officers, elected officials, employees, agents and volunteers as additional insured, and shall not be reduced or canceled without forty-five (45) days prior written notice to the City. In addition, vendor's insurance shall be primary, as respects the City and any other insurance maintained by the City shall be excess and not contributing insurance with the vendor's insurance.

1.11.2 Claims Made Form and Deductibles

If any such policy(ies) above is written on a Claims Made Form, the retroactive date shall be prior to or coincident with the effective date of this Agreement. The policy shall state that coverage is Claims Made, and state the retroactive date. Claims made form coverage shall be maintained by the vendor for a minimum of three years following the expiration or earlier termination of this Agreement. The vendor shall annually provide the City with proof of renewal. If renewal of the claims made form of coverage becomes unavailable, or economically prohibitive, the vendor shall purchase an extended reporting period ("tail") or execute another form of guarantee acceptable to the City to assure financial responsibility for liability for services performed.

Any deductible or self-insured retention must be disclosed and is subject to approval by Risk Management Administrator. The cost of any claim payments falling within the deductible shall be the responsibility of the vendor.

1.11.3 Evidence of Insurance

The Contractor shall provide the City's Risk Management Administrator and Purchasing Department with an original standard form ACORD Certificate of Liability Insurance with attached declaration pages to verify insurance coverage specified above, signed by a licensed insurance agent or broker authorized to do business in the State of Washington, showing the insuring company and policy effective dates. The City reserves the right to obtain a copy of any policy required by this Agreement, including all forms and endorsements.

1.11.4 Insurance Policy Rating

All policies shall be subject to approval by the Risk Management Administrator in the Contracting Services Division as to company (must be rated A-(VII) or higher in the A.M. Best's Key Rating Guide and licensed to do business in the State of Washington or issued as a surplus line by a Washington Surplus lines broker), form and coverage, and primary to all other insurance.

1.12.5 Self-Insurance

If the vendor is self-insured for purposes of the Commercial General Liability and the Business Automobile to be provided under Subsections 1.12.1.1 through 1.12.1.3 a letter to the City's Project Director must be submitted by the vendor's Risk Manager or appropriate Finance Officer, indicating whether the self-insurance is actuarially funded and if so, what the fund limits are. Such letter shall be accompanied by any declaration pages of excess coverage required to meet the Agreement limit requirements. Further, this letter should advise how the vendor would protect and defend The City of Seattle as an Additional Insured in the vendor's Self-Insured layer, and include claims handling directions in the event of a claim.

1.11.6 Sub-Contractors

Vendor shall include all subcontractors as insureds under its policies or shall furnish separate evidence of insurance as stated above for each subcontractor. All coverage for subcontractors shall be subject to all the requirements stated herein and applicable to their profession.

1.12 Indemnification

Vendor shall indemnify, hold harmless and defend (including paying reasonable attorney's fees and costs) the City, and any officer, employee or agent thereof, (each of the foregoing being hereinafter referred to individually as an "Indemnified Party") against all claims of, and liability to, third parties (other than liability solely and entirely the fault of the Indemnified Party) arising from or in connection with any act or omission of the vendor or any of its officers, employees, agents or subcontractors under this Agreement; or the sale or license to or use by the City of the System, including but not limited to, the violation of any third party's trade secrets, proprietary information, trademark, copyright, or patent rights in connection with goods to be provided and services to be performed under this Agreement. The vendor's obligation to indemnify, hold harmless and defend any Indemnified Party shall survive the expiration or termination of this Agreement by either party for any reason. Vendor shall conduct the defense in any such third party action arising as described herein and the City promises to cooperate fully with such defense. The indemnification obligation set forth in this section shall survive the expiration or earlier termination of this Agreement.

1.13 Confidentiality

The vendor shall not permit the disclosure or duplication of any information received from the City unless such disclosure or duplication is specifically authorized in writing by the City. Please refer to the Non-Disclosure Agreement at the end of this chapter. The City shall not permit the duplication by, or disclose any information conspicuously designated in advance by the vendor as “Confidential and Proprietary” information to, any person (other than City officers, employees, or consultants who must have such information for the performance of their City duties or obligations), unless such duplication, use or disclosure is specifically authorized in writing by the vendor or is required by law. The term “Confidential and Proprietary” information is not meant to include ideas, concepts, know-how or techniques related to any information that, at the time of disclosure, is in the public domain unless the entry of that information into the public domain is a result of any breach of this Agreement. In the event any request is made for material that the vendor has designated as containing Confidential Information, the City will notify the vendor of the request pursuant to RCW 42.17.320 or its successor legislation. Upon receipt of such notice, the vendor shall take such action as it deems necessary and appropriate to prevent the release of such information pursuant to RCW 42.17.330 or its successor legislation, and the City shall have no further obligations in this regard provided, however, that the vendor may not take any action that would affect a) the ability of the City to use the goods or services provided under this Agreement or b) the obligations of the vendor under this Agreement. In the event the vendor does not take action to prevent the disclosure of its Confidential Information within the time period required by law, the vendor shall be deemed to have authorized the release of such information and the City shall not be liable to the vendor in the event the Confidential Information is released.

1.14 Publicity

No news release, advertisement, promotional material, tour, or demonstration related to the City’s purchase or use of the vendor’s product or any work performed pursuant to this Agreement shall be produced, distributed or take place without the prior, specific approval of the City’s Project Director or his/her designee.

1.15 Warranties

1.15.1 Warranty of the System

Commencing on the date of software installation and extending for a period of ninety (90) days, the vendor warrants that the Software furnished hereunder shall be free from programming errors and that the Software and hardware shall be free from defects in workmanship and materials and shall operate in conformity with the performance capabilities, specifications, functions and other descriptions and standards applicable thereto and as set forth in this Agreement including but not limited to the City’s Request for Proposals; that the services shall be performed in a timely and professional manner by qualified professional personnel; and that the services, Software and Hardware shall conform to the standards generally observed in

the industry for similar services, Software and hardware. This warranty shall not be affected by the City's modification of the Software (including source code) so long as the licensor can discharge any warranty obligations notwithstanding such modifications or following their removal by the City. If the vendor is not the original Software or hardware manufacturer, the vendor shall obtain in writing the manufacturer's consent to pass through all Software and hardware warranties for the City's benefit. During this warranty period, the vendor shall replace or repair any defect appearing in the Software or hardware, or deficiency in service provided at no additional cost to the City. Annual maintenance shall commence after the ninety (90) day warranty period..

1.16.2 Warranty against Planned Obsolescence

The vendor warrants that the products proposed to and acquired by the City under this Agreement are new and of current manufacture, and that it has no current plans for announcing a replacement line that would be marketed by vendor as a replacement for any of the products provide to the City under this Agreement and would result in reduced support for the product line within which the System furnished to the City is contained.

The vendor further warrants that, in the event that a major change in hardware, software, or operating system occurs that radically alters the design architecture of the System and makes the current design architecture obsolete within three (3) years after full execution of this Agreement, and if the City continues its annual maintenance agreement with the vendor, the vendor shall provide the City with a replacement hardware, software, or operating system(s) that continues the full functionality of the early intervention system, at no extra cost to the City.

1.15.3 No Surreptitious Code Warranty

The vendor warrants to the City that no copy of the licensed Software provided to the City contains or will contain any Self-help Code or any Unauthorized Code as defined below. This warranty is referred to in this Agreement as the "No Surreptitious Code Warranty."

As used in this Agreement, "Self-help Code" means any back door, time bomb, drop dead device, or other Software routine designed to disable a computer program automatically with the passage of time or under the positive control of a person other than the licensee of the Software. The term "Self-help Code" does not include Software routines in a computer program, if any, designed to permit an owner of the computer program (or other person acting by authority of the owner) to obtain access to a licensee's computer system(s) (e.g. remote access via modem) for purposes of maintenance or technical support.

As used in this Agreement, "Unauthorized Code" means any "virus," "Trojan horse," "worm" or other Software routines or Equipment components designed to permit unauthorized access to disable, erase, or otherwise harm Software, Equipment, or data

or to perform any other actions. The term Unauthorized Code does not include Self-help Code.

The vendor shall defend City against any claim, and indemnify the City against any loss or expense arising out of any breach of the No Surreptitious Code Warranty.

1.15.4 Title Warranty and Warranty against Infringement

The vendor warrants and represents that the hardware and Software provided under this Agreement is the sole and exclusive property of the vendor or that the vendor is authorized to provide full use of the hardware and Software to the City as provided herein. The vendor warrants that it has full power and authority to grant the rights granted by this Agreement to the City without the consent of any other person or entity.

In the event of any claim by a third party against the City asserting a patent, copyright, trade or secret, or proprietary right violation involving the System acquired by the City hereunder or any portion thereof, vendor shall defend, at its expense, and shall indemnify the City against any loss, cost, expense, or liability arising out of such claim, whether or not such claim is successful; provided, however, that vendor is notified by the City in writing within a reasonable time after the City first receives written notice of any such claim, action, or allegation of infringement. In the event a final injunction or order is obtained against the City's full use of either the System or any portion thereof as a result of any such claim, suit or proceeding, and if no further appeal of such ruling is practicable, vendor shall, at the City's option and at vendor's expense:

- (1) procure for the City the right to continue full use of the System or
- (2) replace or modify the same so that it becomes non-infringing (which modification or replacement shall not affect the obligation to ensure the System conforms with applicable specifications); or
- (3) if the product was purchased and the actions described in item (1) or (2) of Section 5.19.4, are not practicable, re-purchase the product from the City at a price mutually agreed upon, which shall relate to the value and utility of the product to the City; or
- (4) if the System was leased, licensed, or rented, and the actions described in item (1), (2), or (3) of Section 5.19.4, are not practicable, remove such System from the City's site(s) and pay the City promptly after notification for all direct and consequential damages suffered by the City as a result of the loss of the infringing product and any other continued utility of which to the City is adversely affected by the removal of the infringing product, and hold the City harmless from any further liability therefore under any applicable Order, Settlement, or other agreement. In no event shall the City be liable to vendor for any lease, rental, or maintenance payments after the date, if any, that the City is no longer legally permitted to use the System because of such actual or claimed infringement. In the event removal or replacement of the System is required pursuant to this paragraph,

vendor shall use reasonable care in the removal or modification thereof and shall, at its own expense, restore the City's premises as nearly to their condition immediately prior to the installation of the System as is reasonably possible.

No settlement that prevents the City from continuing to use the Software, other products or Software documentation as provided in this Agreement shall be made without the City's prior written consent. In all events, the City shall have the right to participate at its own expense in the defense of any such suit or proceeding through counsel of its own choosing.

The indemnification obligation set forth in this section shall survive the expiration or earlier termination of this Agreement.

1.15.5 No Liens

The vendor warrants that the Software and Equipment is the sole and exclusive property of the vendor and that the vendor is authorized to provide full use of the Software to the City as provided herein and that such Software is not subject to any lien, claim or encumbrance inconsistent with any of the City's rights under this Agreement and that the City is entitled to and shall be able to enjoy quiet possession and use of the Software and Equipment without interruption by vendor or any other person making a claim under or through the vendor or by right of paramount title.

1.15.6 Prices and Charges

The vendor warrants that the price or charges for Software acquired by the City during the term of this Agreement shall be equal to or less than the prices or charges given to any other customer for the same product or service.

1.15.7 Services Warranty

The vendor warrants that, in performing the services under this Agreement, the vendor shall strictly comply with the descriptions and representations as to the services, including performance capabilities, accuracy, completeness, characteristics, specifications, configurations, standards, function and requirements, which appear in this Agreement. Its products shall be uniform in appearance and clean and presentable in accordance with generally applicable standards in the industry.

Any preparation Software or data analysis used in the Services shall be available to the City for a period of five (5) years following the completion of the Services. This warranty shall apply only to preparation Software or data analysis owned by or under the control of the vendor. Errors or omissions committed by the vendor in the course of providing Services shall be remedied by the vendor at its own expense.

1.15.8 Equipment

The vendor warrants and represents that the Equipment provided to meet the requirements of this Agreement shall be free from all defects, shall be in good

operating order, and shall operate in conformity with the descriptions and standards as set forth in this Agreement for a period of one (1) year, from and after, the Acceptance Date. During the warranty period, vendor shall promptly, without additional charge, repair or replace the equipment or any part thereof that fails to function according to the vendor's specifications or the specifications of the manufacturer thereof.

1.15.9 Merchantability and Fitness Warranty

Vendor represents and warrants that the Software, other products and Software Documentation will be merchantable and will be fit for the particular purposes established in this Agreement.

1.16 Compliance with Applicable Law

The vendor warrants that the System, and the manufacture and production thereof, are in compliance with any and all applicable laws, rules, and regulations.

1.17 Survival of Warranties and Representations

The representations and warranties of the vendor made pursuant to this Agreement shall survive the delivery of the System, the payment of the purchase price, and the expiration or earlier termination of this Agreement.

1.18 Access to Books and Records

For a period of six (6) years after the completion of this agreement, the city or its agents shall have the right at reasonable times to audit in King County, Washington, the books and records of the vendor bearing upon or connected with the terms and conditions of this agreement in order to determine compliance with the provisions of this agreement. The vendor shall require its subcontractors to allow the city or its agents to audit the subcontractors' books and records as necessary in order to determine compliance with the provisions of this agreement. In the event that the audit reveals that there has been an error in payment, the parties agree to immediately correct such errors. A written request for audit documentation shall be provided to the vendor. The vendor, within thirty (30) days from and after its receipt of the request, shall furnish the required documentation. Such documentation shall be confined to those matters directly related or pertinent to the vendor's performance of this agreement.

1.19 Equal Employment

The vendor will not discriminate against any employee or applicant for employment because of creed, religion, race, age, color, sex, marital status, sexual orientation, gender identity, ideology, ancestry, national origin, or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. The vendor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their creed, religion, race, age, color, sex,

national origin, marital status, political ideology, ancestry, sexual orientation, gender identity, or the presence of any sensory, mental or physical handicap. Such action shall include but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship.

The vendor shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City setting forth the provisions of this nondiscrimination clause.

1.20 Non-Discrimination in Benefits

The vendor shall comply with the requirements of SMC Ch.20.45 and the Equal Benefits Program Rules. Failure to comply will subject the Contractor to one or more of the following penalties: disqualification from bidding on or being awarded a City contract for a period of up to 5 years, actual damages, termination of the contract, or other remedial actions such as payment of cash equivalent payments or expedited implementation of equal benefits.

1.21 Women and Minority Business Enterprise Requirements

Notwithstanding any other provision in any procurement document, City women- and minority-owned business (WMBE) utilization requirements shall not apply to this Agreement. Any affirmative action requirement set forth in any federal regulations or statutes included or referenced in the Agreement shall apply.

The City encourages the vendor to employ a workforce reflective of the region's diversity. The vendor shall adhere to all nondiscrimination requirements as set forth in federal and state laws and regulations and Seattle municipal code provisions.

1.21.1 Non-Discrimination

The vendor shall not create barriers to open and fair opportunities for WMBEs to participate in all City contracts and to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction and services. In considering offers from and doing business with subcontractors and suppliers, the vendor shall not discriminate on the basis of race, color, creed, religion, sex, age, nationality, marital status, sexual orientation or the presence of any mental or physical disability in an otherwise qualified disabled person.

1.21.2 Record-Keeping

The vendor shall maintain, for at least twelve (12) months after completion of this Agreement, relevant records and information necessary to document the level of utilization of WMBEs and other businesses as subcontractors and suppliers in the Agreement and in its overall public and private business activities. The vendor shall also maintain all written quotes, bids, estimates, or proposals submitted to the vendor

by all businesses seeking to participate as subcontractors or suppliers in this Agreement. The City shall have the right to inspect and copy such records. If this Agreement involves federal funds, the vendor shall comply with all record-keeping requirements set forth in any federal rules, regulations or statutes included or referenced in the Agreement documents.

1.21.3 Affirmative Efforts to Utilize WMBES

The City encourages the utilization of minority owned businesses (“MBEs”) and women-owned businesses (“WBEs”) (collectively, “WMBEs”), in all City contracts. The City encourages the following practices by the vendor to open competitive opportunities for WMBEs:

Attending a pre-bid or pre-solicitation conference, if scheduled by the City, to provide project information and to inform WMBEs of contracting and subcontracting opportunities.

Placing all qualified WMBEs attempting to do business in the City on solicitation lists, and providing written notice of subcontracting opportunities to WMBEs capable of performing the work, including without limitation all businesses on any list provided by the City, in sufficient time to allow such businesses to respond to the written solicitations.

Breaking down total requirements into smaller tasks or quantities, where economically feasible, in order to permit maximum participation by small businesses, including WMBEs.

Establishing delivery schedules, where the requirements of this Agreement permit, that encourage participation by WMBEs.

Providing WMBEs that express interest with adequate and timely information about plans, specifications, and requirements of the Agreement.

Utilizing the services of available minority community organizations, minority contractor groups, local minority assistance offices, the City, and other organizations that provide assistance in the recruitment and placement of WMBEs.

1.21.4 Sanctions for Violation

Any violation of the requirements of Sections 1.22.1 and 1.22.2 shall be a material breach of contract for which the vendor may be subject to damages and sanctions provided for by contract and by applicable law.

1.22 Fair Contracting Practices

The Contractor shall comply with the Fair Contracting Practices Ordinance of The City of Seattle (Ordinance 119601), as amended. Conduct made unlawful by that ordinance constitutes a breach of contract. Engaging in an unfair contracting practice may also result in

the imposition of a civil fine or forfeiture under the Seattle Criminal Code as well as various civil remedies. (See SMC 14.10 at <http://clerk.ci.seattle.wa.us/~public/code1.htm>)

1.23 Dispute Resolution

Any dispute concerning the vendor's performance of this Agreement that is not disposed of by agreement between the vendor and the City shall be referred to the City's Director of the Department of Executive Administration or designee and the vendor's [Managing Partner. If such parties' representatives do not agree upon a decision within a reasonable period of time, either of the parties may pursue other legal means to resolve such disputes.

1.24 Notices

All notices and other material to be delivered hereunder shall be in writing or facsimile and shall be delivered or mailed to the following:

If to the City:

Vivian Uno
700 Fifth Avenue, Suite 4112
Seattle, WA 98104
(P.O. Box 94687, Seattle, WA 98124-4687
206-684-0449

If to Vendor: []

or such other respective name(s) and address(es) as either party may, from time to time, designate for itself, by notice to the other party in writing.

1.25 Miscellaneous

1.25.1 Amendments

The Parties hereto reserve the right to make amendments or modifications to this Agreement by written agreement signed by an authorized representative of each party.

1.25.2 Applicable Law

This Agreement shall be governed by the laws of the State of Washington and the Charter and Ordinances of the City. The venue of any action thereunder shall be in King County, Washington.

1.25.3 Compliance with Law

1.25.3.1 General

The vendor shall comply with all applicable federal or state laws and City ordinances and with applicable directions, rules and regulations of public officials and departments in enforcement of City ordinances and with directions, rules, and regulations from the State of Washington or from the United States of America with respect to any portion of this Agreement.

1.25.3.2 Licenses and Similar Authorizations

The vendor, at no additional expense to the City, shall secure and maintain in full force and effect during the term of any Agreement resulting from this procurement process, all required licenses, and similar legal authorization, and comply with all legal requirements.

1.25.4 Attorneys' Fees

Subject to the indemnification and limitation of vendor's liability provisions set forth in this Agreement, if any action or suit is brought with respect to a matter or matters covered by this Agreement, each party shall be responsible for all its own costs and expenses incident to such proceedings, including reasonable attorneys' fees.

1.26 Assignment

Neither party shall assign any of its obligations under this Agreement, in whole or in part, without the other party's written consent.

1.27 Binding Effect

The provisions, covenants and conditions in this Agreement apply to bind the parties, their legal heirs, representatives, successors, and assigns.

1.28 Remedies

All remedies available at law or in equity to either party for breach of this Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

1.29 Gratuities

The City may, by written notice to the vendor, terminate the right of the vendor to proceed under this Agreement upon one (1) calendar day's notice, if it is found that a gratuity in the form of a bribe, gift, or otherwise was offered or given by the vendor, or any agent as representative of the vendor, to any official, officer or employee of the City, provided that the existence of the facts upon which the City makes such findings may be reviewed by a

competent court. In the event of such termination, the City shall be entitled to pursue the same remedies against the vendor as it could pursue in the event of default by the vendor. The above restrictions are not to be interpreted as prohibiting the vendor from providing room and board for the City personnel to attend vendor-sponsored training seminars or schools that are generally held at plant sites and are available to all vendor's customers, and are a regular element of vendor's training program.

1.30 Headings

Section, subsection and paragraph headings are included in this Agreement for convenience only and do not change, modify or limit any right or obligation of this Agreement.

1.31 Independent Status of Parties

Both parties hereto, in the performance of this Agreement, will be acting in their individual capacities and not as agents, employees, partners, joint venturers or associates of the other. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

1.32 Severability

If any term or condition of this Agreement or the application hereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application; to this end the terms and conditions of this Agreement are declared severable.

1.33 Waiver

The waiver of any breach or failure of either party to exercise in any respect any right provided for in this Agreement shall not be deemed a waiver of any further, prior or future breach or right thereunder. No right or obligation of this Agreement shall be deemed to be waived, modified or deleted except by an instrument, in writing, signed by both parties.

1.34 Authority

Each party has full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement. Each party further acknowledges that it has read this Agreement, understands it, and shall be bound by it.

1.35 Entire Agreement

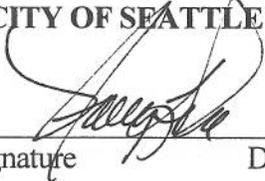
The activeG MAXIMO MapEngineWeb™ GIS Integration for City of Seattle, and the ActiveG Maximo MapEngine software License and Maintenance Agreement are

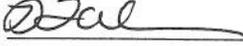
explicitly included in this Agreement. Where there is any conflict among or between any of these documents, the controlling document shall be this Agreement.

IN WITNESS WHEREOF, the City and the vendor have caused this Agreement to be executed.

THE CITY OF SEATTLE

ActiveG

By:  10/27/14
Signature Date

By:  10/20/04
Signature Date

Printed Name: Nancy Locke

Printed Name: Donald L. Anderson

Title: City Purchasing Manager

Title: Managing Partner

AGREEMENT FOR ACTIVEG MAXIMO
MAPENGINE WEB™ GIS INTEGRATION TO THE CITY OF SEATTLE
Appendix A

ctiveG, LLC
ational solutions for business

**ACTIVEG MAXIMO MAPENGINE
SOFTWARE LICENSE AND MAINTENANCE AGREEMENT**

etween

And ("Licensee")

ctiveG, LLC
O. Box 957
esa, AZ 85211
elephone: 480 610 0839
AX: 480 835 6835

ffective Date: 11/1/2004

Attn: _____

egarding (i) the activeG, LLC ("ACTIVEG") proprietary software marketed under the name activeG MAXIMO MAPENGINE ("MAPENGINE"), which software includes the object code version of the software modules listed below and/or in any purchase order(s) accepted by ACTIVEG, any Enhancements (as defined in Section 1) to and New Releases (as defined in Section 1) of the software provided by ACTIVEG, and any user manuals and documentation provided by ACTIVEG relating to the software (the "Licensed Software").

activeG MAXIMO MAPENGINE	
MAPENGINE Base Package	\$ <u>\$20,000</u>
Additional Users <u>60</u> @ <u>400</u>	Price \$ <u>24,000</u> ACSP \$ <u>8,800</u> 1st Year good thru 1/31/2006
• MAPENGINE Image Server	\$ _____
Image Server ACSP	\$ _____
•Indicates Add-On Features; Installation requires MAPENGINE Base Package	

The parties hereby acknowledge that each has read this Agreement, understands it, and agreed to be bound by its terms. The parties further agree that this Agreement (including the terms and conditions set forth on the following pages), together with any exhibits hereto, sets forth the complete and exclusive statement of the agreement between the parties relating to the Licensed Software and supersedes all prior agreements, whether written or oral, and all other communications in effect between the parties relating to the Licensed Software.

activeG, LLC
BY: [Signature]
NAME: Donald L. Anderson
TITLE: Manager Partner DATE 10/20/04

LICENSEE
BY: [Signature]
NAME: _____
TITLE: _____ DATE 10/29/04

AGREEMENT FOR ACTIVEG MAXIMO
MAPENGINE WEB™ GIS INTEGRATION TO THE CITY OF SEATTLE
Appendix A

AGREEMENT FOR ACTIVEG MAXIMO
MAPENGINE WEB™ GIS INTEGRATION TO THE CITY OF SEATTLE

Appendix A

ACTIVEG MAXIMO MAPENGINE SOFTWARE LICENSE AND MAINTENANCE AGREEMENT

Grant of Right. Subject to the terms and conditions of this Agreement, ACTIVEG hereby grants to Licensee and Licensee hereby accepts, a non-exclusive, non-transferable, perpetual license to use the Licensed Software.

Term. This Agreement shall take effect upon the date first set forth (the "Effective Date") and shall continue unless terminated in accordance with the terms of this Agreement.

Additional Software. Additional copies of the Licensed Software may be requested by Licensee after the Effective Date hereof upon issuance by Licensee of purchase order; provided, however, that acceptance of such purchase order by ACTIVEG is subject to ACTIVEG's sole discretion and all additional Licensed Software shall be provided at ACTIVEG's then-current License Fees (as defined below) and on the terms and conditions set forth in this Agreement. All orders are subject to credit approval and no order shall be deemed accepted by ACTIVEG until the earlier of the date on which ACTIVEG (i) has accepted the purchase order in writing, or (ii) has shipped the Licensed Software to Licensee. Any provision of Licensee's purchase order (whether issued prior to or after the date of this Agreement) which is inconsistent with or in addition to the terms and conditions of this Agreement shall not be binding upon ACTIVEG unless ACTIVEG expressly agrees in a writing separate from the purchase order to such provision.

Quotations. Any quotation issued by ACTIVEG is subject to the terms and conditions set forth in this Agreement. No quotation shall be valid unless in writing, and any quotation shall expire sixty (60) days after issuance, unless otherwise specified in writing by ACTIVEG.

License Fees. Licensee shall pay to ACTIVEG the license fee for the Licensed Software ("License Fee"), and the annual fee for ACTIVEG's Annual Customer Support Plan ("ACSP") if purchased hereunder, in the amounts set forth in ACTIVEG's current U.S. price list ("U.S. Price List") or as otherwise agreed to by the parties in writing, without set-off or deduction whatsoever, within thirty (30) days of the later of the date of invoice or the date of shipment. ACTIVEG reserves the right to modify its U.S. Price List at any time without notice to Licensee. Should ACTIVEG not receive payment on or before the date it is due, Licensee shall pay to ACTIVEG interest on the amount payable to ACTIVEG at a rate equal to 1% for each month payment remains delinquent or (ii) the maximum rate of interest allowable under applicable law, calculated from the due date. All fees are non-refundable and payable in U.S. dollars.

Annual Customer Support Plan. If Licensee purchases ACTIVEG's Annual Customer Support Plan ("ACSP"), Licensee shall be entitled to receive the maintenance and support services described in Section 1 of this Agreement for a period of one year commencing upon the expiration of the Warranty period described in Section 5 of this Agreement. Once Licensee has purchased ACSP, ACSP shall automatically renew for additional one-year terms unless Licensee notifies ACTIVEG in writing at least thirty (30) days before the end of the then-current ACSP term that Licensee does not wish to purchase ACSP for the next year. If Licensee does not purchase ACSP or fails to make timely payment of any ACSP Fee due upon renewal of ACSP, ACTIVEG shall have no obligation to provide Licensee with any maintenance or support services in connection with the Licensed Software. ACTIVEG may adjust the term of any ACSP period to become commensurate with existing Licensed Software. ACSP fees are based on base package cost and the number of installed users.

3. Support and Maintenance.

Problem Reporting Procedure. During the Warranty Period described in Section 5 of this Agreement and for so long as Licensee has purchased ACSP, Licensee may report errors or problems with the Licensed Software to ACTIVEG by telephone, fax, or mail, during ACTIVEG's normal business hours, Monday to Friday (except holidays observed by ACTIVEG) 8:00 a.m. to 5:00 p.m. M.S.T. ACTIVEG may change its normal business hours from time to time upon notice to Licensee. ACTIVEG can be reached currently at 480 610 0839 (phone) or 480 835 6835 (fax). In any event, Licensee shall send written notice of all suspected errors to ACTIVEG within five (5) days after discovery, which notice shall include complete documentation of such errors. Upon ACTIVEG's request, Licensee shall cooperate with ACTIVEG to provide more information concerning any suspected error or problem reported by Licensee. Upon verification by ACTIVEG of a reported error, ACTIVEG's sole obligation shall be to use reasonable efforts to

provide, at ACTIVEG's sole discretion, a software update or workaround to correct or address such error.

Enhancements. ACTIVEG shall provide, to Licensees who have purchased ACSP, Enhancements to the Licensed Software. For purposes of this Agreement, "Enhancements" shall mean updates, improvements or revisions to the Licensed Software that ACTIVEG generally provides to its U.S. licensees who have purchased ACSP without additional payment. If ACTIVEG issues an Enhancement, Licensee shall promptly install and begin using the Enhancement.

New Versions. From time to time, ACTIVEG may issue new versions or releases of the Licensed Software (a "New Release") that supersede the prior release (the "Superseded Release"). If ACTIVEG issues a New Release at no additional charge to Licensee, Licensee shall promptly install and begin using the New Release. In no event shall ACTIVEG be required to provide maintenance and support services for any Superseded Release in accordance with Section 1 at any time after one (1) year from the U.S. release date of the New Release.

No ACSP. If Licensee has not purchased ACSP and at some future date wishes to obtain an Enhancement to or New Release of the Licensed Software, such Enhancement or New Release shall only be licensed to Licensee if Licensee pays to ACTIVEG the then-current ACSP Fee and all ACSP Fees for the period elapsed since the end of the Warranty Period or since the expiration of the last ACSP period for which Licensee paid the ACSP Fee, whichever is less, or the then-current applicable License Fee for the New Release.

2. Ownership of the Licensed Software.

Ownership. ACTIVEG and its licensors own all right, title and interest in the Licensed Software throughout the world, including without limitation, patent, copyright and trade secret rights. Licensee acknowledges and agrees that the Licensed Software constitutes a valuable trade secret asset of ACTIVEG.

Indemnification. ACTIVEG shall defend or, at its option, settle any claim, action or proceeding brought against Licensee that the Licensed Software infringes any U.S. patent, copyright or trade secret, and shall indemnify Licensee against all damages and costs finally awarded against Licensee in any such action or proceeding which results from any such claim. ACTIVEG shall have no liability under this Section unless Licensee (a) promptly notifies ACTIVEG in writing of the claim, action or proceeding, (b) gives ACTIVEG full authority, information and assistance to defend such claim, action or proceeding and (c) gives ACTIVEG sole control of the defense of such claim, action or proceeding and all negotiations for the compromise or settlement thereof. If the Licensed Software or any part thereof becomes, or in ACTIVEG's opinion is likely to become, the subject of a valid claim of infringement or the like under any U.S. patent, copyright or trade secret law, ACTIVEG shall have the right, at its option and expense, either (i) to obtain a license permitting the continued use of the Licensed Software or such part, (ii) to replace or modify it so that it becomes non-infringing, or (iii) to terminate the license thereof and refund the depreciated value of the License Fee paid. ACTIVEG shall have no liability hereunder for any costs incurred by Licensee or for any settlement entered into without its prior written consent. ACTIVEG shall have no liability hereunder with respect to any claim based upon (a) the combination of the Licensed Software with other products not furnished by ACTIVEG, (b) any addition to or modification to the Licensed Software other than as specifically defined in the MAPENGINE Administrator's Guide, or (c) use of a Superseded Release of the Licensed Software.

The indemnity provision set forth above is in lieu of all other obligations, including without limitation the implied warranty of noninfringement, and state the sole, exclusive and entire liability of ACTIVEG and its licensors, and the sole, exclusive and entire remedy of Licensee, with respect to any claim of patent, copyright or trade secret infringement by the Licensed Software.

Licensed Software (including Documentation). ACTIVEG shall provide to Licensee a master copy and one set of documentation to be installed on a single server. Any additional hard copies of the user documentation may be purchased separately at the then-current price.

No Copying. Except as required by law, Licensee may not copy the Licensed Software or any other Confidential Information (as defined below) of ACTIVEG in whole or in part, except that Licensee may make copies of the Licensed Software

AGREEMENT FOR ACTIVEG MAXIMO
MAPENGINE WEB™ GIS INTEGRATION TO THE CITY OF SEATTLE

Appendix A

for archival or backup purposes. Licensee shall not remove any patent, trademark, copyright, restricted rights, limited rights, proprietary rights or confidentiality notice included in or affixed to the Licensed Software or any other Confidential Information of ACTIVEG and shall reproduce all such notices in or on all copies of the Licensed Software or Confidential Information of ACTIVEG made by Licensee in accordance with this Agreement.

No Modifications/Reverse Engineering. Except as defined in the MAPENGINE Administrator's Guide, Licensee shall not alter, modify, enhance, adapt, reverse engineer, make works derived from the Licensed Software or attempt to generate or access the source code for the Licensed Software, whether by converting, translating, decompiling, disassembling or merging any part of the Licensed Software with any other software or otherwise.

Installation. If Licensee has not purchased installation Services from ACTIVEG, Licensee shall be responsible for installing the Licensed Software and shall follow ACTIVEG's written instructions for said installation process.

3. Protection and Security

Confidential Information. By virtue of this Agreement, the parties may have access to information that is confidential to one another ("Confidential Information"). Confidential Information shall include the Licensed Software and all other information clearly marked as confidential. A party's Confidential Information shall not include information which: (a) is or becomes a part of the public domain through no act or omission of the other party; (b) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on disclosure; or (d) is independently developed by the other party.

Non-disclosure. The parties agree, both during the term of this Agreement and for a period of three (3) years after termination of this Agreement and for all licenses granted hereunder, to hold each other's Confidential Information in confidence. The parties agree not to make each other's Confidential Information available in any form to any third party or to use each other's Confidential Information for any purpose other than the implementation of this Agreement unless disclosure is required by Law. Each party shall limit access to the other party's Confidential Information to its employees and agents whose responsibility require such access, and each party shall take all reasonable steps to ensure that Confidential Information is not disclosed or distributed by its employees or agents in violation of the provisions of this Agreement. Each party shall take at least the same precautions to protect the confidentiality of the other party's Confidential Information as it takes to protect its own Confidential Information.

Third Party Beneficiary. Licensee understands that the Licensed Software may contain third party software ("Third Party Software") and that ACTIVEG's licensors shall be third party beneficiaries of this Agreement and shall be entitled to enforce Licensee's obligations hereunder, provided, however that ACTIVEG's licensors shall not be liable or responsible for any of ACTIVEG's covenants or obligations under this Agreement, and Licensee's sole rights or remedies with respect to this Agreement shall be against ACTIVEG.

Indemnification by Licensee. Licensee shall indemnify and hold harmless ACTIVEG and its officers, directors, employees and agents, from and against any and all damages and costs incurred by ACTIVEG in any claim, action or proceeding brought by any of ACTIVEG's licensors against ACTIVEG which arises from or relates to Licensee's failure to comply with its obligations under this Agreement.

Compliance with Laws. Licensee shall comply with all applicable laws, including, without limitation, the export control laws of the United States of America and prevailing regulations which may be issued from time to time by the United States Department of Commerce and Office of Munitions Control, U.S. Department of State, concerning the exporting, importing re-exporting of the Licensed Software. Without limiting the generality of the foregoing, Licensee shall not export or re-export the Licensed Software or the direct product thereof in violation of the regulations of the United States Department of Commerce or the U.S. Export Administration Act or without the prior written consent of ACTIVEG.

4. Default and Termination

Termination by ACTIVEG. ACTIVEG may terminate this Agreement immediately upon notice to Licensee if: (i) Licensee fails to comply with any term or condition of this Agreement (other than Sections 2 and 3) and such non-compliance is not corrected to ACTIVEG's satisfaction within thirty (30) days after written notice of the non-compliance is given by ACTIVEG to Licensee, (ii) Licensee is liquidated or dissolved, or becomes insolvent, or suffers a receiver or trustee to be appointed for it, or makes an assignment for the benefit of creditors or institutes or has instituted against it any proceeding under any law relating to bankruptcy or insolvency or the reorganization or relief of debtors, or (iii) Licensee fails to comply with any of the provisions of Section 2 or 3 of this Agreement. In the event of any termination of this Agreement, all sums owed to ACTIVEG shall become immediately due and payable without notice or demand.

Termination by Licensee. Licensee may terminate this Agreement at any time upon notice to ACTIVEG, provided, however, that ACTIVEG shall in no event be obligated to refund to Licensee any fees paid by Licensee to ACTIVEG hereunder.

5. Limited Warranty and Limitation of Liability

Performance Warranty. ACTIVEG warrants that for ninety (90) days from the date of shipment of each copy of the Licensed Software ("Warranty Period"), that copy of the Licensed Software will perform substantially in accordance with the user documentation provided by ACTIVEG relating to that copy of the Licensed Software. ACTIVEG's sole obligation under this warranty, and Licensee's sole remedy for non-conformance with this warranty shall be, at ACTIVEG's option in each case, either (a) to use reasonable efforts to correct any substantial non-conformity in accordance with the procedure set forth in Section 1 of this Agreement, or (b) upon return of the non-conforming copy of the Licensed Software, to refund the License Fee paid by Licensee for the copy of the Licensed Software and terminate the license therefor. Any replacement copy of the Licensed Software will be warranted for the remainder of the original warranty period or thirty (30) days from the date of shipment to Licensee, whichever is longer.

Media Warranty. ACTIVEG warrants that the tapes, diskettes or other media on which the Licensed Software is delivered will be free of defects in materials and workmanship under normal use during the Warranty Period. During the Warranty Period, Licensee may return defective media to ACTIVEG and it will be replaced without charge. Replacement of media shall be Licensee's sole remedy in the event of a media defect.

Limitation on Warranties. ACTIVEG shall have no liability under the foregoing warranties to anyone other than Licensee or to the extent that: (a) Licensee has failed to report in writing to ACTIVEG any defect claimed to be a non-conformance with the warranty within ninety (90) days after the shipment date, or (b) in non-conformance with the warranty has resulted from (i) accident, misuse or neglect of the Licensed Software; (ii) acts or omissions by someone other than ACTIVEG, (iii) combination of the Licensed Software with products, material or software not provided by ACTIVEG or not intended for combination with the Licensed Software; (iv) failure by Licensee to incorporate and use any Enhancement or New Release which ACTIVEG has provided to Licensee under ACSP or otherwise without additional cost, or (v) the claimed defect is in a Superseded Release of the Licensed Software. In no event may you bring any claim, action or proceeding arising out of the warranty set forth in this Section 5 more than one year after the date on which the non-conformance with the warranty occurred or was discovered. ACTIVEG does not warrant that the Licensed Software will meet Licensee's requirements or that the operation of the Licensed Software will be uninterrupted or error free or that errors in the Licensed Software will be corrected.

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AGREEMENT FOR ACTIVEG MAXIMO
MAPENGINE WEB™ GIS INTEGRATION TO THE CITY OF SEATTLE
Appendix A

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Miscellaneous

Termination of Confidential Information. Upon termination of this Agreement, for any reason, Licensee shall immediately cease using the Licensed Software and shall promptly return to ACTIVEG or destroy all copies of the Licensed Software or other Confidential Information of ACTIVEG under Licensee's control, including without limitation, all copies that are fixed or running in machines controlled by Licensee. Within ten (10) days after any such termination, Licensee will provide ACTIVEG with a written statement signed by a duly authorized officer of Licensee certifying that Licensee has complied with the foregoing sentence.

Notices. Any notices required or permitted under this Agreement shall be in writing and shall be deemed properly given if personally delivered or sent by registered States first class or certified mail (return receipt requested) postage prepaid by reputable express courier. All notices shall be addressed as set forth on the first page or to such other address as the addressee shall have furnished to the licensor in accordance with this provision. Any notices given hereunder shall be deemed to have been received on the earlier of actual receipt or three (3) days after posting in the mail or with the courier service.

Severability. If any of the provisions or portions thereof of this Agreement are determined to be invalid, illegal or unenforceable by a court of competent jurisdiction under any applicable statute or rule of law, such provisions or portions thereof shall be severed from this Agreement and the remaining provisions shall remain in full force and effect.

Independent Contractor. The relationship between ACTIVEG and Licensee shall be that of independent contractors. Nothing contained in this Agreement shall be construed to create a partnership, joint venture or agency relationship, and, notwithstanding anything else herein, neither party shall have the right to incur (and will not attempt to incur) any obligation or liability on behalf of the other party.

No Waiver/Modification. No waiver, alteration, modification or cancellation of any of the provisions of this Agreement shall be binding on ACTIVEG unless made in writing and signed by an authorized representative of ACTIVEG. ACTIVEG's failure at any time to require performance by Licensee of any provision hereof shall not affect in any way ACTIVEG's right to require such performance at any time thereafter.

Remedies. No remedy referred to in this Agreement is intended to be exclusive, but each shall be cumulative and in addition to any other remedy referred to herein or otherwise available at law, in equity or otherwise.

Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Washington, USA without regard to its principles of conflicts of laws.

Jurisdiction. The parties agree that any action with respect to this Agreement may be brought in a court of competent subject matter jurisdiction located in the State of Washington, USA and Licensee hereby submits itself to the jurisdiction and venue of such courts for the purpose of such action.

Assignment. This Agreement shall be binding upon, and inure to the benefit of, ACTIVEG and its legal representatives, successors and assigns. This Agreement and the Licensed Software to which it applies may not be assigned, sublicensed or otherwise transferred by Licensee without ACTIVEG's prior written consent.

Force Majeure. ACTIVEG shall not be liable for any delays in the performance of any of its obligations hereunder due to causes beyond its reasonable control, including, but not limited to fire, strike, war, riots, acts of any civil or military authority, acts of God, judicial action, unavailability or shortages of labor, materials or equipment, failure or delay in delivery by suppliers or delays in transportation.

Equitable Relief. The covenants and agreements of Licensee in Sections 2 and 3 of this Agreement are of a special and unique character, and Licensee acknowledges that money damages alone will not reasonably or adequately compensate ACTIVEG for any breach of such covenants and agreements. Therefore, ACTIVEG and Licensee expressly agree that in the event of the breach or threatened breach of any such covenants or agreements, in addition to other rights or remedies which ACTIVEG may have, at law, in equity or otherwise, ACTIVEG shall be entitled to injunctive or other equitable relief compelling specific performance or, and other compliance with, the terms of such Sections.

Taxes. The License Fees and any other fees due hereunder are exclusive of all federal, state, municipal and other governmental excise, sales, use, customs, value added or other taxes, fees or duties now in force or enacted in the future, including without limitation, all taxes in connection with the use, ownership and licensing of software, but excluding taxes based on ACTIVEG's income. Licensee shall pay on or before their due dates all such taxes, fees, duties and charges which arise out of or in connection with this Agreement or any license granted herein. If ACTIVEG is required at any time to pay any such tax, fee, duty or charge, Licensee will promptly reimburse ACTIVEG thereof. At ACTIVEG's discretion, any such taxes, fees and duties may be added to the price for any Licensed Software provided hereunder or may be billed separately.

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AGREEMENT FOR ACTIVEG MAXIMO
MAPENGINE WEB™ GIS INTEGRATION TO THE CITY OF SEATTLE
Appendix A

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Records Inspection. Licensee shall maintain books and records in connection with the activity under this Agreement. Such records shall include at a minimum the number of licenses purchased and being used by Licensee. Upon advance notice to Licensee,

ACTIVEG may, at its expense, audit the records of Licensee to ensure compliance with the terms of this Agreement. Any such audit shall be conducted during regular business hours at Licensee's offices and shall not interfere unreasonably with Licensee's activities. If any audit reveals that Licensee has underpaid license and/or maintenance fees to ACTIVEG, Licensee shall be invoiced for such underpaid fees based on ACTIVEG's List Price in effect at the time the audit is conducted. If the underpaid fees are in excess of five percent (5%), then Licensee shall pay ACTIVEG's reasonable costs of conducting the audit. Audits shall be made no more than twice per calendar year.

