

MEMORANDUM

TO: MAYOR AND CITY COMMISSION
FROM: CITY ATTORNEY'S OFFICE
DATE: September 18, 2017
RE: **Renewal of SELECT Program Agreement for Software Services with Bentley Systems, Inc.**

Attached hereto for your consideration is a proposed renewal of the SELECT Program Agreement between the City and Bentley Systems, Inc. (Bentley) for software services. Also included is an Addendum which modifies some of Bentley's standard terms/conditions. The Agreement seeks to renew an existing agreement initially approved by the City Commission September 15, 2005 for software, subscriptions, data, cloud offerings, documentation, maintenance and licenses. The renewal of this Agreement will support a number of the City's technology projects in the upcoming year relating to engineering services in operational and technical areas. Specifically, this engineering software is used by several City departments in the design of City assets such as roads, electric, water and wastewater utilities.

The term of this Agreement will be for a period of one (1) year, effective October 1, 2017, upon approval by the City Commission. Pursuant to the Agreement, the City and all of its departments, including Electric and Water/Wastewater, will be granted access to Bentley's core products without upfront capital purchase and maintenance costs on all software during the term of the Agreement.

The total expenses associated with this Agreement will be \$95,036 for the one (1) year term. The cost for the one (1) year term for services has been included in the FY2018 budget. The City's anticipated one (1) year expenditure, without exercising its option to renew the Agreement with Bentley for the same products/services, is estimated to be \$125,000. Without this renewal, the licenses fees would revert to standard market costs and capital purchase costs for any additional seats of software needed throughout the one (1) year term. Thus, renewal of its Agreement with Bentley represents a significant cost savings for the City.

The renewal of this Agreement will provide numerous benefits to the City such as a lower cost per unit for licensed software, substantially reduced administrative/procurement expenses, maintenance on all Bentley software deployed under this Agreement and the flexibility to deploy products when and where needed. The Agreement will be managed by the Information Technology Department.

It is recommended that the appropriate City officials be authorized to execute this renewal of the SELECT Program Agreement and corresponding Addendum for software services with Bentley.



BENTLEY SYSTEMS, INCORPORATED
SELECT PROGRAM AGREEMENT
NORTH AMERICA

Bentley SELECT®

Bentley SELECT Agreement CLA Number _____

This SELECT Program Agreement (together with all exhibits and attachments hereto as in effect from time to time, the “**Agreement**”) is made as of the Effective Date by and between Bentley Systems, Incorporated, a Delaware corporation with its principal office and place of business at 685 Stockton Drive, Exton, Pennsylvania 19341, and the subscriber identified below (“**Subscriber**”). All references herein to “**Bentley**” include Bentley Systems, Incorporated and its direct and indirect subsidiaries, including, without limitation subsidiaries created or acquired during the term hereof.

Subscriber desires to enter into this Agreement to subscribe to the Bentley SELECT® Program (“**SELECT Program**”) to acquire licensing privileges and services offered from time to time under the SELECT Program, all as more fully described in the lettered exhibits attached hereto.

Subscriber, upon signing this Agreement, is bound by the terms of this Agreement and Exhibits A, B, C and F hereto. Subscriber shall be bound by any amended or supplemental exhibit provided by Bentley upon Subscriber’s license or purchase of products or services to which such amended or supplemental exhibits apply. The lettered exhibits attached to this Agreement are incorporated herein and made a part of this Agreement, as such exhibits may be updated, amended and supplemented with additional exhibits from time to time upon thirty (30) days after delivery through electronic or other means to the Subscriber; provided, that as to particular products and services licensed or purchased hereunder, Subscriber shall be bound by the form of the exhibits in effect at the time the products or services are licensed or provided. Upon any renewal of this Agreement, the updated, amended or supplemented exhibits in effect at the time of such renewal, if any, shall be applicable to all licensing privileges and services under the SELECT Program provided from and after the date of such renewal. Notwithstanding the foregoing, unless Bentley and Subscriber agree otherwise by a writing duly executed by authorized representatives of the parties, no amendment or supplement to the exhibits to this Agreement after any perpetual license purchase shall limit or impair the rights of Subscriber under the perpetual license terms and conditions in effect at the time such license is acquired.

For definitions of the capitalized terms used in this Agreement and the Exhibits hereto, see Section 1 of the General Terms and Conditions included as Exhibit B. The term of this Agreement is set forth in the General Terms and Conditions under the caption “Term; Termination.” The terms of all Product licenses acquired hereunder shall be as set forth Exhibit A to this Agreement, and all Product licenses hereunder are subject to the termination provisions applicable to such licenses in Exhibit A to this Agreement and in the General Terms and Conditions. Subscribers may not use the licenses, services and other benefits provided under this Agreement for purposes of developing software applications for distribution outside of their organization or for providing end-user training on Bentley Products other than to internal end users. If your organization falls into either of the foregoing prohibited categories, then please contact Bentley about other programs that are better suited for your business.

BY SIGNING BELOW, SUBSCRIBER ACKNOWLEDGES THAT, THROUGH ITS AUTHORIZED REPRESENTATIVES, IT HAS READ AND UNDERSTANDS THIS AGREEMENT (INCLUDING ALL ATTACHED EXHIBITS), AGREES TO BE BOUND BY THE TERMS AND CONDITIONS CONTAINED HEREIN AND HAS THE AUTHORITY TO ENTER INTO THIS AGREEMENT. SUBSCRIBER IS NOT ENTERING INTO THIS AGREEMENT ON THE BASIS OF ANY REPRESENTATIONS NOT EXPRESSLY SET FORTH HEREIN. A FULLY EXECUTED COPY OF THIS AGREEMENT WILL BE RETURNED TO SUBSCRIBER AFTER THIS AGREEMENT IS APPROVED AND ACCEPTED BY BENTLEY.

SUBSCRIBER

BENTLEY SYSTEMS, INCORPORATED

 Company Name

 Signature

 Printed Name

 Printed Name

 Title

 Title

 E-mail Address

Address: _____

685 Stockton Drive
 Exton, Pennsylvania 19341

Telephone: _____

Telephone: 610-458-5000

Date Signed: _____

Date Signed: _____

BENTLEY SELECT PROGRAM AGREEMENT

SELECT Program Benefits

Exhibit A

Dated as of June 2014

1. General.

Subscriber agrees to purchase SELECT Program coverage for all Bentley Products licensed by Subscriber. Bentley shall provide SELECT Program services to Subscriber for all Bentley Products licensed by Subscriber, subject to the provisions of this Agreement. Subscriber may complete and submit to Bentley a supplemental form referenced by Bentley as Attachment 1 (“**Attachment 1**”), and if completed Attachment 1 shall be incorporated into this Agreement, provided that (except with respect to the duration of the initial term of the Agreement) in the event of any inconsistency between this Agreement and Attachment 1, this Agreement shall control with respect to Subscriber’s SELECT Program subscription. Any additional Bentley Products licensed by Subscriber during the term of this Agreement shall be added automatically to Subscriber’s SELECT Program coverage hereunder and the additional SELECT Program Fees will be included in Subscriber’s periodic invoices for SELECT Program services.

2. SELECT Support Services

2.01. Bentley may provide SELECT support services to Subscriber either directly or, at its discretion, through authorized Bentley Channel Partners. A Channel Partner’s authorization may be limited to a particular Site or Sites. Subscriber acknowledges that Channel Partners are independent contractors of Bentley, and that there is no employer/employee relationship between Bentley and its Channel Partners.

2.02. Bentley shall provide Technical Support services to Subscriber, which includes telephone, facsimile, electronic mail, and Internet based support to assist Subscribers regarding the use of Bentley Products, Passports and services (however, not to include professional services, managed services or professional training services) and reasonable efforts to respond to technical inquiries within four hours during regular business hours. The telephone portion of Technical Support services will be available seven days a week, 24 hours per day, provided that after normal business hours at a Subscriber’s regional support location, Subscriber may be required to contact another Bentley support center.

2.03. Bentley shall have no obligation to provide a response or other service hereunder if Subscriber’s technical inquiry is caused by: (a) incorporation or attachment of a feature, program, or device to a Product not approved or supplied by Bentley; (b) any nonconformance caused by accident, transportation, neglect, misuse, alteration, modification, or enhancement of a Product; (c) failure to provide a suitable installation environment; (d) use of the Product other than as described in its Documentation or as authorized under this Agreement; or (e) failure to incorporate any Update previously released by Bentley. Bentley shall offer SELECT support services for a given version of a Product, for at least twelve months, or until two Upgrades have been released by Bentley, whichever occurs first.

2.04. If Subscriber experiences a production-stopping anomaly, Bentley will use good faith efforts to create an appropriate solution and deliver it electronically, or through such other means as Bentley may choose in its sole discretion.

3. Upgrades, Updates, and Platform Exchanges

3.01. Subscriber shall have the right to receive, at no additional charge (other than shipping and handling, if applicable), Upgrades and Updates for each Product covered by the SELECT Program as such Upgrades and Updates become available. Subscriber shall also have the right to exchange, at no additional charge (other than shipping and handling, if applicable), a license for a Product (other than a Subscription License) covered by the SELECT Program on one

platform for an equivalent license for such Product on another platform (a “**Platform Exchange**”).

3.02. Such Upgrade, Update, or Platform Exchange may be in downloadable electronic form, or any other means as Bentley may choose from time to time in its sole discretion. In order for Subscriber to be eligible to receive Upgrades, Updates, or Platform Exchanges, Bentley may require that Subscriber first return the Product (or component thereof, such as hardware lock or CD-ROM) subject to the Upgrade, Update, or Platform Exchange directly to Bentley.

3.03. If Subscriber receives an Upgrade and uses such Upgrade then Subscriber’s aggregate use of the Upgrade and the original Product subject to such Upgrade may not exceed the number of licenses purchased for such Product. If Subscriber receives a Platform Exchange then Subscriber must immediately cease using the original Product subject to such Platform Exchange.

4. Online SELECT.

4.01. Bentley may, from time to time, offer Subscriber services, including, but not limited to, certain software fulfillment, support, social media, and training services, to its SELECT subscribers via the internet, or through technology developed in the future (collectively “**Online SELECT**”). Subscriber may only use an Online SELECT service in accordance with and subject to this Agreement, and any terms of use for the applicable Online SELECT service, which terms supplement this Agreement. In the event of a conflict with any Online SELECT service terms of use, the terms of this Agreement shall control.

4.02. Bentley shall have the sole right to control the format, content, delivery and all other aspects of Online SELECT. Bentley specifically reserves the right at any time to modify the information provided through Online SELECT, discontinue any portion of Online SELECT, or terminate any Online SELECT service altogether without providing Subscriber any prior notice.

5. Product Licensing

5.01. General.

(a) **Existing Licenses.** Bentley and Subscriber agree that the terms of this Agreement shall amend and supplement all license agreements existing as of the Effective Date for Products (including prior versions thereof). In the event of a conflict between the terms of any license agreements existing as of the Effective Date for Products and the terms of this Agreement, the terms of this Agreement shall control until termination of this Agreement, whereupon, with respect to any perpetually licensed Products, the terms of the license agreement provided with the Product upon its delivery to Subscriber shall govern Subscriber’s use of any such Product.

(b) **Future Licenses.** In the event that Subscriber licenses a copy of a Product, Subscriber’s use of such Product shall be governed by the terms of the license agreement provided with the Product upon its delivery to Subscriber, as amended or supplemented by the terms of this Agreement in effect at the time of such licensing. Subscriber hereby agrees that its downloading or use of any Products delivered to it shall constitute Subscriber’s acceptance of the license agreement terms provided with the Product upon its delivery to Subscriber. In the event of a conflict between the terms of the license agreement provided with a Product upon its delivery to Subscriber and the terms of this Agreement in effect at the time such Product is purchased, the terms of this Agreement in effect at the time such Product is purchased shall control for the term of this Agreement. However, with respect to any perpetually licensed Product, upon any termination of this Agreement the terms and

BENTLEY SELECT PROGRAM AGREEMENT

SELECT Program Benefits

Exhibit A

Dated as of June 2014

conditions of the license agreement provided with the Product upon its delivery to Subscriber shall govern Subscriber's use of the Product.

- (c) **No Transfers.** Subject to Section 8.01 of Exhibit B, Subscriber shall not sell, transfer, assign, grant a security interest in, sublicense, loan, lease or rent any of its rights under its licenses to use Bentley Products without the prior written consent of Bentley. If consent is given by Bentley, Subscriber may permanently transfer a license to another end user, provided all software and related documentation and media covered by such license are transferred to the transferee end user and the Subscriber does not retain any copies thereof, and provided further that the transferee end user agrees in writing with Bentley to cover all of its licensed Products under the SELECT Program and be bound by the terms of the license agreement then in effect for such Product.

5.02. **Licensing Programs.** Unless otherwise specifically set forth herein, Bentley Products are licensed on a per Device basis as set forth in the applicable end user license that ships with the Bentley Product. The following licensing programs are not available for all Products; please check Online SELECT to see which Products are Eligible Products for the respective licensing programs. Bentley reserves the right to add or remove any Product from eligibility for licensing under the following programs. Bentley reserves the right to discontinue any of its licensing programs at any time, without notice to Subscriber. However, until renewal or termination of this Agreement, such termination of any licensing program shall not affect the licenses for Products previously granted pursuant to such terminated licensing program. For purposes of clarity, all licenses previously granted pursuant to a terminated licensing program shall terminate upon the renewal or termination of this Agreement.

- (a) **Pooled Licensing.** Bentley hereby grants to Subscriber a limited non-transferable non-exclusive right to use Eligible Products for Production Use only on multi-user computer networks, and to install a licensed Product on more than one computer or hard disk.

Subscriber shall allow the management and monitoring of pooled licensing usage by SELECTservices. Subscriber acknowledges that the continuing operation of Bentley Products under pooled licensing is predicated upon Usage Data communications between Bentley Products and SELECTservices. Subscriber hereby agrees not to interfere with the transmission to Bentley of accurate Usage Data by installed Products.

In the alternative, upon Bentley's consent, Subscriber may install and implement Bentley's SELECTserver or such other Bentley licensing technology as may be required by Bentley from time to time to monitor usage. Subscriber agrees and acknowledges that, in such instance, Bentley's SELECTserver will from time to time transmit to Bentley the Usage Data files generated by SELECTserver or such other Bentley licensing technology. Subscriber agrees to allow the above transmission to Bentley.

Bentley shall establish time intervals and measure the number of unique Devices on which Subscriber Uses each Product per Site per interval ("**Pooled Usage**"). The interval over which Pooled Usage is measured is subject to change and may vary per Eligible Product, as well as other criteria. Further information on the duration of intervals and measurement of Pooled Usage for Eligible Products is published via Online SELECT.

SELECT Program coverage of licensed Products entitles Subscriber to Pooled Usage in each interval at each Site up to

the number of copies of such Product for which Subscriber has licenses at such Site.

For purposes of clarity, the right to pool licenses of Products granted to Subscriber pursuant to this Section 5.02(a) of Exhibit A shall terminate in the event of any termination or non-renewal of this Agreement, notwithstanding that the subject Products may be licensed on a perpetual basis.

- (b) **Quarterly Term Licenses.** If, during a calendar quarter, the number of unique Devices at a Subscriber Site that utilize a Product in any interval exceeds the number of copies of such Product for which Subscriber has licenses at the Site ("**Excess Use**"), Bentley may grant Subscriber retroactive licenses to cover Excess Use ("**Quarterly Term Licenses**") and invoice Subscriber fees per Site and per licensed Product for the peak amount of such Excess Use ("**Quarterly Term License Fees**"), where such Quarterly Term Licenses shall be effective upon Subscriber's payment of the Quarterly Term License Fees only. Quarterly Term License Fees shall be those in effect as of the start of the calendar quarter to which they apply, as calculated and published by Bentley via Online SELECT.

In the event Subscriber fails to pay Quarterly Term License Fees, Bentley may, in addition to exercising any rights provided in Section 7.02 of Exhibit B of this Agreement, i) take technical measures aimed at restricting Subscriber's capacity to engage in Excess Use and/or ii) discontinue Subscriber's grant of the right to pooled licensing pursuant to Section 5.02(a) of Exhibit A of this Agreement.

- (c) **SELECT Open Access.** Subscriber may, upon Bentley's approval, be allowed to participate in Bentley's SELECT Open Access program ("**SELECT Open Access**"). The Use of Products under SELECT Open Access requires SELECTservices and is otherwise subject to the monitoring and measuring applicable to pooled licensing as provided in Section 5.02(a) of Exhibit A.

SELECT Open Access benefits include (i) a non-exclusive, limited, revocable, non-transferable, non-assignable license to install and use for Production Use only any Eligible Products, even those for which Subscriber has not otherwise licensed any copies of such Eligible Product and (ii) User access to on-demand and virtual classroom training, as made available by Bentley under the Bentley LEARN Program, corresponding per Product to the amount of Subscriber's SELECT Open Access Use (as defined below).

Bentley shall, at the end of each calendar quarter, invoice Subscriber Quarterly Term License Fees for the peak amount of Subscriber's Pooled Usage during the quarter on a per Site per Product basis, including Excess Use of separately licensed Products ("**SELECT Open Access Use**"). Quarterly Term License Fees for SELECT Open Access Use shall be those in effect as of the start of the calendar quarter to which they apply, as calculated and published by Bentley via Online SELECT. By participating in SELECT Open Access, Subscriber hereby agrees to pay Quarterly Term License Fees for all Use of Products hereby granted, such amount, in respect of any separately licensed Products, being limited to Excess Use only.

- (d) **Portfolio Balancing.**
- (1) At least thirty (30) days prior to each anniversary of any renewal of the term of this Agreement pursuant to Section 7.01 of Exhibit B, Subscriber may, upon Bentley's approval and under the terms set forth herein, request Portfolio Balancing ("**Portfolio Balancing**"). Portfolio

BENTLEY SELECT PROGRAM AGREEMENT

SELECT Program Benefits

Exhibit A

Dated as of June 2014

Balancing allows Subscriber to exchange Eligible Product licenses Subscriber has purchased from Bentley for use on a perpetual basis (“**Perpetual Licenses**”) for licenses for other Eligible Products in substitution for a Perpetual License (“**Exchanged Portfolio Licenses**”) for use at the Site of the Perpetual Licenses under the terms of Section 6.01 of Exhibit A.

- (2) Subscriber may exchange Perpetual Licenses for Exchanged Portfolio Licenses having a total aggregate value based on the list price in effect as published by Bentley in the Country of use for perpetual license of a Product (“**Current License Price**”) that is equal to or less than the total aggregate value based on the Current License Prices for the Perpetual Licenses. Upon exchange, license rights granted by Bentley to Subscriber in respect of the Perpetual Licenses shall cease, and license rights in respect of the Exchanged Portfolio Licenses shall commence for an initial term of twelve (12) months, with by-default automatic requests for renewals of like terms to follow, unless Subscriber notifies Bentley of its election not to request a renewal term. Notwithstanding the above, upon termination of this Agreement or the Portfolio Balancing licensing program any Exchanged Portfolio License granted to Subscriber shall terminate and Subscriber’s right to use Perpetual Licenses shall be reinstated. To be eligible to participate, Subscriber must be current on all outstanding invoices for amounts owed to Bentley.
- (e) **No-Charge Licenses.** Subscriber is hereby entitled on a non-exclusive basis, without payment of license fees but otherwise subject to the terms of this Agreement, to create Production Use copies, for use only by Subscriber, of certain Eligible Products made available by Bentley from time to time and which are designated by Bentley as no-charge software. Subscriber is entitled to redistribute such Products, which are designated by Bentley as available for such redistribution, in machine readable form to third parties to which Subscriber distributes its Bentley Products files; provided that Subscriber procures each such third party’s agreement not to further redistribute such Products. Unless Bentley specifically authorizes otherwise in writing, such free licenses granted or redistributed hereunder will expire upon termination of this Agreement.
- (f) **Home Use Licenses.** Unless Subscriber notifies Bentley in writing that Subscriber’s employees shall not be entitled to obtain home use editions of a Product, Bentley will distribute upon an employee’s request made through Subscriber’s site administrator, and permit Subscriber’s employees to use, without charge, home use editions of certain Products (for which such editions are available, as designated on Online SELECT) in accordance with the terms set forth in the license agreement provided with such home use edition of a Product, as amended and supplemented by this Agreement. Restrictions on home use licenses include the following: home use licenses are not permitted to be used for Production Use or any commercial use, including training; home use licenses are not for use in Subscriber’s offices; home use licenses may not be stored on any electronic media; home use licenses must be permitted in Subscriber’s jurisdiction. The total number of home use editions available to Subscriber’s employees may not exceed the number of Subscriber’s Product licenses to which the home use editions relate. Home use editions of Products are ineligible for Technical Support even if Subscriber has purchased SELECT Program services. Subscriber shall not be responsible for ensuring compliance by its employees with the Bentley home use license, nor shall Subscriber be liable for any breaches of

such license by its employees. Such home use licenses granted hereunder will expire upon termination of this Agreement.

- (g) **Evaluation of Products.** Bentley hereby grants to Subscriber, subject to its compliance with the procedures of this Section 5.02(g) of Exhibit A, a limited non-transferable non-exclusive right to create, using Online SELECT (following the registration requirements published on Online SELECT), one (1) copy per Site of each Eligible Product solely for Evaluation Use of such Product, provided that Subscriber shall have no right to create evaluation copies of Products previously licensed by Subscriber. The duration of use of an evaluation copy shall not exceed thirty (30) days, and Bentley may provide the Product with a mechanism that will cause the Product to time out or expire after thirty (30) days. Upon the earlier of the conclusion of such (30) day evaluation period or the termination of this Agreement, Subscriber shall destroy all copies of Products created for evaluation hereunder and, upon request by Bentley, certify such destruction in writing.
- (h) **Documentation.** Bentley may, in association with Products, Passports or Cloud Offerings, make certain Documentation available to Subscriber. Documentation is Bentley Proprietary Information. Bentley hereby grants to Subscriber a limited non-transferable non-exclusive license to use such Documentation in support of Production Use.

6. Subscriptions.

Bentley makes available for purchase by Subscriber certain services and Product licenses for a specified term only. (“**Subscription**”, such term being the “**Subscription Term**”). Subscriber’s use of such Products and services under Subscription shall be governed by the terms of this Agreement, including, as applicable, Section 5.01 of Exhibit A. Subject to Section 6.02(c), Bentley will invoice Subscription Fees based on the fees charged by Bentley for such Subscription as of the start of the Subscription Term.

6.01. Subscription Licenses.

- (a) Subscriber may, upon Bentley’s approval, purchase Subscriptions to license Eligible Products in advance of Use (a “**Subscription License**”). A Subscription License entitles Subscriber to license rights in a Product for Production Use, in Object Code form and within a Country. To be eligible to participate, Subscriber must be current on all outstanding invoices for amounts owed to Bentley. Some Subscription Licenses require participation in SELECT Open Access.
- (b) Subscriber recognizes that the Products licensed under a Subscription License are provided to Subscriber for use only for the applicable Subscription Term or any renewal term. In no event will a Subscription License continue beyond the expiration or earlier termination of the SELECT Agreement under which it is granted. Subscriber recognizes that Subscription Licenses may be delivered to Subscriber with embedded Time Clocks. Subscriber agrees that Time Clocks are not considered a defect of such Subscription Licenses and releases Bentley from any and all claims, however characterized, arising from or related to Time Clocks or their operation. Subscriber may not remove or evade Time Clocks.
- (c) In the event of any inconsistency between this Section 6.01 of Exhibit A and any other Section or Exhibit of this Agreement, or between this Section 6.01 of Exhibit A and the terms and conditions in the license agreement provided with any Product that is the subject of a Subscription License, this Section 6.01 of Exhibit A shall control with respect to Subscription Licenses.

BENTLEY SELECT PROGRAM AGREEMENT

SELECT Program Benefits

Exhibit A

Dated as of June 2014

- (d) If a Subscription is designated as automatically renewing by Bentley, the Subscription Term (and each successive term) shall automatically renew at its expiration for a successive term of equal length unless either party gives notice of its election not to renew the Subscription Term at least thirty (30) days prior to the expiration of the then current term.

the license agreement provided with the SELECTserver Product, as such terms are amended or supplemented in this Agreement.

7. SELECT Program Fees

7.01. Subscriber shall pay to Bentley the applicable SELECT Program Fee in effect for each Product licensed as of the Effective Date of this Agreement. Subscriber shall pay to Bentley the applicable SELECT Program Fee in effect for each additional Product licensed during the term hereof as of the date such additional Product license is purchased. With respect to the Products licensed by Subscriber during the term of the Agreement, the fees in place as of the Effective Date, or, with respect to additional Products licensed, as of the date of such purchase, shall remain in effect for the Subscriber until the date of the next renewal of this Agreement, at which time the fees shall be changed to those charged by Bentley as of such renewal date, provided that no changes in fees for Products covered shall be effective until thirty (30) days after Subscriber receives notice of such changes.

7.02. Subscription Fees as set forth in Section 6 and Quarterly Term License Fees as set forth in Section 5.02(b) of this Exhibit A are inclusive of SELECT Program coverage and no additional fees for SELECT Program coverage shall apply for Passports utilized or Products licensed under a Subscription. Subscription Fees, including Subscription Fees for Passports, may be invoiced in conjunction with Subscriber's SELECT Program Fees.

7.03. Bentley shall initially invoice Subscriber for one (1) year of SELECT Program Fees for all Product licenses as of the Effective Date of this Agreement. Bentley shall provide Subscriber with a pro-rated annual invoice for all Product licenses purchased during the first year following the Effective Date of this Agreement. As of the first anniversary of the Effective Date of this Agreement, invoices for SELECT Program Fees for Product licenses shall be issued quarterly or annually. Invoices reflecting new Product licenses will include a prorated amount reflecting coverage of the Product under the SELECT Program during the preceding invoice period plus the full amount for the current invoice period. Bentley may modify the timing of invoicing hereunder at any time.

6.02. Passports.

- (a) A Passport (“**Passport**”) is a Subscription granting rights and benefits to a specific named User. The Subscription Term for a Passport is the twelve month term described in Section 7.01 of Exhibit B of this Agreement. Subscriber may purchase incremental Passports and assign such Passports to Users at any time during the Subscription Term. Passports are non-transferrable and cannot be pooled or shared among Users. Passports shall automatically renew on the anniversary of the Effective Date, unless Subscriber evidences to Bentley, with at least thirty (30) days’ notice, that Subscriber has revoked the prior assignment of a Passport to a particular named User.

- (b) Subscriber shall allow the management and monitoring of Passport assignment and usage, and Server Product usage, through SELECTservices. Subscriber acknowledges that the continuing availability of Passports to Users may be predicated upon communications with SELECTservices. The total number of Passports counted as assigned by Subscriber during a Subscription Term shall comprise, in addition to any renewing Passports, the number of new Passports so purchased or assigned, including each unique new User recorded in Subscriber's SELECTservices Usage Data files pursuant to this Section 6.02(c), during the Subscription Term.

- (c) Subscriber shall pay to Bentley Subscription Fees for each Passport purchased or assigned by Subscriber as of the start of the Subscription Term. Bentley may also invoice Subscription Fees for any additional Passports purchased or assigned by Subscriber during the Subscription Term. For Passports purchased or assigned after the start of a Subscription Term, the Subscription Fees shall be those as published by Bentley as of the date Subscriber purchases or assigns such Passports.

- (d) Bentley offers Passports granting license rights and access to services. These Passports include the right for an authorized User to run Passport-enabled offerings (including Eligible Products and other client applications and mobile apps) and to connect to and access information and collaborate on an unlimited number of projects, whether those projects are hosted i) on a Server Product deployed behind Subscriber's firewall, ii) on a Server Product licensed by an external organization, or iii) by Bentley as a cloud-based service. The parties acknowledge and agree that an External User may be permitted to access Server Products licensed by Subscriber using such a Passport owned by that External User.

- (e) Bentley further offers Visas (“**Visas**”), which are Subscriptions granting a User with a Passport the right to access specified incremental services during the Subscription Term of the Passport. A list of available Bentley Visas may be found on Online SELECT.

6.03. **SELECTservices.** Subject to the terms of this Agreement, Subscriber may, upon Bentley's approval, and at no charge, be granted a Subscription to SELECTservices to monitor and manage Subscriber's use of Bentley Products and Passports. In the alternative, upon Bentley's approval, Subscriber may receive a Subscription License for Bentley's SELECTserver Product (or such other server-based license management technology that Bentley may offer). The terms of Subscriber's use of the SELECTserver Product shall be as set forth in

BENTLEY SELECT PROGRAM AGREEMENT

General Terms and Conditions

Exhibit B

Dated as of June 2014

1. Definitions.

The capitalized words, terms and phrases in this Agreement shall have the meanings set forth below:

- 1.01. **“Agreement”** means the SELECT Program Agreement executed by Bentley and the Subscriber and all exhibits, attachments and amendments as in effect from time to time.
- 1.02. **“Bentley Products”** or **“Products”** mean the software products, data and other materials, previously or hereafter (including software products, data and other materials acquired by Bentley during the term of this Agreement) distributed by Bentley through delivery mechanisms determined in Bentley’s sole discretion (including but not limited to distribution via Online SELECT through download or by ordering through CD format) that Bentley makes available to Subscriber typically in Object Code form only, for licensing hereunder, including Updates and Upgrades thereto.
- 1.03. **“Channel Partner”** or **“Bentley Channel Partner”** means individuals and companies who are authorized by Bentley to provide SELECT support services as set forth in Exhibit A, Section 2.
- 1.04. **“Country”** means the country: (i) where the Product is first obtained from Bentley or a Channel Partner; or (ii) specified in the purchase order for which a Production Use copy of the Product may be made or the Product is authorized to be used.
- 1.05. **“Device”** means a single personal computer, workstation, terminal, hand held computer, pager, telephone, personal digital assistant, server, or other electronic device.
- 1.06. **“Distribute”** means distribution by Bentley through all means now known or hereinafter developed.
- 1.07. **“Documentation”** means descriptive, interactive or technical information resources pertaining to Products, Passports, or Cloud Offerings..
- 1.08. **“Effective Date”** means the date that this Agreement is accepted by Bentley as indicated on the first page of this Agreement.
- 1.09. **“Eligible Product”** means a Bentley Product eligible under a licensing program or Subscription, as designated by Bentley and published on Online SELECT, absent of which a Product is ineligible for any such program or Subscription.
- 1.10. **“Evaluation Use”** means the use of a Bentley Product solely for internal evaluation of such Product. Evaluation Use expressly excludes use in connection with ongoing projects, use for compensation of any kind, and Production Use.
- 1.11. **“External User”** means any User (not an organization) who is not: (i) one of Subscriber’s full-time, part-time, or temporary employees; or (ii) agency temporary personnel or an independent contractor on assignment at Subscriber’s place of business or work-site.
- 1.12. **“Object Code”** means the Products in a machine readable form that is not convenient to human understanding of the program logic, and that can be executed by a computer using the appropriate operating system without compilation or interpretation. Object Code specifically excludes source code.
- 1.13. **“Online SELECT”** shall be defined as set forth in Exhibit A, Section 4.01 herein.
- 1.14. **“Order”** shall be defined as set forth in Exhibit C, Section 1.01 herein.
- 1.15. **“Passport”** shall be defined as set forth in Exhibit A, Section 6.02(a) herein.
- 1.16. **“Platform Exchange”** shall be defined as set forth in Exhibit A, Section 3.01 herein.
- 1.17. **“Pre-Existing Works”** shall be defined as set forth in Exhibit C, Section 1.08 herein.
- 1.18. **“Production Use”** means use of a Bentley Product in Object Code form by a User or Device, as applicable, solely for Subscriber’s internal production purposes, and excludes External Users (except with respect to use of Passports and access of Server Products pursuant to Exhibit A, Section 6.02 herein).
- 1.19. **“Proprietary Information”** shall be defined as set forth in Exhibit B, Section 3.06(a) herein.
- 1.20. **“SELECT Program Fee”** means the fee for SELECT Program services as published from time to time in Bentley’s sole discretion.
- 1.21. **“SELECTserver”** means Bentley’s server-based licensing technology.
- 1.22. **“SELECTservices”** means Bentley’s cloud-based licensing service.
- 1.23. **“Serial Number”** means a unique number issued by Bentley for identification of a particular copy of a Product, which number shall be registered to Subscriber and assigned by Subscriber to a particular copy of such Product.
- 1.24. **Server Product”** means a Product that resides on a server and provides functionality that Users access by connecting to the server using client applications or mobile apps.
- 1.25. **“Site”** means one or more discrete geographic locations at which Subscriber Uses or manages the operation of Products within the geographic boundaries of a single Country.
- 1.26. **“Subscriber”** shall be defined as set forth on the front page of this Agreement, and with respect to Use of Products the term **“Subscriber”** shall refer to: (i) one of Subscriber’s full-time, part-time, or temporary employees; or (ii) agency temporary personnel or an independent contractor engaged in Production Use and working under Subscriber’s direct supervision and control.
- 1.27. **“Subscription Fee”** means the fee for a Subscription as published from time to time in Bentley’s sole discretion.
- 1.28. **“Subscription License”** shall be defined as set forth in Exhibit A, Section 6.01(a) herein.
- 1.29. **“Subscription Term”** shall be defined as set forth in Exhibit A, Section 6 herein.
- 1.30. **“Technical Support”** means telephone, facsimile, Internet and electronic mail based support to assist a subscriber to the SELECT Program as described in Exhibit A, Section 2.02 of this Agreement.
- 1.31. **“Time Clocks”** means copy-protection mechanisms, or other security devices which may deactivate Products or Passports, including Bentley’s SELECTserver, after termination or expiration of the Agreement, any applicable Subscription Term or any applicable renewal term.
- 1.32. **“Update”** means a maintenance release of a Product.

BENTLEY SELECT PROGRAM AGREEMENT

General Terms and Conditions

Exhibit B

Dated as of June 2014

- 1.33. **“Upgrade”** means a commercial release of a Product which has substantial added functionality over the Product it is intended to replace.
- 1.34. **“Usage Data”** means such data or information as Bentley may collect relating to Subscriber’s installation, access or use of Products, Product features and functionality, Cloud Offerings (as defined in Exhibit F, Section 1(d)), Passports, Online SELECT and other Bentley services.
- 1.35. **“Use”** (whether or not capitalized) means utilization of the Product or Passport by an individual.
- 1.36. **“User”** means an individual person.
- 1.37. **“Work”** shall be defined as set forth in Exhibit C, Section 1.01 herein.
- 1.38. **“Work Product”** shall be defined as set forth in Exhibit C, Section 1.01 herein.
- 2. Payment of Bentley Invoices.**
- 2.01. **Payment Terms.** Subscriber shall pay each Bentley invoice for all Passports, Product licenses and services provided hereunder within thirty (30) days from the date of such invoice. Interest shall accrue on delinquent payments of such invoices at the rate of one and one-half percent (1.5%) per month or the highest rate permitted by applicable law, whichever is less. In the event any payment hereunder is past due, Bentley, at its discretion, may suspend or, after notice of such overdue payment and a thirty (30) day period to cure, terminate Subscriber’s services, rights, and licenses provided under this Agreement.
- 2.02. **Taxes.** Subscriber shall pay to Bentley all levied taxes that Bentley is required under applicable law to collect from Subscriber by reason of the transactions contemplated by this Agreement, including, but not limited to sales, use, occupation, value added, excise, and property taxes (except for taxes based on Bentley’s net income). If Subscriber is obligated under an applicable law to withhold or deduct taxes from any payment of SELECT Program Fees to Bentley, Subscriber shall furnish to Bentley official receipts evidencing Subscriber’s payment of such taxes.
- 2.03. **Local Price and Currency.** Calculation and payment of the SELECT Program Fee or any separate price for all Passports, Products and services hereunder shall be based on the local price and local currency of the Subscriber’s Site where such Passport, Product or service is used.
- 2.04. **Records; Audit.** Subscriber shall maintain complete and accurate records of Product licenses acquired prior to the date of this Agreement and its creation and use of Passports and Products hereunder to permit Bentley to determine whether Subscriber has complied with its obligations hereunder. These records shall include the location and identification of the Subscriber hardware on which Subscriber uses each copy of the Products and identify the Users to whom Subscriber has assigned the Passports. If Bentley suspects Usage Data is incomplete, inaccurate or indicative of non-compliance with Subscriber’s granted rights, Bentley may request, and Subscriber shall, upon seven (7) days advance written notice by Bentley, permit, reasonable inspection and copying of such records by Bentley or a third-party auditor retained by Bentley.
- 3. Intellectual Property Rights**
- 3.01. **Title; Reservation of Rights.** Subscriber acknowledges and agrees that:
- (a) The Products, including the Documentation for each Product, and any information which Subscriber obtains through the SELECT Program or the use of Online SELECT or any other means of electronic transmission, contain proprietary information of Bentley, its licensors or other suppliers, and are protected under United States copyright laws, other applicable copyright laws, other laws relating to the protection of intellectual property, and international treaty provisions;
- (b) The entire right, title and interest in and to the Products, the Documentation, any information Subscriber obtains through the SELECT Program or the use of Online SELECT or any other means of electronic transmission, and all associated intellectual property rights, shall remain with Bentley or its licensors;
- (c) The Products are licensed, not sold, and title to each copy of the Products shall remain with Bentley or its licensors, and shall not pass to Subscriber; and
- (d) Bentley retains all rights not expressly granted.
- 3.02. **Source Code.** Subscriber shall have no right hereunder to receive, review, use or otherwise have access to the source code for the Products.
- 3.03. **Copyright Notices.** Subscriber shall reproduce and include on all copies of the Products created by Subscriber all copyright notices and proprietary legends of Bentley or its licensors as they appear in or on the original media containing the Products supplied by Bentley.
- 3.04. **Usage Data.** Subscriber agrees and acknowledges that Bentley will from time to time collect Usage Data and that all Usage Data shall be owned by Bentley and deemed Bentley Proprietary Information. Subscriber agrees not to alter or interfere with the collection by Bentley of accurate Usage Data.
- 3.05. **Reverse Engineering.** Subscriber may not decode, reverse engineer, reverse assemble, reverse compile, or otherwise translate the Products or Documentation except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation. To the extent that Subscriber is expressly permitted by law to undertake any of the activities listed in the previous sentence, Subscriber will not exercise those rights until it has provided Bentley with thirty (30) days prior written notice of its intent to exercise such rights.
- 3.06. **Proprietary Information.**
- (a) Subscriber understands and agrees that Bentley may, in connection with the provision of Passports, Products and services hereunder, disclose to Subscriber confidential, proprietary and technical information pertaining to Bentley Products and to Bentley’s technology and business practices (collectively **“Proprietary Information”**). Subscriber agrees to treat all Proprietary Information in accordance with this Section 3.06 of Exhibit B.
- (b) Subscriber shall maintain the confidentiality of all Proprietary Information. Subscriber shall not reproduce or copy Proprietary Information except as permitted in this Agreement or as may be expressly authorized in writing in advance by Bentley. All such copies shall be marked by Subscriber as proprietary and confidential information.
- (c) Subscriber shall only use Proprietary Information in furtherance of this Agreement, and may disclose Proprietary Information only to those employees required to have knowledge of same to perform their duties pursuant to this Agreement. Subscriber

BENTLEY SELECT PROGRAM AGREEMENT

General Terms and Conditions

Exhibit B

Dated as of June 2014

shall not disclose or make Proprietary Information available to any third party at any time.

- (d) Subscriber shall treat Proprietary Information with the same degree of care as it uses to protect its own confidential information, and in no case less than a reasonable degree of care.
- (e) Upon the termination or non-renewal of this Agreement, Subscriber shall return to Bentley or, if so requested, destroy all Proprietary Information in its possession.
- (f) Subscriber shall have no obligation of confidentiality with respect to any Proprietary Information that (i) has entered the public domain other than through a breach of this Agreement, (ii) has been rightfully obtained by Subscriber from a third party with no obligation of confidentiality, or (iii) is previously known by Subscriber as demonstrated by clear and convincing evidence.
- (g) Subscriber shall promptly inform Bentley upon knowledge of any actual or potential unauthorized use or disclosure of the Proprietary Information.

3.07. **No Benchmarks.** Subscriber may not disclose the results of any Product testing, including but not limited to benchmarks, to any third party without first obtaining Bentley's written consent to do so.

4. Limited Warranty; Limitation of Remedies and Liability

4.01. **Limited Warranty to Subscriber.** Except for Products licensed under Section 5.02(e), Section 5.02(f) or Section 5.02(g) of Exhibit A hereof, which are provided to Subscriber "AS-IS" and without warranty of any kind, Bentley hereby warrants for the benefit only of Subscriber that (a) for a period of ninety (90) days ("**Warranty Period**") from the date of delivery to Subscriber of a Serial Number or Product, as the case may be, the Product shall, under normal use, operate in substantial conformance with the functional specifications set forth in the Documentation applicable to such Product, and (b) for a period of ninety (90) days from the date of delivery, other products and materials furnished by Bentley to Subscriber shall, under normal use, operate in substantial conformance with the Bentley documentation applicable to such products and materials. If any modifications, enhancements or changes are made by Subscriber or at Subscriber's direction to the Products; if the Products are reverse-engineered, decompiled or disassembled; or if Subscriber breaches the terms of this Agreement, then the warranties in this section shall be immediately terminated. This limited warranty gives Subscriber specific legal rights, Subscriber may have other rights which may vary from state/jurisdiction to state/jurisdiction.

4.02. **Exclusion of Warranties.** THE WARRANTIES STATED IN SECTION 4.01 ARE BENTLEY'S SOLE AND EXCLUSIVE WARRANTIES PERTAINING TO THE PRODUCTS, SELECT SUPPORT SERVICES AND OTHER MATERIALS AND SERVICES LICENSED, DELIVERED OR OTHERWISE FURNISHED BY BENTLEY UNDER THIS AGREEMENT. BENTLEY DOES NOT WARRANT THAT THE PRODUCTS, SELECT SUPPORT SERVICES, OR ANY OTHER SERVICE OR MATERIALS WILL MEET SUBSCRIBER'S REQUIREMENTS, BE FREE FROM VIRUSES OR OPERATE UNINTERRUPTED OR ERROR FREE. BENTLEY HEREBY DISCLAIMS ALL OTHER WARRANTIES EITHER STATUTORY, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES AGAINST NON-INFRINGEMENT AND THE IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE. THESE EXCLUSIONS MAY NOT APPLY TO SUBSCRIBER AS SOME STATES/JURISDICTION DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES.

4.03. **Exclusive Remedy.** The entire liability of Bentley and the sole and exclusive remedy of Subscriber for claims under Section 4.01 of this Exhibit B shall be, in Bentley's sole and absolute discretion, (i) to repair or replace a Product or other materials in breach of the foregoing warranties, (ii) to advise Subscriber how to achieve the same functionality with the Product as described in the Documentation through a procedure different from that set forth in the Documentation, or (iii) to return the purchase price or fees paid therefore, where written notice of such breach, specifying the defect, is furnished to Bentley during the Warranty Period. Repaired, corrected, or replaced Products and Documentation shall be covered by this limited warranty for ninety (90) days after the date: (a) of shipment to Subscriber of the repaired or replaced Products and Documentation, or (b) Bentley advised Subscriber how to operate the Products so as to achieve the functionality described in the Documentation.

4.04. **Exclusion of Damages.** IN NO EVENT SHALL BENTLEY OR ITS LICENSORS AND SUPPLIERS BE LIABLE TO SUBSCRIBER FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, REGARDLESS OF THE NATURE OF THE CLAIM, INCLUDING WITHOUT LIMITATION LOST PROFITS, COSTS OF DELAY, INTERRUPTION OF BUSINESS, LOSS OF USE, INABILITY TO ACCESS ONLINE SERVICES, ANY FAILURE OF DELIVERY, COSTS OF LOST OR DAMAGED DATA OR DOCUMENTATION, OR LIABILITIES TO THIRD PARTIES ARISING FROM ANY SOURCE, EVEN IF BENTLEY HAS BEEN ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES OR CLAIMS. BECAUSE SOME STATES/JURISDICTIONS DO NOT ALLOW FOR THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY TO SUBSCRIBER.

4.05. **Disclaimer.** Subscriber acknowledges that the Products are not fault-tolerant and have not been designed, manufactured or intended for use and will not be used in the development of weapons of mass destruction, as on-line control equipment in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, direct life support machines, or weapons systems, in which the failure of the Products could lead directly to death, personal injury, or severe physical or environmental damage. Subscriber further acknowledges that the Products are not substitutes for Subscriber's professional judgment, and accordingly, neither Bentley nor its licensors or suppliers are responsible for Subscriber's use of the Products or the results obtained from such use. The Products are intended only to assist Subscriber in its business, and are not meant to be substitutes for Subscriber's independent testing and verification of stress, safety, utility or other design parameters.

4.06. **Limitation of Bentley Liability.** IN THE EVENT THAT, NOTWITHSTANDING SECTIONS 4.01, 4.02, 4.03, 4.04 AND 4.05 OF THIS EXHIBIT B, BENTLEY IS FOUND LIABLE FOR DAMAGES BASED ON ANY BREACH, DEFECT, DEFICIENCY OR NON-CONFORMITY IN A PRODUCT, IN SELECT SUPPORT SERVICES, OR IN ANY OTHER SERVICE OR MATERIALS, WHETHER IN CONTRACT, TORT OR OTHERWISE, AND REGARDLESS OF WHETHER ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE BY LAW, BENTLEY'S CUMULATIVE LIABILITY HEREUNDER SHALL NOT EXCEED THE PRICE PAID BY SUBSCRIBER FOR (i) SUCH PRODUCT, (ii) A ONE-YEAR SUBSCRIPTION TO THE SELECT PROGRAM, OR (iii) SUCH OTHER DEFECTIVE SERVICE OR MATERIALS, AS THE CASE MAY BE. THE PROVISIONS OF THIS AGREEMENT ALLOCATE THE RISKS BETWEEN BENTLEY AND

BENTLEY SELECT PROGRAM AGREEMENT

General Terms and Conditions

Exhibit B

Dated as of June 2014

SUBSCRIBER. BENTLEY'S PRICING REFLECTS THIS ALLOCATION OF RISK AND THE LIMITATION OF LIABILITY SPECIFIED HEREIN.

4.07. **Indemnification by Bentley.**

- (a) Bentley shall pay any damages finally awarded against Subscriber based on a claim against Subscriber that a Product which is developed and owned by Bentley infringes a third party's copyright under the laws of a Berne Convention signatory country, or results in a misappropriation of a third party's trade secret, in the Country where Subscriber has been authorized to place the Product subject to such claim into Production Use, if Subscriber provides to Bentley: (a) prompt written notice of any such claim, (b) all available information and assistance, and (c) the opportunity to exercise sole control of the defense and settlement of any such claim.
- (b) Bentley shall also have the right, at its expense, either to procure the right for Subscriber to continue to use the Product or to replace or modify such Product so that it becomes non-infringing. If neither of the foregoing alternatives is available on terms that Bentley, in its sole discretion, deems desirable, Subscriber shall, upon written request from Bentley, return to Bentley the allegedly infringing Product, in which event Bentley shall refund to Subscriber the price paid by Subscriber for each copy of such returned Product, less twenty percent (20%) for each elapsed year since the commencement of the license for such copy. In no event shall Bentley's liability under this subsection (b) to Subscriber exceed the license fees paid by Subscriber for the allegedly infringing Product.
- (c) Bentley shall have no liability and this indemnity shall not apply if the alleged infringement is contained in a Product which is not developed or owned by Bentley or is due to modification of the Product by Subscriber or the combination, operation or use of a Product with other software that does not originate from Bentley or if Subscriber is in breach of this Agreement. Bentley shall also have no liability, and this indemnity shall not apply, for the portion of any claim of infringement based on use of a superseded or altered release of a Product if the infringement would have been avoided by the use of a current, unaltered release of the Product.

This Section 4.07 sets forth Subscriber's sole remedy for intellectual property infringement.

5. **Export Controls.**

The Products have been manufactured or developed in the United States of America and accordingly may be subject to U.S. export control laws, regulations and requirements. Regardless of any disclosure made by Subscriber to Bentley of an ultimate destination of the Products, Subscriber must not export or transfer, whether directly or indirectly, the Products, or any portion thereof, or any system containing such Products or portion thereof, to anyone outside the United States (including further export if Subscriber took delivery of the Products outside the United States) without first complying strictly and fully with all export controls that may be imposed on the Products by the United States Government or any country or organization of nations within whose jurisdiction Subscriber uses the Products. The countries subject to restriction by action of the United States Government are subject to change, and it is Subscriber's responsibility to comply with the United States Government requirements as they may be amended from time to time. Subscriber shall indemnify, defend and hold Bentley harmless for any breach of its obligations pursuant to this Section.

6. **U.S. Government Restricted Rights.**

If the Products are acquired for or on behalf of the United States of America, its agencies and/or instrumentalities ("U.S. Government"), it is provided with restricted rights. The Products and accompanying documentation are "commercial computer software" and "commercial computer software documentation," respectively, pursuant to 48 C.F.R. 12.212 and 227.7202, and "restricted computer software" pursuant to 48 C.F.R. 52.227-19(a), as applicable. Use, modification, reproduction, release, performance, display or disclosure of the Products and accompanying documentation by the U.S. Government are subject to restrictions as set forth in this Agreement and pursuant to 48 C.F.R. 12.212, 52.227-19, 227.7202, and 1852.227-86, as applicable.

7. **Term; Termination**

- 7.01. **Term.** This Agreement and Subscriber's SELECT Program subscription shall become effective on the Effective Date, and shall continue for an initial term of twelve (12) months, and shall automatically renew for terms of like tenure unless either party gives notice of its election to not renew the term at least thirty (30) days prior to the expiration of the then-current term.
- 7.02. **Termination for Material Breach.** Either party may, at its option, terminate this Agreement in the event of a material breach of this Agreement by the other party. Any such termination may be effected only through a written notice to the other party, specifically identifying the breach or breaches on which termination is based. Following receipt of such notice, the party in breach shall have twenty-one (21) days to cure such breach or breaches, and this Agreement shall terminate in the event that such cure is not made by the end of such period; provided, however, Bentley shall have the right to terminate this Agreement immediately if Subscriber breaches any of its obligations under Section 3 of this Exhibit B. The failure of Subscriber to pay an outstanding invoice of Bentley shall always constitute a material breach of this Agreement.
- 7.03. **Insolvency.** If, under applicable insolvency laws, Subscriber becomes unable to pay its debts or becomes insolvent or bankrupt or makes arrangements with its creditors, or otherwise goes into liquidation, administration or receivership, then Bentley shall have the right to terminate this Agreement immediately by written notice.
- 7.04. **Consequences of Termination.** Upon the termination of this Agreement for any reason, all of the rights and licenses granted to Subscriber in this Agreement shall terminate immediately. With respect to any perpetually licensed Products, the terms and conditions set forth in the license agreement delivered with such Products shall govern Subscriber's use of such Products. Subscriber shall immediately discontinue use of any Online SELECT services.
- 7.05. **Reinstatement Following Termination.** Following a termination of the SELECT Program, Subscriber may reinstate such services only if Bentley consents to such reinstatement and Subscriber pays to Bentley, in advance, a SELECT reinstatement fee, in an amount to be determined in Bentley's sole discretion, such amount not to exceed the amount of all fees that would have accrued and been payable, excluding discounts, for the period between the date of termination and the date of reinstatement.

8. **Miscellaneous.**

- 8.01. **Assignment.** Subscriber shall not assign this Agreement or delegate its duties hereunder without prior written consent by Bentley. For purposes of this Agreement, a change in control of Subscriber shall be considered an assignment for which Bentley's prior written consent is hereby granted provided that the surviving entity from such change in control must enter into a SELECT Agreement. This Agreement may be assigned by Bentley to any successor in interest to Bentley's

BENTLEY SELECT PROGRAM AGREEMENT

General Terms and Conditions

Exhibit B

Dated as of June 2014

business or to any direct or indirect wholly-owned subsidiary of Bentley Systems, Incorporated. Any purported assignment in violation of this provision shall be void and without effect.

the American Arbitration Association. The decision of the arbitrator shall be final and binding on the parties, and the judgment upon the award rendered by the arbitrator shall be enforceable in any court of competent jurisdiction. Each party shall bear its own attorney's fees, costs, and expenses incurred in such arbitration.

8.02. **Entire Agreement.** This Agreement, together with the Exhibits and signed Amendments, if any, incorporate the entire agreement of the parties and supersede and merge all prior oral and written agreements, discussions and understandings between the parties with respect to the subject matter hereof. The terms and conditions of this Agreement and of the applicable Bentley confirmation shall apply to each order accepted or shipped by Bentley hereunder. Any additional or different terms or conditions appearing on a purchase order issued by Subscriber hereunder, even if Bentley acknowledges such terms and conditions, shall not be binding on the parties unless both parties expressly agree in a separate writing as provided under Section 8.03 of this Exhibit B.

8.11. **Independent Contractor.** Bentley's relationship with Subscriber for all purposes hereunder shall be that of an independent contractor and nothing herein shall be construed as creating, at any time, an employer and employee relationship between the parties.

8.12. **Change of Ownership.** Subscriber shall provide Bentley with sixty (60) days advance written notice of any changes in its ownership or location.

8.13. **Headings.** The headings in this Agreement are intended solely for convenience of reference and shall not affect the meaning or interpretation of this Agreement.

8.03. **Amendments.** Except as otherwise contemplated herein with respect to updating, amending and supplementing the exhibits, this Agreement may only be amended or modified by a writing duly executed by authorized representatives of the parties, provided, however, that any additional or different terms or conditions appearing on a purchase order, even if required to be acknowledged by Bentley, shall not be binding on the parties.

8.04. **Notices.** Notices under this Agreement shall be made or given as of the date of either hand delivery or mailing to such party, if sent prepaid certified mail or next day air delivery to the address set forth on the first page of this Agreement. All notices under this Agreement shall be addressed, if to Bentley, to its General Counsel, and if to Subscriber, to its authorized representative identified in this Agreement or in a subsequent notice to Bentley.

8.05. **Force Majeure.** Bentley shall not be liable for failure to fulfill the terms of this Agreement due to fire, strike, war, government regulations, acts of God, labor disturbances, acts of terrorism or other causes which are unavoidable and beyond its control.

8.06. **Waiver.** The failure of either party to insist upon any of its rights under this Agreement upon one or more occasions, or to exercise any of its rights, shall not be deemed a waiver of such rights on any subsequent occasions.

8.07. **Survival.** The covenants contained in this Agreement which, by their terms, require or contemplate performance by the parties after the expiration or termination of the Agreement (including, but not limited to, Sections 5.01(a), (b), (c) and (d) and 7.01 of Exhibit A, Sections 1, 2, 3, 4, 5, 6, 7.04, 7.05 and 8 of Exhibit B, and Sections 1.06, 1.07, 1.08, 1.09, 1.10, 1.11, 1.12, 1.14, 1.16 and 1.17 of Exhibit C) shall be enforceable notwithstanding said expiration or termination.

8.08. **Severability.** The provisions of this Agreement shall be severable and the invalidity or unenforceability of any one provision shall not affect any other unless otherwise noted.

8.09. **Governing Law.** This Agreement shall be governed by, interpreted, and enforced in accordance with the laws of the Commonwealth of Pennsylvania, without regard to conflicts of law provisions. To the maximum extent permitted by applicable law, the parties agree that the provisions of the United Nations Convention on Contracts for the International Sale of Goods, as amended, and of the Uniform Computer Information Transactions Act, as it may have been or hereafter may be in effect in any jurisdiction, shall not apply to this Agreement.

8.10. **Arbitration.** In the event of any dispute, controversy or claim between the parties arising under this Agreement, the parties shall submit to binding arbitration before a single arbitrator in Philadelphia, Pennsylvania in accordance with the Commercial Arbitration Rules of

BENTLEY SELECT PROGRAM AGREEMENT

Professional Services

Exhibit C

Dated as of June 2014

1. Professional Services.

- 1.01. Subscriber may request professional services from time to time and Bentley may agree to perform such services pursuant to this Agreement. The description of professional services requested by Subscriber and which Bentley agrees to perform shall be set forth in one or more written descriptions labeled “**SELECT Professional Services**” and signed by Subscriber and Bentley (each an “**Order**”). Bentley shall have the right to accept or decline any proposed Order. Each Order shall set forth, at a minimum, the work to be done, the number of Bentley’s personnel to be assigned to Subscriber’s work, the duration of each individual’s assignment, and the fees for the work. The services and other provisions described on the Order(s) are referred to collectively as the “**Work**” while the results of the Work, if any, are referred to as the “**Work Product**”.
- 1.02. **Method of Performance.** Bentley, in conjunction with its personnel, will determine the method, details, and means of performing the work to be carried out for Subscriber, including the use of sub-contractors if deemed necessary. Subscriber shall have no right to, and shall not, control the manner or determine the method of accomplishing such work. Subscriber may, however, require Bentley’s personnel to observe at all times the security and safety policies of Subscriber. In addition, Subscriber shall be entitled to exercise a broad general power of supervision and control over the results of work performed by Bentley to ensure satisfactory performance. This power of supervision shall include the right to inspect, stop work, make suggestions or recommendations as to the details of the work, and request modifications to the scope of an Order.
- 1.03. **Scheduling.** Bentley will try to accommodate work schedule requests of Subscriber to the extent possible. Should any personnel of Bentley be unable to perform scheduled services because of illness, resignation, or other causes beyond Bentley’s reasonable control, Bentley will attempt to replace such personnel within a reasonable time, but Bentley shall not be liable for failure if it is unable to do so, giving due regard to its other commitments and priorities.
- 1.04. **Reporting.** Subscriber will advise Bentley of the individuals to whom Bentley’s manager will report progress on day-to-day work. Subscriber and Bentley shall develop appropriate administrative procedures for performance of work at Subscriber’s site, if necessary. Subscriber shall periodically prepare an evaluation of the work performed by Bentley for submission to Bentley upon Bentley’s request.
- 1.05. **Place of Work.** Certain projects or tasks may require Bentley’s personnel to perform work for Subscriber at Subscriber’s premises. In the event that such projects or tasks are required to be performed at Subscriber’s premises, Subscriber agrees to provide working space and facilities, and any other services and materials Bentley or its personnel may reasonably request in order to perform their work. Subscriber recognizes that there may be a need to train Bentley’s personnel in the unique procedures used at Subscriber’s location. When Subscriber determines that such training is necessary, Subscriber shall, unless otherwise agreed in writing, pay Bentley for its personnel’s training time.
- 1.06. **Non-Exclusive.** Bentley shall retain the right to perform work for others during the term of this Agreement. Subscriber shall retain the right to cause work of the same or a different kind to be performed by its own personnel or other contractors during the term of this Agreement.
- 1.07. **Perpetual License.** Upon full payment for the Work, Bentley shall grant Subscriber a paid-up, perpetual, royalty-free right and license to use the Work Product for Production Use. Bentley retains all right, title and interest to the Work Product not otherwise granted to Subscriber.
- 1.08. **Preexisting Works of Bentley.** Notwithstanding Section 1.07 of Exhibit C hereof, Bentley hereby reserves and retains ownership of all works which Bentley created unrelated to the Work performed pursuant to any Order, including but not limited to Products (the “**Pre-Existing Works**”). Bentley does not grant Subscriber any rights or licenses with respect to the Pre-Existing Works.
- 1.09. **Residuals.** It is mutually acknowledged that, during the normal course of its dealings with Subscriber and the Work, Bentley and its personnel and agents may become acquainted with ideas, concepts, know-how, methods, techniques, processes, skills, and adaptations pertaining to the Work. Notwithstanding anything in this Agreement to the contrary, and regardless of any termination of this Agreement, Bentley shall be entitled to use, disclose, and otherwise employ any ideas, concepts, know-how, methods, techniques, processes, and skills, adaptations, including generalized features of the sequence, structure, and organization of any works of authorship, in conducting its business (including providing services or creating programming or materials for other customers), and Subscriber shall not assert against Bentley or its personnel any prohibition or restraint from so doing.
- 1.10. **Third-Party Interests.** Subscriber’s interest in and obligations with respect to any programming, materials, or data to be obtained from third-party vendors, regardless of whether obtained with the assistance of Bentley, shall be determined in accordance with the agreements and policies of such vendors.
- 1.11. **Fees.** Bentley shall be paid the fee as specified in each Order (which Bentley reserves the right to change upon at least sixty (60) days advance notice or at any time for any new Order or modified portion of an existing Order), or, if no fee is specified, at Bentley’s customary rates for the level of personnel providing such services.
- 1.12. **Expenses.** Subscriber shall also pay either the actual cost of Bentley’s reasonable travel and living expenses or an agreed-to amount for such travel and living expenses (other than normal commutation travel) for Bentley employees in the performance of Work set forth in each Order along with all other out-of-pocket expenses incurred by Bentley.
- 1.13. **Estimates.** Estimates of total fees for projects may be provided in an Order, but Bentley does not guarantee such estimates. Bentley will, however, notify Subscriber as soon as possible if it will exceed the estimate, and Subscriber may then terminate the project and pay only for services actually rendered if Subscriber so chooses.
- 1.14. **Confidentiality.** In the performance of the Work, Bentley may acquire information of Subscriber which is proprietary, non-public and identified in writing as confidential by Subscriber. Bentley shall not disclose to anyone not employed by Subscriber nor use except on behalf of Subscriber any such confidential information acquired in the performance of the Work except as authorized by Subscriber in writing. Bentley shall have no obligation of confidentiality with respect to any information of Subscriber that (i) has entered the public domain other than through a breach of this Agreement, (ii) has been rightfully obtained by Bentley from a third party with no obligation of confidentiality, or (iii) is previously known by Bentley as demonstrated by clear and convincing evidence. Notwithstanding the foregoing restrictions, Bentley and its personnel may use and disclose any information to the extent required by an order of any court or other governmental authority or as necessary for it or them to protect their interest in this Agreement, but in each case only after Subscriber has been so

BENTLEY SELECT PROGRAM AGREEMENT

Professional Services

Exhibit C

Dated as of June 2014

notified and has had the opportunity, if possible, to obtain reasonable protection for such information in connection with such disclosure.

- 1.15. **Term.** This Exhibit C will become effective as of the date of the first executed Order and will continue in effect through the completion of each Order.
- 1.16. **Termination of Orders.** Subscriber or Bentley may terminate any uncompleted Order at any time by giving thirty (30) days written notice to the other party. Upon such termination, Bentley agrees to stop Work under the Order in question and to forward to Subscriber all completed or uncompleted drawings, reports or other documents relating to the Work. In the event of such termination Subscriber shall be liable only for such fees, costs and expenses as have accrued prior to the effective date of such termination.
- 1.17. **Prohibition on Hiring.** Subscriber shall not solicit for employment or hire any Bentley employees providing professional services hereunder for the duration of the Work, plus a period of one (1) year after completion of the professional services provided hereunder.

BENTLEY SELECT PROGRAM AGREEMENT

Bentley Cloud Offerings

Exhibit F

Dated as of June 2014

1. Definitions. The capitalized words, terms and phrases in this Exhibit F shall have the meanings set forth below:

(a) **"Bentley Data"** means Bentley's Proprietary Information including, but not limited to, the methods by which the services described in this Exhibit F are performed and the processes that make up such services.

(b) **"Data Storage"** means the amount of data storage space (including the backup and off-site storage), if any, to be allocated for Subscriber Data within the Bentley environment.

(c) **"Internet"** means any systems for distributing digital electronic content and information to end users via transmission, broadcast, public display, or other forms of delivery, whether direct or indirect, whether over telephone lines, cable television systems, optical fiber connections, cellular telephones, satellites, wireless broadcast, or other mode of transmission now known or subsequently developed.

(d) **"Bentley Cloud Offerings"** or **"Cloud Offerings"** mean the Bentley products and services made available to Subscriber and accessed by Users via the Internet for use under the terms herein.

(e) **"Subscriber Data"** means data collected or stored by Subscriber using Cloud Offerings, including, but not limited to, financial, business and technical information, engineering plans, customer and supplier information, research, designs, plans, and compilations, but not including any Bentley Data.

2. Applicability. Upon Bentley's approval, Subscriber may be entitled to subscribe to Bentley Cloud Offerings pursuant to the specific terms set forth herein. Cloud Offerings are available as Subscriptions only, as described in Section 6 of Exhibit A. Subscriber acknowledges and agrees that Bentley may in its sole discretion utilize a third party service provider to provision Bentley Cloud Offerings and/or Subscriber Data. To be eligible to participate, Subscriber must be current on all outstanding invoices for amounts owed to Bentley.

3. Bentley Cloud Offerings. A User in possession of a valid Passport may be able to access certain Cloud Offerings at no additional charge to Subscriber. Other Cloud Offerings also require the purchase by Subscriber of a Visa for such User. Certain other Cloud Offerings may be purchased by Subscriber for additional fees (**"Cloud Offering Fees"**) to be specified in a quotation from Bentley to Subscriber (the **"Cloud Offering Quote"**), which may include, as applicable, (a) the number of Passport holders accessing the Cloud Offering, (b) the number of assets managed using the Cloud Offering; (c) Data Storage size, (d) the Professional Services, if any, to be delivered by Bentley to Subscriber for the initial deployment of the Cloud Offering; and (e) Professional Services related to the ongoing management and support of the Cloud Offering, including availability and support service level terms.

4. Permitted Use. Bentley will grant Subscriber a non-exclusive, non-transferrable, non-assignable, revocable, limited license to use and access purchased Bentley Cloud Offerings (subject to the terms of this Exhibit F and any terms of use (**"Terms of Use"**) presented upon access) solely for Production Use (the **"Permitted Use"**). Subscriber acquires only the right to use the purchased Cloud Offering and does not acquire any rights of ownership to the Cloud Offering or any part thereof. Bentley and its suppliers retain all rights, title and interest in the Cloud Offering, and any use of the Cloud Offering beyond the Permitted Use shall constitute a material breach of the Agreement. In addition to the use restrictions set forth in the Terms of Use, Subscriber's Permitted Use rights shall be subject to the following conditions:

(a) Subscriber purchasing against a Cloud Offering Quote shall not exceed any limits set forth in such Cloud Offering Quote. In the event use of a Cloud Offering by Subscriber exceeds that purchased by Subscriber as specified in the applicable Cloud Offering Quote, Bentley may invoice, and Subscriber shall pay, additional Cloud Offering Fees. Bentley shall, in its sole discretion, add such additional fees to subsequent invoices or invoice Subscriber separately.

(b) In the event of a past due balance, Bentley reserves the right to suspend use of the Cloud Offerings until all past due amounts have been received.

(c) Bentley reserves the right to modify or suspend use of a Cloud Offering, or any part thereof, if (i) Bentley determines in its sole discretion that such suspension is necessary to comply with any applicable law, regulation or order of any governmental authority or with the terms of its agreement(s) with its third party service providers; or (ii) Bentley determines in its sole discretion that the performance, integrity or security of the Cloud Offerings is being adversely impacted or in danger of being compromised as a result of Subscriber's or its Users' access.

(d) Subscriber shall not tamper in any way with the software or functionality of Cloud Offerings or any part thereof. Without limiting the foregoing, Subscriber agrees not to put any material into the Cloud Offerings which contain any viruses, time bombs, Trojan horses, worms, cancelbots or other computer programming routines that may damage, interfere with, intercept or expropriate any system or data. Subscriber shall not utilize bots, agents, auction crawlers or other computer based crawling programs in conjunction with its use of the Cloud Offerings.

(e) Subscriber shall communicate the above listed use restrictions to all Subscriber employees and External Users accessing or using any Cloud Offerings. The acts or omissions of any such User accessing the Cloud Offerings shall be deemed to be the acts or omissions of the Subscriber under the Agreement, such that Subscriber shall be fully responsible for the performance and fulfillment of all obligations set forth in the Agreement. Subscriber shall indemnify and hold Bentley harmless against any and all liability resulting from any non-compliance with the terms herein.

5. Access and Availability. Subscriber is responsible for providing all equipment and the connectivity necessary to access and use Cloud Offerings via the Internet. Subscriber agrees that from time to time the Cloud Offerings may be inaccessible or inoperable for various reasons, including without limitation (i) system malfunctions; (ii) periodic maintenance procedures or repairs which Bentley or its service provider(s) may undertake from time to time; (iii) compatibility issues with Subscriber's or a third party's hardware or software; or (iv) causes beyond the control of Bentley or which are not reasonably foreseeable by Bentley, including network or device failure, interruption or failure of telecommunication or digital transmission links, hostile network attacks or network congestion or other failures (collectively **"Downtime"**). Bentley shall use reasonable efforts to provide advance notice to Subscriber in the event of any scheduled Downtime, and to minimize any disruption of the Cloud Offerings in connection with Downtime.

6. Data. Bentley acknowledges, and Subscriber warrants and represents, that Subscriber owns all right, title and interest in Subscriber Data. Subscriber shall indemnify and hold Bentley harmless against any and all claims against Bentley alleging that the Subscriber Data collected or stored for use with the Bentley Cloud Offerings infringes any patent, trademark, trade secret, copyright or other proprietary rights of any third party, or in any way violates any privacy or data protection laws. Bentley shall not be responsible for any failure or impairment of the Cloud Offerings caused by or related to the Subscriber Data. Bentley shall maintain the confidentiality of all Subscriber Data, and shall not reproduce or copy such data except as required to provide services under this Agreement or as may be expressly authorized by Subscriber. Subscriber shall be solely responsible for the Subscriber Data, including without limitation for uploading such data and/or appropriately formatting and configuring such data for use with a Cloud Offering. Subscriber agrees and acknowledges that Bentley will from time to time collect Usage Data and that all Usage Data shall be owned by Bentley and deemed Bentley Proprietary Information. Subscriber agrees not to alter or interfere with the collection by Bentley of accurate Usage Data.

7. Termination. In addition to the termination rights of the parties set forth in Section 7 of Exhibit B, Bentley may terminate a Cloud Offering Subscription, upon notice to Subscriber, in the event of the termination of Bentley's agreement(s) with its third party service provider(s). Termination of a Cloud Offering Subscription by either party shall automatically terminate any license granted pursuant to Section 4 of this Exhibit F.

BENTLEY SELECT PROGRAM AGREEMENT

LICENSE SUBSCRIPTION PROGRAMS

Exhibit LS

Dated as of June 2013

1. Applicability. At Subscriber's request, and upon Bentley's approval, Subscriber and/or its authorized LS Affiliates may be entitled to subscribe to a Bentley License Subscription Program, subject to the terms and conditions of this Exhibit LS. To be eligible to participate, Subscriber must be current on all outstanding invoices for amounts owed to Bentley.

2. License Subscription Programs.

2.1 Overview. Upon Bentley's acceptance of Subscriber into a License Subscription Program, Subscriber shall be granted rights to Use certain Eligible Products and Bentley Passports without limitation as to the number of Employees who may Use such Eligible Products and Bentley Passports. Descriptions of Bentley's License Subscription Programs are available at www.bentley.com (with Bentley reserving the right to alter the eligibility requirements and offerings of any such License Subscription Programs at any time, in its sole discretion, and without any notice to Subscriber). Prior to participating in a License Subscription Program, Subscriber shall complete and acknowledge a License Subscription Order Form which shall designate the details of the specific License Subscription Program in which the Subscriber is opting to participate, as well as the applicable Eligible Products and corresponding LS Fees for participation in that License Subscription Program.

2.2 LS Affiliate Participation. Subject to the terms and conditions of this Exhibit LS, Subscriber's LS Affiliates shall be eligible to participate in the LS Program upon Bentley accepting said LS Affiliate into the LS Program. Except in cases where an LS Affiliate has executed a LS Affiliate Participation Letter, Subscriber agrees to remain responsible for its participating LS Affiliates' compliance with the terms and conditions of the Agreement. Moreover, with respect to any participating LS Affiliates, each LS Affiliate's respective LS Affiliate Agreement, if any, shall terminate immediately upon, and as a precondition to, such LS Affiliate's participation in the License Subscription Program.

2.3 SELECT Coverage of Eligible & Ineligible Products. During the term of Subscriber's participation in an LS Program, all Eligible Products shall receive SELECT Coverage. Ineligible Products that are: (i) Baseline Products, or (ii) licensed by Subscriber or any LS Affiliate during any term, shall not be eligible for or included in the LS Program, but shall nonetheless continue to be eligible for SELECT Coverage under the terms of the Agreement for so long as the Agreement remains in effect and Subscriber is current on all outstanding invoices issued pursuant to the Agreement.

2.4 Bentley LEARN. Certain LS Programs include the right of Subscriber to receive Bentley LEARN benefits, subject to the terms and conditions of Exhibit D, as indicated on Subscriber's License Subscription Order Form. Unless otherwise set forth on the License Subscription Order Form, ELS Programs include the right of Subscriber to receive on-site training under the Bentley LEARN program, while QLS Programs do not include such right.

3. Eligible Product License Grant.

3.1 Production Use. In consideration for full payment of the LS Fees, and provided that Subscriber is not otherwise in breach of the Agreement, Bentley hereby grants to Subscriber a non-exclusive, limited, revocable, non-transferable, non-assignable license to Use: (i) Eligible Products (excluding Non-SELECTserver Products) for Production Use during the term of the LS Program, without limitation as to the number of Employees who may Use the Eligible Products; and (ii) Non-SELECTserver Products for Production Use solely on the Device that corresponds to each node-locked license to a Non-SELECTserver Product.

3.2 Evaluation Use. In consideration for full payment of the LS Fee (and depending on which LS Program that Subscriber opts to participate in), Bentley hereby grants to Subscriber a limited, non-transferable, revocable, non-exclusive right to use Eligible Products for internal evaluation or testing use only (an "Evaluation License"); provided that such Evaluation Licenses are only accessed through a dedicated SELECTserver hosted by Bentley (the "Evaluation Server"), and such licenses are not used for Production Use. Unless otherwise set forth in Subscriber's License Subscription Order Form, the duration of Subscriber's use of an Evaluation License shall not exceed ninety (90) days under an ELS Program, and shall not exceed ten (10) days under a QLS Program (each, respectively, an "Evaluation Period"). Upon the earlier of the conclusion of the Evaluation Period, the termination of the Agreement or

Subscriber's participation in the LS Program, Subscriber shall discontinue use of all copies of Eligible Products used for evaluation hereunder and, upon request by Bentley, certify such destruction in writing. To the extent that an Evaluation License is used in breach of the restrictions set forth herein (an "Unauthorized Use"), then each such instance of Unauthorized Use shall count as an instance of Subscriber Daily Use. It is Subscriber's sole responsibility to ensure that all Evaluation Licenses are generated from the Evaluation Server, and Bentley shall have no obligation to adjust the LS Fee to account for evaluation use of Eligible Products under licenses generated by a SELECTserver other than an Evaluation Server.

4. SELECTServer.

4.1 SELECTserver as a Prerequisite. As a condition precedent of participating in the License Subscription Program, Subscriber must utilize fully the then current, most recent Upgrade to SELECTserver. Subscriber may deploy a single SELECTserver for purposes of managing multiple Subscriber Sites and LS Affiliate Sites located in more than one Country; provided, however, that: (i) such SELECTserver is configured to report Subscriber's Daily Use within the Country it occurs; and (ii) all Subscriber Use within a particular Country is initiated by a Site activation key that is unique to such Country. Subscriber agrees that it shall migrate Subscriber Daily Use reporting from all of Subscriber's and/or LS Affiliates' deployed SELECTservers to the most recent Upgrade to SELECTserver no later than twelve (12) months after its general commercial release by Bentley.

4.2 Reporting. Where SELECTServer is not hosted by Bentley, Subscriber and LS Affiliates shall either: (i) deploy the automatic transmission facility of SELECTserver for monthly or daily transmission of usage information to Bentley; or (ii) provide Bentley with monthly delivery of all usage information created by SELECTserver. With respect to delivery of usage information under sub-section (ii) above, each month's delivery shall be due within seven (7) days of the end of the month in which such usage information is generated, and Subscriber and LS Affiliates, if applicable, shall allow Bentley access to all Subscriber Sites and LS Affiliate Sites in order to verify the content of such manually transmitted usage information. Subscriber and each LS Affiliate shall also deploy any other Bentley licensing technology, as requested by Bentley in order to allow Bentley to monitor Subscriber Daily Use of Eligible Products by Subscriber and each eligible LS Affiliate during the term.

4.3 No Modifications. Subscriber agrees that neither Subscriber nor any of its eligible participating LS Affiliates shall edit, alter, delete, or otherwise revise in any manner the content of the usage information generated by SELECTserver. Bentley shall treat each usage information transmission or delivery as confidential information of Subscriber and each LS Affiliate. If Bentley fails to receive the required usage information, Subscriber shall transmit or deliver the required usage information to Bentley within fourteen (14) days after Bentley requests such information.

5. LS Fee Calculation.

5.1 Total Eligible Product Fees.

- (a) For each Reset Period, "Eligible Product Peak Usage" shall be calculated by (i) determining the maximum Subscriber Daily Use of each Eligible Product over each pertinent Measurement Period (each a "Measurement Period Peak"); then (ii) for each Eligible Product, giving these Measurement Period Peaks an ordinal ranking from highest to lowest in the Reset Period and selecting the ranked Measurement Period Peak designated by Bentley for such Eligible Product under the applicable LS Program; and, finally, (iii) adding to the selected Measurement Period Peak the number of licenses of such Eligible Product as Subscriber has designated Non-SELECTServer Products.
- (b) Eligible Product Fees shall be calculated as (i) Eligible Product Peak Usage times (ii) the then most current SELECT Program Fees as published by Bentley for the applicable Eligible Product times (iii) the Multiplier for such Eligible Product under the applicable LS Program.

BENTLEY SELECT PROGRAM AGREEMENT

LICENSE SUBSCRIPTION PROGRAMS

Exhibit LS
Dated as of June 2013

- c) Subscriber's "Total Eligible Product Fees" shall be the aggregate of the Eligible Product Fees across all Eligible Products Used by Subscriber during the Reset Period.

5.2 Passport Fees. For each Reset Period, Subscriber's Passport Fees shall be calculated as (i) the number of Subscriber's assigned Bentley Passport holders at the start of the Reset Period plus any new unique Bentley Passports used or assigned by Subscriber during the Reset Period times (ii) the then most current SELECT Program Fees as published by Bentley for Bentley Passports times (iii) the Multiplier for Bentley Passports under the applicable LS Program.

5.3 LS Fees. Subscriber's LS Fees for at least the first Reset Period shall be set forth on Subscriber's License Subscription Order Form. For each subsequent Reset Period, Subscriber's LS Fees shall be the greater of the Minimum LS Fees, or the sum of (i) Subscriber's Total Eligible Product Fees and (ii) Subscriber's Passport Fees for the immediate preceding Reset Period (the "Reset Calculation").

5.4 LS Fee Calculation Definitions.

- a) "Eligible Product Peak Usage" shall have the meaning set forth in Section 5.1(a) of this Exhibit.
- b) "Minimum LS Fees" means the minimum amount of LS Fees for each Reset Period as set forth or described in the License Subscription Order Form for Subscriber's LS Program.
- c) "License Subscription Fees" or "LS Fees" means the fees payable each Reset Period to Bentley for Subscriber's (and/or its eligible participating LS Affiliates') participation in a License Subscription Program.
- d) "Measurement Period" means, for each Eligible Product, the period over which Subscriber Daily Use is measured and compared in order to determine a Measurement Period Peak.
- e) "Measurement Period Peak" shall have the meaning set forth in Section 5.1(a) of this Exhibit.
- f) "LS Day(s)" means the calendar day beginning at 12:00:01 AM and ending at 11:59:59 PM in the time zone defined for each Site managed by SELECTserver. All usage log files reflecting Subscriber's Daily Use shall be translated into GMT time relative to the location of the Device on which an Eligible Product is used.
- g) "Multiplier(s)" shall refer to the numerical value designated in Subscriber's applicable License Subscription Order Form which is used as part of the formula to calculate Subscriber's LS Fees during the term.
- h) "Reset Period" shall mean the sub-periods during the Initial Term or any Renewal Term which include a designated number of Measurement Periods to be considered in calculating LS Fees as set forth in the License Subscription Order Form for Subscriber's LS Program.
- i) "Reset Calculation" shall have the meaning set forth in Section 5.3 of this Exhibit.
- j) "Subscriber Daily Use" shall mean the number of unique machines from which Subscriber and/or its participating LS Affiliates Use an Eligible Product during an LS Day.
- k) "Total Eligible Product Fees" shall have the meaning set forth in Section 5.1(c) of this Exhibit.

6. LS Program Fees & Payment Terms.

6.1 Invoice and Payment. Unless otherwise set forth in Subscriber's License Subscription Order Form, payment of all LS Fees for Reset Periods shall be made annually or quarterly by Subscriber and shall be due to Bentley within thirty (30) days of receipt of an invoice. Subscriber's failure to remit payment of the appropriate LS Fee shall: (i) give Bentley the right to immediately suspend Subscriber's participation in the License Subscription until such time that the appropriate LS Fee is paid in full; and (ii) be treated as a material breach of the Agreement. For clarity, for any Ineligible Products licensed by Subscriber and their LS Affiliates that are not included in the LS Program, Bentley shall invoice Subscriber for the SELECT Program Fees for such Ineligible Products.

6.2 LS Fee Adjustment. The parties agree that Bentley may adjust the LS Fee for the then current Reset Period in the event additional Subscriber Sites or LS Affiliates Sites are added to the License Subscription Program. Moreover, in the event Bentley designates additional Eligible Products during any Reset Period, Subscriber shall have the rights, benefits and obligations set forth herein with respect to such additional designated Eligible Products. Subscriber shall not be invoiced for Subscriber Usage of any additional designated Eligible Products, however, until the next applicable annual or quarterly LS Fee determination, at which point Bentley shall include the additional designated Eligible Products when calculating the LS Fees for the next Reset Period.

7. Term and Termination.

7.1 Term. The minimum number of Reset Periods for Subscriber's LS Program subscription shall be designated on Subscriber's License Subscription Order Form, and shall commence on the date set forth therein (the "Initial Term"). Following expiration of the Initial Term, the terms of the License Subscription Program shall automatically renew for a successive minimum number of Reset Periods of like duration (each a "Renewal Term") unless: (i) Subscriber provides Bentley with written notice of its intent to terminate its participation in the LS Program no later than (A) one-hundred twenty (120) days prior to the end of the Initial Term or a then current Renewal Term for an LS Program with a term of more than six (6) months, and (B) thirty (30) days for an LS Program with a term of six (6) months or less, or (ii) Bentley provides Subscriber with written notice of its intent to terminate the LS Program no less than forty-five (45) days prior to the end of the Initial Term or a then current Renewal Term; with any such termination to be effective as of the end of such Initial Term or Renewal Term.

7.2 Termination. Notwithstanding anything to the contrary contained herein, Bentley reserves the right to terminate Subscriber's participation in the LS Program upon thirty (30) days prior written notice in the event Subscriber is in breach of the terms and conditions of this Exhibit and/or Agreement, unless Subscriber cures such breach within such thirty (30) day period. Subscriber hereby acknowledges that this right to cure shall not be extended to any breach by Subscriber which by its nature cannot be cured within the aforementioned thirty (30) day cure period.

7.3 Event of Termination. In the event of a termination, expiration or non-renewal of Subscriber's participation in the LS Program and/or the Agreement, Subscriber's and all its participating LS Affiliates' rights to participate in the LS Program shall immediately terminate and Subscriber's and all LS Affiliates' license rights with respect to Bentley Products shall revert back to the license rights Subscriber and each LS Affiliate respectively had in the Baseline Products. In the event Subscriber and/or its LS Affiliates opt not to continue participating in the LS Program only, SELECT Coverage for such Baseline Products will continue under the terms and conditions of this Agreement (or for a LS Affiliate under a newly executed LS Affiliate Agreement), and Subscriber and each LS Affiliate shall remove all Eligible Products, except for the Baseline Products, from Subscriber Sites and LS Affiliate Sites no later than fourteen (14) days after the Subscriber's participation in the LS Program has ceased.

BENTLEY SELECT PROGRAM AGREEMENT

LICENSE SUBSCRIPTION PROGRAMS

Exhibit LS

Dated as of June 2013

8. Miscellaneous.

8.1 Representations & Warranties. Subscriber hereby represents and warrants that: (i) it has the authority to bind itself and all of its LS Affiliates for the Eligible Products at the Subscriber Sites and LS Affiliate Sites set forth in the License Subscription Order Form (as applicable); and/or (ii) cause all of its LS Affiliates set forth in the License Subscription Order Form to sign an LS Affiliate Letter attached to the License Subscription Order Form, wherein such LS Affiliates agree to be bound by the terms of this Exhibit; and (iii) upon its delivery of a License Subscription Order Form, or (if applicable) Bentley's acceptance of an executed LS Affiliate Letter, this Exhibit will be valid and binding on Subscriber and each of its participating LS Affiliates.

8.2 Use of Eligible Products in a Terminal Server Environment. Subscriber agrees that it shall not use any Bentley Products on any multi-user computer network in a Terminal Server Environment without Bentley's prior written consent. If Bentley consents, any such use shall be subject to the terms of Exhibit T of the Agreement, and Subscriber shall deliver to Bentley (within ten (10) days of any request) reports, usage logs and any other reasonable information related to Subscriber's Terminal Server Environment to enable Bentley to accurately calculate the LS Fee during the term.

8.3 Terms are Confidential. Subscriber hereby acknowledges that the terms and conditions of this Exhibit and the applicable License Subscription Order Form are confidential in nature and Subscriber hereby agrees that neither it nor its LS Affiliates shall disclose the contents of the Exhibit and/or the License Subscription Order Form to any third party.

8.4 Product Time Out. Subscriber acknowledges that the licenses to the Eligible Products are for a set term and that Bentley shall have the right to terminate Subscriber's and any LS Affiliate's rights to the Eligible Products upon expiration of the term hereof. In the event Subscriber fails to pay the LS Fee, or upon termination of the Agreement for any other reason, the parties hereby agree that any timing out or expiration of the Eligible Products shall not be considered a "time bomb," defect or error with respect to the Eligible Products.

8.5 Conflicts. The terms herein must be read in conjunction with the other Exhibits to this Agreement, except that in the event of any inconsistency between the terms herein and any other Exhibit, the terms herein shall control with respect to Subscriber's participation in the License Subscription Program.

9. Definitions. Capitalized terms used in this Exhibit LS shall have the meanings set forth below or, if not otherwise defined herein, shall have the definitions set forth in the Agreement.

- a) **"Baseline Product(s)"** means the Bentley Products licensed by Subscriber and/or all participating LS Affiliates immediately prior to the date the Subscriber and/or its participating LS Affiliates enter into the LS Program. Baseline Products shall be listed on Subscriber's License Subscription Order Form and/or as an attachment to the LS Affiliate Participation Letter (as applicable), with Bentley reserving the right to amend the list of Baseline Products from time-to-time to include any additional Bentley Products licensed on a perpetual basis by Subscriber or LS Affiliates after the commencement of the LS Program subscription.
- b) **"Eligible Product(s)"** means the Bentley Products (including any Updates or Upgrades thereto) eligible for inclusion in a License Subscription Program, as designated and posted at: <http://selectservices.bentley.com/en-US/> (click on the "Eligible Software" link). The designation of Eligible Products may be amended from time-to-time in Bentley's sole discretion.
- c) **"Employee(s)"** means (i) any full-time, part-time, or temporary employee of Subscriber or an LS Affiliate, or, (ii) any temporary, term or contract professional or service personnel or employees who work at Subscriber Sites or LS Affiliates Sites, and whose work is supervised or managed by Subscriber or an LS Affiliate and for whom Subscriber or an LS Affiliate remains responsible.
- d) **"Ineligible Product(s)"** means Bentley Products that are not Eligible Products.
- e) **"Initial Term"** shall have the meaning set forth in Section 7.1 of this Exhibit.
- f) **"License Subscription Order Form(s)"** is the order form wherein Bentley shall indicate Subscriber's LS Program, Eligible Products, Reset Periods, Initial Term and corresponding LS Fees. The parties agree that the License Subscription Order Form shall constitute a part of this Exhibit LS and governed by the terms and conditions of this Agreement.
- g) **"License Subscription Program(s)"** or **"LS Program(s)"** shall refer to the licensing programs, described at www.bentley.com, under which Subscriber may Use Eligible Products under the terms and conditions of this Exhibit LS.
- h) **"LS Affiliate(s)"** shall mean: (i) an Affiliate; or (ii) any incorporated or non-incorporated entity: (A) listed on the License Subscription Order Form, or (B) whose participation in the LS Program is approved by Bentley upon such entity's execution of a LS Affiliate Participation Letter. The License Subscription Order Form may be amended by Bentley from time-to-time throughout the term to update the list of Subscriber's LS Affiliates.
- i) **"LS Affiliate Agreement(s)"** means a pre-existing SELECT Program Agreement, if any, between a LS Affiliate and Bentley.
- j) **"LS Affiliate Participation Letter(s)"** shall refer to a form letter attached to the License Subscription Order Form, wherein LS Affiliates can opt individually to participate in the LS Program under the terms set forth herein, subject to Bentley's acceptance of the LS Affiliate into the LS Program.
- k) **"Non-SELECTserver Product(s)"** means Baseline Products which are Eligible Products installed at a Subscriber Site but not initiated by or deployed from a SELECTserver.
- l) **"Renewal Term(s)"** shall have the meaning set forth in Section 8.1 of this Exhibit.
- m) **"SELECT Coverage"** means the SELECT Program benefits applicable to Bentley Products as set forth in the Agreement.
- n) **"Subscriber Site(s)"** or **"LS Affiliate Site(s)"** shall mean the discrete geographic locations from which Subscriber or its participating LS Affiliates conduct their respective operations. The definition of "Site" in Exhibit B of the Agreement is explicitly superseded by the foregoing definition for purposes of this Exhibit LS.

LICENSE SUBSCRIPTION ORDER FORM¹

Welcome to Bentley's License Subscription Program. This order form lists the specific details of the License Subscription Program that Subscriber has agreed to participate in, as described in Exhibit LS of Subscriber's SELECT Program Agreement. This order form designates which particular License Subscription Program is applicable to Subscriber, and establishes the duration of Subscriber's participation in the program, the corresponding License Subscription Fees, and other details regarding the program. This order form and Subscriber's SELECT Program Agreement CLA No 10399340 (including any and all signed amendments and Exhibits thereto, specifically including Exhibits A, B, C, D, F & LS, as may be updated periodically by Bentley from time-to-time) incorporate the entire agreement of the parties and supersede and replace all prior oral and written agreements and understandings between the parties with respect to the subject matter hereof. The parties agree to the following:

- **SUBSCRIBER:** City of Lakeland
501 E. Lemon Street
Lakeland, FL 33801
- **SELECT PROGRAM AGREEMENT CLA #:** 10399340
- **Ultimate Account ID #:** 1001389465
- **APPLICABLE LICENSE SUBSCRIPTION PROGRAM:** Enterprise License Subscription
- **ENTERPRISE LICENSE SUBSCRIPTION PROGRAM COMMENCEMENT DATE:** October 1, 2017
- **INITIAL TERM:** Program Commencement Date through September 30, 2018
- **RENEWAL TERM:** successive one (1) year terms following the Initial Term by written agreement and signed by authorized representatives of the parties.
- **MINIMUM ANNUAL LS FEE:** \$95,036
- **RESET PERIOD:** The annually recurring twelve (12) month period commencing each October 1 and ending September 30.
- **RESET CALCULATION SCHEDULE:** Commencing at the end of the Initial Term, and annually thereafter, Bentley shall determine Subscriber's Annual LS Fee for the next year based on Subscriber's License use during the immediately preceding year.
- **MEASUREMENT PERIOD:** Each calendar month during the pertinent Reset Period

¹ Any capitalized terms used in this License Subscription Order Form (or alternatively "order form") shall have the meanings set forth in this order form, or as set forth in Subscriber's SELECT Agreement (including any and all Exhibits thereto, specifically including Exhibits D & LS, as may be updated periodically by Bentley from time-to-time). This License Subscription Order Form is deemed a part of Subscriber's SELECT Agreement, and is therefore governed by the terms and conditions of Subscriber's SELECT Agreement, and any and all Exhibits thereto.

• **RANKED MEASUREMENT PERIOD PEAK:**

ELIGIBLE PRODUCT	RANKED MEASUREMENT PERIOD PEAK
All Eligible Products	2 nd Highest
AEP Products	Highest

• **MULTIPLIER:**

ELIGIBLE PRODUCT	MULTIPLIER
All Eligible Products	1.8
AEP Products	1.8

• **ANNUAL LS FEES:**

1. The LS Fee for the Initial term is \$95,390.07; and
2. The LS Fee for each subsequent Renewal Term shall be by written agreement and signed by authorized representatives of the parties.

• **BENTLEY LEARN INCLUDED?** Yes, per the terms of Exhibit D to the Agreement

- ✓ Distance Learning
- ✓ Online Content
- ✓ Performance Consulting Days – 1 Day

• **SELECTSERVER:** Hosted

• **PAYMENT TERMS:** Net thirty (30) days

• **LS AFFILIATES:** NONE

• **BASELINE PRODUCTS:**

Site ID	Subscriber Site(s)	Part #	Baseline Product(s)	Quantity
4019336	Lakeland Water Utilities	2923	FlowMaster	2
4019336	Lakeland Water Utilities	1579	InRoads Storm and Sanitary	4
4019336	Lakeland Water Utilities	1577	InRoads Survey	1
4019336	Lakeland Water Utilities	1568	InterPlot Raster Server	1
4019336	Lakeland Water Utilities	1570	InterPlot Server	2
4019336	Lakeland Water Utilities	1003	MicroStation	68
4019336	Lakeland Water Utilities	1240	OpenPlant Modeler	2
4019336	Lakeland Water Utilities	12662	OpenRoads Designer	8
4019336	Lakeland Water Utilities	1565	ProjectWise InterPlot Driver Pack	3
4019336	Lakeland Water Utilities	1548	ProjectWise InterPlot Mid-Volume Driver Pack	1
4019336	Lakeland Water Utilities	1554	ProjectWise InterPlot Professional	1
4019336	Lakeland Water Utilities	3118	SewerGEMS 2000 Pipes	1
4019336	Lakeland Water Utilities	2977	WaterCAD Stand Alone 25 Pipes	1

• **INELIGIBLE PRODUCTS:** NONE

ADDENDUM TO BENTLEY SELECT PROGRAM AGREEMENT
GENERAL TERMS AND CONDITIONS

This Addendum, made and entered into this 1st day of October 2017, by and between the CITY OF LAKE LAND, a municipality organized and existing under the laws of Florida, hereinafter referred to as "Subscriber", and BENTLEY SYSTEMS, INCORPORATED, hereinafter referred to as "Bentley", agree that the following terms and conditions shall serve as an Addendum to the Select Program Agreement, along with all subsequent documents that form this Agreement, whereby, upon mutual written consent of the parties:

WHEREAS, the parties seek to amend the Bentley Select Program Agreement General Terms and Conditions ("Agreement"); and

NOW THEREFORE, in consideration of the above and mutual covenants contained herein, the parties agree to modify the Agreement as follows:

The following sections of the Agreement's Terms and Conditions shall be modified as follows:

1. The definition of "Effective Date" in Section 1.08 of Exhibit B is hereby deleted and replaced in its entirety with the following:

1.08 "**Effective Date**" means October 1, 2017.

2. Section 2.01 of Exhibit B, Payment Terms, is hereby deleted and replaced in its entirety with the following:

2.01 **Payment Terms.** Subscriber shall pay each Bentley invoice for all Passports, Product licenses and services provided hereunder within forty-five (45) days from receipt of invoice in accordance with Florida Statute § 218.74, the Local Government Prompt Payment Act. Interest shall accrue on delinquent payments of such invoices at a rate of one percent (1%) per month or the highest rate permitted by law, whichever is less. In the event any payment hereunder is past due, Bentley, at its discretion, may suspend or, after notice of such overdue payment and a thirty (30) day period to cure, terminate Subscriber's services, rights and licenses provided under this Agreement.

3. Section 2.02 of Exhibit B, Taxes is hereby modified by adding the following provision: Subscriber is a governmental entity exempt from Florida state sales and use tax and shall provide Bentley with certificate of exemption upon execution of this Agreement.

4. Section 3.06 of Exhibit B, Proprietary Information, subsections (b), (c) and (f) are hereby deleted and replaced in their entirety as follows:

(b) To the extent permitted by Florida Statute Chapter 119, the Florida Public Records Act, Subscriber shall maintain the confidentiality of all Proprietary Information. Subscriber shall not reproduce or copy Proprietary Information except as permitted in this Agreement, as expressly authorized in writing in advance by Bentley or authorized by law. All such copies shall be marked by Bentley as proprietary and confidential.

(c) To the extent permitted by Florida Statute Chapter 119, the Florida Public Records Act, Subscriber shall only use Proprietary Information in furtherance of this Agreement, and may disclose Proprietary Information only to those employees required to have knowledge of same to perform their duties with respect to this Agreement. Subscriber shall not disclose or make Proprietary Information available to any third party, except as otherwise authorized by applicable law.

(f) Subscriber shall have no obligation of confidentiality with respect to any Proprietary Information that (i) has entered the public domain other than through a breach of this Agreement, (ii) has been rightfully obtained by Subscriber from a third party with no obligation of confidentiality, (iii) is previously known by Subscriber as demonstrated by clear and convincing evidence, or (iv) is subject to disclosure pursuant to Florida Statute Chapter 119, the Florida Public Records Act or any other applicable law.

5. Section 4.04 of Exhibit B, Exclusion of Damages, is hereby deleted and replaced in its entirety with the following:

4.04. Exclusion of Damages. IN NO EVENT SHALL EITHER PARTY OR ITS LICENSORS AND SUPPLIERS BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, REGARDLESS OF THE NATURE OF THE CLAIM, INCLUDING WITHOUT LIMITATION LOST PROFITS, COSTS OF DELAY, INTERRUPTION OF BUSINESS, LOSS OF USE, INABILITY TO ACCESS ONLINE SERVICES, ANY FAILURE OF DELIVERY COSTS OF LOST OR DAMAGED DATA OR DOCUMENTATION, OR LIABILITIES TO THIRD PARTIES ARISING FROM ANY SOURCE, EVEN IF A PARTY HAS BEEN ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES OR CLAIMS. BECAUSE SOME STATES/JURISDICTIONS DO NOT ALLOW FOR THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY TO SUBSCRIBER.

6. Section 4.06 of Exhibit B, Limitation of Bentley Liability, is hereby deleted and replaced in its entirety with the following:

4.06. Limitation of Bentley Liability. IN THE EVENT THAT NOTWITHSTANDING SECTIONS 4.01, 4.02, 4.03, 4.04 AND 4.05 OF THIS EXHIBIT B, BENTLEY IS FOUND LIABLE FOR DAMAGES BASED ON ANY BREACH, DEFECT, DEFICIENCY OR NON-CONFORMITY IN A PRODUCT, IN

SELECT SUPPORT SERVICES, OR IN ANY OTHER SERVICE OR MATERIALS, WHETHER IN CONTRACT, TORT OR OTHERWISE, AND REGARDLESS OF WHETHER ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PRUPOSE BY LAW, BENTLEY'S CUMATIVE LIABILITY HEREUNDER SHALL NOT EXCEED THE PRICE PAID BY SUBSCRIBER FOR (i) SUCH PRODUCT, (ii) A ONE YEAR SUBSCRIPTION TO THE SELECT PROGRAM, OR (iii) SUCH OTHER DEFECTIVE SERVICE OR MATERIALS, AS THE CASE MAY BE. THE PROVISIONS OF THIS AGREEMENT ALLOCATE THE RISKS BETWEEN BENTLEY AND SUBSCRIBER. BENTLEY'S PRICING REFLECTS THIS ALLOCATION OF RISK AND THE LIMITATION OF LIABILITY SPECIFIED HEREIN.

7. Section 7.01 of Exhibit B, Term, is hereby deleted and replaced in its entirety with the following:

7.01, **Term.** This Agreement and Subscriber's SELECT Program subscription shall become effective on the Effective Date, and shall continue for an initial term of twelve (12) months, and shall automatically renew for terms of like tenure unless either party gives notice of its election to not renew the term at least thirty (30) days prior to the expiration of the then-current term.

8. Section 8.01 of Exhibit B, Assignment, is hereby deleted and replaced in its entirety with the following:

8.01. **Assignment.** Neither party shall assign this Agreement or delegate its duties hereunder without prior written consent of the other. For purposes of this Agreement, a change in control of either party shall be considered an assignment for which each party's written consent is hereby granted provided that written notice of such assignment is given to the other party and that the surviving entity from such change in control must enter into a SELECT Agreement. This Agreement may be assigned by Bentley to any successor in interest in Bentley's business or to any direct or indirect wholly-owned subsidiary of Bentley Systems, Incorporated provided that written notice of such assignment be provide to Subscriber.

9. Section 8.09 of Exhibit B, Governing Law, is hereby deleted and replaced in its entirety with the following:

8.09. **Governing Law.** The parties to this Agreement irrevocably consent to jurisdiction and venue of the Courts of Polk County, Florida or the United States District Court in and for the Middle District of Florida, Tampa Division in connection with any action or proceeding arising out of or relating to this Agreement, document or instrument delivered pursuant to, in connection with, or simultaneously with this Agreement, or breach of this Agreement or any such document or instrument. This Agreement shall be governed by the laws of the State of Florida. To the maximum extent permitted by applicable law, the parties agree the provisions of the United Nations Convention on Contracts for the International Sale of Goods, as amended, and of the Uniform Computer

Information Transactions Act, as it may have been or hereafter may be in effect in any jurisdiction shall not apply to this Agreement.

10. Section 8.10 of Exhibit B, Arbitration, is hereby deleted and replaced in its entirety with the following:

8.10 Arbitration. In the event of any dispute, controversy or claim between the parties arising under this Agreement, the parties shall attempt in good faith to resolve such issue by negotiation between their respective designees authorized to settle such issue. Either party may give the other party written notice of any dispute not resolved in the normal course of business. Within thirty (30) days of receipt of such notice the parties agree to schedule a meeting at a designated time and place or a teleconference in an attempt to resolve the matter. If the parties fail to resolve the matter within sixty (60) days of providing such notice, either party may initiate mediation of the dispute as administered by the American Arbitration Association in accordance with its Commercial Mediation Rules. If the dispute has not been settled by mediation, or either party fails to participate in mediation, the other party may pursue any remedy available at law or in equity.

11. Section 8.12 of Exhibit B, Change of Ownership, is hereby deleted and replaced in its entirety with the following:

8.12. Change of Ownership. Subscriber shall provide the other party with sixty (60) days advance written notice of any changes in its ownership or location. Bentley shall provide Subscriber the same advanced written notice of any change in its ownership or location, as provided to any other of Bentley's subscribers.

12. Add the following to the Agreement as Section 8.14 of Exhibit B. Public Records:

8.14. Public Records.

IF BENTLEY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS: KEVIN COOK - DIRECTOR OF COMMUNICATIONS AT: PHONE: 863-834-6264, E-MAIL: KEVIN.COOK@LAKELANDGOV.NET, ADDRESS: ATTN: COMMUNICATIONS DEPARTMENT, 228 S. MASSACHUSETTS AVE., LAKELAND, FLORIDA 33801.

In accordance with Florida Statute §119.0701, Bentley shall keep and maintain public records required by the Subscriber in performance of services pursuant to the contract. Upon request from the Subscriber's custodian of public records, Bentley shall provide the Subscriber with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided pursuant to Florida Statute Chapter 119 or as otherwise provided by law. Bentley shall ensure that public records that are exempt or confidential and exempt from public

records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Bentley does not transfer the records to the Subscriber. Bentley shall, upon completion of the contract, transfer, at no cost, to the Subscriber all public records in possession of Bentley or keep and maintain public records required by the Subscriber to perform services pursuant to the contract. If Bentley transfers all public records to the Subscriber upon completion of the contract, Bentley shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Bentley keeps and maintains public records upon completion of the contract, Bentley shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Subscriber, upon request from the Subscriber's custodian of public records, in a format that is compatible with the information technology systems of the Subscriber.

13. Add the following to the Agreement as Section 8.15 of Exhibit B. Insurance:

8.15. Insurance.

Prior to the start of the Agreement and any yearly renewal term, Bentley shall provide to Subscriber a Certificate of Insurance evidencing the required insurance coverage specified herein. With the exception of Workers' Compensation, the Subscriber, the City of Lakeland, shall be listed as an additional insured:

Commercial General Liability: This shall be an "occurrence" type policy written in comprehensive form and shall protect Bentley and the additional insured against all claims arising from bodily injury of any person other than the employees of Bentley, and damage to property of the Subscriber. The liability limits shall not be less than \$1,000,000 single limit each occurrence.

Business Automobile Liability: This coverage is to include bodily injury and property damage arising out of the ownership, maintenance or use of any auto, including owned, non-owned, and hired automobiles and employee non-ownership use. The liability limits shall not be less than \$1,000,000 single limit each occurrence.

Workers' Compensation: Workers' Compensation coverage is to apply for all employees for statutory limits and shall include employer's liability with a minimum limit of \$1,000,000 each accident, \$1,000,000 disease policy limits, \$1,000,000 disease policy limit each employee. "All States" endorsement is required where applicable.

14. Except as provided herein, all other terms and conditions of the Agreement remain in full force and effect.

IN WITNESS WHEREOF the parties herein have executed this Addendum to the Bentley Select Program Agreement's General Terms and Conditions as of the day and year first written above.

**SUBSCRIBER
CITY OF LAKELAND, FLORIDA**

BENTLEY SYSTEMS INCORPORATED

By: _____
R. Howard Wiggs, Mayor

By: _____
(Signature)

(Printed Name/Title)

[Corporate Seal]

ATTEST:

ATTEST:

By: _____
Kelly S. Koos, City Clerk

By: _____
(Attesting Witness' Signature)

(Printed Name/Title)

APPROVED AS TO FORM AND
CORRECTNESS:

Timothy J. McCausland, City Attorney