



HAYWOOD COUNTY BOARD OF COMMISSIONERS

AGENDA REQUEST

***Must be presented to the County Manager's Office
NO LATER THAN 5 P.M. FRIDAY THE WEEK BEFORE THE MEETING***

DATE OF REQUEST: August 28, 2015

FROM: DBF

MEETING DATE REQUESTED: September 8, 2015

*Regular meetings: First (1st) Monday of the month at 9:00 am
Third (3rd) Monday of the month at 5:30 pm*

SUBJECT: Spatialest Appraisal Software

REQUEST: Contract approval of Spatialest Appraisal and Comparison Software

BACKGROUND: Spatialest uses comparable sales information, property characteristics, and location to produce estimates of value. It combines statistical analysis within the power of a map interface enabling users to generate high quality accurate appraisal analysis.

Comper for the Appraiser is a revolutionary online Comparable Sales selector. Comper helps the Appraiser validate or present assessment information, assists with appeal management and improves accessing or disseminating property information

IMPLEMENTATION PLAN: Spatialest will train county staff during a four day training period.

FINANCIAL IMPACT STATEMENT: Cost of software was approved in the 2015-2016 budget. Initial fees are \$60,000.00 and then a yearly cost of \$21,000.00 for support.

SUPPORTING ATTACHMENTS: YES X NO HOW MANY

LIST:

If yes, one ORIGINAL ATTACHMENT, and 14 copies, copied front and back side of pages, stapled and three-hole punched must accompany the agenda request

PowerPoint Presentation: YES _____ NO _____

PERSON MAKING PRESENTATION AT MEETING: DBF

TITLE: Tax Administrator

PHONE NUMBER: 828.356.2602

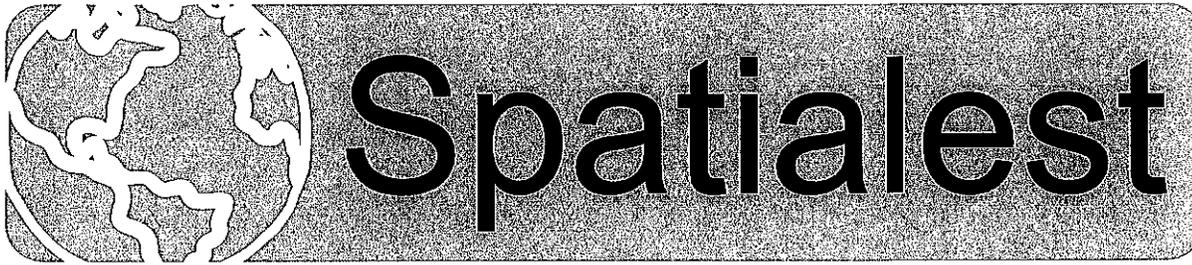
E-MAIL: dbfrancis@haywoodnc.net

THIS SECTION FOR OFFICE USE ONLY

Received (Date/Time): _____

County Manager / Clerk to the Board Comments: _____

In an effort to save paper, attachments should be copied on both front and back sides.



Software as a Service Agreement

Haywood County, NC

Spatialest

10 The Diamond

Coleraine

BT521DE

N Ireland, UK

info@spatialest.com

www.spatialest.com

US: 617 418 4531

Intl: +44 2870 342235

UK: 02870 342235

SPATIALEST SOFTWARE AS A SERVICE AGREEMENT

This Software as a Service Agreement (the "Agreement"), effective the 1st day of October 2015 (the "Effective Date"), is made by and between Spatialest Ltd. with its principal place of business at 10, The Diamond, Coleraine, Northern Ireland, BT52 1DE ("Spatialest"), and Haywood County, a body politic and corporate, and a political subdivision of the State of North Carolina with a principal place of business at 215 N Main Street, Waynesville, NC 28786 ("Customer"). Spatialest and Customer shall herein be referred to each as a "Party" and collectively as the "Parties". In consideration of the mutual promises and covenants contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. DEFINITIONS

1.1 Affiliates means any corporation, partnership or other entity now existing or hereafter organized that directly or indirectly controls, is controlled by or under common control with a Party. For purposes of this definition "control" means the direct possession of a majority of the outstanding voting securities of an entity.

1.2 Confidential Information has the meaning ascribed to it in Section 4.1.

1.3 Content means text, images, documents, materials, and all other forms of data or communication.

1.4 Customer Content means all Content made available by Customer or its Users to Spatialest for use in connection with the Services or generated by Customer via use of the.

1.5 Documentation means the documentation for the Subscription Service generally supplied by Spatialest to assist its customers in the use of the Subscription Service, including user and system administrator guides and manuals and other written materials.

1.6 Losses has the meaning ascribed to it in Section 9.1.

1.7 Professional Services means those development, set-up, integration, configuration, consulting and/or training services, if and as specified on a Sales Order and/or on an SOW to be provided by Spatialest.

1.8 Representatives has the meaning ascribed to it in Section 4.1.

1.9 Sales Order means each Spatialest ordering document signed by duly authorized representatives of both Parties which references this Agreement, identifies the specific Subscription Service ordered by Customer from Spatialest, sets forth the prices for the Subscription Service and contains other applicable terms and conditions

1.10 Services means both the Subscription Service and any related Professional Services

provided by Spatialest pursuant to this Agreement.

1.11 SOW means a Statement of Work referencing this Agreement signed by duly authorized representatives of both Parties from time to time that sets forth Professional Services to be provided by Spatialest and certain other terms related thereto that are agreed between the Parties. The Parties acknowledge that for small Professional Services engagements, the Sales Order may serve as the SOW.

1.12 Spatialest Content means all Content made available by Spatialest to Customer in connection with Customer's use of the Subscription Service.

1.13 Subscription Service means Spatialest's proprietary web based software programs described on the applicable Sales Order.

1.14 Users mean individuals who are authorized by Customer to use the Services. Users consist of any employee of Customer or its Affiliates and any independent contractor of Customer or its Affiliates.

1.15 Work Product means any work product, deliverables, programs, interfaces, modifications, configurations, reports, analyses or documentation developed by Spatialest on behalf of Customer and delivered to Customer in the performance of Professional Services.

2. SERVICES

2.1 Services. Spatialest shall provide Customer with the specific Services specified on a Sales Order or SOW, as the case may be. Any conflict between the terms and conditions set forth in this Agreement and any Sales Order or SOW shall be resolved in favor of this Agreement unless such Sales Order or SOW expressly references the conflicting provision in this Agreement that it is intended to control and states that it is to control. Customer agrees that purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written comments made by Spatialest regarding future functionality or features.

2.2 License Grant. Subject to the terms and conditions of this Agreement, and in consideration for the payment of fees set forth on the applicable Sales Order, Spatialest hereby grants to Customer, solely during the term of the applicable Sales Order, a non-exclusive, non-transferable (except as set forth in Section 10.2) license to access and use the Subscription Service solely for Customer's internal business purposes. This license is restricted to use by Customer and its Users and does not include the right to use the Subscription Service on behalf of any third party. Customer is responsible for procuring and maintaining the network connections that connect the Customer to the Subscription Service.

3. FEES; PAYMENT TERMS

3.1 Fees. Customer agrees to pay Spatialest for Services provided and expenses incurred on the basis and at the rates specified in each Sales Order or SOW. Unless otherwise set forth on the Sales Order or SOW, payment shall be due within thirty (30) days after receipt of Spatialest's invoice and shall be made in US Dollars. Customer

agrees to pay a late charge of one percent (1%) per month (or part of a month), or the maximum lawful rate permitted by applicable law, whichever is less, for all amounts, not subject to a good faith dispute, and not paid when due. In addition to paying the applicable fees, Customer shall also pay all pre-approved reasonable travel and out-of-pocket expenses incurred by Spatiallest in connection with any Services rendered.

3.2 Disputed Charges. If Customer disputes any charge or amount on any invoice and such dispute cannot be resolved promptly through good faith discussions between the Parties, Customer shall pay the amounts due under this Agreement less the disputed amount, and the Parties shall diligently proceed to resolve such disputed amount. An amount will be considered disputed in good faith if (i) Customer delivers a written statement to Spatiallest on or before the due date of the invoice, describing in detail the basis of the dispute and the amount being withheld by Customer, (ii) such written statement represents that the amount in dispute has been determined after due investigation of the facts and that such disputed amount has been determined in good faith, and (iii) all other amounts due from Customer that are not in dispute have been paid as and when required under this Agreement.

3.3 Taxes. Fees are exclusive of taxes. Customer shall be responsible for the payment of all sales, use and similar taxes arising from or relating to the Services rendered hereunder, except for taxes related to the net income of Spatiallest and any taxes or obligations imposed upon Spatiallest under federal, state and local wage laws.

4. CONFIDENTIALITY

4.1 Confidential Information. During the term of this Agreement, each Party will regard any information provided to it by the other Party and designated in writing as proprietary or confidential to be confidential ("Confidential Information"). Confidential Information shall also include information which, to a reasonable person familiar with the disclosing Party's business and the industry in which it operates, is of a confidential or proprietary nature. The receiving Party shall hold in confidence, and shall not disclose (or permit or suffer its personnel to disclose) any Confidential Information to any person or entity except to a director, officer, employee, outside consultant, or advisor (collectively "Representatives") who have a need to know such Confidential Information in the course of the performance of their duties for the receiving Party and who are bound by a duty of confidentiality no less protective of the disclosing Party's Confidential Information than this Agreement. The receiving Party and its Representatives shall use such Confidential Information only for the purpose for which it was disclosed and shall not use or exploit such Confidential Information for its own benefit or the benefit of another without the prior written consent of the disclosing Party. Each Party accepts responsibility for the actions of its Representatives and shall protect the other Party's Confidential Information in the same manner as it protects its own valuable confidential information, but in no event shall less than reasonable care be used. The Parties expressly agree that the terms and pricing of this Agreement are Confidential Information and Customer further agrees that it shall not use the Services for the purposes of conducting comparative analysis, evaluations or product benchmarks with respect to the Services and will not publicly post any analysis or

reviews of the Services without Spatialest's prior written approval. A receiving Party shall promptly notify the disclosing Party upon becoming aware of a breach or threatened breach hereunder, and shall cooperate with any reasonable request of the disclosing Party in enforcing its rights.

4.2 Exclusions. Information will not be deemed Confidential Information hereunder if such information: (i) is known prior to receipt from the disclosing Party, without any obligation of confidentiality; (ii) becomes known to the receiving Party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing Party; (iii) becomes publicly known or otherwise publicly available, except through a breach of this Agreement; or (iv) is independently developed by the receiving Party without use of the disclosing Party's Confidential Information. The receiving Party may disclose Confidential Information pursuant to the requirements of applicable law, legal process or government regulation, provided that it gives the disclosing Party reasonable prior written notice to permit the disclosing Party to contest such disclosure, and such disclosure is otherwise limited to the required disclosure.

4.3 Injunctive Relief. Notwithstanding any other provision of this Agreement, both Parties acknowledge that any use of the disclosing Party's Confidential Information in a manner inconsistent with the provisions of this Agreement may cause the disclosing Party irreparable and immediate damage for which remedies other than injunctive relief may be inadequate. Therefore, both Parties agree that, in addition to any other remedy to which the disclosing Party may be entitled hereunder, at law or equity, the disclosing Party shall be entitled to an injunction or injunctions (without the posting of any bond and without proof of actual damages) to restrain such use in addition to other appropriate remedies available under applicable law.

5. LIMITED WARRANTY

5.1 Subscription Service Warranty. Spatialest warrants that during the term of any Sales Order for the Subscription Service, the Subscription Service will conform, in all material respects, with its Documentation. Spatialest does not warrant that it will be able to correct all reported defects or that use of the Subscription Service will be uninterrupted or error free. Spatialest makes no warranty regarding features or services provided by third parties. For any breach of the above warranty, Spatialest will, at no additional cost to Customer, provide remedial services necessary to enable the Subscription Service to conform to the warranty. Customer will provide Spatialest with a reasonable opportunity to remedy any breach and reasonable assistance in remedying any defects. The remedies set out in this subsection are Customer's sole remedies for breach of the above warranty. Such warranty shall only apply if the Subscription Service has been utilized by Customer in accordance with the Sales Order and this Agreement.

5.2 Professional Services Warranty. Spatialest warrants that any Professional Services provided hereunder shall be provided in a competent manner in accordance with any specifications set forth in the Sales Order or SOW (as the case may be), in all material respects. Spatialest further warrants that any Work Product provided pursuant to any

Professional Services engagement shall comply, in all material respects, with the specifications set forth in the applicable Sales Order or SOW. If the Services are not performed as warranted or the Work Product does not so comply, then, upon Customer's written request, Spatialest shall promptly re-perform, or cause to be re-performed, such Professional Services, at no additional charge to Customer. Such warranties and other obligations shall only survive for thirty (30) days following the completion of the Professional Services or the delivery of each applicable portion of the Work Product, as the case may be (provided however, that if a Sales Order or SOW specifies that acceptance testing is applicable then such warranty shall survive for a period of thirty (30) days following Customer's acceptance of such Professional Services or Work Product). Such re-performance shall be Customer's exclusive remedy and Spatialest's sole liability for any such non-performance. If, however, after repeated efforts, Spatialest is unable to remedy such defect in any Professional Services or Work Product, then Customer's sole remedy and Spatialest's entire liability shall be to refund to Customer any amounts previously paid by Customer for the particular deficient portion of the Professional Services or Work Product.

5.3 No Other Warranty. SPATIALEST DOES NOT REPRESENT THAT THE SERVICES WILL BE ERROR-FREE OR THAT THE SERVICES WILL MEET CUSTOMER'S REQUIREMENTS OR THAT ALL ERRORS IN THE SERVICES WILL BE CORRECTED OR THAT THE OVERALL SYSTEM THAT MAKES THE SUBSCRIPTION SERVICE AVAILABLE (INCLUDING BUT NOT LIMITED TO THE INTERNET, OTHER TRANSMISSION NETWORKS, AND CUSTOMER'S LOCAL NETWORK AND EQUIPMENT) WILL BE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THE WARRANTIES STATED IN SECTION 5 ABOVE ARE THE SOLE AND EXCLUSIVE WARRANTIES OFFERED BY SPATIALEST. THERE ARE NO OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THOSE OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS. CUSTOMER ASSUMES ALL RESPONSIBILITY FOR DETERMINING WHETHER THE SERVICES ARE ACCURATE OR SUFFICIENT FOR CUSTOMER'S PURPOSES.

6. LIMITATION OF LIABILITY.

6.1 Consequential Damage Waiver. Except as may arise out of either Party's breach of Section 4, neither Party will be liable to the other or any third party for loss of profits, or special, indirect, incidental, consequential or exemplary damages, including lost profits and costs, in connection with the performance of the Services, or the performance of any other obligations under this Agreement, even if it is aware of the possibility of the occurrence of such damages.

6.2 Limitation of Liability. The total cumulative liability of Spatialest to Customer for any and all claims and damages under this Agreement, whether arising by statute, contract, tort or otherwise, will not exceed the Services fees paid by Customer to Spatialest under the Sales Order or SOW for the Services which form the subject of the claim during the six (6) month period immediately preceding the event giving rise to the claim. The provisions of this Agreement allocate risks between the Parties. The pricing set forth in each Sales Order and SOW reflects this allocation of risk and the limitation

of liability specified herein.

7. TERM

7.1 Term. This Agreement will commence on the Effective Date as set forth above and will continue in effect until otherwise terminated in accordance with Section 7.2 below. The term of each Sales Order for the Subscription Service shall be set forth on the Sales Order. Spatialest reserves the right to change the rates, applicable charges and usage policies and to introduce new charges, for such Sales Order upon providing Customer written notice thereof (which notice may be provided by e-mail) at least 60 days prior to the then current renewal date of the Sales Order.

7.2 Termination. Notwithstanding the foregoing, either Party may terminate this Agreement or any Sales Order or SOW (i) immediately in the event of a material breach of this Agreement or any such Sales Order or SOW by the other Party that is not cured within thirty (30) days of written notice thereof from the other Party, or (ii) immediately if the other Party ceases doing business or is the subject of a voluntary or involuntary bankruptcy, insolvency or similar proceeding, that is not dismissed within sixty (60) days of filing. Termination of a Sales Order or SOW shall not be deemed a termination of this Agreement. Termination of this Agreement shall, however, terminate all outstanding Sales Orders and SOWs. Either Party may also terminate this Agreement upon no less than thirty (30) days' prior written notice to the other Party for any reason, if at such time there are no outstanding Sales Orders or SOWs then currently in effect. All rights and obligations of the Parties which by their nature are reasonably intended to survive such termination or expiration will survive termination or expiration of this Agreement and each Sales Order and SOW.

7.3 Effect of Termination. Upon any termination or expiration of this Agreement or any applicable Sales Order or SOW, Spatialest shall no longer provide the applicable Services to Customer and Customer shall cease and cause its Users to cease using the Services. Customer shall pay Spatialest for all fees that had accrued prior to the termination date. Except as expressly provided herein, termination of this Agreement by either party will be a nonexclusive remedy for breach and will be without prejudice to any other right or remedy of such party. Upon termination of this Agreement, each party shall promptly return or destroy all Confidential Information of the other party in its possession. Within thirty (30) days following termination, Customer may retrieve Customer Data in accordance with established and reasonable system access procedures. After such period, Spatialest will have no further obligation to store and/or make available Customer Data and may delete the same.

8. OWNERSHIP; USE OF CONTENT; OBLIGATIONS

8.1 Customer Content. Customer retains ownership of all right, title and interest in and to all Customer Content. During the term of this Agreement, Customer hereby grants to Spatialest a limited, worldwide, non-exclusive, non-transferable (except as set forth in Section 10.2), royalty-free right to use, display, transmit, and distribute the Customer Content solely as necessary to provide the Subscription Service to Customer. Upon termination of the Subscription Service, Spatialest shall make such Customer

Content available to Customer in a mutually agreed upon format. Notwithstanding the foregoing, Customer acknowledges and agrees that Spatialest shall have the right to copy, use, distribute, and display any information, analysis, statistics and other data generated by the Subscription Service (or derived from Customer's use of the Subscription Service), including compilation of aggregated statistics about the Subscription Service; provided, however, that Spatialest shall not publicly disclose or distribute any such data unless such data is in an aggregated form that would not permit a third party to identify the data as associated with Customer or any of its Users.

8.2 Subscription Service and Spatialest Data. Customer acknowledges and agrees that as between Spatialest and Customer, all right, title and interest in and to the Subscription Service and all derivatives thereof (including any and all patents, copyrights, trade secret rights, trademarks, trade names and other proprietary rights embodied therein or associated therewith) are and shall remain Spatialest's or its licensors', and Spatialest in no way conveys any right or interest in the Subscription Service other than a limited license to use it in accordance herewith. Spatialest also retains ownership of all right, title and interest in and to all Spatialest Data. During the term of this Agreement, Spatialest grants to Customer a limited, worldwide, non-exclusive, non-transferable (except as set forth in Section 10.2), royalty-free right to use, display, transmit, and distribute the Spatialest Data solely in connection with Customer's permitted use of the Subscription Service.

8.3 Customer Obligations. Customer is responsible for all activities conducted under its User logins and for its Users' compliance with this Agreement. Unauthorized use, resale or commercial exploitation of the Subscription Service in any way is expressly prohibited. Without Spatialest's express prior written consent in each instance, Customer shall not (and shall not allow any third party to): reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code form or structure of the Subscription Service or access the Subscription Service in order to build a competitive product or service or copy any ideas, features, functions or graphics of the Subscription Service. Except as expressly permitted in this Agreement, Customer shall not copy, license, sell, transfer, make available, lease, time-share, distribute, or assign this license, the Subscription Service to any third-party. Customer shall be liable for any breach of this Agreement by any of its Users. In addition to Spatialest's other remedies hereunder, Spatialest reserves the right upon notice to Customer to terminate any User's right to access the Subscription Service if such User has violated any of the restrictions contained in this Agreement. Customer is solely responsible for all Customer Content. Spatialest does not guarantee the accuracy, integrity or quality of such Customer Content. Neither Customer nor its Users shall use the Subscription Service to: (a) send, upload or otherwise transmit any Customer Content that is unlawful, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, libelous, invasive of another's privacy, hateful, or racially, ethnically or otherwise objectionable; (b) upload or otherwise transmit, display or distribute any Customer Content that infringes any trademark, trade secret, copyright or other proprietary or intellectual property rights of any person; (c) upload or otherwise transmit any material

that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment; (d) interfere with or disrupt the Subscription Service or networks connected to the Subscription Service; or (e) violate any applicable law or regulation.

8.4 Work Product. Except as otherwise set forth on an SOW or Sales Order, Customer will have a non-exclusive, non-transferable (except as set forth in Section 10.2) license to use any Work Product developed by Spatialest in the performance of the Services and delivered to Customer, upon Customer's payment in full of all amounts due hereunder, solely for Customer's internal use in connection with the subscription Service. Spatialest retains ownership of all information, software and other property owned by it prior to this Agreement or which it develops independently of this Agreement and all Work Product compiled or developed by Spatialest in the performance of this Agreement.

9. INDEMNIFICATION

9.1 Spatialest Indemnification. Subject to Section 9.3 below, Spatialest will indemnify, defend and hold Customer and its Affiliates harmless from and against any and all costs, liabilities, losses, and expenses (including, but not limited to, reasonable attorneys' fees) (collectively, "Losses") incurred arising out of or in connection with a claim, suit, action, or proceeding brought by any third party against Customer or any of its Affiliates alleging that the use of the Services as permitted hereunder infringes any United States patent, copyright or trademark, or constitutes a misappropriation of a trade secret of a third party. Excluded from the above indemnification obligations are claims to the extent arising from (a) use of the Services in violation of this Agreement or applicable law, (b) use of the Services after Spatialest notifies Customer to discontinue use because of an infringement claim, (c) any claim relating to any third party products or services or Customer Content, (d) modifications to the Services made other than by Spatialest (where the claim would not have arisen but for such modification), (e) the combination, operation, or use of the Services with software or equipment which was not provided by Spatialest, to the extent that Customer's liability for such claim would have been avoided in the absence of such combination, operation, or use; or (f) compliance by Spatialest with Customer's custom requirements or specifications if and to the extent such compliance with Customer's custom requirements or specifications resulted in the infringement. If the Services are held to infringe, Spatialest will, at its own expense, in its sole discretion use commercially reasonable efforts either (a) to procure a license that will protect Customer against such claim without cost to Customer; (b) to replace the Services with non-infringing Services without material loss of functionality; or (c) if (a) and (b) are not commercially feasible, terminate the Agreement or the applicable Sales Order or SOW and refund to the Customer any prepaid unused fees paid to Spatialest for the infringing Services. The rights and remedies granted Customer under this Section 9.1 state Spatialest's entire liability, and Customer's exclusive remedy, with respect to any claim of infringement of the intellectual property rights of a third party, whether arising under statutory or

common law or otherwise.

9.2 Customer Indemnification. Subject to Section 9.3 below, Customer shall indemnify, defend, and hold Spatialest and its Affiliates harmless from and against any and all Losses resulting from a claim, suit, action, or proceeding brought by any third party against Spatialest or any of its Affiliates that arises out of or results from a claim (i) alleging that the Customer Content, or any use thereof, infringes the intellectual property rights or proprietary rights of others, or has caused harm to a third party, or (ii) arising out of Customer's breach of Sections 8.3 above or violation of any applicable law.

9.3 Indemnification Procedure. The indemnified Party shall (i) promptly notify the indemnifying Party in writing of any claim, suit or proceeding for which indemnity is claimed, provided that failure to so notify will not remove the indemnifying Party's obligation except to the extent it is prejudiced thereby, and (ii) allow the indemnifying Party to solely control the defense of any claim, suit or proceeding and all negotiations for settlement; provided that the indemnifying Party shall not settle any claim without the indemnified Party's prior written consent (such consent not to be unreasonably withheld or delayed). The indemnified Party shall also provide the indemnifying Party with reasonable cooperation and assistance in defending such claim (at the indemnifying Party's cost).

10. GENERAL PROVISIONS

10.1 Entire Agreement and Controlling Documents. This Agreement, including all Exhibits hereto and all Sales Orders and SOWs, contains the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous proposals, understandings, representations, warranties, covenants, and any other communications (whether written or oral) between the Parties relating thereto and is binding upon the Parties and their permitted successors and assigns. Only a written instrument that refers to this Agreement or the applicable Sales Order or SOW and that are duly signed by the authorized representatives of both Parties may amend this Agreement or such Sales Order or SOW. Any inconsistent or conflicting terms and conditions contained in any purchase order issued by Customer shall be of no force or effect, even if the order is accepted by Spatialest. This Agreement shall be construed and interpreted fairly, in accordance with the plain meaning of its terms, and there shall be no presumption or inference against the Party drafting this Agreement in construing or interpreting the provisions hereof.

10.2 Assignment. This Agreement shall be binding upon and for the benefit of Spatialest, Customer and their permitted successors and assigns. Either Party may assign this Agreement and all Sales Orders without consent of the other Party to an Affiliate of such party or as part of a corporate reorganization, consolidation, merger, or sale of substantially all of its assets or business to which this Agreement relates provided that it gives the other Party prompt written notice of such assignment and the assignee is or otherwise agrees in writing to be bound by the terms and conditions of this Agreement. Except as expressly stated in this Agreement, neither Party may otherwise assign its rights or delegate its duties under this Agreement either in whole or

in part without the prior written consent of the other Party, and any attempted assignment or delegation without such consent will be void. Spatialest may use independent contractors or subcontractors to assist in the delivery of Services; provided, however, that Spatialest shall remain liable for the actions or omissions of such independent contractors or subcontractors and for the payment of their compensation.

10.3 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of North Carolina, USA without regard to its conflict of law provisions.

10.4 Headings. The headings to the sections of this Agreement are for ease of reference only and shall not affect the interpretation or construction of this Agreement.

10.5 Relationship of the Parties. Spatialest and Customer are independent contractors, and nothing in this Agreement shall be construed as making them partners or creating the relationships of employer and employee, master and servant, or principal and agent between them, for any purpose whatsoever. Neither Party shall make any contracts, warranties or representations or assume or create any obligations, express or implied, in the other Party's name or on its behalf.

10.6 Publicity. Neither party will use, publicize, or issue any press release which includes the name, trademarks, or other proprietary identifying symbol of the other party without the prior written consent of the other party; provided, that Spatialest may include Customer's name and logo on lists of selected Customers.

10.7 Force Majeure. Except for the obligation to make payments, nonperformance of either Party shall be excused to the extent that performance is rendered impossible by strike, fire, flood, governmental acts or orders or restrictions, failure of suppliers, or any other reason where failure to perform is beyond the reasonable control of the non-performing Party.

10.8 Certification and Audit. At Spatialest's written request and no more than once every twelve (12) months, Customer shall provide Spatialest with a signed certification verifying that the Subscription Service is being used pursuant to the provisions of this Agreement. Spatialest may perform an audit of Customer's use of the Subscription Service and Customer's compliance with the provisions of this Agreement. Any such audit shall be made at Spatialest's expense and shall occur during the Customer's normal business hours and no more than once per six month period.

10.9 Modifications to Subscription Service. Spatialest may make modifications to the Subscription Service or particular components of the Subscription Service from time to time provided that such modifications do not materially degrade any functionality or features of the Subscription Service.

10.10 Notices. Any notice, approval, request, authorization, direction or other communication under this Agreement shall be given in writing and shall be deemed to have been delivered and given for all purposes (i) on the delivery date if delivered personally to the Party to whom the same is directed; (ii) one (1) business day after deposit with a nationally recognized overnight carrier, with written verification of receipt,

or (iii) five (5) business days after the mailing date whether or not actually received, if sent by U.S. certified mail, return receipt requested, postage and charges pre-paid or any other means of rapid mail delivery for which a receipt is available, to the address of the Party set forth on the applicable Sales Order. Either Party may change its address by giving written notice of such change to the other Party.

10.11 No Third Party Beneficiaries. Nothing contained in this Agreement is intended or shall be construed to confer upon any person any rights, benefits or remedies of any kind or character whatsoever, or to create any obligation of a Party to any such person.

10.12 Counterpart and Facsimile Execution. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original as against any Party whose signature appears thereon, but all of which together shall constitute but one and the same instrument. Signatures to this Agreement transmitted by facsimile, by electronic mail in "portable document format" (".pdf"), or by any other electronic means which preserves the original graphic and pictorial appearance of the Agreement, shall have the same effect as physical delivery of the paper document bearing the original signature.

10.13 Waiver and Severability. Performance of any obligation required by a Party hereunder may be waived only by a written waiver signed by an authorized representative of the other Party, which waiver shall be effective only with respect to the specific obligation described therein. The failure of either Party to exercise any of its rights under this Agreement will not be deemed a waiver or forfeiture of such rights. The invalidity or unenforceability of one or more provisions of this Agreement will not affect the validity or enforceability of any of the other provisions hereof, and this Agreement will be construed in all respects as if such invalid or unenforceable provision(s) were omitted.

Spatialest and Customer have caused this Agreement to be executed as a document under seal by their duly authorized representatives as of the Effective Date.

Spatialest Ltd.

Haywood County

By: _____

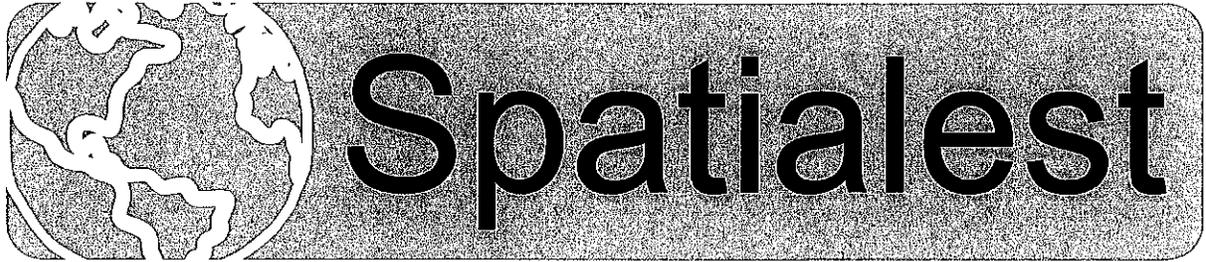
By: _____

Name: Ashley Moore

Name: Ira Dove

Title: CEO

Title: County Manager



Spatialest License and Services Agreement

Haywood County, NC

Spatialest

10 The Diamond

Coleraine

BT521DE

N Ireland, UK

info@spatialest.com

www.spatialest.com

US: 617 418 4531

Intl: +44 2870 342235

UK: 02870 342235

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1.1 Affiliates means any corporation, partnership or other entity now existing or hereafter organized that directly or indirectly controls, is controlled by or under common control with a Party. For purposes of this definition "control" means the direct possession of a majority of the outstanding voting securities of an entity

1.2 Documentation means the documentation for the Software generally supplied by Spatialest to assist its Customers in the use of the Software, including user and system administrator guides and manuals and other written materials, including the software functional specifications

1.3 Losses mean all claims, actions, proceedings, damages, losses, liabilities and expenses, including reasonable attorney fees.

1.4 Maintenance Services means Spatialest's maintenance and support services for the Software.

1.5 Professional Services means those development, set-up, integration, configuration, consulting and/or training services, if and as specified on a Sales Order and/or on an SOW to be provided by Spatialest.

1.6 Sales Order means each Spatialest ordering document signed by duly authorized representatives of both Parties which references this Agreement, identifies the specific Software or Services ordered by Customer from Spatialest, sets forth the prices for such Software and Services and contains other applicable terms and conditions

1.7 Services means the Maintenance Services and any Professional Services provided by Spatialest pursuant to this Agreement.

1.8 Software means the software products provided by Spatialest to Customer and which are listed on a Sales Order and all updates, enhancements, bug fixes and new releases thereto that Spatialest makes available to Customer hereunder.

1.9 SOW means a Statement of Work referencing this Agreement signed by duly authorized representatives of both Parties from time to time that sets forth Professional Services to be provided by Spatialest and certain other terms related thereto that are agreed between the Parties. The Parties acknowledge that for small Professional Services engagements, the Sales Order may serve as the SOW.

1.10 Users mean individuals who are authorized by Customer to use the Services. Users consist of any employee of Customer or its Affiliates and any independent contractor of Customer or its Affiliates.

1.11 Work Product means any work product, deliverables, programs, interfaces, modifications, configurations, reports, analyses or documentation developed by Spatialest on behalf of Customer and delivered to Customer in the performance of Professional Services.

1. SERVICES/LICENSES

1.1 Services. Spatialest shall provide Customer with the specific Services and/or Software specified on a Sales Order or SOW, as the case may be. Any conflict between the terms and conditions set forth in this Agreement and any Sales Order or SOW shall be resolved in favor of this Agreement unless such Sales Order or SOW expressly references the conflicting provision in this Agreement that it is intended to control and states that it is to control.

1.2 License. Subject to the terms and conditions of this Agreement, upon the execution of a Sales Order by Spatialest and Customer, Spatialest grants to Customer a non-exclusive, non-transferable, term license to install, execute and use the Software, in object code form only, as well as the accompanying Documentation, solely for Customer's internal use, and solely in connection with the number of licenses licensed by Customer (as reflected on the Sales Order). Customer shall only install the Software at the site(s) set forth on the Sales Order (the "Sites"). The preceding sentence does not, however, restrict the ability of Users to access the Software over the internet from any site outside the Sites. The foregoing license is subject to the other terms set forth in this Agreement, any additional terms set forth in the applicable Sales Order, and payment of all applicable license fees. Notwithstanding the foregoing, Customer shall only use the Software and Documentation during the specified term set forth on the Sales Order (the "License Term").

1.3 Copies. Customer may make up to two (2) copies of the Software and Documentation solely for Customer's internal back-up and archival purposes only, provided that all such copies shall bear the original and unmodified copyright, patent and other intellectual property markings as originally delivered by Spatialest.

1.4 Delivery. Spatialest shall deliver one (1) copy of the ordered Software and Documentation within ten (10) days after its execution of the applicable Sales Order or on such other date as may be specified in the applicable Sales Order. Delivery shall be deemed to have been made upon (i) transfer of the Software and Documentation by Spatialest to its shipping agent or (ii) receipt of electronic confirmation by Spatialest that the electronic mail to Customer containing the instructions for downloading the Software and Documentation from an FTP site has been sent.

2. FEES; PAYMENT TERMS

3.1 License Fees. In consideration of the licenses granted by Spatialest under this Agreement, Customer agrees to pay Spatialest all license fees set forth on a Sales Order ("License Fees"). Customer agrees that notwithstanding any other provision of this Agreement, License Fees are fully earned by Spatialest upon delivery of the Software to a designated User, and such License Fees are due and payable by Customer without any further performance by Spatialest. Spatialest is expressly authorized by Customer to deliver the Software and invoice for the Software listed in accordance with the Sales Order upon execution of such Sales Order by the Parties. All licenses granted with respect to any Software and Documentation shall immediately expire on the last day of the License Term.

3.2 Maintenance and Support Fees. For each Maintenance Period, Customer agrees to pay to Spatialest the Maintenance Services fee set forth on a Sales Order ("Maintenance Fee"). The Maintenance Fee for the initial Maintenance Period shall be the applicable amount set forth on a Sales Order. The Maintenance Fee for each subsequent Maintenance Period shall be equal to Spatialest's then-current Maintenance Fee for the Software. The Maintenance Fee for each such Maintenance Period, except as otherwise specifically set forth on a Sales Order, shall be payable on the later of (i) the commencement date of such Maintenance Period, or (ii) the thirtieth (30th) day following Customer's receipt of Spatialest's invoice for such Maintenance Fee.

3.3 Additional Hardware and Software. Customer is responsible for the purchase or licensing of all additional equipment and software necessary to install and operate properly the Software as detailed in the then-current Documentation. Future versions of the Software and new Spatialest products may require additional equipment and/or software, as well as updated versions of the additional equipment and software. Purchase or licensing of these items, if required, shall be solely the responsibility of Customer. Customer acknowledges that certain third party hardware and software products ("Third Party Products") are provided by Spatialest as a "pass through" to Customer, and such Third Party Products are covered by a warranty offered by the third party hardware or software vendor, not Spatialest. Any such Third Party Products shall be identified as such on the Sales Order. Customer acknowledges and agrees that Spatialest makes no warranty of any kind with respect to such Third Party Products, and agrees to look solely to the applicable vendor for warranty support for such Third Party Products.

3.4 Payment Terms. Customer agrees to pay Spatialest for the Software and Services provided and expenses incurred on the basis and at the rates specified in each Sales Order or SOW, as the case may be. Unless otherwise set forth on the Sales Order or SOW, payment shall be due within thirty (30) days after the date of Spatialest's invoice and shall be made in US Dollars. Customer agrees to pay a late charge of one and half percent (1 1/2%) per month (or part of a month), or the maximum lawful rate permitted by applicable law, whichever is less, for all amounts, not subject to a good faith dispute, and not paid when due. In addition to paying the applicable fees, Customer shall also pay all pre-approved reasonable travel and out-of-pocket expenses incurred by Spatialest in connection with any Services rendered.

3.5 Taxes. Customer shall be solely and exclusively responsible for the payment of required federal, state and local taxes arising from or relating to the Software and Services rendered hereunder, except for taxes related to the net income of Spatialest and any taxes or obligations imposed upon Spatialest under federal, state and local wage laws.

3. CONFIDENTIALITY

3.1 Confidential Information. During the term of this Agreement, each Party will regard any information provided to it by the other Party and designated in writing as proprietary or confidential to be confidential ("Confidential Information"). Confidential Information shall also include information which, to a reasonable person familiar with the disclosing Party's business and the industry in which it operates, is of a confidential or proprietary nature. For the sake of clarity, the Software is the Confidential Information of Spatialest. The receiving Party shall hold in confidence, and shall not disclose (or permit or suffer its personnel to disclose) any Confidential Information to any person or entity except to a director, officer, employee, outside consultant, or advisor (collectively "Representatives") who have a need to know such Confidential Information in the course of the performance of their duties for the receiving Party and who are bound by a duty of confidentiality no

less protective of the disclosing Party's Confidential Information than this Agreement. The receiving Party and its Representatives shall use such Confidential Information only for the purpose for which it was disclosed and shall not use or exploit such Confidential Information for its own benefit or the benefit of another without the prior written consent of the disclosing Party. Each Party accepts responsibility for the actions of its Representatives and shall protect the other Party's Confidential Information in the same manner as it protects its own valuable confidential information, but in no event shall less than reasonable care be used. The Parties expressly agree that the terms and pricing of this Agreement are Confidential Information and Customer further agrees that it shall not use the Software or Services for the purposes of conducting comparative analysis, evaluations or product benchmarks with respect to the Services and will not publicly post any analysis or reviews of the Software or Services without Spatialest's prior written approval. A receiving Party shall promptly notify the disclosing Party upon becoming aware of a breach or threatened breach hereunder, and shall cooperate with any reasonable request of the disclosing Party in enforcing its rights.

3.2 Exclusions. Information will not be deemed Confidential Information hereunder if such information: (i) is known prior to receipt from the disclosing Party, without any obligation of confidentiality; (ii) becomes known to the receiving Party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing Party; (iii) becomes publicly known or otherwise publicly available, except through a breach of this Agreement; or (iv) is independently developed by the receiving Party without use of the disclosing Party's Confidential Information. The receiving Party may disclose Confidential Information pursuant to the requirements of applicable law, legal process or government regulation, provided that it gives the disclosing Party reasonable prior written notice to permit the disclosing Party to contest such disclosure, and such disclosure is otherwise limited to the required disclosure

3.3 Injunctive Relief. Notwithstanding any other provision of this Agreement, both Parties acknowledge that any use of the disclosing Party's Confidential Information in a manner inconsistent with the provisions of this Agreement may cause the disclosing Party irreparable and immediate damage for which remedies other than injunctive relief may be inadequate. Therefore, both Parties agree that, in addition to any other remedy to which the disclosing Party may be entitled hereunder, at law or equity, the disclosing Party shall be entitled to an injunction or injunctions (without the posting of any bond and without proof of actual damages) to restrain such use in addition to other appropriate remedies available under applicable law.

4. LIMITED WARRANTY

4.1 Software Warranty. Spatialest warrants that (a) for a period of thirty (30) days following the initial delivery of the Software to Customer the Software will perform in conformity with its Documentation, in all material respects, and (b) all Maintenance Services will be provided with reasonable skill and care conforming to generally accepted industry standards. Such warranty does not apply to Software that has been damaged, mishandled, mistreated, altered or used or maintained or stored other than in conformity with the Documentation. If the above warranties are breached, Spatialest will, at its option and at no cost to Customer, (a) provide remedial services necessary to enable the Software or Maintenance Services to conform to the warranty, or (b) replace any defective Software, or (c) refund amounts paid by Customer and received by Spatialest in respect of the defective Software or Maintenance Services. Customer will provide Spatialest with a reasonable opportunity to remedy any breach and reasonable assistance in remedying any defects. Customer will notify Spatialest promptly in writing of any breach of warranty. The remedies set out in this subsection are Customer's sole remedies for breach of the above warranties.

4.2 Professional Services Warranty. Spatialest warrants that any Professional Services provided hereunder shall be provided in a competent manner in accordance with any specifications set forth in the Sales Order or SOW (as the case may be), in all material respects. Spatialest further warrants that any Work Product provided pursuant to any Professional Services engagement shall comply, in all material respects, with the specifications set forth in the applicable Sales Order or SOW. If the Services are not performed as warranted or the Work Product does not so comply, then, upon Customer's written request, Spatialest shall promptly re-perform, or cause to be re-performed, such Professional Services, at no additional charge to Customer. Such warranties and other obligations shall only survive for thirty (30) days following the completion of the Professional Services or the delivery of each applicable portion of the Work Product, as the case may be (provided however, that if a Sales Order or SOW specifies that acceptance testing is applicable then such warranty shall survive for a period of thirty (30) days following Customer's acceptance of such Professional Services or Work Product). Such re-performance shall be Customer's exclusive remedy and Spatialest's sole liability for any such non-performance. If, however, after repeated efforts, Spatialest is unable to remedy such defect in any Professional Services or Work Product, then Customer's sole remedy and Spatialest's entire liability shall be to refund to Customer any amounts previously paid by Customer for the particular deficient portion of the Professional Services or Work Product.

4.3 No Other Warranty. SPATIALEST DOES NOT REPRESENT THAT THE SERVICES OR SOFTWARE WILL BE ERROR-FREE OR THAT THE SERVICES OR SOFTWARE WILL MEET CUSTOMER'S REQUIREMENTS OR THAT ALL ERRORS IN THE SERVICES OR SOFTWARE WILL BE CORRECTED. THE WARRANTIES STATED IN SECTION 5 ABOVE ARE THE SOLE AND EXCLUSIVE WARRANTIES OFFERED BY SPATIALEST. THERE ARE NO OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THOSE OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS. CUSTOMER ASSUMES ALL RESPONSIBILITY FOR DETERMINING WHETHER THE SERVICES AND SOFTWARE ARE ACCURATE OR SUFFICIENT FOR CUSTOMER'S PURPOSES.

5. LIMITATION OF LIABILITY.

5.1 Consequential Damage Waiver. Except as may arise out of either Party's breach of Section 4, neither Party will be liable to the other or any third party for loss of profits, or special, indirect, incidental, consequential or exemplary damages, including lost profits and costs, in connection with the performance of the Services, or the performance of any other obligations under this Agreement, even if it is aware of the possibility of the occurrence of such damages.

5.2 Limitation of Liability. The total cumulative liability of Spatialest to Customer for any and all claims and damages under this Agreement, whether arising by statute, contract, tort or otherwise, will not exceed the Services or Software fees paid by Customer to Spatialest under the Sales Order or SOW for the Services or Software which form the subject of the claim during the six (6) month period immediately preceding the event giving rise to the claim. The provisions of this Agreement allocate risks between the Parties. The pricing set forth in each Sales Order and SOW reflects this allocation of risk and the limitation of liability specified herein.

6. TERM

7.1 Term. This Agreement will commence on the Effective Date as set forth above and will continue in effect until otherwise terminated in accordance with Section 7.2 below. The term of each Sales Order shall be set forth on the Sales Order.

7.2 Termination. Notwithstanding the foregoing, either Party may terminate this Agreement or any Sales Order or SOW (i) immediately in the event of a material breach of this Agreement or any such Sales Order or SOW by the other Party that is not cured within thirty (30) days of written notice thereof from the other Party, or (ii) immediately if the other Party ceases doing business or is the subject of a voluntary or involuntary bankruptcy, insolvency or similar proceeding, that is not dismissed within sixty (60) days of filing. Termination of a Sales Order or SOW shall not be deemed a termination of this Agreement. Termination of this Agreement shall, however, terminate all outstanding Sales Orders and SOWs. Either Party may also terminate this Agreement upon no less than thirty (30) days' prior written notice to the other Party for any reason, if at such time there are no outstanding Sales Orders or SOWs then currently in effect. All rights and obligations of the Parties which by their nature are reasonably intended to survive such termination or expiration will survive termination or expiration of this Agreement and each Sales Order and SOW.

7.3 Effect of Termination. Upon any termination or expiration of this Agreement or any applicable Sales Order or SOW, Spatialest shall no longer provide the applicable Services to Customer and Customer shall cease and cause its Users to cease using the Services and the Software. Except as expressly provided herein, termination of this Agreement by either Party will be a nonexclusive remedy for breach and will be without prejudice to any other right or remedy of such Party. Upon termination of this Agreement, each Party shall promptly return or destroy all Confidential Information of the other Party in its possession.

7. OWNERSHIP; RESTRICTIONS

8.1 Software. Ownership of the Software, any related Documentation, copies, modifications and derivatives of the Software or Documentation (in whole or in part), and all related copyright, patent, trade secret and other proprietary rights, are and will remain the exclusive property of Spatialest and/or its licensors. Spatialest reserves all rights not expressly granted by it to Customer under this Agreement. There are no implied rights.

8.2 Restrictions. Customer shall not and shall not allow any third party to decompile, disassemble, reverse engineer or attempt to reconstruct, identify or discover any source code, underlying ideas, underlying user interface techniques or algorithms of the Software or any portion thereof, or otherwise derive its source code; (ii) modify, translate, or create derivative works of the Software or Documentation; (iii) sell, lease, license, sublicense, copy (except as permitted in Section 1.2 above), market or distribute the Software or Documentation; or (iv) use the Software for any timesharing, service bureau, subscription, rental or similar uses without the express prior written consent of Spatialest in each instance or use the Software on behalf of any third party. Customer shall take all reasonable precautions to prevent unauthorized or improper use or disclosure of the Software. Unless otherwise expressly set forth on a Sales Order, the Software may only be accessed and used by Customer and its Users; provided, however, that Customer shall take appropriate action, by instruction or agreement, to ensure that the Software is being used by such Users in accordance with the terms and conditions of this Agreement. Customer shall be liable for any breach of this Agreement by any of its Users.

8.3 Audit. Spatialest may, upon written notification to Customer, perform an audit, not more than once per twelve (12) month period, of Customer's use of the Software and Documentation and Customer's compliance with the provisions of this Agreement. Any such audit shall be made at Spatialest's expense and shall occur during the Customer's normal business hours. Spatialest shall notify Customer, in writing, ten (10) business days prior to such audit. Such audit shall not

unreasonably interfere with Customer's business operations and Customer agrees to cooperate with Spatialest in any such audit.

8.4 Work Product. Except as otherwise set forth on an SOW or Sales Order, Customer will have a non-exclusive, non-transferable (except as set forth in Section 10.2) license to use any Work Product developed by Spatialest in the performance of the Services and delivered to Customer, upon Customer's payment in full of all amounts due hereunder, solely for Customer's internal use in connection with the Software. Spatialest retains ownership of all information, software and other property owned by it prior to this Agreement or which it develops independently of this Agreement and all Work Product compiled or developed by Spatialest in the performance of this Agreement.

8.5 Export; Government Restricted Rights. Customer acknowledges that the export of any Software is subject to export or import control and Customer agrees that any Software or the direct or indirect product thereof will not be exported (or re-exported from a country of installation) directly or indirectly, unless Customer obtains all necessary licenses from the U.S. Department of Commerce or other agency as required by law. The Software and the Documentation have been developed at private expense and are sold commercially. They are provided under any U.S. government contracts or subcontracts with the most restricted and the most limited rights permitted by law and regulation. Whenever so permitted, the government and any intermediate buyers will obtain only those rights specified in Spatialest's standard commercial license. Thus, the Software referenced herein, and the Documentation provided by Spatialest hereunder, which are provided to any agency of the U.S. Government or U.S. Government contractor or subcontractor at any tier shall be subject to the maximum restrictions on use as permitted by FAR 52.227-19 (June 1987) or DFARS 227.7202-3(a) (Jan. 1, 2000) or successor regulations

9. INDEMNIFICATION

9.1 Spatialest Indemnification. Subject to Section 9.2 below, Spatialest will indemnify, defend and hold Customer harmless from and against any and all Losses incurred arising out of or in connection with a claim, suit, action, or proceeding brought by any third party against Customer alleging that the use of the Software or Work Product as permitted hereunder infringes any United States patent, copyright or trademark, or constitutes a misappropriation of a trade secret of a third party. Excluded from the above indemnification obligations are claims to the extent arising from (a) use of the Software or Work Product in violation of this Agreement or applicable law, (b) use of the Software or Work Product after Spatialest notifies Customer to discontinue use because of an infringement claim, (c) modifications to the Software or Work Product made other than by Spatialest (where the claim would not have arisen but for such modification), (d) the combination, operation, or use of the Software or Work Product with materials which were not provided by Spatialest, to the extent that Customer's liability for such claim would have been avoided in the absence of such combination, operation, or use; or (f) compliance by Spatialest with Customer's custom requirements or specifications if and to the extent such compliance with Customer's custom requirements or specifications resulted in the infringement. If the Software or Work Product are held to infringe, Spatialest will, at its own expense, in its sole discretion use commercially reasonable efforts either (a) to procure a license that will protect Customer against such claim without cost to Customer; (b) to replace the Software or Work Product with non-infringing Software or Work Product; or (c) if (a) and (b) are not commercially feasible, terminate the Agreement or the applicable Sales Order or SOW and refund to the Customer any licensee fees paid for the Software or Work Product (as depreciated over a five year straight line basis) and any prepaid unused Maintenance Services fees. The rights and remedies granted Customer under this Section 9.1 state Spatialest's entire liability, and Customer's

exclusive remedy, with respect to any claim of infringement of the intellectual property rights of a third party, whether arising under statutory or common law or otherwise.

9.2 Indemnification Procedure. The indemnified party shall (i) promptly notify Spatialest in writing of any claim, suit or proceeding for which indemnity is claimed, provided that failure to so notify will not remove Spatialest's obligation except to the extent it is prejudiced thereby, and (ii) allow Spatialest to solely control the defense of any claim, suit or proceeding and all negotiations for settlement; provided that Spatialest shall not settle any claim without the indemnified party's prior written consent (such consent not to be unreasonably withheld or delayed). The indemnified party shall also provide Spatialest with reasonable cooperation and assistance in defending such claim (at Spatialest's cost).

10. MAINTENANCE SERVICES.

10.1 Maintenance Generally. Customer may purchase Maintenance Services for the Software for so long as Spatialest continues to maintain such Software generally, in accordance with Spatialest's then current maintenance and support policies as described below. Spatialest's Maintenance Services are provided only for the standard version of the Software made generally available by Spatialest and do not apply to any custom software deliverables that may be provided by Spatialest to Customer as part of Professional Services.

10.2 Telephone Support. Spatialest technical support offers the Customer a single point of contact for all product support questions. The Customer will call the technical support hotline and the call coordinator will work to address Customer issues. Support is provided for the then current and one prior Upgrade of the Software. Customer shall at all times maintain two (2) appropriately qualified persons as its designated support representatives and keep Spatialest informed of their identities. Support calls to Spatialest shall be routed through such representatives.

10.3 Maintenance. Updates and Upgrades are available to purchasers of Maintenance Services who are paid up on Maintenance Services fees, upon a request of such Customer. Spatialest reserves the right to address defects in the next release of a product. Spatialest will not be responsible to provide service or support when the problem is the result of faulty hardware or software that (i) Spatialest did not provide or (ii) Spatialest has not contracted with Customer to support under this agreement. Spatialest reserves the right to bill Customer for such non-supported service at Spatialest's standard time and material charges for services that fulfill this criteria. Maintenance services are not on-site services. If Customer needs or desires on-site maintenance services, such services are available at Spatialest's standard time and material charges. For purposes of the foregoing, "Updates" mean interim releases of the Software incorporating standard maintenance, improvements, patches, error corrections and enhancements that are provided by Spatialest to customers who subscribe to Spatialest's Maintenance Program. Updates are designated by all digit(s) to the right of the decimal point (e.g., 3.x.x), and the content and timing of all Updates shall be decided upon by Spatialest in its sole discretion and "Upgrades" mean full product releases of the Software, which contain substantial functional enhancements. Upgrades are also provided by Spatialest to customers who subscribe to Spatialest's Maintenance Program. Upgrades are designated by the digit to the left of the decimal point (e.g., x.0), and the content and timing of all Upgrades shall be decided by Spatialest in its sole discretion. Upgrades do not include any products that are marketed and priced separately by Spatialest or which Spatialest does not make available to its customers who subscribe to Spatialest's Maintenance Program.

11. GENERAL PROVISIONS

11.1 Entire Agreement and Controlling Documents. This Agreement, including all Exhibits hereto and all Sales Orders and SOWs, contains the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous proposals, understandings, representations, warranties, covenants, and any other communications (whether written or oral) between the Parties relating thereto and is binding upon the Parties and their permitted successors and assigns. Only a written instrument that refers to this Agreement or the applicable Sales Order or SOW and that are duly signed by the authorized representatives of both Parties may amend this Agreement or such Sales Order or SOW. Any inconsistent or conflicting terms and conditions contained in any purchase order issued by Customer shall be of no force or effect, even if the order is accepted by Spatialest. This Agreement shall be construed and interpreted fairly, in accordance with the plain meaning of its terms, and there shall be no presumption or inference against the Party drafting this Agreement in construing or interpreting the provisions hereof.

11.2 Assignment. This Agreement shall be binding upon and for the benefit of Spatialest, Customer and their permitted successors and assigns. Either Party may assign this Agreement and all Sales Orders without consent of the other Party to an Affiliate of such party or as part of a corporate reorganization, consolidation, merger, or sale of substantially all of its assets or business to which this Agreement relates provided that it gives the other Party prompt written notice of such assignment and the assignee is or otherwise agrees in writing to be bound by the terms and conditions of this Agreement. Except as expressly stated in this Agreement, neither Party may otherwise assign its rights or delegate its duties under this Agreement either in whole or in part without the prior written consent of the other Party, and any attempted assignment or delegation without such consent will be void. Spatialest may use independent contractors or subcontractors to assist in the delivery of Services; provided, however, that Spatialest shall remain liable for the actions or omissions of such independent contractors or subcontractors and for the payment of their compensation

11.3 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State North Carolina, USA without regard to its conflict of law provisions.

11.4 Headings. The headings to the sections of this Agreement are for ease of reference only and shall not affect the interpretation or construction of this Agreement.

11.5 Relationship of the Parties. Spatialest and Customer are independent contractors, and nothing in this Agreement shall be construed as making them partners or creating the relationships of employer and employee, master and servant, or principal and agent between them, for any purpose whatsoever. Neither Party shall make any contracts, warranties or representations or assume or create any obligations, express or implied, in the other Party's name or on its behalf.

11.6 Publicity. Neither Party will use, publicize, or issue any press release which includes the name, trademarks, or other proprietary identifying symbol of the other Party without the prior written consent of the other Party; provided, that Spatialest may include Customer's name and logo on lists of selected Customers.

11.7 Force Majeure. Except for the obligation to make payments, nonperformance of either Party shall be excused to the extent that performance is rendered impossible by strike, fire, flood, governmental acts or orders or restrictions, failure of suppliers, or any other reason where failure to perform is beyond the reasonable control of the non-performing Party.

11.8 Notices. Any notice, approval, request, authorization, direction or other communication under this Agreement shall be given in writing and shall be deemed to have been delivered and given for all purposes (i) on the delivery date if delivered personally to the Party to whom the same is directed; (ii) one (1) business day after deposit with a nationally recognized overnight carrier, with written verification of receipt, or (iii) five (5) business days after the mailing date whether or not actually received, if sent by U.S. certified mail, return receipt requested, postage and charges pre-paid or any other means of rapid mail delivery for which a receipt is available, to the address of the Party set forth on the applicable Sales Order. Either Party may change its address by giving written notice of such change to the other Party.

11.9 No Third Party Beneficiaries. Nothing contained in this Agreement is intended or shall be construed to confer upon any person any rights, benefits or remedies of any kind or character whatsoever, or to create any obligation of a Party to any such person.

11.10 Counterpart and Facsimile Execution. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original as against any Party whose signature appears thereon, but all of which together shall constitute but one and the same instrument. Signatures to this Agreement transmitted by facsimile, by electronic mail in "portable document format" (".pdf"), or by any other electronic means which preserves the original graphic and pictorial appearance of the Agreement, shall have the same effect as physical delivery of the paper document bearing the original signature.

11.11 Waiver and Severability. Performance of any obligation required by a Party hereunder may be waived only by a written waiver signed by an authorized representative of the other Party, which waiver shall be effective only with respect to the specific obligation described therein. The failure of either Party to exercise any of its rights under this Agreement will not be deemed a waiver or forfeiture of such rights. The invalidity or unenforceability of one or more provisions of this Agreement will not affect the validity or enforceability of any of the other provisions hereof, and this Agreement will be construed in all respects as if such invalid or unenforceable provision(s) were omitted.

Spatialest and Customer have caused this Agreement to be executed as a document under seal by their duly authorized representatives as of the Effective Date.

Spatialest Ltd.

Haywood County

By: _____

By: _____

Name: Ashley Moore

Name: Ira Dove

Title: CEO

Title: County Manager