

RESOLUTION OF THE BOARD OF SUPERVISORS
OF THE COUNTY OF ORANGE

December 13, 2011

WHEREAS, the County of Orange, by and through its OC Public Works department has developed a geographic information system (OC Landbase) covering the entire County of Orange, which integrates cadastral, street, precinct, terrain, zip code, and political boundary data; and

WHEREAS, the OC Landbase is maintained in a GIS file format, which allows the geographic data stored in the OC Landbase to be analyzed, viewed, and managed with GIS software; and

WHEREAS, on September 9, 2003, the Board of Supervisors adopted Resolution No. 03-293, setting forth fees for the licensing of the OC Landbase to the public in a GIS file format; and

WHEREAS, the cost to maintain the OC Landbase has been \$5,044,151 dollars since fiscal year 2004-05, for an average annual cost of \$720,593 dollars; and

WHEREAS, the County has collected fees totaling \$1,165,836 dollars, since fiscal year 2004-05, which yields an average annual revenue of \$166,548 dollars; and

WHEREAS, the County wishes to recover a reasonable portion of the costs associated with the development, annual maintenance, and dissemination of the OC Landbase from those entities wishing to obtain the OC Landbase in a GIS file format to reduce the cost burden on other County funds; and

WHEREAS, reducing reliance on other County funds provides the County with more resources to develop, maintain, and upgrade the OC Landbase for the benefit of both County residents and those entities who wish to license the OC Landbase; and

WHEREAS, Government Code Section 6254.9 permits the County to sell, lease, or license a computer mapping system such as the OC Landbase for commercial or non-commercial use; and

WHEREAS, the County wishes to expand public access to the OC Landbase by reducing the costs of licensing the OC Landbase; and

WHEREAS, the County has conducted a survey of jurisdictions that charge licensing fees for geographic data in GIS file format similar to the OC Landbase and has concluded that the fees that are being approved by this Board are lower than the average of the jurisdictions that have been surveyed; and

WHEREAS, the fees being approved by this Board will not exceed the reasonable cost of providing the products or services for which they are levied and are not levied for general revenue purposes; and

WHEREAS, the charges being approved by your Board do not exceed the costs of providing the government services or products for which the fees are being charged and do not exceed the reasonable costs to the County of providing the service or product.

NOW, THEREFORE, THE BOARD OF SUPERVISORS OF THE COUNTY OF ORANGE DOES HEREBY RESOLVE, ORDER, AND DETERMINE AS FOLLOWS:

SECTION 1. Each of the above recitals is true and correct and is adopted by the Board of Supervisors.

SECTION 2. This Board adopts the revised OC Landbase Fee Schedule, attached hereto as Exhibit A, to be effective thirty days from the date of approval of this Resolution.

SECTION 3. The Board hereby finds that the approved fees are statutorily exempt from the provisions of CEQA pursuant to Section 15273(a) are associated with an activity that is not a project as defined by CEQA pursuant to Section 15378 (b)(2) of the CEQA Guidelines.

SECTION 4. The Board finds that these fees satisfy the requirements set forth in Section 1 of Article XIII C, subdivision (e)(2) and (4), of the California Constitution and are therefore exempt from the definition of tax as used in that section.

EXHIBIT A

OC Landbase Fees

Proposed OC Landbase Fees			
Type of License	Fee	Payable	Agreement
Individual Use – Perpetual	\$1,000	One-time	End-User License
Municipality/District/Utility Use – Perpetual	\$2,000	One-time	End-User License
Publisher Use – Perpetual	\$5,000	One-time	End-User License

PERMITTED USES OF THE OC LANDBASE BY LICENSEE	
Individual Use License	Individuals, non-profits or private sector businesses may use the OC Landbase solely for their internal-facing GIS applications for analysis and/or business applications. Under this license, the OC Landbase cannot be publicly displayed on the internet, downloaded, copied, or further distributed in any form to any other party.
Municipality/District/Utility License	Municipalities, districts, and utilities may use the OC Landbase solely in their GIS applications for analysis, business applications, and constituent viewing. Under this license, the OC Landbase cannot be downloaded, copied, or further distributed in any form to any other party.
Publisher License	A publisher license permits individuals, non-profit organizations/corporations, or private sector businesses to use the OC Landbase not only in their internal-facing GIS applications for analysis or business applications, but also includes as part of this license the ability to publish applications (including for-profit applications) on the Internet that include the OC Landbase. However, the OC Landbase cannot be made available, downloaded, copied, or further distributed in any form to any other party.

The foregoing was passed and adopted by the following vote of the Orange County Board of Supervisors, on December 13, 2011, to wit:

AYES: Supervisors: JOHN M. W. MOORLACH, BILL CAMPBELL, JANET NGUYEN
SHAWN NELSON, PATRICIA BATES
NOES: Supervisor(s):
EXCUSED: Supervisor(s):
ABSTAINED: Supervisor(s):

Bill Campbell
CHAIRMAN

STATE OF CALIFORNIA)
)
COUNTY OF ORANGE)

I, DARLENE J. BLOOM, Clerk of the Board of Orange County, California, hereby certify that a copy of this document has been delivered to the Chairman of the Board and that the above and foregoing Resolution was duly and regularly adopted by the Orange County Board of Supervisors .

IN WITNESS WHEREOF, I have hereto set my hand and seal.

Darlene J. Bloom
DARLENE J. BLOOM
Clerk of the Board
County of Orange, State of California

Resolution No: 11-196
Agenda Date: 12/13/2011
Item No: 37



I certify that the foregoing is a true and correct copy of the Resolution adopted by the Board of Supervisors , Orange County, State of California

DARLENE J. BLOOM, Clerk of the Board of Supervisors

By: _____
Deputy

**OC LANDBASE
LICENSE AGREEMENT NO. D12-_____**

THIS LICENSE AGREEMENT (the "Agreement"), for purposes of identification hereby dated the ____ day of _____, 2012, is BY AND BETWEEN the following Parties:

LICENSOR		LICENSEE	
NAME:	COUNTY OF ORANGE	NAME:	
	OC Public Works / OC Survey	COMPANY:	
ADDRESS:	300 N. Flower St., Rm. 221	ADDRESS:	
CITY, STATE, ZIP:	Santa Ana, CA 92703	CITY, STATE, ZIP:	
TELEPHONE:	(714) 967-0821	TELEPHONE:	
Hereinafter referred to as "LICENSOR" or "LICENSORS"		Hereinafter referred to as "LICENSEE"	

WHEREAS, the Licensor has certain geographic data in a geographic information system ("GIS") file format (the "OC Landbase") that the Lessee wishes to license; and

WHEREAS, the Licensor is desirous of entering into an agreement to license the OC Landbase to the Licensee;

NOW, THEREFORE, in consideration of the mutual promises, covenants, and agreements herein contained, it is hereby agreed by and between the parties as follows:

I. LICENSE FEE

For the consideration of payment in accordance with the Fee Schedule and Permitted Uses approved by Board Resolution Number 11-196, which is attached as Exhibit A and by reference made a part hereof, Licensors hereby grant to Licensee a perpetual, non-exclusive, non-transferable License to use the OC Landbase, described herein under Section II. A _____ license is granted to Licensee for the fee specified in Exhibit A. Licensee is prohibited from using the OC Landbase except as is specifically permitted by this Agreement.

II. DESCRIPTION OF OC LANDBASE

Licensor has developed a county-wide, parcel level, digital landbase (the "OC Landbase") as part of a GIS, which contains geographic and attribute data with information assembled and maintained by OC Survey from source documents. The OC Landbase includes parcel polygons, labels, street centerlines, and rights-of-way. Attribute information on legal parcels includes: County Assessor Parcel Number ("APN"). The current published version of the OC Landbase as of the date of this Agreement is delivered in a GIS file format, which allows the geographic data stored in the OC Landbase to be analyzed, viewed, and managed with GIS software.

III. CONDITIONS

- A. In addition to the pertinent conditions listed in Exhibit A, Licensee shall not: (a) sell, rent, lease, assign, lend, sub-license, or otherwise convey, transfer, or grant any right in or to the OC Landbase, in whole or in part, hereunder; (b) utilize the OC Landbase with any service bureau or time-sharing system; or (c) allow any person to have access to OC Landbase who is neither a paid employee of Licensee nor a consultant to Licensee (as described in section III.B-C), who needs to use the OC Landbase in the course of his or her employment; (d) use or permit the use of the OC Landbase, or any part thereof, to build, decompile, reverse engineer, or enhance any of the OC Landbase database in any form or for creation of derivative works for any purpose, including, but not limited to, resale or for distribution without express written consent by LICENSOR; and, (e) use the OC Landbase over the Internet without an express license to do so.

- B. Onsite use of data by consultants under contract to Licensee is permissible if consultants agree to use the data only for the purpose for which they are under contract to Licensee.
- C. Offsite use of data by consultants under contract to Licensee is not permissible. Consultants may purchase a license to use the OC Landbase at their site or on their equipment.
- D. Licensee shall be exclusively responsible for the supervision and control of its use of their copy of the OC Landbase.
- E. Licensee shall not make a copy of the OC Landbase deliverable, even for back-up purposes. Licensees on record may obtain a copy of the OC Landbase deliverable if lost within the license term.
- F. Licensee shall not alter or remove any notice of copyright, confidentiality, disclaimer, or proprietary markings within or on the OC Landbase deliverable.

IV. PROTECTION OF PROPRIETARY MATERIALS

- A. Licensee shall not use the OC Landbase for any purpose not specifically authorized in the Agreement.
- B. Licensee shall take all reasonable precautions to protect and maintain the confidentiality of the OC Landbase including those precautions Licensee employs to protect their own confidential information.
- C. Licensee shall not disclose, publish, display, or otherwise make available to any third person (except as described in Section III.B-C above or as described in pertinent part in Exhibit A) any of the OC Landbase or copies thereof in any digital form without Licensor's prior written consent.
- D. Licensor shall retain all title, interests, and other proprietary rights to all OC Landbase information furnished by Licensor to Licensee and all copies made by Licensee.
- E. Licensee understands and accepts that all OC Landbase data, files, media, and documents derived from OC Landbase are proprietary, confidential, and excluded from public disclosure under the California Public Records Act (CPRA) and under the federal Freedom of Information Act, 5 U.S.C. 552 (FOIA). In the event a request for information is submitted under the CPRA or the FOIA, the Licensee will consult with the Licensor for response and possible objection. To the maximum extent allowed by law, the Licensee will protect the OC Landbase deliverable as a confidential record that is exempt from disclosure.
- F. Licensee acknowledges that any failure by Licensee to comply with this Section IV will cause Licensor irreparable injury. In the event of a breach thereof, Licensor shall be entitled to, in addition to any other remedies available under the law, injunctive relief without the posting of a bond or other security, plus an award of reasonable attorneys' fees, including the costs of in-house counsel and County Counsel, together with all costs as set by a court of competent jurisdiction.

V. LIMITED WARRANTY

- A. The OC Landbase is provided "as is" without warranty of any kind, either expressed or implied, as to the accuracy, thoroughness, value, quality, validity, merchantability, suitability, condition, usage, content, interpretation, sequence, or timeliness. Licensor does not warrant that the content or accuracy of the OC Landbase will meet the Licensee's requirements or that the OC Landbase will be current, error-free, complete, or based upon accurate or meaningful facts. Licensor explicitly disclaims any representations and warranties, including, without limitation, any implied warranty of merchantability or fitness for a particular purpose. Licensee accepts the OC Landbase so issued with any and all defects and Licensor does not warrant that any defects will be corrected.

- B. The entire risk as to the quality and content of the OC Landbase is with Licensee.

VI. DISCLAIMER OF LIABILITY

- A. In no event will the Licensor be liable for any direct, indirect, consequential, incidental, punitive, exemplary, or special damages however caused and on any theory of liability, including, but not limited to; loss of use, data or profits; procurement or substitution of goods or services; lost profits, savings, or sales due to business interruption arising out of the use of or inability to use the OC Landbase, even if Licensor has been advised of the possibility of such damages.
- B. Licensee understands and agrees that it is quite possible that errors and omissions will occur in data input and/or programming done by Licensor to provide the OC Landbase in the form desired and Licensee further understands and agrees that it is highly probable that errors and omissions will occur in any record keeping process, especially when large numbers of records are developed and maintained and that the OC Landbase may not meet Licensee's standards as to accuracy or completeness; notwithstanding the foregoing, Licensee agrees to take the OC Landbase "as is," fully expecting that there may well be errors and omissions in the data obtained from Licensor.
- C. Licensee is solely responsible for compliance with its legal obligations to suppliers of Licensee of any software or other products or services which may be used by Licensee in conjunction with the OC Landbase. Licensee shall indemnify, defend, and hold Licensor harmless from and against any liability, claims, or actions, including all costs, expenses, and reasonable attorneys' fees incurred (including house counsel and County Counsel as set by a court of competent jurisdiction) in resisting or defending against such liability, claims, or actions, made against Licensor by such suppliers or third parties, arising out of or in connection with Licensee failure to comply with its obligations to such suppliers or third parties.

VII. LICENSOR'S INDEMNIFICATION

Licensee hereby agrees to defend, save, hold harmless and indemnify Licensor and their officers, employees and agents, against claims by anyone for any loss, injury, damage, risk, cause of action, or liability of any type including legal fees and costs (including house counsel and County Counsel, as set by a court of competent jurisdiction) occurring to Licensee or any other person, relating to or arising out of the subject matter of this Agreement, or which may be alleged to have been caused, either directly or indirectly, by the acts, conduct, omissions, negligence or lack of good faith of Licensor, their officers, employees, or agents, in anyway related to or arising out of the subject matter of this Agreement.

VIII. TERMINATION

The Agreement may be terminated by the Licensor at any time upon written notice to Licensee if Licensee fails to comply with the terms and conditions of the Agreement and if Licensee has dissolved, liquidated or permanently terminated its operations. If the Agreement is terminated, Licensee no longer has the right to use the OC Landbase and data and must either destroy its copy and provide written clarification of the destruction, or return the OC Landbase and data to Licensor.

IX. GENERAL PROVISIONS

- A. This Agreement sets forth the entire understanding of the parties with respect to the subject matter hereof and supersedes all prior oral and written agreements and understandings relating thereto. No representation, promise, inducement, or statement of intention has been made by either party which has not been set forth in this Agreement and neither shall be bound by or be liable for an alleged representation, promise, inducement, or statement of intention not so set forth. No waiver, alteration, modification, or cancellation of any of the provisions of this Agreement shall be binding unless made in writing and signed by the parties.

- B. A waiver of or failure to enforce any right under this Agreement by either party shall not be deemed as a subsequent waiver of the same right or any other right.
- C. All written notices to be given under this Agreement shall be sent either by (a) first class United States mail, postage prepaid, or (b) overnight commercial courier, addressed to the recipient party at its respective address specified on the face hereof. Each party may change its address by giving written notice to the other.
- D. This Agreement shall be construed and enforced in accordance with the laws of the State of California.
- E. All obligations and warranties in this Agreement which by their sense and context are intended or reasonably construed to survive the Licensor's and Licensee's performance of this Agreement shall so survive the completion of performance and termination or cancellation of this Agreement.

X. SIGNATURE

- A. If Licensee is neither a private individual nor public or government entity, the person signing as Licensee must be a principal of the firm he/she represents. This may include, but is not limited to, President, Vice-President, or CEO.
- B. If Licensee is a public or government entity, the person signing as Licensee must be a person in a responsible management position. This may include, but is not limited to, Mayor, City Manager, Director of Public Works, or Agency Director.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates opposite their respective signatures:

LICENSOR:

COUNTY OF ORANGE

(Director, OC Public Works or Director's Designee)

Date: _____

By:

(Signature)

(Print Name)

(Title)

LICENSEE:

Date: _____

By:

(Signature)

(Print Name)

(Title)