

REPRINT



COUNTY of EL DORADO

Procurement & Contracts

PURCHASE ORDER NO.

PO201001238

DATE	REQUISITION NO.	TYPE	BLANKET PO#	PAGE	DELIVERY DATE	EXPIRATION DATE	THIS NUMBER MUST BE ON ALL INVOICES, PACKING LISTS, AND RELATED PAPER WORK.
07/22/09	RQ20100035	PO		1	07/24/09		

VIATHOR

VIATHOR, INC.
8849 EULA WAY

SHATO

DEPT OF TRANSPORTATION
2850 FAIRLANE COURT

ORANGEVALE

CA 95662

PLACERVILLE

CA 95667

REQUESTOR	F.O.B. POINT	TERMS
RJB	DESTINATION	NET 30

NOTE CONDITIONS ON REVERSE

LINE	QUANTITY	UNIT	DESCRIPTION	UNIT PRICE	EXTENDED TOTAL
001	1.00	EA	920-49 SOFTWARE MAINTENANCE VERIDGE SOFTWARE, NETWORK VERSION 1 SEAT LICENSE FEE: \$2,490.00 SUPPORT FEE: \$ 850.00 SUPPORT ORIGINATION DATE: 06/01/09	3,340.0000	3,340.00
002	1.00	EA	900-01 SVCS:FREIGHT; PAID PRICING PER SOFTWARE LICENSE AGM FOR QUESTIONS, CONTACT: MIKE PAVLICK 916 358-3657 INVOICE TO: DOT 2850 FAIRLANE COURT PLACERVILLE, CA 95667 CONTRACT ADMINISTRATOR: MIKE PAVLICK, ADMINISTRATION SERVICES OFFICER OR SUCCESSOR. TO THE EXTENT THAT THE TERMS AND CONDITIONS OF THE EULA CONFLICT, THE EULA WILL TAKE PRECEDENCE. CONTINUED, NEXT PAGE	.0001	

RECEIVED

JUL 30 2009

ADMINISTRATION

copy to MP 7/30/09

This Purchase Order expressly limits acceptance to the terms and conditions stated herein, set forth on the reverse side hereof and any supplementary or additional terms and conditions annexed hereto or incorporated herein by reference. Any additional or different terms and conditions proposed by seller are objected to and hereby rejected.

SFX TOTAL INDEX SUB-OBJECT USER CODE

I hereby certify that this purchase order is issued in accordance with procedures prescribed by ordinance and BOS Policy C-17 governing purchase of such items for the County of El Dorado.

[Signature] 7/24/09
Purchasing Agent

DEPARTMENT COPY

(Note: Authorized signature in lieu of Purchasing Agent for purchase less than \$5,000.00)

M 10869

REPRINT



COUNTY of EL DORADO

Procurement & Contracts

PURCHASE ORDER NO.

PO201001238

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07/22/09	RQ20100035	PO		2	07/24/09		

VENDOR

VIATHOR, INC.
8849 EULA WAY

BUYER

DEPT OF TRANSPORTATION
2850 FAIRLANE COURT

ORANGEVALE

CA 95662

PLACERVILLE

CA 95667

REQUESTOR	F.O.B. POINT	TERMS
RJB	DESTINATION	NET 30

NOTE CONDITIONS ON REVERSE

LINE	QUANTITY	UNIT	DESCRIPTION	UNIT PRICE	EXTENDED TOTAL
			<p>EXHIBIT "A" IS INCORPORATED TO AND MADE A PART OF THIS PURCHASE ORDER CONTRACT.</p> <p>NO BUSINESS LICENSE REQUIRED NO TANGIBLE PROPERTY OR MEDIA RECEIVED.</p>		

This Purchase Order expressly limits acceptance to the terms and conditions stated herein, set forth on the reverse side hereof and any supplementary or additional terms and conditions annexed hereto or incorporated herein by reference. Any additional or different terms and conditions proposed by seller are objected to and hereby rejected.

TAX

TOTAL: 3,340.00

VENDOR NUMBER : 020643

SFX	TOTAL	INDEX	SUB-OBJECT	USER CODE
01	3,340.00	308110	4144	21100A
	3,340.00			

I hereby certify that this purchase order is issued in accordance with procedures prescribed by ordinance and BOS Policy C-17 governing purchase of such items for the County of El Dorado.

[Signature]

Purchasing Agent

DEPARTMENT COPY

(Note: Authorized signature in lieu of Purchasing Agent for purchase less than \$5,000.00)

M40870

ORIGINAL

#838-00910

EXHIBIT "A"

VIATHOR, INC. SOFTWARE LICENSE AGREEMENT

Configuration

ATTENTION: THIS ENTIRE SOFTWARE LICENSE AGREEMENT MUST BE READ, UNDERSTOOD, AND ACCEPTED PRIOR TO USING THE SOFTWARE IDENTIFIED HEREIN. **BY SIGNING THIS AGREEMENT, OR USING THE SOFTWARE IDENTIFIED HEREIN, YOU ACCEPT THE TERMS AND CONDITIONS OF THIS LICENSE AND AGREE TO BE BOUND BY SUCH TERMS AND CONDITIONS.**

This license applies to the following software configuration:

Software	Usage	Location	License Fee	Support Fee
VBridge	Network 1 Seat	El Dorado Hills, CA	\$ 2490.00	\$ 850.00
Support Origination Date: June 1, 2009				

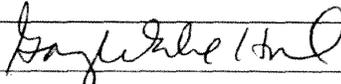
The entire Agreement consists of:

- This configuration page
- Terms and Conditions (2 pages)
- Schedule A – Support Terms

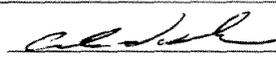
Instructions:

1. Please read the entire Agreement
2. Verify the information on this page
3. Sign and date the Licensee section below
4. Return the entire Agreement to Viathor

This license agreement is between:

("Licensee")	
COUNTY OF EL DORADO	
Address:	Department of Transportation 2850 Fairlane Ct Placerville, CA 95667
Fax:	530-295-2739
By:	
Name:	
Title:	<u>CAO</u> Board of Supervisors
Date:	<u>7/24/09</u>
Attest:	Suzanne Allen de Sanchez Clerk of the Board of Supervisors
By:	Deputy Clerk

and

("Licensor")	
Viathor, Inc.	
P.O. Box 1771 Orangevale, CA 95662	
By:	
Name:	Clark Verkler
Title:	President
Date:	<u>6-10-09</u>

VIATHOR, INC.
SOFTWARE LICENSE AGREEMENT

Terms and Conditions

This software license agreement, including these Terms and Conditions and any additional schedules (collectively, "the Agreement"), is between Viathor, Inc., a California Corporation ("Licensor"), and the Licensee set forth in the Configuration section of the Agreement.

WHEREAS, Licensor has developed certain computer software and related documentation and other technical information (collectively, "Software") as described in the Configuration section of the Agreement, and

WHEREAS, Licensor desires to grant Licensee a license to use the Software in accordance with the Terms and Conditions contained herein, and

WHEREAS, Licensee desires to use the Software in Licensee's existing business.

THEREFORE, upon payment in full of any applicable license fees as specified in the Configuration section of the Agreement, Licensor grants to Licensee a non-exclusive, non-transferable license to use the Software in accordance with the following terms and conditions:

1. LICENSE. The terms of the scope of the use of the Software under this License shall be as follows:
 - a) This License is for the exclusive use of the Licensee only. It may not be used by or shared with any third party without the express written consent of Licensor.
 - b) The Software may not be used to assist in the development of any software that is intended to perform the same or similar functions as the Software.
 - c) The software use as designated in the Configuration section of the Agreement, shall be as follows:
 - i) Single-User License. The Software may be installed on one (1) single-user computer, and may be used by only one (1) user at a time, and only by a user located at the physical address specified.
 - ii) Network License. The Software may be installed on a single network computer and may be used simultaneously by multiple users who are located at the physical address specified, up to the number of network users as designated in the Configuration section of the Agreement. The Network License does not allow users at a different physical address to use the Software.
2. SUPPORT AND MAINTENANCE. Should Licensee elect to obtain optional Software Support and Maintenance ("Support"), as indicated in the Configuration section of the Agreement, Licensee shall be entitled to obtain all upgrades to the current major version of the Software as made available by the Licensor during the period of Support. The period of Support shall commence upon full payment of the applicable Support fees and shall continue for a period of twelve (12) months after the Support Origination Date indicated in the Configuration section of the Agreement. Support shall be renewable annually for a fee current at the time of renewal. Terms of support shall be as set forth on Schedule A – Support Terms.
3. WARRANTY. No warranty, express or implied, is provided with the Software. The Software is provided "as is", and the user assumes the entire risk as to the suitability, quality, performance and use of the Software.
4. LIMITED LIABILITY. The Software is provided "as is", and shall be used at the Licensee's own risk. In no event will Licensor be liable for any direct, indirect, special, incidental, consequential, or exemplary damages arising out of the use of or inability to use the Software, or any defect in the Software, or for acting or failing to act under the terms of the Agreement. The Licensee's sole and exclusive remedy shall be the return of the Software for replacement. In no event, regardless of the cause or form of action, shall the Licensor's liability exceed the amount originally paid for the license of the Software. The Licensee agrees to indemnify and defend the Licensor against any and all claims, suits, damages, and expenses, including attorneys' fees, arising from any use of the Software.
5. VIRUSES. Although Licensor has taken significant steps to prevent the entry of and spread of computer viruses within its own operations, no representation is made in regards to whether there are no viruses contained in the Software, on the distribution media of the Software, in past or future e-mails, or any other form or transfer of

electronic information. Licensee is hereby advised to take all necessary steps to detect and, if necessary, neutralize or eliminate such computer viruses within the scope of the Agreement.

6. **COPYRIGHT AND INTELLECTUAL PROPERTY.** The Software is hereby acknowledged to be the sole intellectual property of the Licensor. Licensee agrees not to make copies of any part of the Software except as required for normal backup, and agrees not to prepare derivative works based on the Software. Licensee agrees not to engage in any form of reverse engineering, decompiling, or disassembling of any part of the Software. Licensor reserves all rights and privileges thereunto, except as specifically provided for within these Terms and Conditions.
7. **CONFIDENTIALITY.** The Software contains confidential and trade secret information (collectively, the "Information"). Licensee agrees to treat the Information as confidential and not directly or indirectly divulge, use, transmit, or convey such information in any manner whatsoever to any third party during the period of this License or anytime thereafter. These confidentiality provisions do not apply to tabular and graphical results produced by the Software.
8. **DEFAULT.** The following shall constitute acts of default by the
 - a) Violation of any term or condition contained herein,
 - b) Breach of confidentiality,
 - c) Voluntary or involuntary cessation of Licensee's present business, or
 - d) Failure to pay applicable license fees identified in the Agreement.
9. **LICENSOR'S RIGHTS IN THE EVENT OF DEFAULT.** In the event of default, Licensor may exercise any or of the following rights:
 - a) Terminate the Agreement,
 - b) Require immediate return of the Software.
10. **SURVIVAL.** Upon termination of the Agreement, the elements of Section 7 – Confidentiality, shall endure.
11. **ATTORNEYS' FEES AND COSTS.** If any legal action or proceeding is brought by Licensor to enforce any of the Terms and Conditions of the Agreement, Licensor shall be entitled to recover from Licensee all costs incurred in connection with such action or proceeding and any post judgment proceeding, including attorney's fees, expenses, and court costs.
12. **TAXES AND TARIFFS.** Licensee shall be responsible for the payment of all taxes and tariffs associated with the Agreement.
13. **ASSIGNMENT.** No rights or privileges granted under the Agreement shall be assigned to any third party without the express written consent of the Licensor.
14. **SUCCESSORS.** All obligations created under the Agreement shall survive to the successors of each party of the Agreement.
15. **SEPARABILITY.** If any provision of the Agreement is determined to be invalid or unenforceable under law, that provision shall be enforced to the maximum extent permissible, and the remaining provisions of the Agreement shall remain in full force and effect.
16. **ENTIRETY.** The Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior agreements, whether written or oral.
17. **GOVERNING LAW.** The laws of the State of California shall govern the Agreement.
18. **VENUE.** The legal venue for settling all disputes arising out of or in connection with the Agreement shall be the City of Sacramento, California, the county of Sacramento, California, or the State of California, as appropriate.
19. **SIGNATURE.** When signed in the Configuration section, the Agreement shall be valid and enforceable, whether signed in its original form or transmitted electronically. When the Software is installed and in use, the Agreement shall be valid and enforceable, regardless of any signature.
20. **LOCAL AGENCY CONTRACT ADMINISTRATOR.** The County Officer or employee with responsibility for administering this Agreement is Matthew D. Smeltzer, Deputy Director of Engineering, Roadway Design Division, Department of Transportation, or successor.

VIATHOR, INC.
SOFTWARE LICENSE AGREEMENT

Schedule A – Support Terms

Licensee may elect to obtain optional Software Support and Maintenance ("Support"), as indicated in the Configuration section of the Agreement. Support for the Software identified in the Configuration section, shall be provided in accordance with the following terms and conditions:

1. **GENERAL.** Licensor shall provide technical support of the Software. Support consists of technical assistance related to installation, program operations, and apparent program malfunctions. Support does not include consulting, training, or assistance with any matter not related to the operation of the Software. Support is annual and coincident with the period of Support, as indicated in the Configuration section of the Agreement.
2. **CONTACT METHOD.** Licensee may contact Licensor for support via email or phone. Support via email is the preferred method, wherein Licensee emails a support request and attaches related input files or other data. Alternatively, Licensee may access support via phone or voice mail. Licensee may be required to leave a message containing pertinent information, providing enough contact information to allow Licensor to respond.
 - a) Email (preferred) may be sent to: Vsupport@Viathor.com
 - b) Phone / voice mail support number: 916-987-0246
3. **RESPONSE TIME.** Licensor will endeavor to respond to requests for support by the next business day after the request is received. A support response does not infer a complete resolution of the support request, but the response does acknowledge that Licensor has received the support request and is actively considering it. Licensor reserves the right to a longer response time due to unforeseen circumstances.
4. **SOFTWARE VERSION.** Support will only be provided for requests based on the current version of the Software. A current agreement containing Support allows the Licensee to obtain the current version of the Software. Therefore, Licensor reserves the right to refuse support based on earlier versions of the Software. In the event that Licensee discontinues Support or allows Support to expire, and later desires to update the Software to the current version, Licensor reserves the right to charge Support fees for the entire time the Software was unsupported, as if the Software had been continually supported from the Support Origination Date indicated in the Configuration section of the Agreement.
5. **EXPECTATIONS.** Licensee is expected to select Software users who are qualified to operate the Software, and who have a general knowledge of the Software input data, calculations, and results performed and produced by the Software. Licensee is expected to review and utilize Software documentation and help systems before requesting support from Licensor. If Licensee requests support on basic engineering principals or any other matter not related to the operation of the Software, Licensor at its sole discretion, reserves the right to refuse support or charge an additional fee to provide such support.
6. **AMENDMENTS.** Licensor reserves the right to amend or change these Support Terms at any time. In the event that Licensee does not accept the changed Support Terms, Licensee may request a pro-rated refund of any remaining Support fee for the year in which the change is made, and the Support shall be discontinued. To obtain the pro-rated refund, Licensee must notify Licensor in writing within one (1) month of the change in Support Terms, and identify the reasons for not accepting the amendments.