



Amendment No. 1  
to  
Contract No. MA 5000 NS230000042  
for  
GeoNexus Integration Platform  
between  
GeoNexus Technologies, LLC (Contractor)  
and the  
City of Austin

1.0 The City hereby exercises Extension Option No. 1 for the subject contract. This extension option will be from July 1, 2024, through June 30, 2025. One option will remain.

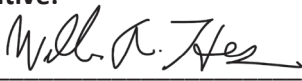
2.0 MBE/WBE goals were not established for this contract.

3.0 By signing this amendment the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas or the City of Austin.

4.0 All other terms and conditions remain the same.

By the signature affixed below, this amendment is hereby incorporated into and made a part of the above referenced contract.

**Authorized Representative:**

Contractor Signature: 

Printed Name: William A. Heise

Date: 6/25/2024

Vieux & Associates, Inc  
301 DL Boren Blvd., Ste 3050  
Norman, OK 73072

Signature: **Gil Zilkha** Digitally signed by Gil Zilkha  
Date: 2024.06.27 13:37:58  
-05'00'

City of Austin Purchasing Office  
Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

City of Austin  
124 W. 8<sup>th</sup> St., Ste. 310  
Austin, TX 78701



**CONTRACT BETWEEN THE CITY OF AUSTIN (“City”)  
and  
GeoNexus Technologies, LLC (“Contractor”)  
for  
GeoNexus Integration Platform Implementation, Software and Maintenance  
Contract Number: MA 5000 NS230000042**

The City accepts the Contractor’s Offer for the above requirement and enters into the following Contract. This Contract is between GeoNexus Technologies having offices at 3005 Boardwalk Street, Suite 107, Ann Arbor, Michigan 48108 and the City, a home-rule municipality incorporated by the State of Texas. Capitalized terms used but not defined herein have the meanings given in the Solicitation.

**1.1 This Contract is composed of the following documents in order of precedence:**

- 1.1.1 This Document
- 1.1.2 City of Austin Standard Terms and Conditions, incorporated herein and attached as Exhibit A
- 1.1.3 GeoNexus Technologies Software Quote and Scope of Work, incorporated herein and attached as Exhibit B
- 1.1.4 Negotiated GeoNexus Integration Platform-Software License Agreement, incorporated herein and attached as Exhibit C

**1.2 Compensation.**

The Contractor shall be apaid a Not-To-Exceed amount of \$145,320.00, for implementation, and will be paid according to the following Payment Schedule, provided completion of each task:

1	Task 1 - Project kick Off and Mobilization	<ul style="list-style-type: none"> <li>▪ Remote access provided and validated.</li> <li>▪ Kick off meeting complete.</li> <li>▪ PMCB established.</li> </ul>	\$12,504.00
2	Task 2 – Requirements and Design	<ul style="list-style-type: none"> <li>▪ Workshops complete.</li> </ul>	\$15,720.00
3	Task 3 – Configuration Specification	<ul style="list-style-type: none"> <li>▪ Draft design delivered.</li> <li>▪ Final design delivered.</li> </ul>	\$11,760.00
4	Task 4 - Install Software and Establish Connections	<ul style="list-style-type: none"> <li>▪ Software is installed on development server and connections are established to ArcGIS and CC&amp;B.</li> </ul>	\$17,220.00
5	Task 5 - Configure and Unit Test in Dev	<ul style="list-style-type: none"> <li>▪ Datasets configured in Dev.</li> </ul>	\$31,092.00

6	Task 6 - Migrate and Configure in TEST	<ul style="list-style-type: none"> <li>Software is configured and unit tested in the TEST environment.</li> </ul>	\$26,496.00
7	Task 7 - Training	<ul style="list-style-type: none"> <li>Training complete.</li> </ul>	\$7,560.00
8	Task 8 - Support UAT	<ul style="list-style-type: none"> <li>UAT is complete.</li> </ul>	\$14,304.00
9	Task 9 - Migrate and Configure in Prod	<ul style="list-style-type: none"> <li>Software is configured and unit tested in Production environment.</li> </ul>	\$5,664.00
10	Task 10 - Hypercare	<ul style="list-style-type: none"> <li>Hypercare period is complete.</li> </ul>	\$3,000.00

The Contractor shall be apaid a Not-To-Exceed amount of \$292,204.57 for software subscription, support and maintenance according to the following schedule:

US-Subscription- GIP Essentials July 2023-June 2024	\$51,836.04
US-Subscription- GIP Essentials July 2024-June 2025	\$54,946.20
US-Subscription- GIP Essentials July 2025-June 2026	\$58,242.97
US-Subscription- GIP Essentials July 2026-June 2027	\$61,737.55
US-Subscription- GIP Essentials July 2027-June 2028	\$65,441.81

1.3 **Term of Contract.**

This Contract shall remain in effect for an initial term of 12 months, or the City terminates the Contract. This contract may be extended beyond the initial term for up to four additional 12 months periods at the City sole option.

1.4 **Designation of Key Personnel.** The City and the Contractor resolve to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Contractor shall promptly notify the City and obtain approval for the replacement. Such approval shall not be unreasonably withheld. The Contractor’s and City’s key personnel are identified as follows:

	<u>Name</u>	<u>Phone Number</u>	<u>Email Address</u>
<u>Contractor Contract Manager</u>	<u>Lindsay Sutherland</u>	<u>(866) 839-4993</u> <u>x105</u>	<u>Lindsay.Sutherland@geo-nexus.com</u>
<u>City Contract Manager Software and Maintenance</u>	<u>Peggy Garcia</u>	<u>(512) 974-9122</u>	<u>Peggy.Garcia@austintexas.gov</u>
<u>City Contract Manager Implementation</u>	<u>Chaz Armijo</u>	<u>(512) 974-1346</u>	<u>Chaz.Armijo@austintexas.gov</u>
<u>City Contract Administrator, Procurement Specialist</u>	<u>Patricia Sustaita</u>	<u>(512) 978-1708</u>	<u>Patricia.Sustaita@austintexas.gov</u>

1.5 **Invoices.** The City’s preference is to have invoices emailed to [CTMAP\\_Invoices@austintexas.gov](mailto:CTMAP_Invoices@austintexas.gov)

CTM	<a href="mailto:CTMAP_Invoices@austintexas.gov">CTMAP_Invoices@austintexas.gov</a>
WPD	<a href="mailto:WPDInvoices@austintexas.gov">WPDInvoices@austintexas.gov</a>

This Contract (including any Exhibits and referenced Documents) constitutes the entire agreement of the parties regarding the subject matter of this Contract and supersedes all prior agreements and understandings, whether written or oral, relating to such subject matter. This Contract may be altered, amended, or modified only by a written instrument signed by the duly authorized representatives of both parties.

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By signing below, Contractor hereby certifies the following are true and will ensure the following will remain true throughout the term of this Contract:

1. That its firm and its principals are not currently suspended or debarred from bidding on any Federal, State, or City of Austin Contracts.
2. That it has not in any way directly or indirectly:
  - a. Colluded, conspired, or agreed with any other person, firm, or corporation, as to the amount of this contract or the terms or conditions of this contract.
  - b. paid or agreed to pay any other person, firm, or corporation any money or anything of value in return for assistance in procuring or attempting to procure a contract or in return for establishing the prices in the contract.
3. That it has not received any compensation or a promise of compensation for participating in the preparation or development of the underlying Contract documents.
4. In accordance with Chapter 176 of the Texas Local Government Code, that the Offeror:
  - a. does not have an employment or other business relationship with any local government officer of the City or a family member of that officer that results in the officer or family member receiving taxable income;
  - b. has not given a local government officer of the City one or more gifts, other than gifts of food, lodging, transportation, or entertainment accepted as a guest, that have an aggregate value of more than \$100 in the twelve month period preceding the date the officer becomes aware of the execution of the Contract or that City is considering doing business with the Offeror; and
  - c. does not have a family relationship with a local government officer of the City in the third degree of consanguinity or the second degree of affinity.
5. Pursuant to City Council Resolution No. 20191114-056, that its firm and its principals are not currently and will not during the term of the Contract engage in practicing LGBTQ+ conversion therapy; referring persons to a healthcare provider or other person or organization for LGBTQ+ conversion therapy; or Contracting with another

entity to conduct LGBTQ+ conversion therapy. If the City determines in its sole discretion that Contractor has during the term of this Contract engaged in any such practices, the City may terminate this Contract without penalty to the City.

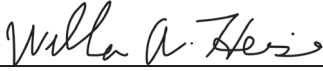
6. Pursuant to Texas Government Code §2271.002, the Contractor verifies that it does not boycott Israel and will not boycott Israel during the term of this contract.
7. Pursuant to Texas Government Code Chapter 2274, the Contractor verifies that if it will have remote or direct access to communication infrastructure systems, cybersecurity systems, the electric grid, hazardous waste treatment systems, or water treatment facilities as a result of this contract, that it is not owned by or the majority of stock or other ownership interest of the Contractor is not held or controlled by:
  - a. individuals who are citizens of China, Iran, North Korea, Russia, or a Governor-designated country; or
  - b. a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a Governor-designated country; or
  - c. headquartered in China, Iran, North Korea, Russia, or a Governor-designated country.
8. Pursuant to Texas Government Code Chapter 2274, the Contractor verifies that if it has 10 or more full-time employees, unless the contract contains a written verification from the company that it: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association.
9. Pursuant to Texas Government Code Chapter 2274, the Contractor certifies that, if they have 10 or more full-time employees: (1) they do not boycott energy companies; and (2) will not boycott energy companies during the term of the contract.

In witness whereof, the parties have caused a duly authorized representative to execute this Contract on the date set forth below.

**GEONEXUS TECHNOLOGIES, LLC**

William A. Heise

Printed Name of Authorized Person



Signature

President and CEO

Title:

March 24, 2023

Date:

**CITY OF AUSTIN**

Barbara Pavolini Smith

Printed Name of Authorized Person

Barbara Pavolini Smith

Digitally signed by Barbara Pavolini  
Smith  
Date: 2023.04.25 14:34:54 -05'00'

Signature

Procurement Specialist III

Title:

Date:

**CITY OF AUSTIN  
STANDARD TERMS AND CONDITIONS**

The Contractor agrees that the Contract shall be governed by the following terms and conditions.

**1 GENERAL**

**1.1 TERM OF CONTRACT:**

- A. The Contract shall commence upon execution unless otherwise specified and shall continue in effect until all obligations are performed in accordance with the Contract. Upon written notice to the Contractor from the City's Purchasing Officer or designee, unless specified otherwise in the Scope of Work, the Contract may be extended beyond the initial term at the City's sole option unless the Contractor is notified 30 days prior to the expiration. If the City exercises any extension option, all terms, conditions, and provisions of the Contract shall remain in effect for that extension period, subject only to any economic price adjustment otherwise allowed under the Contract.
- B. Upon expiration of the initial term or any period of extension, the Contractor agrees to holdover under the terms and conditions of this Contract for such a period as is reasonably necessary for the City to re-solicit and/or complete the Deliverables due under this Contract. Any holdover period will not exceed 180 calendar days unless mutually agreed on by both parties in writing.

**1.2 INDEFINITE QUANTITY:**

The quantities and/or services listed herein are estimates of the goods and services needed by the City for the period of the Contract. The City reserves the right to purchase more or less of these quantities and/or services as may be required during the Contract term. Quantities and/or services will be as needed and specified by the City for each order. Unless specified in the Contract, there are no minimum order quantities.

**1.3 INVOICES:**

- A. The Contractor shall submit separate Invoices for each Order after each delivery or on the schedule provided in the Contract. If partial shipments or deliveries are authorized by the City, a separate Invoice must be sent for each shipment or delivery made.
- B. Invoices shall be sent to the address on the Purchase Order of Delivery Order in the section entitled, "BILL TO". Proper Invoices must include a unique Invoice number, the purchase Order or delivery Order number, the master agreement number (if applicable), the Department's Name, and the name of the point of contact for the Department. Invoices shall be itemized according to pricing structure in the Contract. A copy of the bill of lading and the freight waybill, when applicable, shall be attached to the Invoice. The Contractor's name and, if applicable, the tax identification number on the Invoice must exactly match the information in the Vendor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's Invoice. Invoices received without all required information cannot be processed and will be returned to the vendor.
- C. Invoices for labor shall include a tabulation of work-hours at the appropriate rates and grouped by work Order number. Time billed for labor shall be limited to hours actually worked.
- D. **Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontracting and other authorized expenses at actual cost without markup.**
- E. Federal excise taxes, State taxes, or City sales taxes must not be included in the Invoiced amount. The City will furnish a tax exemption certificate upon request.

**1.4 PAYMENT:**

- A. All proper Invoices received by the City will be paid within 30 calendar days of the City's receipt of the Deliverables or of the Invoice, whichever is later.

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STANDARD TERMS AND CONDITIONS**

- B. If payment is not timely made, (per Paragraph A), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code §2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until 10 calendar days after the grounds for withholding payment have been resolved.
- C. If partial shipments or deliveries are authorized by the City, the Contractor will be paid for the partial shipment or delivery, as stated above, provided that the Invoice matches the shipment or delivery.
- D. The City may withhold or set off the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:
  - i. Delivery of defective or non-conforming Deliverables by the Contractor;
  - ii. Third party claims, which are not covered by the insurance which the Contractor is required to provide under the terms of this Contract, are filed or there is reasonable evidence indicating probable filing of such claims;
  - iii. Failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;
  - iv. Damage to the property of the City or the City's agents, employees or Contractors, which is not covered by insurance required to be provided by the Contractor;
  - v. Reasonable evidence demonstrates that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
  - vi. Failure of the Contractor to submit proper Invoices with all required attachments and supporting documentation; or
  - vii. Failure of the Contractor to comply with any material provision of the Contract Documents.
- E. Notice is hereby given of Article VIII, §1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.
- F. The Contractor agrees to accept payment by either credit card, check or Electronic Funds Transfer for all goods and/or services provided under the Contract. The Contractor shall factor the cost of processing credit card payments into the Offer. There shall be no additional charges, surcharges, or penalties to the City for payments made by credit card.
- G. The awarding or continuation of this Contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds appropriated and available for this Contract. The absence of appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not appropriated or available and any Deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City. The City shall pay the Contractor, to the extent of funds appropriated or otherwise legally available for such purposes, for all goods delivered and services performed, and obligations incurred prior to the date of notice of non-appropriation.

**1.5 FINAL PAYMENT AND CLOSE OUT:**

- A. If a Minority-Owned Business Enterprise/Women-Owned Business Enterprise (MBE/WBE) Program Compliance Plan is required by the Solicitation, and the Contractor has identified Subcontractors, the Contractor is required to submit a Contract Close-Out MBE/WBE Compliance Report to the Project Manager or Contract Manager no later than the 15th calendar day after completion of all work under the Contract. Final payment, retainage, or both may be withheld if the Contractor is not in compliance with the requirements of the Compliance Plan as accepted by the City.
- B. The making and acceptance of final payment will constitute:



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- i. A waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and
- ii. A waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

**1.6 SPECIAL TOOLS & TEST EQUIPMENT:**

If the price stated on the Offer includes the cost of any special tooling or special test equipment fabricated or required by the Contractor for the purpose of filling this Order, such special tooling equipment and any process sheets related thereto shall become the property of the City and shall be identified by the Contractor as such.

**1.7 AUDITS AND RECORDS:**

- A. The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance, including security audits, under this Contract, at the City's expense. The Contractor agrees to refund to the City any overpayments disclosed by any such audit. The City agrees to protect from disclosure Contractor's confidential and proprietary information disclosed during an audit to the same extent it protects its own confidential and proprietary information, subject to the requirements of the Texas Public Information Act, Chapter 2251, Texas Government Code.
- B. Records Retention:
  - i. Contractor is subject to City Code Chapter 2-11 (Records Management), and as it may subsequently be amended.
  - ii. The Contractor shall retain all records for a period of three years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer.

**1.8 FINANCIAL DISCLOSURES AND ASSURANCE:**

The City may request and review financial information as the City requires to determine the credit worthiness of the Contractor, including but not limited to, annual reports, audited financial Statements and reports, bank letters of credit or other credit instruments. Failure of the Contractor to comply with this requirement shall be grounds for terminating the Contract.

**1.9 RIGHT TO ASSURANCE:**

Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. If no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

**1.10 STOP WORK NOTICE:**

The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified

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by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.

**1.11 DEFAULT:**

The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or Deliverable required to be submitted by the Contractor to the City. The City shall be in default if it fails to make payment in accordance with the Payment terms of this Contract.

**1.12 TERMINATION FOR CAUSE:**

In the event of a default by either party, the non-defaulting party shall have the right to terminate the Contract for cause, by written notice effective ten 10 calendar days, unless otherwise specified, after the date of such notice, unless the defaulting party, within such 10 day period, cures such default, or provides evidence sufficient to prove to the non-defaulting party's reasonable satisfaction that such default does not, in fact, exist. Additionally, the City shall have the right to act in accordance with the terms defined by "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors." In addition to any other remedy available under law or in equity, either party shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the party as a result of the Contractor's default, including, without limitation, cost of cover, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and not exclusive of any other right or remedy provided by law. In the event of termination of the Contract under this Section, the Contractor shall handover all complete and partially complete Work Products and Documentation developed under this Contract.

**1.13 ATTORNEY'S FEES:**

In consideration of the award and execution of this Contract and in consideration of the City's waiver of its right to attorney's fees, the Contractor knowingly and intentionally waives its right to attorney's fees under §271.153, Texas Local Government Code, in any administrative proceeding, alternative dispute resolution proceeding, or litigation arising out of or connected to this Contract.

**1.14 TERMINATION WITHOUT CAUSE:**

The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon 30 calendar days' prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds appropriated or otherwise legally available for such purposes, for all goods delivered and services performed, and obligations incurred prior to the date of termination in accordance with the terms hereof. In the event of termination of the Contract under this Section, the Contractor shall handover all complete and partially complete Work Products and Documentation developed under this Contract.

**1.15 FRAUD:**

Fraudulent Statements by the Contractor on any Offer or in any report or Deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

**1.16 DELAYS:**

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The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within 30 calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution Clause. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

**1.17 FORCE MAJEURE:**

Contractor may be excused from performance under the Contract for any period when performance is prevented as the result of an act of God, strike, war, civil disturbance, epidemic, pandemic, sovereign conduct, or court order provided that the Contractor experiences the event of force majeure and prudently and promptly acts to take any and all steps that are within the Contractor's control to ensure performance and to shorten the duration of the event of force majeure. Contractor shall provide notice of the force majeure event to the City within three (3) business days of the event or delay, whichever occurs later, to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination. However, the City may terminate an order under the Contract if it is determined by the City that the Contractor will not be able to deliver goods or services in a timely manner to meet the business needs of the City.

**1.18 INDEMNITY:**

A. IN THIS SECTION, THE FOLLOWING TERMS HAVE THE MEANINGS ASSIGNED BELOW:

- (1) "INDEMNIFIED PARTY" IS THE CITY AND THE CITY'S OFFICERS, ELECTED AND APPOINTED OFFICIALS, EMPLOYEES, AGENTS, REPRESENTATIVES, SUCCESSORS AND ASSIGNS.
- (2) "INDEMNIFYING PARTY" IS THE CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, SUCCESSORS AND ASSIGNS.
- (3) THE INDEMNIFYING PARTY SHALL INDEMNIFY, HOLD HARMLESS, AND DEFEND THE INDEMNIFIED PARTY AGAINST ANY AND ALL LOSSES, DAMAGES, LIABILITIES, DEFICIENCIES, CLAIMS, CAUSES OF ACTION, JUDGMENTS, SETTLEMENTS, INTEREST, AWARDS, PENALTIES, FINES, COSTS OR EXPENSES, INCLUDING PROFESSIONAL FEES AND ATTORNEYS' FEES, THAT ARE INCURRED BY THE INDEMNIFIED PARTY ARISING OUT OF ANY DIRECT OR THIRD PARTY CLAIM OF:
  - i. BREACH OR NON-FULFILLMENT OF ANY PROVISION OF THIS CONTRACT BY THE INDEMNIFYING PARTY;
  - ii. ANY FALSE REPRESENTATION OR WARRANTY MADE BY THE INDEMNIFYING PARTY IN THIS CONTRACT OR IN THE INDEMNIFYING PARTY'S PROPOSAL/RESPONSE LEADING TO THIS CONTRACT;
  - iii. ANY NEGLIGENT OR MORE CULPABLE ACT OR OMISSION OF THE INDEMNIFYING PARTY, INCLUDING ANY RECKLESS OR WILLFUL MISCONDUCT, RELATED TO THE PERFORMANCE OF ITS OBLIGATIONS UNDER THIS CONTRACT;
  - iv. BODILY INJURY; DEATH OF ANY PERSON; OCCUPATIONAL ILLNESS OR DISEASE; LOSS OF SERVICES, WAGES, OR INCOME; OR DAMAGE TO REAL OR PERSONAL PROPERTY CAUSED BY THE NEGLIGENT OR MORE CULPABLE ACTS OR OMISSIONS OF INDEMNIFYING PARTY, INCLUDING ANY RECKLESS OR WILLFUL MISCONDUCT; OR
  - v. ANY FAILURE OF THE INDEMNIFYING PARTY TO COMPLY WITH ANY APPLICABLE FEDERAL, STATE, OR LOCAL LAWS, REGULATIONS, OR CODES RELATED TO THE PERFORMANCE OF ITS OBLIGATIONS UNDER THIS CONTRACT.

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- B. THE INDEMNIFIED PARTY SHALL GIVE THE INDEMNIFYING PARTY WRITTEN NOTICE (A "CLAIM NOTICE") OF ANY CLAIM RECEIVED RELATED TO THIS CONTRACT. THE INDEMNIFYING PARTY'S DUTY TO DEFEND APPLIES IMMEDIATELY. THE INDEMNIFIED PARTY'S FAILURE TO PROVIDE A CLAIM NOTICE TO THE INDEMNIFYING PARTY DOES NOT RELIEVE THE INDEMNIFYING PARTY OF ITS DUTY TO INDEMNIFY, HOLD HARMLESS AND DEFEND THE INDEMNIFIED PARTY.
- C. THE INDEMNIFIED PARTY MAY SELECT ITS OWN LEGAL COUNSEL TO REPRESENT ITS INTERESTS. THE INDEMNIFYING PARTY SHALL:
  - i. REIMBURSE THE INDEMNIFIED PARTY FOR ITS REASONABLE COSTS AND ATTORNEY'S FEES IMMEDIATELY UPON REQUEST, AS THEY ARE INCURRED, AND
  - ii. REMAIN RESPONSIBLE TO THE INDEMNIFIED PARTY FOR ANY LOSSES INDEMNIFIED UNDER THIS SECTION.
- D. THE INDEMNIFYING PARTY SHALL GIVE PROMPT, WRITTEN NOTICE TO THE INDEMNIFIED PARTY OF ANY PROPOSED SETTLEMENT OF A CLAIM THAT IS INDEMNIFIABLE UNDER THIS SECTION. THE INDEMNIFYING PARTY MAY NOT, WITHOUT THE INDEMNIFIED PARTY'S PRIOR, WRITTEN CONSENT, SETTLE OR COMPROMISE ANY CLAIM OR CONSENT TO THE ENTRY OF ANY JUDGMENT REGARDING WHICH INDEMNIFICATION IS BEING SOUGHT UNDER THIS SECTION.
- E. MAINTENANCE OF THE INSURANCE REQUIRED BY THIS CONTRACT SHALL NOT LIMIT THE INDEMNIFYING PARTY'S OBLIGATIONS UNDER THIS SECTION. THE INDEMNIFYING PARTY SHALL REQUIRE ALL SUBCONTRACTORS TO INDEMNIFY THE CITY IN THE SAME MANNER AS PROVIDED IN THIS SECTION.

**1.19 NOTICES:**

Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Notices to the Contractor shall be sent to the address registered with the City. Notices to the City shall be addressed to the City at P.O. Box 1088, Austin, Texas 78767 and marked to the attention of the assigned Procurement Specialist.

**1.20 CONFIDENTIALITY:**

The Parties may be granted access to certain of the other Party's or Licensor's Confidential Information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the Party or its licensors consider confidential) (Confidential Information) to provide the Deliverables to the City. The Parties acknowledge and agree that the Confidential Information is the valuable property of the disclosing Party and its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the disclosing Party and its licensors. The receiving Party (including its employees, Subcontractors, agents, or representatives) agrees it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without prior written consent of disclosing Party, or in a manner not expressly permitted under this Contract, unless the Confidential Information is required to be disclosed by law or an Order of a court or other governmental authority (including a Texas Attorney General opinion) with proper jurisdiction. In all cases, the receiving Party agrees to promptly notify the disclosing Party before disclosing Confidential Information to permit the disclosing Party reasonable time to seek an appropriate protective Order. The receiving Party agrees to use protective measures no less stringent than the receiving Party uses in its business to protect its own most valuable information. In all circumstances, the receiving Party's protective

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measures must be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

- A. The Parties agree: (i) not to use Confidential Information for any reason other than for the purpose of providing or receiving the Deliverables, (ii) not to disclose Confidential Information to any third party other than to its employees who have a need to know the Confidential Information for furtherance of providing the Deliverables, and (iii) to promptly notify the disclosing Party of any request for Confidential Information to be disclosed under any law or order of any court or other governmental authority with proper jurisdiction, so as to permit disclosing Party reasonable time to seek an appropriate protective order.
- B. All Confidential Information and derivations thereof shall remain the sole and exclusive property of disclosing Party, and no license or other right to the Confidential Information or intellectual property is granted or implied hereby. Upon the written request of disclosing Party, the receiving Party shall promptly return to disclosing Party all tangible items of Confidential Information furnished by disclosing Party and all copies thereof or certify in writing that all Confidential Information, including all copies, has been destroyed.
- C. No expiration or termination of the Contract shall affect either Party's rights or obligations with respect to Confidential Information.
- D. The Parties acknowledge and agree that any breach or threatened breach of the Contract could cause harm for which money damages may not provide an adequate remedy.
- E. The parties agree that in the event of such a breach or threatened breach of the Contract, in addition to any other available remedies, City may seek temporary and permanent injunctive relief restraining the Contractor from disclosing or using, in whole or in part, any Confidential Information.

**1.21 TEXAS PUBLIC INFORMATION ACT:**

- A. All material submitted by the Contractor to the City related to the Contract may become subject to public disclosure upon receipt by the City. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.
- B. In accordance with Texas Government Code §552.372, if this Contract has a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by the City or results in the expenditure of at least \$1 million in public funds for the purchase of goods or services by the City in a fiscal year, Contractor agrees to:
  - i. Preserve all Contracting information related to the Contract as provided by the records retention requirements in the AUDITS AND RECORDS Section of the Contract;
  - ii. Promptly provide to the City any Contracting information related to the Contract that is in the custody or possession of Contractor on request of the City; and
  - iii. On completion of the Contract, either:
    - (1) Provide at no cost to the City all Contracting information related to the Contract that is in the custody or possession of Contractor; or
    - (2) Preserve the Contracting information related to the Contract as provided by the records retention requirements in the AUDITS AND RECORDS Section of the Contract.
- C. The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Contract, and the Contractor agrees that the Contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that Subchapter.

**1.22 PUBLICATIONS:**

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All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.

**1.23 ADVERTISING:**

The Contractor shall not advertise or publish, without the City's prior written consent, the fact that the City has entered into the Contract, except to the extent required by law.

**1.24 NO CONTINGENT FEES:**

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

**1.25 GRATUITIES:**

The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were Offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City of Austin with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such Contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

**1.26 PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS:**

No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any Solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that Solicitation. Any willful violation of this Section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.

**1.27 INDEPENDENT CONTRACTOR:**

The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent Contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.

**1.28 ASSIGNMENT DELEGATION:**

The Contract shall be binding upon and ensure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this Paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third-party beneficiaries to the Contract.

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**1.29 WAIVER:**

The claim or right arising out of a breach of the Contract cannot be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

**1.30 MODIFICATIONS:**

The Contract can be modified or amended only in writing and signed by both parties. No pre-printed or similar terms on any Contractor Invoice, Order, clickwrap agreement or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.

**1.31 INTERPRETATION:**

The Contract is intended by the parties as a final, complete and exclusive Statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

**1.32 DISPUTE RESOLUTION:**

- A. If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this Section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within 14 calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within 30 calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.
- B. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within 30 calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to consider qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a Contract interpretation expert. If the parties fail to agree on a mediator within 30 calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center. The parties agree to participate in mediation in good faith for up to 30 calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

**1.33 JURISDICTION AND VENUE:**

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The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another State or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

**1.34 INVALIDITY:**

The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.

**1.35 HOLIDAYS:**

Dates for the holidays observed by the City can be found here <https://www.austintexas.gov/department/official-city-holidays>

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

**1.36 SURVIVABILITY OF OBLIGATIONS:**

All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.

**1.37 COOPERATIVE CONTRACT:**

- A. The City has entered into Interlocal Purchasing Agreements with other governmental entities, for the purpose of accessing their cooperative contracts and making available our cooperative contracts, pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code. The Contractor agrees to offer the same prices and terms and conditions of this cooperative contract to other eligible governmental agencies that have entered into an interlocal agreement with the City for the purpose of accessing the City's cooperative contracts.
- B. The City does not accept any responsibility or liability for the purchases by other governmental entities made under a separate contract based on this cooperative contract.

**1.38 EQUAL OPPORTUNITY:**

- A. **Equal Employment Opportunity:** No Contractor, or Contractor's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Offer submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Offeror has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the Contract and the Contractor's suspension or debarment from participation on future City Contracts until deemed compliant with Chapter 5-4.



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- B. **Non-Retaliation:** The Contractor agrees to prohibit retaliation, discharge or otherwise discrimination against any employee or applicant for employment who has inquired about, discussed or disclosed their compensation.
- C. **Americans with Disabilities Act (ADA) Compliance:** No Contractor, or Contractor's agent, shall engage in any discriminatory practice against individuals with disabilities as defined in the ADA, including but not limited to: employment, accessibility to goods and services, reasonable accommodations, and effective communications.

**1.39 INSURANCE:**

A **GENERAL INSURANCE REQUIREMENTS:**

- i. The Contractor shall provide a Certificate of Insurance as verification of coverages and endorsements required in Section B., Specific Insurance Requirements, to the City prior to Contract execution and within 14 calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or hold over period is exercised, as verification of continuing coverage.
- ii. All endorsements naming the City as additional insured, waivers, and notices of cancellation shall indicate, and the Certificate of Insurance shall be mailed to the following address:
  - City of Austin Purchasing Office
  - P.O. Box 1088
  - Austin, Texas 78767
  - OR
  - [PURInsuranceCompliance@austinTexas.gov](mailto:PURInsuranceCompliance@austinTexas.gov)
- iii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
- iv. The City may request that the Contractor submit certificates of insurance to the City for all Subcontractors prior to the Subcontractors commencing work on the project.
- v. The Contractor's and all Subcontractors' insurance coverage shall be written by companies authorized to do business in the State of Texas and have an A.M. Best rating of B+VII or better.
- vi. The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.
- vii. If insurance policies are not written for amounts specified in Section B., Specific Insurance Requirements, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.
- viii. The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.
- ix. The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in exposure,

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statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.

- x. The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.
  - xi. The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. Self-insured retentions greater than \$499,999 shall be disclosed on the Certificate of Insurance.
  - xii. If any required insurance is written on a claims-made basis, the Certificate of Insurance shall state that the coverage is claims-made and the retroactive date shall be prior to or coincident with the date of the Contract and the coverage continuous and shall be provided for 24 months following the completion of the Contract.
  - xiii. The insurance coverages specified in Section B., Specific Insurance Requirements, are required minimums and are not intended to limit the responsibility or liability of the Contractor.
- B. **Specific Insurance Coverage Requirements:** The Contractor, consistent with its status as an independent Contractor shall carry and will cause its Subcontractors to carry, at a minimum insurance in the types and amounts indicated below for the duration of the Contract, including extension options and hold over periods, and during any warranty period.
- i. 30 Days' Notice of Cancellation, Form WC420601, or equivalent coverage.  
**Commercial General Liability Insurance:** Coverage with minimum bodily injury and property damage per occurrence limits of \$1,000,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injury).
    - (1) The policy shall contain the following provisions:
      - a. Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project;
      - b. Independent Contractors coverage (Contractor/Subcontracted work);
      - c. Products/Completed Operations Liability for the duration of the warranty period;
      - d. If the project involves digging or drilling, provide Explosion, Collapse, and Underground (X, C, & U) Coverage.
    - (2) The policy shall also include these endorsements in favor of the City of Austin:
      - a. Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage;
      - b. 30 Days' Notice of Cancellation, Endorsement CG 0205, or equivalent coverage;
      - c. The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage.
  - ii. **Professional Liability/Technology Errors and Omissions Insurance:** The Contractor shall provide coverage, at a minimum limit of \$1,000,000 per claim, to pay on behalf of the assured all sums which the assured shall become legally obligated to pay as damages by reason of any negligent act, error, omission, or breach of security (including but not limited to any confidential or private information) arising out of the performance of professional services under this Agreement. The required coverage shall extend to technology licensed and/or purchased, including any Software licensed or Hardware purchased under this Contract.
  - iii. **Cyber Liability Insurance:** Coverage of not less than \$1,000,000 each claim and annual aggregate providing coverage for damages and claims expenses, including notification expenses, arising from (1) breach of network security, (2) alteration, corruption, destruction or deletion of information

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stored or processed on a computer system, (3)invasion of privacy, including identity theft and unauthorized transmission or publication of personal information, (4) unauthorized access and use of computer systems, including hackers (5) the transmission of malicious code, and (6) website content, including claims of libel, slander, trade libel, defamation, infringement of copyright, trademark and trade dress and invasion of privacy.

- C. **Endorsements:** The specific insurance coverage endorsements specified above, or their equivalents must be provided. If endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and approval.

**2 SERVICES**

**2.1 ACCEPTANCE OF INCOMPLETE OR NON-CONFORMING DELIVERABLES AND/OR SERVICES:**

If, instead of requiring immediate correction or removal and replacement of defective or non-conforming Deliverables or Services, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming Deliverables or Services. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming Deliverables or Services. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor within 30 calendar days of notification provided by the City.

**2.2 WORKFORCE:**

- A. The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.
- B. The Contractor, its employees, Subcontractors, and Subcontractor's employees may not while engaged in participating or responding to a Solicitation or while in the course and scope of delivering goods or services under a City of Austin Contract or on the City's property:
  - i. Illegally use or possess a firearm, except as required by the terms of the Contract; or
  - ii. Use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.
- C. If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has illegally possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

**2.3 GUARANTEE – SERVICES:**

The Contractor warrants and represents that all services to be provided to the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices following the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.

- A. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.
- B. Unless otherwise specified in the Contract, the warranty period shall be at least one year from Final Acceptance Date. If during the warranty period, one or more of the above warranties are breached, the

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Contractor shall promptly upon receipt of demand perform the services again in accordance with the services warranty standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within 30 calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this Section.

- C. If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Contract from the Contractor and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.

**3 TECHNOLOGY**

**3.1 PROFESSIONAL & TECHNICAL - DELIVERABLE (INCLUDING SERVICE) ACCEPTANCE:**

Acceptance for any particular Deliverable, shall not occur until City has determined that such Deliverables function substantially in accordance with the specifications listed in Contractor's relevant technical documentation, and with any required test scripts and procedures developed according to any relevant Statement of Work ("Acceptance Test"). Once the Acceptance Test(s) are passed in City's determination, Contractor shall request Final Acceptance in writing. Final Acceptance of the Work shall officially occur by City stating same to Contractor in writing and by making the final payment to Contractor of the initial sum(s) due and owing, in line with any Statement of Work or Payment Schedule.

**3.2 SOFTWARE & CLOUD - WARRANTY:**

- A. **PERFORMANCE:** Contractor represents and warrants that: (a) Subscription Services provided under any SaaS Subscription Schedule and Non-subscription Services provide under a Statement of Work shall be provided and performed by qualified personnel in a professional, workmanlike manner, consistent with the prevailing standards of the industry; (b) it shall use industry best practices to fulfill its obligations under each SaaS Subscription Schedule and Statement of Work; and (c) any Deliverables provided by Contractor shall operate in conformance with the terms of this Contract and the applicable Schedules and Statements of Work.
- B. **SOFTWARE:** Unless otherwise expressly provided in this Contract, a SaaS Subscription Schedule or Statement of Work, Contractor for itself and for and on behalf of its subcontractors, licensors, employees and agents warrants that: (a) the functions contained in the Subscription Services and in any Non-subscription Services provided under this Contract shall meet City's requirements, (b) the operation of the Subscription Services and any Non-subscription Services shall be uninterrupted and error free, (c) the Subscription Services and any Non-subscription Services shall have the capacity to meet the demand during the times specified in the Subscription Services Schedule(s) and in the Statement(s) of Work for Non-subscription Services and (d) the Subscription Services shall work with future specifications, as well as future releases of web browsers, and shall have both forward and backward functionality. Contractor shall be liable for any damages that City may suffer arising out of use of, or inability to use, the Subscription Services and Non-subscription Services provided under this Contract. Without limitation, Contractor's indemnification obligation under this section includes any claim, damage, loss or expense arising from or in connection with any act by an agent, contractor,

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subcontractor, consultant, or employee of Contractor that results in, or is intended by such agent, contractor, subcontractor, consultant, or employee to result in, harmful or otherwise unauthorized access into any of City's systems, data, City's Confidential Information, or City's technology.

- i. Contractor warrants that no software program, either in whole or in part, nor any portion of the Subscription Services or Non-subscription Services provided to City under this Contract, shall:
  - (1) Contain any hidden file;
  - (2) Replicate, transmit or activate itself without control of a human operating the computing equipment on which it resides;
  - (3) Alter, damage or erase any data or computer programs without control of a human operating the computing equipment on which it resides;
  - (4) Contain any key, node lock, time-out or other function, whether implemented by electronic, mechanical or other means, that restricts or may restrict use or access to any software programs, Subscription Services or Non-subscription Services developed or data created under this Contract, based on residency on a specific equipment configuration, frequency of duration of use or other limiting criteria;
  - (5) Contain any virus, malicious, illicit or similar unrequested code, whether known or unknown to Contractor; or
  - (6) Use electronic self-help, including but not limited to preventing electronically City's further or continued use of and/or access to the Subscription Services, Non-subscription Services, or any software or other portion thereof.
- ii. Notwithstanding any provision in this Contract to the contrary, if any Subscription Service or Non-subscription Service has any of the above foregoing attributes (collectively, "Illicit Code"), Contractor shall be in default of this Contract, and no cure period shall apply unless approved by an executive of the City. At the request of and at no cost to City, Contractor shall remove any such Illicit Code from the licensed software as promptly as possible.
- iii. To protect City from damages that may be caused intentionally or unintentionally by the introduction of Illicit Code into City's computer systems, no software may be installed, executed or copied onto City's equipment without express warranty to City that Illicit Code does not exist. Contractor agrees that in the event of any dispute with City regarding an alleged breach of this Contract, Contractor shall not use any type of electronic means to prevent or interfere with City's use of any portion of the Subscription Services and Non-subscription Services. Contractor understands that a breach of this provision could foreseeably cause substantial harm to City and to numerous Third Parties having business relationships with City. As a result, at City's option, City may subject Contractor to the Liquidated Damages provision of this Contract or obtain injunctive relief against Contractor which Contractor agrees not to contest.

**3.3 BUSINESS CONTINUITY AND DISASTER RECOVERY:**

The Contractor shall maintain a business continuity and disaster recovery plan.

**3.4 DATA**

- A. **DATA OWNERSHIP:** The City owns all right, title and interest in City Data. Contractor agrees it has no title or interest to City Data. The Contractor shall not access City User accounts or City Data,

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except (1) in the course of data center operations, (2) in response to service or technical issues, (3) as required by the express terms of this Contract, or (4) at the City's written request.

- B. **DATA PROTECTION:** Protection of personal privacy and City Data shall be an integral part of the business activities of the Contractor to ensure there is no inappropriate or unauthorized use of City Data at any time. To this end, the Contractor shall safeguard the confidentiality, integrity and availability of City Data and comply with the following conditions:
- i. The Contractor shall implement and maintain appropriate administrative, technical and organizational security measures to safeguard against unauthorized access, disclosure or theft of City Data, including non-public data. Such security measures shall be in accordance with recognized industry practice.
  - ii. All non-Public data shall be encrypted at rest and in transit with controlled access. Unless otherwise stipulated, the Contractor is responsible for encryption of the non-Public data. Any stipulation of responsibilities will identify specific roles and responsibilities and shall be included in the service level agreement (SLA), or otherwise made a part of this Contract.
  - iii. The City shall identify data it deems as non-public data to the Contractor. The level of protection and encryption for all non-Public data shall be identified and made a part of this Contract.
  - iv. At no time shall any data or processes – that either belong to or are intended for the use of a City or its officers, agents or employees – be copied, disclosed or retained by the Contractor or any Contractor Affiliate for non-City use.
  - v. The Contractor shall not use any information collected in connection with the Service it provides under the Contract for any purpose other than fulfilling the Contract requirements.
- C. **COMPLIANCE WITH ACCESSIBILITY STANDARDS:** The Contractor shall comply with and adhere to the Accessibility Standards of Section 508, as amended, of the Rehabilitation Act of 1973.
- D. **SECURITY:** The Contractor shall disclose its non-proprietary security processes and technical limitations to the City and shall provide protection of the City Data. The City and the Contractor shall understand and memorialize each other's roles and responsibilities in the Contract documents. Contractor agrees to adhere to the requirements of the Data Handling Controls. Contractor agrees these provisions shall survive the termination of the Contract.
- E. **COMPLIANCE WITH CHAPTER 521 OF THE TEXAS BUSINESS AND COMMERCE CODE:** Contractor shall comply with all requirements of Chapter 521 of the Texas Business and Commerce Code, including being responsible for a program that protects against the unlawful use or disclosure of Personal Identifying Information (PII) or Sensitive Personal Information (SPI) collected or maintained in the regular course of business. The program shall include policies and procedures for the implementation of administrative, technical, and physical safeguards, and shall also include appropriate corrective action in event of any Security Incident or Data Breach, and proper methods of destroying records containing PII or SPI.
- F. **SECURITY INCIDENT OR DATA BREACH NOTIFICATION:** The Contractor shall inform the City of any Security Incident or Data Breach as required by the Data Handling Controls or other relevant part of the Contract.
- i. **Incident Response:** The Contractor may need to communicate with outside parties regarding a Security Incident or Data Breach, which may include contacting law enforcement, fielding

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media inquiries and seeking external expertise as mutually agreed upon, defined by law or contained in the Contract. Security Incidents or Data Breaches, especially notification and subsequent communication, should be handled on an urgent basis, as part of Contractor's communication and mitigation processes as mutually agreed upon, defined by law, or contained in the Contract, including the Data Handling Controls.

- ii. **Security Incident Reporting Requirements:** The Contractor shall report a Security Incident to the appropriate City identified contact immediately and without delay, as defined in the SLA.
- iii. **Data Breach Reporting Requirements:** If the Contractor has actual knowledge of a confirmed Data Breach that affects the security of any City Data, whether or not that is subject to applicable data breach notification law, the Contractor shall (1) promptly notify by telephone the appropriate City identified contact as soon as reasonably possible, but no later than four (4) hours, unless shorter time is required by applicable law, and (2) take commercially reasonable measures to address the Data Breach in a timely manner.
- iv. **Data Breach Responsibilities:** The following subsection describes the Contractor's supplemental responsibilities that apply when a Data Breach is suspected or occurs with respect to Personally Identifiable Information or City Confidential Information within the possession, custody or control of Contractor.
  - (1) The Contractor, unless stipulated otherwise (including in the Data Handling Controls), shall immediately notify the appropriate City identified contact by telephone in accordance with the agreed upon security plan or security procedures if it reasonably believes there has been a Security Incident.
  - (2) The Contractor, unless stipulated otherwise, shall promptly notify by telephone the appropriate City identified contact as soon as reasonably possible but no later than four (4) hours, unless shorter time is required by applicable law (or by another section of the Contract), if it confirms that there is, or reasonably believes that there has been a Data Breach. The Contractor shall (1) cooperate with the City as reasonably requested by the City to investigate and resolve the Data Breach, (2) promptly implement necessary remedial measures, and (3) document responsive actions taken related to the Data Breach, including any post-incident review of events and actions taken to make changes in business practices in providing the Services.
  - (3) Unless otherwise stipulated, if a Security Incident or a Data Breach is a direct result of the Contractor's breach of its Contract obligations, the Contractor shall bear all costs to remedy, including but not limited to (1) the investigation and resolution of the Security Incident or the Data Breach; (2) notifications to individuals, regulators or others required by state law; (3) a credit monitoring service required by state (or federal) law; (4) establishing a website or a toll-free number and call center for affected individuals required by state law; and (5) complete all corrective actions as reasonably determined by Contractor based on root cause analysis.

**3.5 EXPORT OF DATA:**

The City shall have the ability to export data in part or in its entirety at its discretion without interference from the Contractor. This includes the ability for the City to export data to/from other Contractors.

**3.6 IMPORT OF DATA:**

The City shall have the ability to import data in part or in its entirety at its discretion without interference from the Contractor. This includes the ability for the City to import data to/from other Contractors.

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**4 DEFINITIONS**

1. **“Affiliate”** – including but not limited to, (i) Contractor’s parent, subsidiaries, sister companies, partnerships, joint ventures, franchisees, assigns, business partners, contractors, subcontractors and consultants, controlling, controlled by or under common control of Contractor as they may change from time to time and (ii) Users, as they may change from time to time.
2. **“Amendment”** – a written document executed by both Parties that modifies the terms of this Contract, including referenced attachments.
3. **“Authorized Persons”** – the Contractor personnel (including subcontractor personnel) located in the contiguous United States having successfully completed the required background check and related requirements of the Contract.
4. **“Change Order Request”** – the written document provided by the City to Contractor requesting changes to Contractor’s obligations under this Contract.
5. **“Change Order Response”** – the written document provided to the City by Contractor in response to City’s Change Order Request.
6. **“City Confidential Information”** – (a) information provided by the City that is marked or identified as confidential, (b) information, including software, computer programs, documentation, processes, procedures, techniques, technical, financial, customer, personnel and other business information of a non-public nature that would reasonably be understood to be confidential whether or not marked or identified as confidential, (c) information generated by Contractor (or subcontractor) that contains, reflects, or is derived from Confidential Information, (d) Personal Identifying Information, (e) Restricted Data , and (f) all other information made confidential by federal, state or local law or regulation. City Confidential Information is part of City Data.
7. **“City Data”** – data or information (in any form) regarding the City or its customers that is created, collected, provided, obtained, or otherwise made available in connection with this Contract to an Authorized Person.
8. **“City Identified Contact”** – the person or persons designated in writing by the City to receive security incident notifications.
9. **“City”** – the City of Austin, Texas, a municipal corporation and subdivision of the State of Texas, or a department of same.
10. **“Cloud Service”** – any Service made available to Users via the Internet from a provider's servers as opposed to being provided from the City’s own on-premises servers. In this instance, it would mean such Services provided by the Contractor.



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11. **“Confidential Information”** – all written or oral information, which may be disclosed by either Party to the other, related to the business operations of either Party or a third party that has been identified as confidential or that by the nature of the information or the circumstances surrounding disclosure ought reasonably to be treated as confidential; **“City Confidential Information”** is a subsets of Confidential Information.
12. **“Contract”** – the final general authorizing document (including Change Orders thereto) utilized by the City to procure Services from Contractor and any attachments and appendices attached thereto.
13. **“Contract Price”** – the total amount to be paid to Contractor under any Purchase Order as it may be adjusted or changed in accordance with the terms of the final Contract.
14. **“Contractor”** – the contractor and its employees, subcontractors, agents and affiliates who are providing the services agreed to under the contract.
15. **“Contractor Information”** – all techniques, algorithms and methods or rights thereto owned by or licensed to Contractor during the term of this Contract and employed by Contractors in connection with the Services provided to City.
16. **“Contractor Software”** – software that was developed or licensed to Contractor independent of this Contract and which Contractor utilizes to provide the Subscription Services or the Non-subscription Services.
17. **“Data Breach”** – the unauthorized access by a non-authorized person(s) that results in the use, disclosure or theft of City’s or City’s customers’ unencrypted Personally Identifiable Information or City Confidential Information.
18. **“Documentation”** – the documentation created by the Contractor for the Services provided but does not include customized documentation prepared under the Contract and which are Deliverables under the Contract, including the Statement of Work; such Deliverables are wholly owned by City and Contractor shall make no claim to such Deliverables.
19. **“Facility”** – the City designated facility or location set forth in the Purchase Order where Services are to be performed by Contractor or Supplier or software installed.
20. **“FACTA”** – the Fair and Accurate Credit Transactions Act, 15 U.S.C. §§ 1681-1681x.
21. **“Final Acceptance Date”** – the date upon which the City confirms that all Services and Work Products have been completed and tested and function in accordance with the terms of the Contract.
22. **“IaaS Subscription Schedule”** – the document, part of the Contract, executed by both Parties that sets out the Parties’ rights and obligations with respect to City’s access to and use of the IaaS services.

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23. **“Infrastructure-as-a-Service”** (IaaS) – the capability provided to the consumer to provision processing, storage, networks and other fundamental computing resources where the consumer is able to deploy and run arbitrary software, which can include operating systems and applications. The consumer does not manage or control the underlying cloud infrastructure but has control over operating systems, storage, deployed applications and possibly limited control of select networking components (e.g., host firewalls).
24. **“Non-Public Data”** – data typically considered internal and used for city business or mission needs. All information is considered Non-Public unless otherwise classified or explicitly defined through the Information Governance Program or official policy or procedural documents.
25. **“Public Data”** means data typically created for public release or released to the public through management decision and/or a public information request.
26. **“Restricted Data”** means data typically exempt from public disclosure requirements under the provisions of applicable state or federal law. Examples of restricted information are regulated and confidential data.
27. **“Non-Subscription Services”** – the Services provided to City by Contractor under this Contract that are not included in the definition of Subscription Services. Non-subscription Services shall include, but not be limited to, consulting, implementation, customization and other services provided to City by Contractor under this Contract, together with all documentation provided by or otherwise required of Contractor for any of the consulting, implementation, customization or other Services it provides.
28. **“PaaS Subscription Schedule”** – the document, part of the Contract, executed by both Parties that sets out the Parties’ rights and obligations with respect to City’s access to and use of the PaaS services.
29. **“Party”** or **“Parties”** – the City and Contractor, individually or together, as applicable.
30. **“Personally Identifiable Information”** – information that can be used to distinguish or trace an individual's identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual. PII includes, but is not limited to, personal information and/or personal data. Some forms of PII are considered Restricted Data and require additional protection, including, but not limited to, Sensitive Personal Information (SPI), Sensitive and/or Protected PII, and Protected Health Information (PHI).
31. **“Platform-as-a-Service”** (PaaS) – the capability provided to the City to deploy onto the cloud infrastructure consumer-created or -acquired applications created using programming languages and tools supported by the provider. This capability does not necessarily preclude the use of compatible programming languages, libraries, services and tools from other sources. The consumer does not manage or control the underlying cloud infrastructure, including network, servers, operating systems or storage, but has control over the deployed applications and possibly application hosting environment configurations.

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32. **“Purchase Order”** – the general authorizing document (including Change Orders thereto) utilized by the City to procure Services from Contractor under this Contract and any attachments and appendices attached thereto.
33. **“SaaS Software Application”** and **“SaaS Software”** – the computer software listed on a SaaS Subscription Schedule to which Contractor has granted City access and use as part of the Subscription Services. This includes any customization, other derivative works, upgrades, releases, fixes, patches, etc. related to the software that Contractor develops or deploys during the term of this Contract, together with all documentation provided by or otherwise required of Contractor for any of the software, customization, other derivative works, upgrades, releases, fixes, patches, etc.
34. **“SaaS Subscription Schedule”** – the document, part of the Contract, executed by both Parties that sets out the Parties’ rights and obligations with respect to City’s access to and use of the SaaS Software Application.
35. **“Security Incident”** – any actual or potential unauthorized disclosure of, or unauthorized access to, City Confidential Information; or a violation or imminent threat of violation of computer security policies, acceptable use policies, or violation or imminent threat of violation of industry standard security practices.
36. **“Service Level Agreement” (SLA)** – a written agreement between both the City and the Contractor that is subject to the terms and conditions of the Contract that, unless otherwise agreed, includes (1) the technical service level performance promises, (i.e. metrics for performance and intervals for measure), (2) description of service quality, (3) identification of roles and responsibilities, (4) security responsibilities and notice requirements, (5) how disputes are discovered and addressed, and (6) any remedies for performance failures by or otherwise required of Contractor for any of the software, customization, other derivative works, upgrades, releases, fixes, patches, etc.
37. **“Service Levels”** – the performance specifications for work performed by the Contractor under a SaaS Subscription Schedule or Statement of Work.
38. **“Services”** – work, direction of work, installation services, technical information, technical consulting, software programming and development, software maintenance and support services, or other professional and technical services furnished by Contractor as described in detail in the final Contract.
39. **“Software”** – the computer programs in source code, object code or binary form or in any other form, including any related or included computer programs, whether owned by Licensor or licensed to Licensor by a third party which has authorized Licensor to sublicense such computer programs, and including any documentation or related materials concerning the application, use, training of users, theory of operation, maintenance or any other aspect of the Software.

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40. **“Software-as-a-Service” (SaaS)** – the Services provided to the City to use the Contractor’s offering running on non-City owned infrastructure. The User does not manage or control the underlying cloud infrastructure including network, servers, operating systems, storage or even individual application capabilities, with the possible exception of limited user-specific application configuration settings.
41. **“Specifications”** – those technical specifications attached to the Contract and to which the Services and Work Products supplied by Contractor must conform.
42. **“Statement/Scope of Work”** – a written statement of Deliverables including Services and, ultimately, the Contract, which describes the City’s Service needs and expectations.
43. **“Subscription Services”** – City’s access to and use of and Contractor’s provision of the SaaS Software Applications and other Services listed on a SaaS Subscription Schedule and in accordance with the terms and conditions set forth in the SaaS Subscription Schedule and Contract documents, as appropriate.
44. **“Third Party”** – any natural person or legal entity other than Contractor and City.
45. **“Transition Date”** – the date upon which it is established to City’s satisfaction that the SaaS Software Application is stable enough to support City’s production processing.
46. **“User Information”** – all information directly or indirectly obtained from Users accessing the SaaS Software Applications where such information is obtained by Contractor or by any of its employees, representatives, agents or any Third Parties having contractual privity with Contractor or who are under Contractor’s supervision or control.
47. **“User”** – City’s employees, agents, consultants, outsourcing companies, contractors and others who are authorized by City to access and use the SaaS Software Applications and any part or portion of the Subscription Services or non-Subscription Services in the performance of their duties for City.
48. **“Work Product”** – all deliverables and other materials, products or modifications developed or prepared for City by Contractor under this Contract, including without limitation, any integration software or other software, all data, program images and text viewable on the Internet, any HTML code relating thereto, or any program code, including program code created, developed or prepared by Contractor under or in support of the performance of its obligations under this Contract, including manuals, training materials and documentation, but excluding the Contractor’s Software.

## Software Subscription Quote

**Customer:** City of Austin, TX  
**Quote Date:** February 1, 2023  
**Term:** July 2023 – June 2028 (5-Year Contract)  
**Valid:** Quote valid for 90 days

### Geonexus Integration Platform (GIP)

GIP is priced based on the total number of records, from each source system, that are processed by the software. For example, 1 record in Maximo, 1 record in GIS A, and 1 record in GIS B would result in a total record count of 3. The software tracks the number of records processed each time it runs and provides the volume details in a report. This provides the customer with complete transparency and understanding of the data volume processed by Geonexus. Software subscriptions include software, updates and patches, online documentation, and technical support for a 12-month term. Geonexus performs QBR's (Quarterly Business Reviews) with our clients to review the usage of our software and confirm the record counts before generating a renewal quote.

The tables below show the annual renewal fees for the GIP software. Pricing for both 2,000,000 records and 3,000,000 records has been included to account for potential record increases over the five-year period.

Item	Description	July 2023 – June 2024	July 2024 – June 2025	July 2025 – June 2026	July 2026 – June 2027	July 2027 – June 2028
US-Subscription-GIP Starter	Geonexus Integration Platform - Enterprise, Supports up to 1,000,000 records, 12 Month Subscription	\$22,917.25	\$24,292.29	\$25,749.82	\$27,294.81	\$28,932.50
US-Subscription-GIP Starter - Add 500K Rec	Additional Records Block of 500,000 - GIP Starter, 12 Month Subscription	\$10,828.00	\$12,145.56	\$12,874.30	\$13,646.76	\$14,465.56
US-Subscription-GIP Starter - Add 500K Rec	Additional Records Block of 500,000 - GIP Starter, 12 Month Subscription	\$10,828.00	\$12,145.56	\$12,874.30	\$13,646.76	\$14,465.56
	Annual Subscription GIP	<b>\$44,573.25</b>	<b>\$48,583.41</b>	<b>\$51,498.42</b>	<b>\$54,588.33</b>	<b>\$57,863.62</b>
	<i>Max Records Supported</i>	<i>2,000,000</i>	<i>2,000,000</i>	<i>2,000,000</i>	<i>2,000,000</i>	<i>2,000,000</i>

Item	Description	July 2023 – June 2024	July 2024 – June 2025	July 2025 – June 2026	July 2026 – June 2027	July 2027 – June 2028
US-Subscription-GIP Essentials	Geonexus Integration Platform - Enterprise, Supports up to 3,000,000 records, 12 Month Subscription	<b>\$51,836.04</b>	<b>\$54,946.20</b>	<b>\$58,242.97</b>	<b>\$61,737.55</b>	<b>\$65,441.81</b>
	<i>Max Records Supported</i>	<i>3,000,000</i>	<i>3,000,000</i>	<i>3,000,000</i>	<i>3,000,000</i>	<i>3,000,000</i>





## GEONEXUS® INTEGRATION PLATFORM SOFTWARE LICENSE AGREEMENT

This Geonexus Integration Platform Software License Agreement (this “Agreement”) is made as of \_\_\_\_\_, 2023 (the “Effective Date”), between Geonexus Technologies L.L.C., a Michigan limited liability company with a place of business at 3005 Boardwalk Street, Suite 107, Ann Arbor, Michigan 48108 (“Geonexus”), and the City of Austin, a home-rule municipality incorporated by the State of Texas with a place of business at 1124 St. IH-35, Suite 300, Austin, TX, (“Customer”) (each of Geonexus and Customer, a “Party”; together, the “Parties”).

### 1 Definitions.

- 1.1 “**Affiliate**” means an entity where Customer owns or controls more than 50% of either the entity’s voting rights or the entity’s controlling body, but only for so long as this control continues to exist.
- 1.2 “**Documentation**” means the documentation pertaining to the use of the Software that is made available to Customer, as it may be updated from time to time by Geonexus.
- 1.3 “**Fees**” means license fees, subscription fees, and all other fees or charges arising under this Agreement.
- 1.4 “**Software**” means the software programs listed on Exhibit A, in object code only, and provided by Geonexus to Customer, including any Upgrades provided to Customer.
- 1.5 “**Subscription Start Date**” means, with respect to specific Software, the date on which Customer receives the software authorization keycode.
- 1.6 “**Support**” means the technical support services described in Exhibit B.
- 1.7 “**Term**” is defined in Section 5.1.
- 1.8 “**Upgrades**” means maintenance patches, new releases, or new versions for Software provided to Customer.

### 2 License Grants and Limitations.

- 2.1 **Software License.** Subject to all the terms and conditions of this Agreement, Geonexus hereby grants to Customer a nonexclusive, nontransferable, nonsublicensable license during the Term under Geonexus’ intellectual property rights to use the Software identified on Exhibit A solely for its own internal business purposes and in accordance with the other restrictions in this Agreement. The Software may only be copied as may be necessary for backup purposes or to replace a defective copy. If Customer is unable to operate the Software due to an equipment malfunction, the Software may be transferred temporarily to other computer equipment during the period of equipment malfunction.
- 2.2 **Documentation License.** Subject to all the terms and conditions of this Agreement, Geonexus hereby grants to Customer a nonexclusive, nontransferable, nonsublicensable license during the Term under Geonexus’ intellectual property rights to use and copy the Documentation in support of Customer’s licensed use of the Software.

### 2.3 Use by Affiliates.

- 2.3.1 **Addendum.** The Software and Documentation may be used by an Affiliate of Customer provided that prior to any use the Affiliate executes a mutually agreeable addendum to this Agreement by which the Affiliate agrees to be bound by the terms of this Agreement.
- 2.3.2 **Customer Responsibility.** Any use by a Customer Affiliate will be subject to the following: (a) Customer is responsible for the acts or omissions of its Affiliate as if they were Customer’s acts or omissions; and (b) the Affiliate’s use will not constitute a violation under any applicable export law or regulation.

### 2.4 Restrictions.

- 2.4.1 **General.** Customer acknowledges that the Software and Documentation contain valuable trade secret and confidential information of Geonexus. Customer shall take the actions necessary to fulfill its obligations under this Agreement by instruction or agreement with its employees or agents who are permitted access to the Software or Documentation. Customer shall only give access to the Software or Documentation on a need-to-know basis.
- 2.4.2 **Proprietary Rights.** Title to all patents, copyrights, trade secrets, and other proprietary rights in or related to the Software and Documentation (including all of their component parts) are and will remain the exclusive property of Geonexus. Customer will not acquire any right in the Software or Documentation except the limited rights specified in this Section 2, or take any action to challenge Geonexus proprietary rights. Geonexus will own all rights in any copy, translation, modification, adaptation, or derivative work of the Software, including any improvements, whether or not authorized by Geonexus, and Customer hereby assigns these rights to Geonexus.
- 2.4.3 **No Implied Licenses.** Any use, modification, or distribution of the Software or Documentation by Customer outside the scope of the express licenses granted in this Section 2 is prohibited.
- 2.4.4 **No Reverse-Engineering.** Customer shall not, and shall not knowingly permit others to: (a) modify the Software; or (b) decompile, reverse-

engineer, disassemble, or otherwise attempt, directly or indirectly, to obtain or create source code for the Software; except that decompiling the Software is permitted solely to the extent the laws of Customer's jurisdiction give Customer the right to do so to obtain information necessary to render the Software interoperable with other software, provided that Customer must first request this information from Geonexus and Geonexus may, in its sole discretion, either provide this information to Customer or impose reasonable conditions, including a reasonable fee, on this use of the Software to ensure that Geonexus proprietary rights in the Software are protected.

2.4.5 **Unauthorized Distribution or Copying.** Other than in accordance with this Agreement, Customer shall not, and shall not knowingly permit others to: (a) lease, license, sublicense, transfer, or assign any of its rights under this Agreement; (b) sell, rent, or distribute the Software, including providing access to the Software or using the Software to operate a service bureau or on a timesharing basis; or (c) use, copy, duplicate, or otherwise reproduce any part of the Software or Documentation. Any breach of this Section 2.4.5 is a material breach of this Agreement that is incapable of cure.

2.4.6 **Required Proprietary Notices.** Customer shall ensure that each copy it makes of the Software or Documentation contains the same proprietary notices as provided to Customer.

2.5 **Reasonable Cooperation.** Customer shall promptly provide to Geonexus all relevant facts in its possession upon becoming aware of a likelihood of infringement or other illegal use or misuse by any third party of the Software or any related intellectual property rights. Customer shall provide reasonable cooperation in any related suits and actions, at Geonexus request and expense.

3 **Technical Support.** Geonexus shall provide Support and Upgrades in accordance with Exhibit B.

#### 4 **Fees.**

4.1 **Prices.** Customer shall pay the Fees for the Software as referenced on Exhibit A.

4.2 **Payment Terms.** All payments are due within thirty (30) days after the Subscription Start Date. For all amounts not paid when due, Customer shall pay interest, as required by Chapter 2251, Texas Government Code.

4.3 **Renewals.** Geonexus shall provide an invoice for the renewal Fee at the then-current price at least sixty (60) days prior to the end of the current term. The applicable term may be renewed for subsequent one-year terms upon Customer payment of the applicable invoice.

4.4 **Taxes.** All applicable transaction taxes, including sales and use taxes, value added taxes, privilege

taxes, and other transactional charges such as duties, customs, tariffs, imposts, and government imposed surcharges ("Transaction Taxes") will be paid by Customer, and are not included in Geonexus pricing. If Geonexus is required by law to collect Transaction Taxes from Customer and remit them to a taxing authority, Geonexus will separately state the Taxes on an invoice. Each Party is responsible for its own income taxes or taxes based on gross revenues or gross receipts.

4.5 **Software Usage Audit.** Upon Geonexus written request, Customer shall provide to Geonexus a signed certification (a) verifying the Software is being used in accordance with the terms of this Agreement; and (b) listing the locations in which the Software is run, number of users, number of CPUs, and any other information reasonably requested by Geonexus. Geonexus may, at Geonexus expense and not more than once annually, audit Customer's use of the Software and compliance with this Agreement. The audit will be conducted during business hours and will not unreasonably interfere with Customer's business activities. Customer shall provide Geonexus or its auditor with all reasonable information and assistance (including copies of related software) required to enable Geonexus to determine whether Customer is in compliance with this Agreement. If the audit reveals that Customer has underpaid Fees to Geonexus, Customer will be invoiced for the underpaid Fees based upon Geonexus' price list at the time the Fees would have otherwise been incurred, together with interest at a rate of one and one-half percent (1.5%) per month or partial month until paid. If the audit reveals that Customer has underpaid Fees totaling five percent (5%) or more of the Fees due in any year, Customer shall reimburse Geonexus for all reasonable expenses associated with the audit.

#### 5 **Term and Termination.**

5.1 **Term.** This Agreement commences on the Effective Date and continues until the end of the subscription term specified in Exhibit A, subject to renewal pursuant to Section 4.3 and early termination pursuant to Section 5.2 (the "Term").

5.2 **Termination.** Either Party may terminate this Agreement for cause upon written notice if the other Party is in material breach of this Agreement and fails to correct the breach within thirty (30) days after written notice.

5.3 **Effect of Termination.** Upon termination of this Agreement, all licenses granted to Customer will immediately terminate and Customer shall: (a) immediately cease using the Software and Documentation; and (b) certify to Geonexus in writing within thirty (30) days after termination that Customer has destroyed or returned to Geonexus the Software and Documentation and all copies remaining in Customer's possession or control. This requirement applies to copies in all forms, partial and complete, and whether or not modified

or merged into other materials. Termination of this Agreement by either Party will not limit a Party from pursuing any other remedies available to it, including injunctive relief, nor will termination release Customer from its obligation to pay all Fees that Customer has agreed to pay under this Agreement. The Parties' rights and obligations under Sections 2.3.2, 2.4, 2.5, 4, 5, 6, 7, 8, 9, and 10 will survive termination of this Agreement.

## 6 Warranties.

6.1 **Limited Warranty.** Geonexus warrants that each unmodified copy of a Software product will substantially conform to Exhibit A and to the applicable Documentation at the time of delivery, when operated in accordance with the applicable user manuals. If Customer does not provide written notice to Geonexus of a claim for breach under this Section 6.1 within ninety (90) days after the Subscription Start Date with respect to a particular Software product, then its right to make a claim will terminate. The warranty under this Section 6.1 does not apply to subsequently delivered copies of the same Software product after this period has passed for the first copy delivered to Customer.

6.2 **Remedies.** For any breach of the warranty in Section 6.1, Geonexus shall exercise commercially reasonable efforts to modify the Software so that the applicable warranty is true and to deliver to Customer the modified Software, if any. If Geonexus concludes this modification is impracticable, then Geonexus will refund the Fees paid for the license of the nonconforming Software; but Customer must first return to Geonexus all copies of the applicable Software in Customer's possession or control. This requirement applies to all copies in all forms, partial and complete, and whether or not modified or merged into other materials.

## 7 Disclaimers.

7.1 The express remedies in Section 6 constitute Customer's exclusive remedies, and Geonexus' sole obligation and liability, for any claim: (a) that any Software or other deliverable does not conform to specifications or is otherwise defective; or (b) that any services were performed improperly.

7.2 EXCEPT FOR THE WARRANTIES IN SECTION 6.1, WHICH ARE LIMITED WARRANTIES AND THE ONLY WARRANTIES PROVIDED TO CUSTOMER, THE SOFTWARE AND ANY SERVICES ARE PROVIDED "AS IS," AND GEONEXUS MAKES NO ADDITIONAL WARRANTIES, EXPRESS, IMPLIED, ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, OR STATUTORY, AS TO ANY SOFTWARE OR SERVICES, OR ANY MATTER WHATSOEVER. THE PARTIES DISCLAIM ALL IMPLIED WARRANTIES, INCLUDING MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, TITLE, AND NON-INFRINGEMENT.

7.3 GEONEXUS DOES NOT WARRANT THAT THE SOFTWARE OR ANY SERVICES WILL MEET ANY CUSTOMER REQUIREMENTS NOT SPECIFIED IN THIS AGREEMENT, THAT THE SOFTWARE WILL OPERATE IN THE COMBINATIONS THAT CUSTOMER MAY SELECT FOR USE, THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ALL ERRORS WILL BE CORRECTED. IF CUSTOMER REQUESTS PRE-PRODUCTION (E.G., "ALPHA" OR "BETA") RELEASES OF SOFTWARE, THESE COPIES ARE PROVIDED "AS-IS" WITHOUT WARRANTY OF ANY KIND.

7.4 Except as may be done in accordance with Section 10.14, no statement by any Geonexus employee or agent, orally or in writing, will serve to create any warranty or obligation or to otherwise modify this Agreement.

## 8 LIMITATION OF LIABILITY.

8.1 EXCEPT WITH REGARD TO CLAIMS BASED UPON CUSTOMER'S BREACH OF SECTION 2.4, NEITHER PARTY WILL BE LIABLE FOR ANY SPECIAL OR CONSEQUENTIAL DAMAGES (INCLUDING FOR ANY LOSS OF PROFITS, SAVINGS, REVENUE, OR USE, DAMAGED OR LOST FILES OR DATA, OR BUSINESS INTERRUPTION) IN CONNECTION WITH THIS AGREEMENT, REGARDLESS OF THE CAUSE OF ACTION OR CHARACTERIZATION OF THE DAMAGES, EVEN IF THE PARTY SOUGHT TO BE HELD LIABLE HAS BEEN ADVISED OF THE POSSIBILITY OF THESE DAMAGES. GEONEXUS WILL NOT BE LIABLE FOR ANY DAMAGES FOR THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR AGGREGATE LIABILITY TO CUSTOMER RELATING TO THIS AGREEMENT, REGARDLESS OF THE CAUSE OF ACTION OR CHARACTERIZATION OF THE DAMAGES, EXCEEDING THE AMOUNT OF FEES PAID BY CUSTOMER UNDER THIS AGREEMENT DURING THE ONE-YEAR PERIOD PRECEDING THE FIRST ACT GIVING RISE TO LIABILITY. NEITHER PARTY WILL BE LIABLE FOR ANY LOSS OR DAMAGES BASED ON ACTIONS OR OCCURRENCES THAT OCCURRED MORE THAN ONE YEAR BEFORE THE OTHER PARTY PROVIDES NOTICE OF THE CLAIM. THESE LIMITATIONS OF LIABILITY ARE INDEPENDENT OF ANY EXCLUSIVE REMEDIES FOR BREACH OF WARRANTY, AND WILL SURVIVE AND APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY SPECIFIED REMEDIES.

8.2 CUSTOMER ACKNOWLEDGES THAT THE FEES CHARGED UNDER THIS AGREEMENT REFLECT THE OVERALL ALLOCATION OF RISK BETWEEN THE PARTIES, INCLUDING BY MEANS OF THE LIMITATION OF LIABILITY AND



EXCLUSIVE REMEDIES DESCRIBED IN THIS AGREEMENT. THESE PROVISIONS FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES AND A MODIFICATION OF THESE PROVISIONS WOULD AFFECT SUBSTANTIALLY THE FEES CHARGED BY GEONEXUS. IN CONSIDERATION OF THESE FEES, CUSTOMER AGREES TO THIS ALLOCATION OF RISK AND HEREBY WAIVES ANY RIGHT, THROUGH EQUITABLE RELIEF OR OTHERWISE, TO SUBSEQUENTLY SEEK A MODIFICATION OF THESE PROVISIONS OR ALLOCATION OF RISK.

## 9 Indemnity.

### 9.1 Geonexus Intellectual Property Indemnity.

Geonexus shall: (a) defend or, at its sole option, settle, at its own expense any suit, action, or proceeding brought against Customer by a third party claiming that the Software infringes any United States patent issued or any copyright or trade secret arising under the laws of any jurisdiction (an "IP Action"); and (b) pay damages finally awarded against Customer in the IP Action, or those monetary damages agreed to by Geonexus and the claimant in a monetary settlement of the IP Action; provided that Geonexus will be relieved of these obligations unless Customer: (c) gives Geonexus prompt written notice of the claim; (d) tenders to Geonexus sole control of the defense or settlement of the IP Action; and (e) cooperates with Geonexus in defending or settling the IP Action. If Geonexus receives notice of an allegation that any Software infringes a third party's intellectual property rights, or if Customer's use of any Software is enjoined as a result of infringement, Geonexus may, at its sole option and expense: (i) procure for Customer the right to continue using the Software; (ii) modify the Software so that it is no longer infringing; or (iii) replace the Software with other Software of equal or superior functional capability. If none of these actions are in Geonexus' determination commercially feasible, Geonexus will have the right to terminate the license to that Software. If Geonexus terminates a Software license as described above: (1) Geonexus shall (A) for a perpetual license, refund the applicable Fees paid for the license of that Software, prorated over a straight-line five-year period and (B) for a subscription, refund the applicable Fees paid for the balance of the term; and (2) Customer shall immediately deliver to Geonexus all copies of that Software in Customer's possession or control. This requirement applies to all copies in all forms, partial and complete, and whether or not modified or merged into other materials. Notwithstanding any other provision of this Agreement, Geonexus will not accept new orders for Software that is subject to a claim of infringement.

9.2 **GEONEXUS IP INDEMNITY LIMITATIONS.** THE RIGHTS GRANTED TO CUSTOMER UNDER SECTION 9.1 WILL BE CUSTOMER'S EXCLUSIVE REMEDY AND GEONEXUS' SOLE OBLIGATION AND LIABILITY FOR ANY ALLEGED INFRINGEMENT OF A PATENT, COPYRIGHT, TRADEMARK, OR OTHER PROPRIETARY RIGHT, INCLUDING MISAPPROPRIATION OF A TRADE SECRET. GEONEXUS HAS NO LIABILITY FOR ANY CLAIM OF INFRINGEMENT CAUSED BY: (A) MODIFICATION OF THE SOFTWARE WITHOUT THE APPROVAL OF GEONEXUS; (B) ANY CUSTOMER OR THIRD-PARTY APPLICATION OR OTHER TECHNOLOGY; (C) USE OF THE SOFTWARE IN CONNECTION OR IN COMBINATION WITH EQUIPMENT, DEVICES, OR SOFTWARE NOT PROVIDED BY GEONEXUS (BUT ONLY TO THE EXTENT THAT THE SOFTWARE ALONE WOULD NOT HAVE INFRINGED); (D) COMPLIANCE WITH CUSTOMER'S DESIGN REQUIREMENTS OR SPECIFICATIONS; (E) USE OF SOFTWARE OTHER THAN AS PERMITTED UNDER THIS AGREEMENT, OR IN A MANNER FOR WHICH IT WAS NOT INTENDED; OR (F) USE OR DISTRIBUTION OF OTHER THAN THE MOST CURRENT RELEASE OR VERSION OF THE SOFTWARE (IF THE INFRINGEMENT WOULD HAVE BEEN PREVENTED BY THE USE OF THIS RELEASE OR VERSION).

9.3 **Intentionally Omitted.** Customer Use Indemnity.

## 10 General.

10.1 **Export.** Customer shall comply with all applicable export laws and regulations of the United States of America, the European Union, Australia, and other countries ("Applicable Export Laws") and assure that no Software is: (a) exported, directly or indirectly, in violation of Applicable Export Laws; or (b) intended to be used for any purposes prohibited by the Applicable Export Laws, including nuclear, chemical, or biological weapons proliferation. The Parties shall not take any actions that would cause either Party to violate the U.S. Foreign Corrupt Practices Act or similar anti-corruption laws.

10.2 **U.S. Government End Users.** The Software and Documentation qualify as "commercial items," as that term is defined at Federal Acquisition Regulation ("FAR") (48 C.F.R.) 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as these terms are used in FAR 12.212. Consistent with FAR 12.212 and DoD FAR Supp. 227.7202-1 through 227.7202-4, and notwithstanding any other FAR or other contractual clause to the contrary in any agreement into which this Agreement may be incorporated, Customer may provide to a government end user or, if this Agreement is direct, a government end user will acquire, the Software and Documentation with only those rights specified in this Agreement. Use of either the Software or

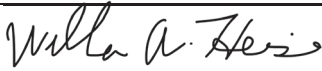
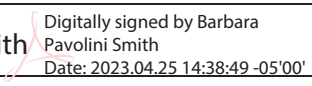
- Documentation or both constitutes agreement by the government that the Software and Documentation are “commercial computer software” and “commercial computer software documentation,” and constitutes acceptance of the rights and restrictions in this Agreement.
- 10.3 **Notice.** All notices under this Agreement, including notices of address change, must be in writing and will be deemed given when sent by (a) registered mail, return receipt requested, or (b) a nationally recognized overnight delivery service (such as Federal Express), to the President or General Counsel of the appropriate Party at the relevant address first listed above, or to a Party’s address as changed in accord with this Section.
- 10.4
- 10.5 **Severability.** If a provision of this Agreement is held by a court of competent jurisdiction to be illegal, unenforceable, or in conflict with any law of a federal, state, or local government, the validity of the remaining provisions will remain in full force and effect.
- 10.6 **Governing Law; Venue.** This Agreement is governed by the laws of the State of Texas, without regard to its conflict of laws principles. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. All litigation related to this Agreement must be brought in a state or federal court located in Travis County, Texas, as permitted by law, except that Geonexus may elect to seek injunctive or similar relief in any court having jurisdiction over Customer. Customer hereby consents to the personal jurisdiction of these courts.
- 10.7 **No Waiver.** No failure to exercise, and no delay in exercising, any right will operate as a waiver; nor will any single or partial exercise of a right preclude any further exercise of that right or the exercise of any other right. The waiver by a Party of a breach of this Agreement will not constitute a waiver of any other breach.
- 10.8 **Remedies Cumulative.** Each remedy of a Party is cumulative with each other remedy contained in this Agreement and with all other remedies available to that Party at law, in equity, and otherwise, and no pursuit of any particular remedy will constitute an exclusive election of any particular remedy.
- 10.9 **Assignment.** Neither Party may assign or transfer, by merger, operation of law or otherwise, this Agreement or any right or duty under this Agreement to a third party without the other Party’s prior written consent, except that. Geonexus may transfer this Agreement, together with all of its rights and duties under this Agreement, to a successor entity if Geonexus is acquired, whether by equity or asset purchase, merger, corporate restructuring or reorganization, or the like. Any purported assignment or transfer in violation of this Section is void.
- 10.10 **Independent Contractor; Use of Subcontractors.** Geonexus is an independent contractor and nothing in this Agreement or related to Geonexus performance will be construed to create a joint venture relationship between Customer and Geonexus, or an employee relationship between Customer and any Geonexus employee or subcontractor. Geonexus may, in its discretion, utilize subcontractors to provide services under this Agreement.
- 10.11 **No Third-Party Beneficiaries.** This Agreement is an agreement between the Parties, and confers no rights upon any of the Parties’ employees, agents, contractors, or customers, or upon any other person or entity.
- 10.12 **Construction of this Agreement.** The word “including” is not intended to be exclusive and means “including, but not limited to.” The word “or” is not intended to be exclusive unless the context clearly requires otherwise. Each of the Parties and their counsel have carefully reviewed this Agreement, and, accordingly, no rule of construction to the effect that any ambiguities in this Agreement are to be construed against the drafting Party will apply in the interpretation of this Agreement.
- 10.13 **Force Majeure.** Except with regard to any obligation to pay money, neither Party will be held responsible for any delay or failure in performance caused by fire, flood, embargo, strike, labor dispute, delay or failure of any subcontract, telecommunications failure or delay, act of sabotage, riot, accident, delay of carrier or supplier, voluntary or mandatory compliance with any governmental act, regulation or request, act of God or by public enemy, or any act or omission or other cause beyond that Party’s reasonable control. If any of these events does occur, the time to perform an affected obligation will be extended by the length of time the event continues.
- 10.14 **Entire Agreement.** This Agreement together with the Exhibits, which are hereby incorporated in this Agreement, contain all the agreements, representations, and understandings of the Parties, and supersedes any previous understandings, commitments, representations or agreements, verbal or written, with respect to the subject matter of this Agreement. If there is any inconsistency between a term of this Agreement and a term on any exhibit, the term of this Agreement will govern. By executing this Agreement, the Parties are terminating the GeoWorx Software License Agreement dated July 5, 2015, between Customer and Geonexus, and Customer will no longer have any rights to the Software under that agreement.
- 10.15 **Modification.** This Agreement may not be modified or amended except in a written document signed by a duly authorized representative of each Party that expressly states the sections of this Agreement to be modified; no other act, usage, or

custom will be deemed to amend or modify this Agreement. Each Party hereby waives any right it may have to claim that this Agreement was subsequently modified other than in accordance with this Section.

10.16 **Purchase Orders.** Customer may, for purposes of administrative convenience, use Customer's standard form of purchase order to order Software. Any terms or conditions on a purchase order in any way different from or in addition to the terms and conditions of this Agreement will have no effect and Geonexus hereby rejects these terms and conditions.

10.17 **Counterparts; Electronic Copies.** This Agreement may be signed in one or more counterparts, each of which is an original, and all of which together constitute only one agreement

between the Parties. Delivery of an executed counterpart by facsimile, electronic mail in portable document format (.pdf), or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, has the same effect as delivery of an executed original of this Agreement.

<b>GEONEXUS TECHNOLOGIES L.L.C.</b>	<b>CITY OF AUSTIN</b>
Signature 	Signature  Barbara Pavolini Smith Digitally signed by Barbara Pavolini Smith Date: 2023.04.25 14:38:49 -05'00'
Name William A. Heise	Name Barbara Pavolini Smith
Title President and CEO	Title Procurement Specialist III

**EXHIBIT A**  
**Software**

Product	Description
Geonexus Integration Platform	<p>The Geonexus Integration Platform (GIP), is our next generation of our data synchronization technology. GIP is a new software product built from the ground up using Java Eclipse Rich Client Platform (RCP) which is “plug-in” based technology that aligns perfectly with our strategy for creating a library of prebuilt connectors to several edge systems.</p> <p>The Geonexus Integration Platform brings enhanced features and functionality.</p> <ul style="list-style-type: none"> <li>▪ Multi-Point Integration</li> <li>▪ Enhanced User Interface for Improved Speed to Configuration</li> <li>▪ New Connectors</li> <li>▪ GIS is No Longer Required</li> <li>▪ Enhanced Utility Network Functionality</li> <li>▪ Workspace &amp; Project-Based</li> </ul>
GeoWorx Sync	<p>GeoWorx Sync is an autonomous enterprise software program that synchronizes data between an EAM database and an Esri ArcGIS geodatabase. GeoWorx Sync communicates with EAM and ArcGIS systems via vendor-supported Application Programming Interfaces (APIs), including EAM Business Objects or Web Services and Esri ArcObjects.</p>
GeoWorx Office	<p>GeoWorx Office is a widget or “plug-in” built using Esri’s Web AppBuilder. The purpose of GeoWorx Office is to provide a bridge between EAM databases and your Esri Web GIS viewer. GeoWorx Office users can perform Maximo transactions, such as creating and editing work orders and looking up work history on an asset from within their Map Viewer. Users can also display and filter work orders, service requests, and work request layers on the map.</p>
GeoWorx Sketch	<p>GeoWorx Sketch is a field-friendly map sketch/mark-up tool, yet comprehensive redlining system used to enhance communication and collaboration throughout the enterprise. GeoWorx Sketch makes it easy for a distributed workforce to inform asset managers of changes made to the infrastructure as a result of performing inspection, installation, repair, or other maintenance activities.</p>

The type, quantity, and pricing for the initial licensed Software is specified in the quote dated February 1, 2023. Additional Software may be licensed upon the mutual written agreement of the Parties.

**EXHIBIT B**  
**GEONEXUS INTEGRATION PLATFORM SUPPORT AND MAINTENANCE**

Geonexus shall provide the support services described in Section 1 below (the “Support”) and Upgrades as described in Section 2 below.

**1. SUPPORT**

1.1 **TYPES OF SUPPORT.** Geonexus shall provide the following types of Support for the Software during the “Principal Period of Support”, which is a nine-hour contiguous daily time period between the hours of 8:00 AM and 5:00 PM, ET, Monday through Friday, excluding Geonexus published holidays (see Schedule 2).

1.1.1 **Telephone/Email Support.** Geonexus technical staff shall attempt to answer questions and assist Customer in resolving issues related to the Software.

1.1.2 **Remote Access Support.** Geonexus shall access the Software to perform remote diagnostics, verification, and/or correction of issues.

1.1.3 **Additional Support.** For other support related activities that are not covered above, Customer may purchase Additional Support for the Software as described below in Section 4.

1.2 **REQUESTING SUPPORT.** Customer may request Support from Geonexus (“Customer Request”) during the Principal Period of Support. A Customer Request may be made in the following manner:

1.2.1 **Telephone:** Customer Requests can be made to 1-866-839-4993.

1.2.2 **E-mail:** Customer Requests to support@geonexus.com.

1.3 **INFORMATION REQUIRED.** Prior to making a Customer Request, Customer must gather information in sufficient detail to permit Geonexus to take appropriate action. Based upon the Severity Level, Geonexus may begin investigation before a complete notification is received provided Customer promptly provides Geonexus with the applicable information. Customer’s Authorized Contacts (Schedule 1) must provide the following information:

- Customer Name
- Authorized Contact Name
- Contact Phone Number
- Short Description of the Problem
- Severity Level (as defined below)
- Full text and code number of any error messages
- When did the problem first occur?
- Did this function/feature work prior to now?
- Did any events/changes occur during the timeframe in which the problem first occurred?
- Is the problem reoccurring?
- What resolutions or troubleshooting steps have been tried and what were the results?

1.4 **SEVERITY LEVELS.** Customer shall initially assign one of four Severity Levels to a Customer Request, which may be subsequently changed by mutual agreement between Geonexus and Customer. Geonexus shall respond to the Customer Request based upon the Severity Level initially assigned by Customer. The Severity Levels are:

1.4.1 **Severity Level 1:** An unplanned outage of the Software in which the system crashes, hangs, loses data, or leaves the Software in a state that is not operational.

1.4.2 **Severity Level 2:** The Software is up and running but a major area of core functionality (non-administrative) is unavailable, no workaround exists, and a large percentage of users are impacted by the problem.

1.4.3 **Severity Level 3:** The Software is operational, major functional areas are available, and either (1) an error occurred within one of the features but the error does not prevent use of the essential functionality; or (2) a slight operational error or inconvenience occurred that impacts a small percentage of users; or (3) a general degradation in performance is experienced.

1.4.4 **Severity Level 4:** A minor issue related to usability, including text errors, screen or report alignment, incorrect colors, sorting errors on reports, etc.

1.5 **RESPONSE TO CUSTOMER REQUESTS.** Geonexus shall respond to Customer Requests as described below.

1.5.1 **Acknowledge:** Geonexus shall acknowledge the Customer Request and log the request in its Problem Reporting system.

1.5.2 **Level of Effort:** Geonexus shall address the Customer Request using a commercially reasonable level of effort that is commensurate with the Severity Level.

1.5.3 **Status:** Geonexus shall provide the Customer with status regarding the Customer Request based upon the Severity Level. For Severity Levels 1 and 2, Geonexus shall provide both verbal and written status. For Severity Levels 3 and 4, Geonexus shall provide either verbal or email status.

1.5.4 **Circumvention:** Geonexus’ first priority is to assist Customer in getting the Software operational. This may be accomplished through a correction, adjustment, temporary solution, reasonable work around, or patch if possible (“Circumvention”). If during the course of problem resolution one of these actions improves the condition of the problem, then the Severity Level will be changed to reflect the current situation.

1.5.5 **Resolution:** Issue “Resolution” means Geonexus has provided Customer with a New Version, New Release, or Maintenance Patch that contains a fix or written instructions that enable Customer to

correct the issue. Customer acknowledges that New Versions, New Releases, or Maintenance Patches for third party Software must come from the applicable third party and that Geonexus does not control the timing. If a Resolution cannot be accomplished in a timely manner and a temporary solution has been provided, Geonexus will then provide a long-term action plan describing its approach to resolving the Customer Request.

1.5.6 **Guidelines:** During the Principle Period of Support, Geonexus will use the following non-guaranteed guidelines to address Customer Requests.

Severity	Acknowledge	Status	Circumvention
1	2 hrs	8 hrs or as mutually agreed	48 hrs
2	4 hrs	16 hrs or as mutually agreed	96 hrs
3	8 hrs	Upon Request	N/A
4	16 hrs	Upon Request	N/A

**2. SOFTWARE MAINTENANCE AND UPGRADES**

2.1 **Upgrades for Geonexus Software:** Geonexus may release Maintenance Patches, New Releases or New Versions (each, as defined below) to correct issues, add updates, make adjustments, or provide improvements as described below. If Customer requests deployment assistance from Geonexus, Customer shall pay Geonexus the applicable Additional Support fee and Travel Expenses associated with the deployment.

2.2 **Maintenance Patches:** Geonexus may determine it is necessary to make modifications to the Software or related documentation that correct errors or deficiencies or are identified by Geonexus as mandatory changes to the Software.

2.3 **New Releases:** From time to time, as Geonexus sees fit, Geonexus may make changes or additions, other than Maintenance Patches or New Versions, to the Software or related documentation to support the systems with which the Software is designed to operate, to improve existing functions and performance, to provide other updates, or are identified by Geonexus as mandatory changes to the Software.

2.4 **New Versions:** From time to time, as Geonexus sees fit, Geonexus may make significant changes or additions, other than Maintenance Patches or New

Releases, to the Software or related documentation that adds new functionality, or improve performance by changes in system design or coding. New Versions will not include, however, any changes or additions to Software that Geonexus does not make generally available to customers who are receiving Support, which shall instead constitute a "New Product."

2.5 **Version.Release.Maintenance:** is the numbering scheme for the Software, for example: 2.5.10, with 2 being the "Version," 5 being the "Release," and 10 being the "Maintenance" number.

**3. SUPPORT FOR THIRD PARTY UPGRADES**

3.1 **Third Party Maintenance Patches:** Third party vendors issue maintenance patches from time to time for products with which the Software work (the "Third Party Products"). These patches are intended to correct issues in the Third Party Products and should not impact the Software. Therefore, Geonexus does not perform any evaluation or testing of these patches in regards to the Software.

3.2 **Third Party New Releases:** If Customer determines a need to update to a Third Party Product new release, it will notify Geonexus of its intentions through a Customer Request. Geonexus shall then determine if an update to the Software is required. Geonexus shall notify Customer of the need to update or not. If Geonexus needs to update the Software, it shall do so within a commercially reasonable timeframe based upon the scope of effort required.

3.3 **Third Party New Versions:** Geonexus may, at its sole discretion, provide updates to Software to support new versions of applicable Third Party Products. If Customer requests Geonexus to update Software to support a Third Party Product new version, Customer shall pay Geonexus the applicable Additional Support fee and Travel Expenses associated with the update.

**4. ADDITIONAL SUPPORT**

4.1 **Description.** Customer may have a need for support that is not described above ("Additional Support"). This includes but is not limited to:

1. On-site support
2. Deployment assistance for Maintenance Patches, New Releases and New Versions
3. Updates to support New Versions of Third Party Products
4. Customer data issues, configuration issues, network/infrastructure issues, and connections to third party systems
5. Developer support for Customer
6. Enhancement requests associated with Software
7. Support outside of the Principal Period of Support
8. Training

4.2 **Time and Material Support:** Additional Support will be available to the Customer on an hourly time-and-material basis, provided in one (1) hour minimum

increments. Customer will be invoiced monthly for the Additional Support at the applicable Time and Material rates.

## **5. TRAVEL EXPENSES**

Customer approved travel and living expenses associated with providing Support, Upgrades or Additional Support ("Travel Expenses") will be invoiced separately on a monthly basis as travel expenses are incurred.

## **6. CUSTOMER RESPONSIBILITIES**

Customer shall:

- 6.1 Identify three (3) authorized contact personnel, including a primary contact, for the purposes of receiving services under this Exhibit (see Schedule 1). Customer may change these authorized contacts by providing Geonexus written notice of the change. Geonexus will direct all official communications to the primary contact.
- 6.2 Provide Geonexus reasonable access to the Software to perform Support including remote access (via Internet, VPN, etc.) to perform remote Support.
- 6.3 Commit resources in a timely manner that are knowledgeable with the Software and related third party products (including databases, operating systems, networks, computers, and other equipment) to assist Geonexus while providing services hereunder.
- 6.4 Be responsible for installation, testing, and deployment of New Versions, New Releases, and Maintenance Patches in Customer's development, test, and production environments.
- 6.5 Be responsible for charges incurred for communication facilities at the Customer's facilities, whether incurred by the Customer or by Geonexus representatives while performing services.
- 6.6 Be responsible for regular administration and maintenance of the Software, by a System Administrator trained in the operating system, database administration, and third party tools and applications purchased by Customer.
- 6.7 Perform all back-ups and ensure their accuracy.
- 6.8 Maintain up-to-date support contracts for all third party applications and hardware related to the Software.

## **7. SUPPORT LIMITATIONS**

- 7.1 Geonexus obligations under this Exhibit apply to the Customer only. Geonexus has no obligation to provide any Support or other services to Customer's customers, agents, or vendors.
- 7.2 Customer acknowledges that Geonexus does not provide help desk or similar services to Customer's end users.
- 7.3 This Exhibit does not obligate Geonexus to provide on-site services, except to the extent that Geonexus believes on-site Support is necessary for it to fulfill its obligations under this Exhibit.

- 7.4 Support and Upgrades are contingent upon the use of unmodified Software, unless modifications were approved by Geonexus, operated in accordance with Geonexus documentation. Support specifically excludes the following: (1) Support to a version of the Software other than the current or immediate prior release; (2) efforts to restore a release of the Software beyond the current or immediate prior release; (3) efforts to restore Customer's data.
- 7.5 Support for third party products is not included under this Exhibit.
- 7.6 Any Upgrades to third party products are provided by the applicable third party licensor.
- 7.7 Unless purchased as Additional Support, Geonexus is not responsible for the installation and testing of New Versions, New Releases, or Maintenance Patches.
- 7.8 Customer may reinstate lapsed Support (within 12 months), provided Geonexus continues to Support the applicable Software, by paying 125% of all Support fees then in arrears. Customer may exercise its right to reinstate lapsed Support no more than once without the written agreement of Geonexus.

**Schedule 1 to Exhibit B**  
**Authorized Customer Contact Information**

<b>Primary Contact Person</b>			
Name:		Title:	
Phone Number:		Cell Number:	
E-mail address:			
<b>Auxiliary Contact Person</b>			
Name:		Title:	
Phone Number:		Cell Number:	
E-mail address:			
<b>Auxiliary Contact Person</b>			
Name:		Title:	
Phone Number:		Cell Number:	
E-mail address:			



**Schedule 2 to Exhibit B**  
**Geonex Published Holidays**

New Year's Day
President's Day
Memorial Day
Independence Day
Labor Day
Thanksgiving, and the day after
Christmas Eve and Christmas Day

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