

## Composite Exhibit 1

### AGREEMENT

*between*

**THE CITY OF COCONUT CREEK**

*and*

**VertiGIS North America Corp.**

*for*

**Geocortex - Geographics Software Platform and Services**

**(Sole Source)**

THIS SOLE SOURCE AGREEMENT is entered into on \_\_\_ day of \_\_\_\_\_, 2021 between the City of Coconut Creek, a municipal corporation with principal offices located at 4800 West Copans Road, Coconut Creek, Florida 33063 ("City" or "Licensee" or "Customer" used interchangeably) and VertiGIS North America Corp. ("VERTIGIS NA"), a British Columbia corporation, at 1117 Wharf Street, Victoria, BC V8W 1T7 for the purpose of providing geographics technology solutions and services to the City in the form of a software platform known as Geocortex, more specifically detailed herein. In consideration of the mutual covenants and obligations expressed herein, the Parties agree to the following:

#### **1. The Contract Documents**

This Sole Source Agreement, Exhibit A - "Master License Agreement" (MLA), and Exhibit B - "Services Agreement", attached hereto and made apart hereof, constitute the entire Agreement between the City and the VERTIGIS NA. The documents must be read together to provide the most complete interpretation of the work to be conducted. All terms and conditions of the contract documents set forth in Exhibit "A" and Exhibit "B" are incorporated herein as if set forth in full. In the event of a conflict between these documents, this Sole Source Agreement shall prevail, followed in order by Exhibit A – MLA, and then Exhibit B – Services Agreement. Ordering Document(s), including but not limited to, Service Order(s) and Purchase Order(s), shall also form an integral part of this Agreement, incorporated herein as composite Exhibit C, organized by date of the approved order and allowing for future approved orders to be compiled therein, and must detail the Scope of Work for services, itemize products/licenses procured by the City, fees, and invoice payment instructions, without adding additional terms and conditions beyond what is agreed to herein.

#### **2. Agreement Term**

This Agreement shall commence after the full execution hereof and shall expire five (5) years thereafter, unless renewed by the City for an additional two (2) years. During the overall Term of this Agreement, the City shall not be required to order and/or pay for services except those described in Ordering Documents signed by an authorized City Employee for the then-current duration of performance identified on each Order for which VERTIGIS NA has committed to provide, and City has committed to pay. No Ordering Document may have a duration of performance that extends beyond the Term of this Agreement, as stated above.

#### **3. Contract Price and Payments**

Pricing and payments will be made in accordance with Ordering Documents signed by an authorized City Employee. Aggregated expenses under this Agreement must not exceed \$80,000 during the initial term of the Agreement, and \$50,000 for any renewal term. Any Ordering Documentation that exceeds the aggregated maximum must be approved by the City Commission.

**4. Conditions for Emergency/Hurricane or Disaster**

It is hereby made a part of this Agreement that before, during and after a public emergency, disaster, hurricane, flood or other substantial loss, that the City of Coconut Creek shall require a “**first priority**” basis for goods and services. It is vital and imperative that the majority of citizens are protected from any emergency situation which threatens public safety and health, as determined by the City Manager. VERTIGIS NA agrees to provide all goods and services, most importantly access to its licensed software, to the City, as opposed to a private citizen or corporation, on a first priority basis. The City expects to pay a fair and reasonable price for all products/services in the event of a disaster, emergency or hurricane.

**5. Indemnification**

The parties agree that one percent (1%) of the total compensation paid to VERTIGIS NA for each Order pursuant to this Agreement shall constitute specific consideration to VERTIGIS NA for the indemnification to be provided under the contract. VERTIGIS NA shall indemnify and hold harmless the City, its elected and appointed officials, employees, and agents from any and all claims, suits, actions, damages, liability, and expenses (including attorneys' fees) in connection with loss of life, bodily or personal injury, or property damage, including loss of use thereof, directly or indirectly caused by, resulting from, arising out of or occurring in connection with the operations of VERTIGIS NA or its officers, employees, agents, subcontractors, or independent contractors, excepting only such loss of life, bodily or personal injury, or property damage solely attributable to the gross negligence or willful misconduct of the City or its elected or appointed officials and employees. In any and all claims against the City, or any of their agents or employees by any employee of VERTIGIS NA, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Paragraph shall not be limited in any way by any limitation on this amount or type of damages compensation or benefits payable by or for VERTIGIS NA or any subcontractor under Workers' Compensation Acts, Disability Benefit Acts or other Employee Benefit Acts. , VERTIGIS NA agrees to defend, indemnify and hold harmless the City, its elected and appointed officials, employees, and agents from all such claims, fees, royalties, or costs for its use of any patent, trademark, or copyrighted materials, and any suits or actions of any name that may be brought against the City, its elected and appointed officials, employees, and agents for the infringement of any patents, trademarks or copyrights claimed by any person, firm, or corporation. Nothing herein is intended to serve as a waiver of sovereign immunity by the City under Section 768.28, Fla. Stat., as amended, nor shall anything included herein be construed as consent to be sued by any third parties in any matter arising out of this Agreement. The above provisions shall survive the early termination or natural expiration of this Agreement and shall pertain to any occurrence during the term of this Agreement, even though the claim may be made after the termination or expiration hereof.

**6. Insurance Requirements**

**6.1 Cyber Liability**

VERTIGIS NA must carry Cyber Liability Insurance with limits not less than \$1,000,000 per occurrence or claim, \$1,000,000 aggregate, and such coverage is required for the benefit of the City throughout the term of this Agreement. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by VERTIGIS NA in this agreement and shall include, but not limited to, information theft, damage to or destruction of electronic information, release of private

information, liability to third parties for failure to handle, manage, store, and control personal identifiable information, alteration of electronic information, extortion, network security, legal fees, judgments, settlements, forensic experts and public relations efforts. The policy shall provide coverage for regulatory fines and penalties as well as credit monitoring expenses.

## **6.2 General**

If VERTIGIS NA is required to go on to City of Coconut Creek property to perform work or services as a result of this Agreement, VERTIGIS NA shall assume full responsibility and expense to obtain all necessary insurance as required by the City of Coconut Creek. Throughout the term of this Agreement, VERTIGIS NA and/or any and all subcontractors or anyone directly or indirectly employed by either of them shall maintain in force, at all times, insurance as follows:

### **a) General Liability**

Commercial General Liability insurance with limits not less than \$1,000,000.00 each occurrence combined single limit for Bodily Injury and Property Damage including coverage for premises/operations, contractual liability, personal injury, explosion, collapse, underground hazard, products/completed operations, broad form property damage, cross liability and severability of interest clause. This policy of insurance shall be written in an "occurrence" based format. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit and provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence limits specified above. General Liability policies shall be endorsed to provide the following: Name as additional insured the City of Coconut Creek and its Officers, Agents, Employees and Commission Members; and that such insurance is primary to any other insurance available to the additional insured with respect to claims covered under the policy and that insurance applies separately to each insured against whom claims are made or suit is brought, but the inclusion of more than one insured shall not operate to increase the insurer's limit of liability.

- 6.3** Certificates of Insurance, in form and evidencing all required insurance and endorsements, shall be submitted by VERTIGIS NA with this executed Agreement. The issuing agency shall include full name, address and telephone number in each insurance certificate issued. All insurance policies herein required of the VERTIGIS NA shall be written by a company with a A.M. Best rating of A-VII or better that is duly authorized and licensed to do business in the State of Florida and shall be executed by agents, thereof that are duly licensed as agents in said state.

## **7. Public Entity Crimes Statement**

Pursuant to Paragraph (2)(a) of Section 287.133, Florida Statutes, as amended from time to time, a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid for a contract to provide any goods or services to a public entity; may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and, may not transact business with any public entity in excess of the threshold amount provided in

Section 287.017, Florida Statutes, as amended from time to time, for Category TWO (\$35,000) as may be amended, for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.

**8. Independent Contractor**

This Agreement does not create an employee/employer relationship between the Parties. It is the intent of the Parties that VERTIGIS NA is an independent contractor under this Agreement and not the City's employee for any purposes, including but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the State Worker's Compensation Act, and the State Unemployment Insurance law. VERTIGIS NA shall retain sole and absolute discretion in the judgment of the manner and means of carrying out VERTIGIS NA's activities and responsibilities hereunder provided, further that administrative procedures applicable to services rendered under this Agreement shall be those of VERTIGIS NA, which policies of VERTIGIS NA shall not conflict with City, State, or United States policies, rules or regulations relating to the use of VERTIGIS NA's funds provided for herein. VERTIGIS NA agrees that it is a separate and independent enterprise from the City, that it had full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This Agreement shall not be construed as creating any joint employment relationship between VERTIGIS NA and the City and the City will not be liable for any obligation incurred by VERTIGIS NA, including but not limited to unpaid minimum wages and/or overtime premiums.

**9. Scrutinized Companies List**

Consistent with the requirements of Sections 287.135 and 215.473, Florida Statutes, by signing this Agreement, VERTIGIS NA certifies that it is not on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Fla. Stat., as amended, nor is it engaged in a boycott of Israel.

**10. Termination**

**10.1 Termination for Cause: Immediate**

In the event either party defaults in or violates any of the terms, obligations, restrictions or conditions of this contract, the non-breaching party may, upon written notice to the other terminate this contract effective immediately upon receipt of notice as provided in section 17, "Notice," above. The notice for immediate termination shall state the date of termination and all work under this contract must be discontinued on that date. In the event of immediate termination by the City, a pro-rated reimbursement of pre-paid services/licenses must be given within thirty (30) days of the date of termination. The non-breaching party shall have all legal and equitable remedies available to it.

**10.2 Termination for Convenience or Lack of Funding by City**

Upon thirty (30) calendar days written notice to VERTIGIS NA as provided in Section 17, "Notice," herein, the City may without cause and without prejudice to any other right or remedy, terminate the contract for the City's convenience or for lack of funding whenever the City determines that such termination is in the best interest of the City. Where the contract is terminated for the convenience or lack of funding by the City the notice of termination to VERTIGIS NA must state that the contract is being terminated for such reason under the termination clause and the

extent of termination. VERTIGIS NA shall discontinue all work on the appointed last day of service.

**11. Non-Discrimination Covenant**

That VERTIGIS NA shall for itself, its personal representatives, successors in interests, assigns, subcontractors, and sub-lessees, as a part of the consideration hereof, hereby covenant and agree that:

**11.1** No person on the ground of race, color, religion, sex, national origin, age, marital status, political affiliation, familial status, disability, sexual orientation, pregnancy, or gender identity or expression, veteran or service member status shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the work or performance of services described herein; and

**11.2** No employee or applicant for employment shall be discriminated against during the performance of this Agreement with respect to hiring, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment because of race, color, religion, sex, national origin, age, marital status, political affiliation, familial status, disability, sexual orientation, pregnancy, or gender identity or expression, veteran or service member status.

**12. Public Records**

VERTIGIS NA shall keep such records and accounts as may be necessary in order to record complete and correct entries as to personnel hours charged to the project and any expenses for which VERTIGIS NA attributes to City. Such books and records will be available at all reasonable times for examination and audit by City and shall be kept for a period of five (5) years after the completion of all work to be performed pursuant to this Agreement. Incomplete or incorrect entries in such books and records will be grounds for City's disallowance of any fees or expenses based upon such entries.

City is a public agency subject to Chapter 119, Florida Statutes. To the extent VERTIGIS NA is acting on behalf of the City pursuant to Section 119.0701, Florida Statutes, as amended from time to time, VERTIGIS NA shall comply with all public records laws in accordance with Chapter 119, Florida Statutes. In accordance with state law, VERTIGIS NA agrees to:

- a) Keep and maintain all records that ordinarily and necessarily would be required by the City in order to perform the services.
- b) Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copies within a reasonable time at a cost that does not exceed the costs provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- c) Ensure that public records that are exempt or confidential and exempt from public records disclosure are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if VERTIGIS NA does not transfer the records to the City.
- d) Upon completion of the work described within this Agreement, at no cost, either transfer to the City all public records in possession of VERTIGIS NA or keep and maintain public records required by the City to perform the services. If VERTIGIS NA transfers all public records to the City upon completion of the services, VERTIGIS NA shall destroy any duplicate public records that are exempt or

confidential and exempt from public records disclosure requirements. If VERTIGIS NA keeps and maintains public records upon completion of the work, VERTIGIS NA shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

- e) **IF VERTIGIS NA HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLA. STAT., TO VERTIGIS NA'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CITY'S CUSTODIAN OF PUBLIC RECORDS AT 954-973-6774, PublicRecords@coconutcreek.net, 4800 West Copans Road, Coconut Creek, FL 33063.**

If VERTIGIS NA does not comply with this Section, the City shall enforce the Agreement provisions in accordance herewith and may unilaterally cancel this Agreement in accordance with state law.

**13. Assignment and Subcontracting**

No assignment of this Agreement or any right occurring under this Agreement shall be made, in whole or in part, by VERTIGIS NA without the express written consent of the City's Contract Administrator which shall not be unreasonably withheld. In the event of any assignment, the assignee shall assume all the rights, duties and responsibilities of VERTIGIS NA.

**14. Venue and Choice of Law**

This Agreement shall be governed by the laws of the State of Florida and the United States of America as are now and hereafter in force. The venue for actions arising out of this Agreement is situated exclusively in the 17<sup>th</sup> Judicial Circuit Court in and for Broward County, Florida or the United States District Court for the Southern District of Florida.

**15. Signatory Authority**

VERTIGIS NA shall provide the City with copies of requisite documentation evidencing that the signatory for VERTIGIS NA has the authority to enter into this Agreement.

**16. Severability; Waiver of Provisions**

Any provision in this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provisions in any other jurisdiction. The non-enforcement of any provision by either party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

**17. Notice**

Whenever either party desires or is required under this Agreement to give notice to any other party, it must be given by written notice, sent by registered United States mail, with return receipt requested, addressed to the party for whom it is intended at the following addresses. Notice shall be deemed received by the party for whom it is intended after the USPS certified mail process is completed and/or hand delivery.

**CITY**

City Manager  
City of Coconut Creek  
4800 West Copans Road  
Coconut Creek, FL 33063  
With a copy to the City Attorney at the same address.

**VERTIGIS NA**

VertiGIS Customer Service
300-117 Wharf St.
Victoria, British Columbia
Canada V8W 1T7
Attention: Legal Dept.

**18. E-VERIFY Certification**

Beginning January 1, 2021, VERTIGIS NA must register with and use the E-Verify system to verify the work authorization status of all newly hired employees pursuant to Section 448.095, Fla. Stat., as amended. If VERTIGIS NA enters into a contract with a subcontractor, the subcontractor must provide VERTIGIS NA with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien, and such documentation must be provided to the City. VERTIGIS NA must maintain a copy of such affidavit for the duration of this Agreement.

**19. Gratuities and Kickbacks**

**a) Gratuities**

It is unethical for any person to offer, give, or agree to give any employee or for any employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, audit, or in any other advisory capacity in any proceeding or application, request for ruling, determination claim or controversy, or other particular matter, pertaining to any program requirement or an Agreement or subcontract, or to any solicitation or proposal therefore.

**b) Kickbacks**

It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a Sub-contractor under a Contract to VERTIGIS NA or higher tier sub-contractor any person associated therewith, as an inducement of the award of a subcontract or order.

**c) Contract Clause**

The prohibition against gratuities and kickbacks prescribed in this section shall be conspicuously set forth in every Contract and subcontract and solicitation therefore.

**20. Scrutinized Companies pursuant to Sections 287.135 and 215.473, Fla. Stat.**

VERTIGIS NA certifies that the company is not participating in a boycott of Israel. VERTIGIS NA also certifies that VERTIGIS NA is not on the Scrutinized Companies that Boycott Israel list, not on the Scrutinized Companies with Activities in Sudan List, and not on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, and has not been engaged in business operations in Cuba or Syria. Subject to limited exceptions provided in state law, the City will not contract for the provision of goods or services with any scrutinized company referred to above. VERTIGIS NA must submit the certification that is attached to this contract. Submitting a false certification shall be

deemed a material breach of contract. The City shall provide notice, in writing, to the VERTIGIS NA of the City's determination concerning the false certification. The VERTIGIS NA shall have five (5) days from receipt of notice to refute the false certification allegation. If such false certification is discovered during the active contract term, the VERTIGIS NA shall have ninety (90) days following receipt of the notice to respond in writing and demonstrate that the determination of false certification was made in error. If the VERTIGIS NA does not demonstrate that the City's determination of false certification was made in error then the City shall have the right to terminate the contract and seek civil remedies pursuant to Section 287.135, Florida Statutes, as amended from time to time. VERTIGIS NA understands and agrees that pursuant to Sections 287.135 and 287.473, Florida Statutes, the submission of a false certification; or being placed on the Scrutinized Companies that Boycott Israel List, or engaging in a boycott of Israel; or being placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List; or engaging in business operations in Cuba or Syria will be cause for the City to terminate this Agreement at the option of the City. Case-by-case exceptions may be made by the City pursuant to Florida law. Furthermore, the conditions set forth in this paragraph as it relates to Activities in Sudan List or Activities in the Iran Petroleum Energy Sector List, created pursuant to s. 215.473; or conducting business operations in Cuba or Syria only apply if the value of this contract is one million dollars (\$1,000,000.00) or more.

**21. Legal Representation**

It is acknowledged that each party to this Agreement had the opportunity to be represented by counsel in the preparation of this Agreement and accordingly the rule that a contract shall be interpreted strictly against the party preparing same shall not apply herein due to the joint contributions of both parties.

**22. Force Majeure**

As used herein, "Force Majeure" means the occurrence of any event that prevents or delays the performance by either party of its obligations hereunder which are beyond the reasonable control of the non-performing party. Examples of "Force Majeure" include, but are not limited to, acts of God, labor strikes, human health pandemics, natural disasters, emergency governmental action, or material or labor shortages. To invoke this paragraph, immediate written notice, consistent with the notice provisions of this Agreement, must be sent by the non-performing party describing the circumstances constituting force majeure and proof that the non-performance or delay of performance is a direct and reasonable result of such event(s). All obligations must resume when the circumstances of such event(s) have subsided, or other arrangements are made pursuant to a written amendment to this Agreement.

**23. Antitrust Violations; Denial or Revocation under Section 287.137, Fla. Stat.**

Pursuant to Section 287.137, Fla. Stat., (enacted under Chapter 2021-32, Laws of Florida) effective July 1, 2021, a person or an affiliate who has been placed on the antitrust violator vendor list (electronically published and updated quarterly by the State of Florida) following a conviction or being held civilly liable for an antitrust violation may not submit a bid, proposal, or reply for any new contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply for a new contract with a public entity for the construction or repair of a public building or public work; may not submit a bid, proposal, or reply on new leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a new contract with a public entity; and may not transact new business with a public entity. By entering this Agreement, VERTIGIS NA certifies neither it nor its affiliate(s) are on the antitrust violator



vendor list at the time of entering this Agreement. False certification under this paragraph or being subsequently added to that list will result in termination of this Agreement, at the option of the City consistent with Section 287.137, Fla. Stat. as amended.

**24. Trade Secrets and Proprietary Confidential Business Information**

Documents submitted by VERTIGIS NA which constitute trade secrets as defined in Section 812.081, Fla. Stat., as amended from time to time, or proprietary confidential business information as defined in Section 119.0713(4), as amended from time to time, and which are clearly marked or stamped as confidential by the VERTIGIS NA at the time of submission to the City, will not be subject to public access. However, should a requestor of public records challenge VERTIGIS NA's interpretation of the term "trade secrets" or "proprietary confidential business information," VERTIGIS NA must provide a separate written indemnification and release guarantee, as approved by the City Attorney or designee, to the City to support its claim that the alleged trade secrets or proprietary confidential business information actually constitutes same as defined by law. VERTIGIS NA must demonstrate the need for confidentiality of the documentation by showing a business advantage or an opportunity to obtain an advantage if the documentation was released. Otherwise, VERTIGIS NA is required to timely seek a protective order in the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County to prevent the City's release of the requested records.

IN WITNESS WHEREOF, the parties have made and executed this Agreement on the date that appears on the first page hereof, City of Coconut Creek, through its City Manager, or designee, and VERTIGIS NA, signing by and through \_\_\_\_\_ its \_\_\_\_\_, who is duly authorized to execute same.

**CITY OF COCONUT CREEK**

ATTEST:

\_\_\_\_\_  
Karen M. Brooks, City Manager      Date

\_\_\_\_\_  
Marianne Bowers      Date  
Interim City Clerk

Approved as to form and legal sufficiency:

\_\_\_\_\_  
Terrill C. Pyburn, City Attorney      Date

[Signature of VERTIGIS NA to follow]



# EXHIBIT A to SOLE SOURCE AGREEMENT



VertiGIS North America Ltd., 300-1117 Wharf Street, Victoria, BC Canada V8W 1T7·Tel: (250) 381-8130·Fax: (250) 381-8132

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## MASTER LICENSE AGREEMENT VERTIGIS NA Contract Number: 2020-12-648

This Master License Agreement (“Agreement”) is between the licensee printed below (“Licensee”), VertiGIS North America Corp. (“VERTIGIS NA”), as licensor of the Software, Data, Online Services and/or Documentation licensed under this Agreement and distributor set out below. The Agreement includes the General License Terms and Conditions stated herein, the Exhibit 1, “Scope of Use,” Exhibit 2, “Technical Support Guidelines,” and VERTIGIS NA’s current ordering document for annual services. The parties acknowledge that they have read and understood this Agreement and agree to be bound by the terms and conditions hereof as applicable to each party.

### VERTIGIS NA Geographics General License Terms and Conditions

#### ARTICLE 1. DEFINITIONS

**Definitions.** The terms used are defined as follows:

- a. “Beta” means any alpha, beta, or prerelease Product.
- b. “Data”, except as otherwise provided herein, means any digital data set(s) owned by VERTIGIS NA or its licensor(s), including, but not limited to, geographic, vector data coordinates, raster data reports, or associated tabular attributes.
- c. “Documentation” means all of the printed and digital materials including, but not limited to, help files, user reference documentation, training documentation, or technical information and briefings.
- d. “License” means a license or access to the Products for which applicable subscription fees have been paid for a specified time period (“Term”) on a subscription basis.
- e. “Licensee Content” means any electronic information, including but not limited to, any data, information or material, such as posts, comments, documents, project information, application data, user information and account information which is submitted, created, saved, added, uploaded or made available by Licensee or any of its authorized users to VERTIGIS NA through the Software and/or Online Services. Licensee Content shall not include the Software, Data and Documentation.
- f. “Online Services” means the VERTIGIS NA computing and data services, and other software services, that are accessed over the internet and subscribed to by Licensee, including without limitation, third party software services or data components that perform GIS functions, tasks, or data services.
- g. “Ordering Document(s)” means a sales quotation, purchase order, or other document identifying the Product(s) or maintenance and/or technical support services that Licensee orders.
- h. “Product(s)” means the Software, Data, Online Services, and Documentation.
- i. “Software” means VERTIGIS NA’s proprietary and licensed software technology, computer software code, components, dynamic link libraries (DLLs), underlying organization, object model, and programs delivered on any media, including any release provided in source, object, or executable code format(s), inclusive of backups, updates, service packs, patches, hot fixes, sample code, sample application, sample extension, or merged copies permitted hereunder, excluding the Online Services and all related software and technology.

#### ARTICLE 2. INTELLECTUAL PROPERTY RIGHTS AND RESERVATION OF OWNERSHIP

VERTIGIS NA is the owner and/or authorized licensee of all intellectual property rights in the Product(s), including, without limitation, written materials, logos, names and other support materials provided pursuant to this Agreement and prior to the execution of this Agreement. Subject to the licenses expressly granted by VERTIGIS NA herein, these terms of use do not transfer from VERTIGIS NA to Licensee any interest in the Product(s), all right, title and interest in which remains solely with VERTIGIS NA or its licensors. All provisions under this Agreement by VERTIGIS NA to Licensee, including, without limitation, the Product(s), are licensed and not sold. VERTIGIS NA does not and has not transferred any ownership interests in any form or manner to the Licensee. VERTIGIS NA and its licensors own the Product(s), which are protected by Canadian law and applicable international laws, treaties, and conventions regarding intellectual property or proprietary rights, inclusive of trade secrets. From the date of receipt or access,

Licensee agrees to use reasonable means to protect the Product(s) from unauthorized use, reproduction, distribution, or publication. VERTIGIS NA and its licensors reserve all rights not specifically granted in this Agreement including the right to change and improve Products and provide new offerings, as they become available.

### **ARTICLE 3. GRANT OF LICENSE**

**3.1 Grant of License.** Subject to the terms and conditions set forth in this Agreement, VERTIGIS NA grants to Licensee a personal, non-exclusive, nontransferable license to:

- a. Access and use the Products, as set forth in the applicable Ordering Documents and Documentation (i) for which the applicable License fees have been paid to VERTIGIS NA, and (ii) in accordance with Exhibit 1, attached hereto, and the licensed configuration as authorized by VERTIGIS NA.
- b. Access and use specific secure VERTIGIS NA online site resources made available to the Licensee for Licensee's internal use only, provided that Licensee also follows general website terms of use specified therein. All passwords, user identifications, or other activation keys that are provided by VERTIGIS NA to Licensee to enable Licensee to access controlled information and any controlled access information provided by VERTIGIS NA or its authorized distributor shall be treated as VERTIGIS NA confidential information, to extent allowed by Florida law. For greater certainty, Licensee shall not allow any unauthorized use or access to the Product(s), passwords, user identifications, or other activation keys that are provided by VERTIGIS NA or its authorized distributor to Licensee.

Such grant includes the right to use, but not to modify or copy in any manner whatsoever except as provided herein, the Product(s), in whole or any portion thereof. Except as provided herein, this grant does not include the use of and access to the Product(s) by any third party, except uses authorized by Paragraph 3.5, herein. Licensee shall take all reasonable precautions to prevent third parties from using the Product(s) in any way that would constitute a breach of this Agreement, including, without limitation, such precautions as Licensee would otherwise take to protect its own proprietary software or hardware or information.

The license grants in this section shall continue for the duration of the performance term set out in the applicable Ordering Documents.

**3.2 Beta License.** Licensee may be accepted into a current Beta testing program. Licensee may be provided copies of, or access to, Beta for the limited purpose of testing Beta in accordance with the Beta testing policies then in effect. Delivered Beta is confidential and proprietary to VERTIGIS NA and/or its licensor(s) and contains trade secrets, inclusive of unpublished specifications. Licensee agrees to retain all Beta in confidence. Except for a "public" Beta testing program, Licensee shall maintain results of testing, performance statistics, errors, or any other quality issues encountered in confidence and agrees not to disclose same to any third party. Beta is subject to change prior to its commercial release and may never be commercially released. Licensee acknowledges that such Beta is not suitable or licensed for full use and accepts all responsibility for use of the same and any results generated. Licensee may from time to time provide suggestions or comments regarding performance, usability or effectiveness, bug reports, test reports or other feedback (collectively, "Feedback") to VERTIGIS NA with respect to Beta. VERTIGIS NA and/or its licensor(s) retain title to such comments and may freely use, disclose, reproduce, license, distribute, and otherwise commercialize any Feedback. A Beta testing program may have additional requirements. Products provided under a Beta Program are for testing purposes only and not for commercial use, and do not qualify for VERTIGIS NA or distributor maintenance or technical support services. Notwithstanding anything herein to the contrary, confidential information referred to herein will be as defined under Florida law, and will be kept confidential only to the extent allowed by Florida law.

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**3.4 Educational Use License.** If Licensee has been qualified by VERTIGIS NA or its authorized distributor to receive education pricing, Licensee agrees to use the Product(s) solely for educational, research, and academic purposes that are noncommercial in nature. Licensee shall not use the Product(s) for any administrative or profit-generating activities.

**3.5 Consultant Access.** Licensee may provide access to the Product(s) to any consultant or contractor of the Licensee, provided that the consultant or contractor is using the Product(s) exclusively for the benefit of the Licensee. Licensee shall be responsible for compliance by consultants or contractors with the terms and conditions of this

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**3.6 Third Party Software.** Unless included in the software for the Products, Licensee will be responsible for purchasing licenses for any third party software that is required in connection with the use of the Products, from the third party licensors. Use of any third party software will be subject to the terms of the applicable third party license agreement, and VERTIGIS NA and/or its licensors provide no warranties and will have no liability in connection with Licensee's or any other party's use of such third party software.

**3.7 Fees.** The Licensee shall pay to VERTIGIS NA or its authorized distributor the License fees set out in the Ordering Document.

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### **4.2 Uses Not Permitted**

Except to the extent that applicable law prohibits or overrides these restrictions, or as provided herein, **Licensee shall not:**

- a. Sell, rent, lease, sublicense, lend, assign, transfer, translate, export, or time-share the Product(s).
- b. Act as a service bureau or commercial Application Service Provider (ASP) that allows third-party access to the Product(s). A commercial ASP means a licensee who uses Product(s) for a site or service, and operates the site or the service for a profit, or generates revenue by charging for access to the site or service. Licensee may only use the Product for Commercial ASP Use provided that Licensee acquires a Commercial ASP Use License.
- c. Distribute (not including the provision of access to) the Software to third-parties, in whole or in part, including, but not limited to, extensions, components, or DLLs without prior written approval of VERTIGIS NA.
- d. Reverse engineer, decompile, cross-assemble, or disassemble the Product(s).
- e. Remove or obscure any VERTIGIS NA (or its licensor(s)') patent, copyright, trademark, proprietary rights notices, and/or legends contained in or affixed to any Product, Product output, metadata file, or online and/or hard-copy attribution page of any Data or Documentation delivered hereunder.
- f. Make any attempt to circumvent the technological measure(s) that controls access to, or use of, the Product(s).
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- h. Use Products in violation of VERTIGIS NA's, its licensor(s)', or a third party's rights, including intellectual property rights, privacy rights, non-discrimination laws, or any other applicable law or government regulation.
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- j. Incorporate any portion of Product into any product or service that competes with any Product.
- k. Use, incorporate, modify, distribute, provide access to, or combine any computer code provided with any Product in a manner that would subject such code or any part of the Product to open source license terms, which includes any license terms that require computer code to be (i) disclosed in source code form to third

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## ARTICLE 5. ONLINE SERVICES

**5.1 User Activity.** Licensee is responsible for any use of the Online Services through Licensee's account or other means of accessing the Online Services specific to Licensee, whether authorized or unauthorized and any liability incurred as a result. Nothing herein is intended to serve as a waiver of sovereign immunity by the City under Section 768.28, Fla. Stat., as amended, nor shall anything included herein be construed as consent to be sued by any third parties in any matter arising out of this Agreement.

**5.2 Unauthorized Access.** Licensee will use all reasonable efforts to prevent unauthorized access to or use of the Online Services and will not share any passwords, user names, access keys or other login credentials for the Online Services, except as authorized herein. Licensee will promptly notify VERTIGIS NA of any known or suspected unauthorized access to or use of the Online Services or any loss, theft or unauthorized use of login credentials.

**5.3 Modification of Online Services.** VERTIGIS NA may implement updates to modify the features or functions of the Online Services ("Update") at any time and at its sole discretion. In the event an Update results in the removal of material functionality of the Online Services, VERTIGIS NA shall endeavor to provide Licensee with at least sixty (60) days notice of the Update and Licensee may, within 60 days of the Update, terminate the License by providing written notice to VERTIGIS NA and receive a refund of any prepaid License fees prorated for the remainder of the performance term following the termination date.

**5.4 Suspension of Online Services.** VERTIGIS NA reserves the right to temporarily suspend Licensee's access to or use of the Online Services in the event: (i) VERTIGIS NA reasonably believes that Licensee's access to or use of the Online Services may result in liability to VERTIGIS NA or adversely affect the integrity, functionality or usability of the Online Services, including without limitation, interfering with the access to or use of the Online Services by other users; (ii) Licensee is in breach of this Agreement, including without limitation, a failure to pay any amounts due under this Agreement; or (iii) the Online Services are undergoing scheduled maintenance. VERTIGIS NA shall not be responsible for any damages, liabilities or losses of Licensee in connection with any suspension of the Online Services that result from the foregoing.

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**5.7 Transmission of Data.** Licensee acknowledges that hosting data online involves risks of unauthorized access and disclosure and that such risk is inherent in Licensee's access to and use of the Online Services. Licensee agrees that VERTIGIS NA will not be responsible or liable in any manner for any Licensee Content or other data which is lost, altered or intercepted without authorization due to errors or actions of third parties, and VERTIGIS NA offers no representations or warranties with respect to the foregoing.

**5.8 Third Party Products and Services.** Licensee acknowledges that the Online Services are provided in part through the use of third party software, hardware, and hosting and storage services. While VERTIGIS NA has used reasonable efforts to engage high quality third party product and services providers, neither VERTIGIS NA nor its third party suppliers shall be responsible for, and provide no representations or warranties with respect to, any third party hardware, software or services used in connection with the delivery of the Online Services.

## **ARTICLE 6. PRIVACY**

**6.1 Privacy Policy.** Licensee acknowledges it has been informed about the VERTIGIS NA Privacy Policy located at [www.geocortex.com/legal](http://www.geocortex.com/legal) (the "Privacy Policy"), which is applicable to the collection, use and disclosure by VERTIGIS NA of personal information relating to Licensee and/or its representative(s) in the context of VERTIGIS NA performing this Agreement and related purposes which is incorporated by reference into this Agreement.

**6.2 Personal Data.** Licensee acknowledges that Licensee Content may be capable of identifying individual users of the Online Services or other natural persons ("Personal Information"). Personal Information is collected and used by VERTIGIS NA for the exclusive purpose of providing the Online Services to Licensee in accordance with this Agreement.

**6.3 Legal Compliance.** Licensee shall comply with all applicable privacy laws in connection with its use of the Products and this Agreement. Without limiting the generality of the foregoing, Licensee will notify all of its personnel and other individuals using the Online Services about the information handling practices detailed in this Article 6 and the Privacy Policy, and will obtain all necessary consents required under applicable privacy law from such individuals with respect to the foregoing. Licensee acknowledges and agrees that: (i) the Online Services are only offered in jurisdictions in which the Online Services are not in violation of applicable privacy laws, including without limitation, any "do not track" legislation, (the "Legal Jurisdictions"); (ii) Licensee is responsible for determining the legality of the Online Services in the Licensee's jurisdiction; and (iii) all licenses and subscriptions granted to Licensee hereunder are not valid outside the Legal Jurisdictions.

## **ARTICLE 7. TERM AND TERMINATION**

The License is effective upon acceptance of this Agreement and shall continue until (i) expiration of a License or (ii) either party terminates the License for a material breach that is not cured within thirty (30) days of written notice to the other party, except that termination is immediate for a material breach of a nature that is impossible to cure. Upon termination of a License, Licensee shall (i) stop accessing and using affected Product(s) (ii) cease all access and use of Online Services and clear Online Services client-side data cache and (ii) uninstall, remove, and destroy all copies of affected Product(s) in Licensee's possession or control, including any modified or merged portions thereof, in any form, and execute and deliver evidence of such actions to VERTIGIS NA or its authorized distributor.

## **ARTICLE 8. LIMITED WARRANTIES AND DISCLAIMERS**

**8.1 Limited Warranties.** For a period of ninety (90) days from the date of receipt of Software or Online Services authorization or keycode file(s) by Licensee, VERTIGIS NA warrants that (i) the unmodified Software and Online Services will substantially conform to the published Documentation and (ii) the media upon which the Software, Data, and Documentation is provided will be free from defects in materials and workmanship under normal use and service.

**8.2 Data Disclaimer.** If included under this Agreement, Licensee acknowledges and agrees that the Data has been obtained from sources believed to be reliable, but the accuracy and completeness of the Data are not guaranteed and the Data may contain some nonconformities, defects, errors, or omissions. VERTIGIS NA AND ITS LICENSOR(S) MAKE NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE DATA, AND THE DATA IS PROVIDED "AS IS." Without limiting the generality of the preceding sentence, VERTIGIS NA and its licensor(s) do not warrant that the Data will meet Licensee's needs or expectations, that the use of the Data will be uninterrupted, or that all nonconformities can or will be corrected. VERTIGIS NA and its licensor(s) are not inviting reliance on the Data, and Licensee should always verify Data before any such reliance.

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- a. The Product(s) are not fault-tolerant and are not designed, manufactured, or intended for resale or use in insurance underwriting or with critical health and safety or online control equipment in hazardous environments that require fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation, or communication systems, air traffic control, real-time emergency response, real-time terrorism prevention or response, life support, or weapons systems ("Fault-Intolerant Activities"). VERTIGIS NA AND

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- b. To the extent permitted by law, Licensee agrees to indemnify, defend, and hold VERTIGIS NA, its licensor(s) and their respective officers, directors, employees, agents, subcontractors, licensors, successors, and assigns harmless from and against any and all liability, losses, claims, expenses (including attorney's fees), demands, or damages of any kind, including direct, indirect, special, punitive, incidental, or consequential damages, arising out of or in any way connected with the Licensee's use or permitting the use by others of the Software, Online Services, and Data for Fault-Intolerant Activities. Delivery of the Software, Online Services, and Data does not constitute a waiver of the rights and obligations set forth in this Article. Nothing herein is intended to serve as a waiver of sovereign immunity by the City under Section 768.28, Fla. Stat., as amended, nor shall anything included herein be construed as consent to be sued by any third parties in any matter arising out of this Agreement.

**8.4 Special Disclaimer.** SAMPLE CODE, SAMPLE APPLICATIONS, SAMPLE EXTENSION, HOT FIXES, EVALUATION SOFTWARE, AND BETA ARE DELIVERED "AS IS" WITHOUT WARRANTY OF ANY KIND. LICENSEE ASSUMES ALL RISK AS TO THE QUALITY AND PERFORMANCE OF THE SAMPLE CODE, SAMPLE APPLICATION, SAMPLE EXTENSION, HOT FIXES, EVALUATION SOFTWARE, AND BETA.

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**8.6 General Disclaimer.** EXCEPT FOR THE ABOVE EXPRESS LIMITED WARRANTIES, VERTIGIS NA AND ITS LICENSOR(S) DISCLAIM ALL OTHER WARRANTIES OR CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY OR COMPLETENESS, NONINTERFERENCE, SYSTEM INTEGRATION, AND NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS. VERTIGIS NA DOES NOT WARRANT THAT THE PRODUCT(S) WILL MEET LICENSEE'S NEEDS, OR THAT LICENSEE'S OPERATION OF THE SAME WILL BE UNINTERRUPTED, ERROR FREE, FAULT TOLERANT, FAIL-SAFE OR THAT ALL NONCONFORMITIES CAN OR WILL BE CORRECTED. PRODUCT(S) ARE NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE IN ENVIRONMENTS OR APPLICATIONS THAT MAY LEAD TO DEATH, PERSONAL INJURY, OR PHYSICAL PROPERTY/ENVIRONMENTAL DAMAGE.

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## **ARTICLE 9. LIMITATION OF LIABILITY**

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THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

THE FOREGOING WARRANTIES, LIMITATIONS, AND EXCLUSIONS MAY NOT BE VALID IN SOME JURISDICTIONS AND APPLY ONLY TO THE EXTENT PERMITTED BY APPLICABLE LAW IN LICENSEE'S JURISDICTION. LICENSEE MAY HAVE ADDITIONAL RIGHTS UNDER LAW THAT MAY NOT BE WAIVED OR DISCLAIMED. VERTIGIS NA DOES NOT SEEK TO LIMIT LICENSEE'S WARRANTY OR REMEDIES TO ANY EXTENT NOT PERMITTED BY LAW.

## **ARTICLE 10. INFRINGEMENT INDEMNITY**

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**10.3** VERTIGIS NA shall have no obligation to indemnify or defend Licensee or to pay any resultant costs, damages, or attorney's fees for any claims or demands alleging direct or contributory infringement to the extent arising out of (i) the combination or integration of the Software or the Online Services with a product, process, or system not supplied by VERTIGIS NA or specified by VERTIGIS NA in its Documentation; (ii) material alteration of the Software or the Online Services by anyone other than VERTIGIS NA or its subcontractors; or (iii) use of the Software or the Online Services after modifications have been provided by VERTIGIS NA for avoiding infringement or use after a return is ordered by VERTIGIS NA under Article 10.2. For greater clarity, VERTIGIS NA's obligations under Articles 10.1 and 10.2 apply to any modifications provided by VERTIGIS NA for avoiding infringement.

**10.4** THE FOREGOING STATES THE ENTIRE OBLIGATION OF VERTIGIS NA, ITS LICENSOR(S) AND ITS AUTHORIZED DISTRIBUTOR WITH RESPECT TO INFRINGEMENT OR ALLEGATION OF INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

## ARTICLE 11. GENERAL PROVISIONS

**11.1 Future Updates.** Use of Products licensed under this Agreement is covered by the terms and conditions herein. New or updated Products may require additional or revised terms of use under the then-current VERTIGIS NA Agreement. Any new product(s) or service contained in a future Ordering Document that requires alteration of these terms and conditions will be agreed to by the parties and set forth in a formal written amendment hereto.

**11.2 Export Control Regulations.** Licensee expressly acknowledges and agrees that Licensee shall not export, reexport or provide the Product(s), in whole or in part, to (i) with the exception of Cuba, any country to which Canada or the United States has embargoed goods; (ii) any person on the U.S. Treasury Department's list of Specially Designated Nationals; (iii) any person or entity on the U.S. Commerce Department's Table of Denial Orders; or (iv) any person or entity where such export, reexport, or import violates any export control laws or regulations including amendments and supplemental additions as they may occur from time to time. Licensee shall not export the Product(s) or any underlying information or technology to any facility in violation of these or other applicable laws and warrants that it or its employees, consultants, or customers who gain access to the Product(s) are not a national, resident, or located in or under the control of, or acting on behalf of any person, entity, or country subject to such U.S. export controls.

**11.3 Taxes and Fees, Shipping Charges.** License fees quoted to Licensee are exclusive of any and all applicable taxes or fees including, but not limited to, sales tax, use tax, value-added tax (VAT), customs, duties, or tariffs, and shipping and handling charges. Licensee is state tax exempt pursuant to its Certificate of Exemption Number 85-8012557738C-1.

**11.4 No Implied Waivers.** The failure of either party to enforce any provision of this Agreement shall not be deemed a waiver of the provisions or the right of such party thereafter to enforce that or any other provision.

**11.5 Severability.** The parties agree that if any provision of this Agreement is held to be unenforceable for any reason, such provision shall be reformed only to the extent necessary to make the intent of the language enforceable.

**11.6 Successor and Assigns.** Licensee shall not copy, assign, sublicense, sublease, redistribute, or transfer Licensee's rights or the rights of a contractor or third party or delegate its obligations under this Agreement without VERTIGIS NA's and its authorized distributor's prior written consent, and any attempt to do so without VERTIGIS NA's and its authorized distributor's prior and written consent shall be void. This Agreement shall be binding upon the respective successors and assigns of the parties to this Agreement. Notwithstanding, a Government contractor that has acquired the Product(s) under contract to the Government may assign its rights under this Agreement to its Government customer upon written notice to VERTIGIS NA, provided the Government customer assents to the terms of this Agreement.

**11.7 Survival of Terms.** The provisions of Articles 2, 6, 7, 8, 9, 10, and 11 of this Agreement shall survive the expiration or termination of this Agreement.

**11.8 Equitable Relief.** Either party will have the right to seek an injunction, specific performance, or other equitable relief in any court of competent jurisdiction with the requirement of posting a bond or proving injury as a condition of relief.

**11.9 U.S. Government Restricted Rights.** The Product(s) are provided with restricted rights. The Product(s) are commercial computer software, commercial data, commercial Online Services, and commercial computer software documentation. This Agreement contains VERTIGIS NA's commercial license terms and conditions for such items. The commercial license rights in this Agreement strictly govern Licensee's use, reproduction, or disclosure of the Product(s). No other license terms or conditions shall apply unless expressly agreed in writing by VERTIGIS NA and Licensee. The Software source code is unpublished and all rights to the Product(s) are reserved under international and national copyright laws. In the event any court, arbitrator, or board holds that the Licensee has greater rights to any portion of the Product(s) under applicable public procurement law, such rights shall extend only to the portions affected. Use, duplication, or disclosure by the U.S. Government is subject to restrictions as provided in FAR 52.227-19 (June 1987), FAR 52.227-14 (ALT III) (June 1987), DFARS 252.227-7015 (Nov 1995), or NFS 1852.227-86 (December 1987), or the local, state, or foreign equivalent, as applicable. The owner or authorized licensor is VERTIGIS North America Ltd., 300-1117 Wharf Street, Victoria, British Columbia, Canada V8W 1T7.

**11.10 Reserved.**

### 11.11 Maintenance and Technical Support

a. Maintenance for qualifying Products and technical support services ordered directly from VERTIGIS NA will be provided in accordance with VERTIGIS NA's Maintenance and Technical Support Policy, with the baseline for services provided in Exhibit 2, "Technical Support Guidelines," attached hereto. Any new product(s) or service contained in a future Ordering Document that requires alteration of these terms and conditions will be agreed to by the parties and set forth in a formal written amendment hereto.

b. *Intentionally deleted.*

**11.12 Force Majeure.** Except with respect to payment obligations under this Agreement, neither party shall be held liable or responsible to the other party nor be deemed to have defaulted under or breached this Agreement for failure or delay in fulfilling or performing any obligation under this Agreement when such failure or delay is caused by or results from, directly or indirectly, causes beyond the reasonable control of the affected party, including but not limited to fire, floods, earthquakes, epidemic, embargoes, war, acts of war (whether war is declared or not), insurrections, riots, civil commotions, strikes, lockouts or other labor disturbances, cyberattacks, disruptions or outages of third party services, acts of God or acts, omissions or delays in acting by any governmental authority; provided, however, that the affected party shall use reasonable commercial efforts to avoid or remove such causes of nonperformance, and shall resume performance hereunder as commercially reasonable whenever such causes are removed. The affected party shall provide the other party with prompt written notice of any delay or failure to perform that occurs by reason of Force Majeure.

**EXHIBIT 1**  
**SCOPE OF USE**  
(10/2020)

The scope of use for each VERTIGIS NA Software identified below is described in the applicable footnotes listed in parentheses.

Geocortex Essentials Standard Edition (1, 2, 3, 4 (Starter Kit), 5, 6, 7, 8)

- \* Geocortex Essentials Standard Edition (4.x) (20)
- \* Geocortex Workflow (15, 16, 19)
- \* Geocortex Reporting (15, 16, 19, 22)
- \* Geocortex Printing (15, 16, 19, 22)
- \* Geocortex Web (GXW) (15, 19, 20)

Geocortex Essentials Enterprise Edition (1, 2, 3, 5, 6, 7, 8)

- \* Geocortex Essentials Standard Edition (4.x) (20)
- \* Geocortex Workflow (15, 16, 19)
- \* Geocortex Reporting (15, 16, 19, 22)
- \* Geocortex Printing (15, 16, 19, 22)
- \* Geocortex Workflow Builder Edition (15, 17, 19)
- \* Geocortex Reporting Builder Edition (15, 17,19, 22)
- \* Geocortex Printing Builder Edition (15, 17, 19, 22)
- \* Geocortex Mobile (GXM) (15, 19, 20, 21)
- \* Geocortex Web (GXW) (15, 19, 20)
- \* Geocortex Access Control (16, 19)

- \* Geocortex Essentials Builder Edition (1,2,3, 5)
- \* Geocortex Workflow Builder Edition (15, 17, 19)
- \* Geocortex Reporting Builder Edition (15, 17, 19, 22)
- \* Geocortex Printing Builder Edition (15, 17, 19, 22)

- \* Geocortex Analytics (5, 7, 8)

- \* Geocortex Essentials Developer Subscription (GEDS) (5, 6, 9)

- \* Geocortex Workflow Builder Edition (5, 15, 17)

- \* Geocortex Reporting Builder Edition (5, 15, 17, 22)

- \* Geocortex Printing Builder Edition (5, 15, 17, 22)

- \* Geocortex Mobile (GXM) (5, 15, 20, 21)

- \* Geocortex Web (GXW) (5,15, 20)

- \* Geocortex Access Control (5, 16, 19)

- \* Geocortex Inline (GXI) (5)

- \* Geocortex Item Manager (GXIM) (23)

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## GEOCORTEX TECHNICAL SUPPORT GUIDELINES

**Technical Support:** is available from VERTIGIS NA by a priority queue system during regular operating hours of 8:30 AM-5:00 PM (Pacific Time), Monday-Friday, excluding public holidays. VERTIGIS NA provides all technical support via the Internet (“Remote Support”). To receive Remote Support you will be requested to provide access to your system or computer, and it is within your discretion to determine the level of access granted to VERTIGIS NA for you to receive Remote Support, which you grant at your own risk. When logging an issue, it is required that you provide sufficient details for VERTIGIS NA to reproduce the problem.

**Email Support.** You may submit a request by emailing [support@geocortex.com](mailto:support@geocortex.com)

**Electronic Requests.** You may submit a request electronically by visiting [communities.geocortex.com](http://communities.geocortex.com) and submitting a ticket 24 hours a day, 7 days a week. Requests received outside regular operating hours as listed above are processed on the next business day.

**Before Logging a Case:** To help resolve your problem most efficiently, please follow these steps before you contact the Geocortex Technical Support Team:

- Attempt to reproduce the problem to ensure that it isn’t just a simple error or misstep.
- Determine whether the problem occurs on one, more than one, or all your workstations/servers.
- Determine whether the problem is specific to one, more than one, or all of your datasets.
- Determine whether the problem occurs randomly or consistently.
- If the problem is reproducible, check to see if any changes have recently taken place in your computing environment that might be responsible for the problem:
  - Version of the product, database, etc.
  - Client or server side components
  - Server configuration
  - Security settings

**Please provide as much information as possible, including:**

- Version numbers of any Geocortex software you're using: Workflow, Essentials, Analytics, etc.
- A clear description of the issue and the steps leading up to it, including screenshots of any errors. If an error has associated text, please try to copy all of it, especially if it's only partially visible in screenshots. Depending on the complexity of the issue, you may wish to use a video screen capture. If there is a public facing URL for your site/viewer that we can reach, please provide it.
- If there have been any recent architecture or configuration changes that may affect the operation of your site, please describe those changes.
- Any steps you have taken to attempt to solve the problem.

**Geocortex Support will respond with:**

- A case reference number for tracking purposes
- Confirmation on next steps for resolution and follow-up

**Technical Support Guidelines:**

- Technical Support refers to services provided to troubleshoot and resolve issues related to a Geocortex implementation and the prerequisite information technology infrastructure, such as Geocortex products (customized or out-of-the-box), Esri products (e.g. ArcGIS Server, ArcGIS Online) and other third party software. Please note, if there are issues with third party software or infrastructure, which are beyond our control to resolve, you may need to contact that vendor, or your IT department, for resolution. We are happy to work with you to provide them the information required to identify and ultimately resolve the issue.
- Technical support requests are processed on a first-come, first-served basis. 'Critical' and 'Severe Impact' priority requests that require immediate response or direct help of Product Support Analysts may be promoted within the queue. The problem-solving period depends on the request's priority level, problem complexity and the potential need to engage with other VertiGIS teams.
- The Product Support team cannot guarantee a fixed resolution period due to a number of influencing factors:
  - Complexity of the issue
  - Response time of a third party company
  - Client's timely replies
  - The need to prepare and release a software update, etc.
  - Geocortex welcomes suggestions for enhancements in Geocortex software. Although there is no guarantee any suggestion will be included in a future release, suggestions frequently influence product development decisions.

Please note, we will provide Technical Support services for multiple versions of a product, however you may be required to upgrade your software to the latest version for resolution of an issue.

**Response Times.** VertiGIS NA will use reasonable commercial efforts to communicate, by telephone or e-mail, within the following targeted response times, regarding Errors that are reported to VertiGIS NA. For purposes of this Policy, a "response" means VertiGIS NA's acknowledgement of an Error, and does not necessarily mean that a resolution will be achieved. When an Error is reported, VERTIGIS NA will evaluate the Error and assign an appropriate priority level.

<b>Priority Level</b>	<b>Priority Level Description</b>	<b>Response Target</b>
1	<b>Critical.</b> VertiGIS NA Product not operational.  No Temporary Workaround available at time of the call.	1 working day
2	<b>Severe Impact.</b> Errors that result in a lack of functionality or that cause intermittent system failure.  A Temporary Workaround is available.	1 working day
3	<b>Degraded Operations.</b> Errors that cause non-critical features to consistently malfunction.  Medium effort Workaround is available.	3 working days
4	<b>Minimal Impact.</b> Errors that cause product not to operate as documented.  Low effort Workaround is available.	Future release

**Definitions**

**Error** means a reproducible event that results in failure of the Product to substantially conform to the product documentation.

**Temporary Workaround** means a temporary solution to the reported issues, which is not suitable for permanent use.

**Workaround** means a solution to a reported issue that does not involve a product Update and is acceptable for ongoing use.

## EXHIBIT B

### SERVICES AGREEMENT (05/2020)

#### 1. Definitions

**"Services"** means implementation services provided by VERTIGIS NA on a time and materials basis in exchange for compensation from Customer.

**"Service Order" OR "Ordering Document"** – used interchangeably -- means a scope of work for Services as set out in a sales quote, services proposal or services offering provided to Customer by VERTIGIS NA.

**"Work"** means any work product created by VERTIGIS NA resulting from providing the Services and includes, but is not limited to, reports, training materials and custom software code.

2. **Ownership of Intellectual Property.** VERTIGIS NA hereby grants to Customer a nonexclusive, royalty-free license to use the Work. VERTIGIS NA and its licensors own and retain all right, title, and interest in the Work, unless otherwise set out in the Service Order.
3. **Third Party Software.** Customer is responsible for purchasing licenses for any third-party software that is required in connection with the Services from the third-party licensors. Use of any third-party software will be subject to the terms of the applicable third-party license agreement, and VERTIGIS NA provides no warranties and will have no liability in connection with Customer's or any other party's use of such third-party software.
4. **Payment Terms.** VERTIGIS NA shall provide the Services on a time and materials basis. Payment terms are net thirty (30) days from Customer's receipt of VERTIGIS NA's correct and undisputed invoice. Unless otherwise specified in the Service Order, VERTIGIS NA shall issue invoices on a monthly basis for Services delivered on a time and materials basis. Any expenses incurred by VERTIGIS NA for the provision of on-site Services shall be invoiced with receipts. Services are quoted exclusive of any and all applicable taxes or fees including, but not limited to, sales tax, use tax, value-added tax (VAT), customs, duties, or tariffs, and shipping and handling charges.
5. **Warranties.** VERTIGIS NA warrants that the Services will substantially conform to the specifications set forth in the applicable Service Order for a period of thirty (30) days from the date of final acceptance. VERTIGIS NA shall exert commercially reasonable efforts to provide the Services in a timely and professional manner standard to the software industry.
6. **Disclaimer of Warranties.** With the exception of the limited warranties set out in this Agreement, VERTIGIS NA disclaims, and this Agreement expressly excludes all other warranties, express or implied, including, but not limited to, warranties related to merchantability and fitness for a particular purpose.
7. **Limitation of Liability.** In no event will VERTIGIS NA be liable to Customer for procurement of substitute goods or services; lost profits, lost sales, or business expenditures; investments; business commitments; loss of any goodwill; or any indirect, special, exemplary, punitive, incidental, or consequential damages arising out of or related to this Agreement, however caused or under any theory of liability, even if VERTIGIS NA has been advised on the possibility of damages. Notwithstanding this paragraph, all rights reserved by Customer in the Sole Source Agreement remain valid.

THE TOTAL CUMULATIVE LIABILITY OF VERTIGIS NA HEREUNDER, FOR ANY CLAIM OR DAMAGE ARISING FROM OR OTHERWISE RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT OR IN TORT, BY WAY OF INDEMNIFICATION OR UNDER STATUTE SHALL BE LIMITED TO DIRECT DAMAGES WHICH SHALL NOT EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER AS FEES FOR THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRIOR TO THE OCCURRENCE OF THE EVENT THAT GAVE RISE TO SUCH CLAIM; PROVIDED, HOWEVER, THAT THE FOREGOING LIMITATION SET FORTH HEREUNDER SHALL NOT APPLY TO SUCH SUITS, ACTIONS OR CLAIMS, FEES, ROYALTIES, OR COSTS FOR VIOLATION OF ANY PATENT, TRADEMARK, OR UNLAWFUL USE OF COPYRIGHTED MATERIALS, OR FOR ANY INJURY TO PERSONS OR DAMAGES TO TANGIBLE PROPERTY ARISING OUT OF VERTIGIS NA'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

8. **Confidentiality.** Any Work provided by VERTIGIS NA is confidential information. Customer shall not disclose and shall protect such confidential information using commercially reasonable efforts and means no less protective than what the Customer uses to protect its own confidential information. If disclosure is required by law then Customer shall not disclose any confidential information beyond what is required to comply with the law. Customer shall not reverse engineer, decompile, or otherwise attempt to reproduce Work. Notwithstanding anything herein to the contrary, confidential information referred to herein will be as defined under Florida law, and will be kept confidential only to the extent allowed by Florida law.



- 9. Export Controls.** Customer expressly acknowledges and agrees that Customer shall not export, reexport or provide the Work, in whole or in part, to (i) any country to which Canada or the United States has embargoed goods; (ii) any person on the U.S. Treasury Department's list of Specially Designated Nationals; (iii) any person or entity on the U.S. Commerce Department's Table of Denial Orders; or (iv) any person or entity where such export, reexport, or import violates any export control laws or regulations including amendments and supplemental additions as they may occur from time to time.
- 10. Independent Contractor.** The Services will be furnished by VERTIGIS NA as an independent contractor and not as an agent, an employee or a servant of the Customer. VERTIGIS NA specifically has the right to direct and control VERTIGIS NA's own activities in providing the agreed Services in accordance with the specifications set out in the Service Order. Nothing in this Agreement shall be construed as granting one party the authority to bind the other except as provided herein.
- 11. No Implied Waivers.** The failure of either party to enforce any provision of this Agreement shall not be deemed a waiver of the provisions or the right of such party thereafter to enforce that or any other provision.
- 12. Severability.** If a court of competent jurisdiction holds any provision of the Agreement to be illegal, invalid or unenforceable, in whole or in part, the validity of the remaining provisions will not be affected, and the parties' rights and obligations will be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.
- 13. Force Majeure.** Except with respect to payment obligations under this Agreement, neither party shall be held liable or responsible to the other party nor be deemed to have defaulted under or breached this Agreement for failure or delay in fulfilling or performing any obligation under this Agreement when such failure or delay is caused by or results from, directly or indirectly, causes beyond the reasonable control of the affected party, including but not limited to fire, floods, earthquakes, epidemic, embargoes, war, acts of war (whether war is declared or not), insurrections, riots, civil commotions, strikes, lockouts or other labor disturbances, cyberattacks, disruptions or outages of third party services, acts of God or acts, omissions or delays in acting by any governmental authority; provided, however, that the affected party shall use reasonable commercial efforts to avoid or remove such causes of nonperformance, and shall resume performance hereunder as commercially reasonable whenever such causes are removed. The affected party shall provide the other party with prompt written notice of any delay or failure to perform that occurs by reason of Force Majeure.
- 14. Equitable Relief.** Either party will have the right to seek an injunction, specific performance, or other equitable relief in any court of competent jurisdiction with the requirement of posting a bond or proving injury as a condition of relief..
- 15. Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, and the laws of the United States of America without reference to its conflict of laws principles.

# Quote



Latitude Geographics Group Ltd.

[www.geocortex.com](http://www.geocortex.com)

**Date:** October 25, 2021

**File #:** P-202049985

**Prepared for:** City of Coconut Creek  
4800 West Copans Road  
Coconut Creek, FL 33063

## Account Manager

Peter McLaren

## Phone

1(888) 578-5545 #534

## Email

[peter.mclaren@vertigis.com](mailto:peter.mclaren@vertigis.com)

## Expiration Date

November 24, 2021

Qty	Description	Unit Price	Line Total
1.00	SNB-GXESS-STD-T1 Geocortex Essentials Standard Edition – Tier 1 – Subscription Includes the following products: <ul style="list-style-type: none"><li>• Geocortex Essentials Standard Edition (4.x)</li><li>• Geocortex Workflow<ul style="list-style-type: none"><li>○ For use within a Geocortex viewer (Geocortex Viewer for HTML5 or Geocortex Web)</li></ul></li><li>• Geocortex Reporting<ul style="list-style-type: none"><li>○ For use within a Geocortex viewer (Geocortex Viewer for HTML5 or Geocortex Web)</li><li>○ Includes SaaS storage consumption limit of 1GB per month</li></ul></li><li>• Geocortex Printing<ul style="list-style-type: none"><li>○ For use within a Geocortex Viewer (Geocortex Viewer for HTML5 or Geocortex Web)</li><li>○ Includes SaaS storage consumption limit of 1GB per month</li></ul></li><li>• Geocortex Web (GXW)</li></ul> For use: <ul style="list-style-type: none"><li>• Alongside ArcGIS Server and ArcGIS Enterprise installations with up to 4 production cores of ArcGIS GIS Server</li><li>• Alongside ArcGIS Online and ArcGIS Enterprise Portal with up to 200 activated ArcGIS Identities (ArcGIS Online and Portal combined)</li></ul> Includes: <ul style="list-style-type: none"><li>• Up to 5 installations of each included product for development use (staging and testing server, and development workstations)</li><li>• Complimentary maintenance and basic technical support for the term</li></ul>	\$12,750	\$12,750.00
1.00	Implementation Services	\$10,000.00	\$10,000.00
<b>Total</b>			<b>\$22,750.00</b>

Subject to the terms and conditions of the Sole Source Agreement between the parties, and all other terms and conditions are null and void.

To accept this quotation, sign here and return: \_\_\_\_\_ Date: \_\_\_\_\_



Latitude Geographics (a VertiGIS company)  
Makers of Geocortex software | [www.geocortex.com](http://www.geocortex.com)

Regional Office: 300 – 1117 Wharf Street Victoria, BC Canada V8W 1T7