

## **GGEOWORX® SOFTWARE LICENSE AGREEMENT**

This GeoWorx Software License Agreement (this "Agreement") is made as of May 25, 2018 (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 ("Vendor"), and The City of Clearwater, a [state] [corporation/limited liability company/etc.] with a place of business at 100 S Myrtle Ave Clearwater, FL 33756-5520, ("Customer") (each of Vendor and Customer, a "Party"; together, the "Parties").

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### **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 "**Commencement Date**" means, with respect to specific Software, the date on which Customer receives the first copy of that Software.
- 1.3 "**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 Vendor.
- 1.4 "**Fees**" means Software license fees, Support fees and all other fees or charges arising under this Agreement.
- 1.7 "**Software**" means the software programs listed on Exhibit A, in object code only, and provided by Vendor to Customer, including any Upgrades provided to Customer.
- 1.8 "**Support**" means the technical support services described in Exhibit B.
- 1.9 "**Term**" is defined in Section 5.1.
- 1.10 "**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, Vendor hereby grants to Customer a nonexclusive, nontransferable, nonsublicensable license during the Term under Vendor's intellectual property rights to use the number of copies of the Software identified in Exhibit C 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, Vendor hereby grants to Customer a nonexclusive, nontransferable, nonsublicensable license during the Term under Vendor's intellectual property rights

to use and copy it 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; (b) Customer shall indemnify Vendor against all losses and damages arising from breach of this Agreement by its Affiliate; and (c) 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 Vendor. 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 Vendor. 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 Vendor's proprietary rights. Unless otherwise specifically agreed in writing, Vendor will own all rights in any copy, translation, modification, adaptation, or derivative work of the Software, including any improvements, whether or not authorized by Vendor, and Customer hereby assigns these rights to Vendor. At the request of Vendor, Customer

shall execute and deliver any additional instrument that may be appropriate to assign these rights to Vendor.

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 Vendor and Vendor 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 Vendor's 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 Vendor 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 Vendor's request and expense.

2.6 **Acceptance.** Without prejudice to any warranty rights, Customer will be deemed to have accepted the Software on the Commencement Date. All subsequent copies of a particular Software product will be deemed accepted upon acceptance of the first copy delivered to Customer.

2.7 **Source Code Escrow.** If indicated on Exhibit C, Customer will be made a beneficiary under Vendor's existing source code escrow arrangement. Vendor hereby grants to Customer a non-exclusive, nontransferable, nonsublicensable license during the Term under Vendor's intellectual property rights to use any released source code solely for maintenance of the Software and solely for its own internal business purposes and in accordance with the other restrictions in this Agreement.

3 **Technical Support.** Vendor shall provide Support and Upgrades in accordance with Exhibits B and C.

#### 4 **Fees.**

4.1 **Prices.** Customer shall pay the Fees for the Software, Support and Upgrades in accordance with Exhibit C.

4.2 **Payment Terms.** All payments are due within thirty (30) days after the Commencement Date. For all amounts not paid when due, Customer shall pay an additional charge equal to one and one-half percent (1.5%) of these amounts per month or partial month until paid, except that these additional charges will not apply to unpaid amounts that Customer is disputing in good faith. Customer shall also reimburse Vendor for all expenses incurred by Vendor in exercising its rights under this Agreement or applicable law with respect to a default in payment by Customer, including reasonable attorney fees and the fees of any collection agency retained by Vendor.

4.3 **Renewals.** Vendor shall provide an invoice for the renewal Fee (whether for term licenses or for annual Support) at least sixty (60) days prior to the end of the current term. The applicable term will be renewed automatically for subsequent one-year terms upon Customer payment of the applicable invoice. The Fee amounts for renewals are subject to an annual increase of up to the greater of: (a) three percent (3%); or (b) the Employment Cost Index ("ECI"), Total Compensation, Private Industry, Service-Providing Industries, Professional, Scientific and Technical Occupations, Not Seasonally Adjusted (December 2005 = 100), as published by the U.S. Department of Labor, Bureau of Labor Statistics (see <http://www.bls.gov/ncs/ect/>).

4.4 **Taxes.** All applicable transaction taxes, including sales and use taxes, value added 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 Vendor's pricing. If Vendor is required to collect Transaction Taxes from Customer and remit them to a taxing authority, Vendor will separately state the Transaction 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 Vendor's written request, Customer shall provide to Vendor 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 Vendor. Vendor may, at Vendor's 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 Vendor with all reasonable information and assistance (including copies of related software) required to enable Vendor to determine whether Customer is in compliance with this Agreement. If the audit reveals that Customer has underpaid Fees to Vendor, Customer will be invoiced for the underpaid Fees based upon Vendor's 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 5% or more of the Fees due in any year, Customer shall reimburse Vendor 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 terminated under Section 5.2 (the "Term").
- 5.2 **Termination.** Either Party may terminate this Agreement 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 Vendor in writing within thirty (30) days after termination that Customer has destroyed or returned to Vendor 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, 4.2, 4.4, 4.5, 5, 7, 8, 9, and 10 will survive termination of this Agreement.

## 6 **Warranties.**

- 6.1 **Limited Warranty.** Vendor 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 Vendor of a claim for breach under this Section 6.1 within ninety (90) days after the Commencement 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, Vendor 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 Vendor concludes this modification is impracticable, then Vendor will refund the Fees paid for the license of the nonconforming Software; but Customer must first return to Vendor 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 Vendor's 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 VENDOR 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 VENDOR 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 Vendor 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 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. VENDOR 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 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 VENDOR. 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 **Vendor Intellectual Property Indemnity.** Vendor shall 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 Vendor shall pay damages finally awarded against Customer in the IP Action, or those monetary damages agreed to by Vendor and the claimant in a monetary settlement of the IP Action; provided that Vendor will be relieved of these obligations unless Customer: (a) gives Vendor prompt written notice of the claim; (b) tenders to Vendor sole control of the defense or settlement of the IP Action; and (c) cooperates with Vendor in defending or settling the IP Action. If Vendor 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, Vendor 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 Vendor's determination commercially feasible, Vendor will have the right to terminate the license to that Software. If Vendor terminates a Software license as described above: (1) Vendor shall refund the applicable Fees paid for the license of that Software, prorated over a straight-line five-year period; and (2) Customer shall immediately deliver to Vendor 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, Vendor will not accept new orders for Software that is subject to a claim of infringement.
- 9.2 **VENDOR IP INDEMNITY LIMITATIONS.** THE RIGHTS GRANTED TO CUSTOMER UNDER

SECTION 9.1 WILL BE CUSTOMER'S EXCLUSIVE REMEDY AND VENDOR'S SOLE OBLIGATION AND LIABILITY FOR ANY ALLEGED INFRINGEMENT OF A PATENT, COPYRIGHT, TRADEMARK, OR OTHER PROPRIETARY RIGHT, INCLUDING MISAPPROPRIATION OF A TRADE SECRET. VENDOR HAS NO LIABILITY TO CUSTOMER, INCLUDING UNDER SECTION 9.1, FOR ANY CLAIM OF INFRINGEMENT CAUSED BY: (A) MODIFICATION OF THE SOFTWARE WITHOUT THE APPROVAL OF VENDOR; (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 VENDOR (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 **Customer Use Indemnity.** Except with respect to infringement of third-party rights for which Vendor is obligated to indemnify under Section 9.1, Customer shall defend at its own expense any suit, action or proceeding brought against Vendor by a third party based on any claim arising in connection with Customer's use of the Software (a "Use Action"), and Customer shall pay the damages incurred by Vendor in the Use Action, or those damages agreed to in a settlement of the Use Action, and all reasonable attorney fees and costs of litigation. Vendor shall: (a) notify Customer promptly in writing of the Use Action, (b) tender to Customer sole control of the defense or settlement of the Use Action at Customer's expense, provided, however, Customer may not settle a Use Action in a manner that would have an adverse impact on the business of Vendor without receiving the prior written consent of Vendor, and (c) cooperate and, at Customer's expense, assist in the defense. Vendor will have the right to participate at its own expense in any Use Action or related settlement negotiations using counsel of its own choice.

## 10 General.

10.1 **Export.** Customer shall comply with all applicable export laws and regulations of the United States of America, the European Union, 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 **Legal Expenses.** If legal action is taken by either Party to enforce its rights under this Agreement, all costs and expenses incurred by the prevailing Party, including reasonable attorney fees and costs of litigation, will be paid by the other Party.

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 Michigan, 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 Washtenaw County, Michigan, as permitted by law, except that Vendor 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 **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. Vendor may transfer this Agreement, together with all of its rights and duties under this Agreement, to a successor entity if Vendor 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.

10.9 **Independent Contractor; Use of Subcontractors.** Vendor is an independent contractor and nothing in this Agreement or related to Vendor's performance will be construed to create a joint venture relationship between Customer and Vendor, or an employee relationship between Customer and any Vendor employee or subcontractor. Vendor may, in its discretion, utilize subcontractors to provide services under this Agreement.

10.10 **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.

10.11 **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.

10.12 **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.

10.13 **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, oral 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.

10.14 **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.

10.15 **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 Vendor hereby rejects these terms and conditions.

<b>GEONEXUS TECHNOLOGIES L.L.C.</b>
Signature:
Name: William Heise
Title: President

Countersigned:  
FLORIDA

CITY OF CLEARWATER,

\_\_\_\_\_  
George N. Cretekos  
Mayor

By:

\_\_\_\_\_  
William B. Horne II  
City Manager

Approved as to form:

Attest:

\_\_\_\_\_  
Assistant City Attorney

\_\_\_\_\_  
Rosemarie Call  
City Clerk

## **EXHIBIT A**

### **GeoWorx® Software**

#### **GeoWorx® Sync**

GeoWorx Sync is an out-of-the-box solution that synchronizes data between Oracle WAM and an Esri ArcGIS geodatabase in a loosely coupled model. GeoWorx Sync facilitates a high degree of stability and flexibility, so that you can have secure, consistent, and dependable synchronization of data between Oracle WAM and the ArcGIS geodatabase. GeoWorx Sync uses a “full compare” change detection model operating independently from Oracle WAM and ArcGIS to synchronize data between the two databases. This guarantees data changes made in either system are not lost during synchronization. All configurations, reporting, alerting, and other operations are handled from an intuitive GeoWorx Sync desktop GUI. This includes functionality to support adding new GIS layers that need to be synchronized with Oracle WAM, making it easy to add new Oracle WAM locations or assets to the system.

#### **GeoWorx® Office**

GeoWorx Office is an insertable widget available through the Esri® ArcGIS Online platform. Using existing Esri map visualization and geoprocessing capabilities, GeoWorx Office provides a unified operating picture of infrastructure assets/features, service requests and work orders throughout the enterprise. This includes examples such as corrective and emergency work, preventive/predictive maintenance, repair vs. replacement, inspections, shutdowns/outages, etc. in a geospatial context.

GeoWorx Office includes the User Interface (UI) components and web services that handle the communication with Oracle Utilities Work and Asset Management



GeoWorx Office provides a connection to Oracle Utilities Work and Asset Management for advanced work and asset management capabilities such as:

- Viewing the results of Asset, Work Order, Work Request, and Service Request queries on the map
- Filtering Work Orders, work requests, and service requests shown on the map by attributes in Oracle Work and Asset Management such as status, priority, assignment, problem type, etc.

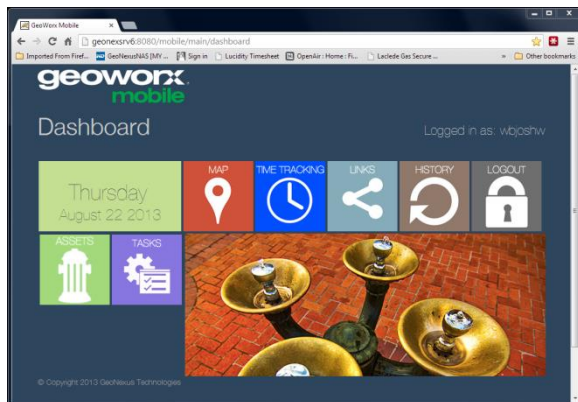


- Access OWAM records and Location Address Information.
- Create Work Orders, Work Requests, and Service Requests by using the map to select the proper assets or locations.
- View details of Assets, Work, and Locations in a spatial context within GeoWorx Office.
- Define Service Request, Work Request, and Work Order Location information from selected assets or a sketched area.

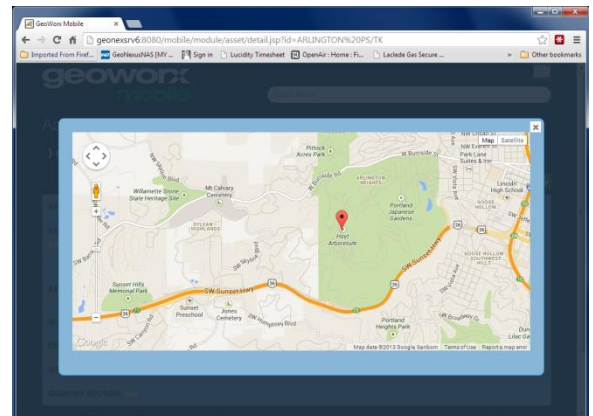
## GeoWorx® Mobile

GeoWorx Mobile is a mobile web-based solution built using HTML5 and JavaScript and runs in a browser such as Chrome. The application connects directly to Oracle Work and Asset Management (WAM) through a wireless connection to a web server that has connectivity to the WAM database server. Since this is a “connected” solution, the mobile workforce has real-time access to asset and work-related information in WAM. Using GeoWorx Mobile, crews can view and update work orders, enter labor time, and add materials used to complete the job. GeoWorx Mobile synchronizes changes made in the field with back office Oracle WAM. The application was designed to provide a simplified, easy-to-use graphical user interface so that users can access the functionality and data needed for field operations without all the complexity of the “out of the box” Oracle WAM application.

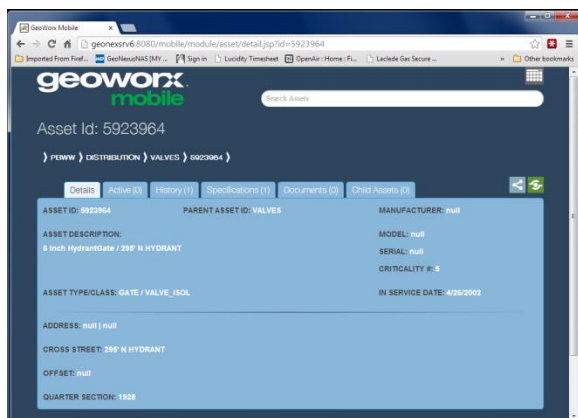
Screenshots of the main application modules are below:



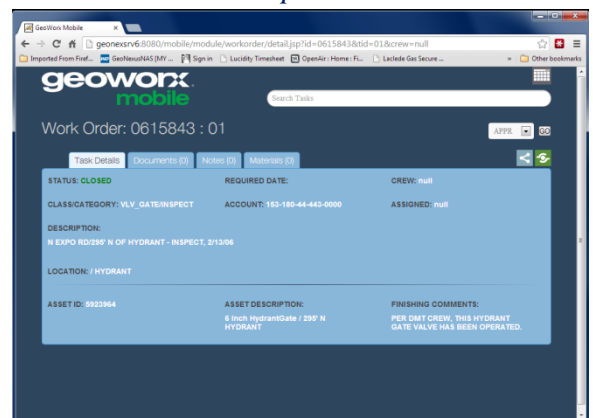
*Dashboard or Home Screen*



*Map Tab*



*Asset Detail Screen*

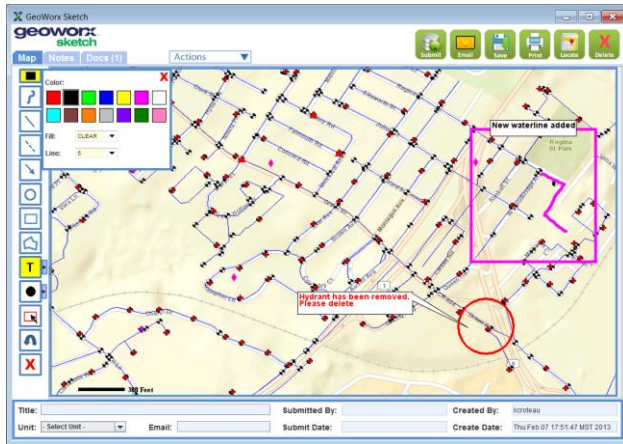


*Work Order Task Screen*

## GeoWorx® Sketch

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

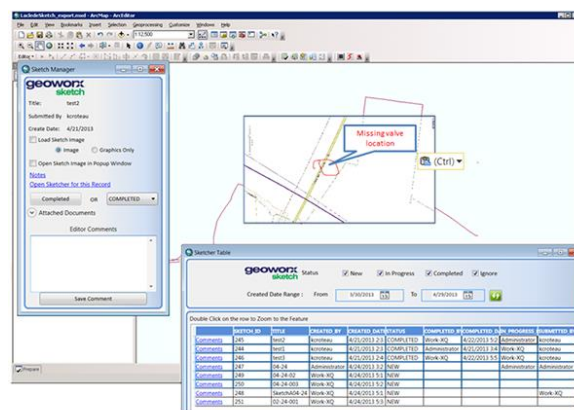
distributed workforce to inform asset managers of changes made to the infrastructure as a result of performing inspection, installation, repair or other maintenance activities. Sketches may be routed to others for comment and approval as well as submitted to authorized data editors for changes required to the Oracle WAM and GIS databases. This workflow-based solution starts with the redline creation and mark-up, continuing with redline sharing and submission to editors, and commencing with redline processing by GIS editors. GeoWorx Sketch is integrated with your Enterprise Asset Management map viewer, plugging into any existing Esri-based mapping system or your own enterprise web GIS viewer.



#### GeoWorx Sketch Highlights:

- A complete enterprise, workflow-based solution
- Easy-to-use map markup tools, for use by non-GIS experts
- Integration of Sketch with Oracle Work and Asset Management map viewer (GeoWorx Map)
- Integration with virtually any other enterprise map viewer, offering a single redlining solution
- Sketch sharing via Email
- Attach sketches to existing Work Orders and Service Requests
- Storage and retrieval from your existing Geodatabase
- Sketch tracking and processing (i.e. data edits) via the Sketch Manager
- A historical and digital record of data update requests

The GeoWorx Sketch Manager is an ArcMap desktop extension which is used by GIS/EAM data editors to track and process Sketch records that are submitted by users. With the GeoWorx Sketch Manager, data editors can view a table of all Sketch records and navigate to the geographic location of each Sketch by simply clicking on the Sketch record listed in the table.



Sketch records can be organized by their status (i.e., NEW, COMPLETE, IN PROCESS, IGNORE, etc.). Typically, data editors wish to review the NEW Sketch records so that they can process the requested data correction. Once the edit is addressed and completed, the data editor changes the Sketch status to "COMPLETE."

GeoWorx Sketch records are organized in the Sketch Manager Table. Each Sketch record is processed by the appropriate data editor. All information including the markup, notes, and attached documents is available to data editors. Sketch markup images are geo-referenced and viewable within ArcMap along with the enterprise asset data.

**EXHIBIT B**  
**SOFTWARE SUPPORT AND MAINTENANCE**

Vendor 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.** During the Support Term, Vendor 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 Vendor’s published holidays (see Schedule 2).

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

**1.1.2 Remote Access Support:** Vendor 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 Vendor (“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 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 Vendor to take appropriate action. Based upon the Severity Level, Vendor may begin investigation before a complete notification is received provided Customer promptly provides Vendor 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 LEVEL.** Customer shall initially assign one of four Severity Levels to a Customer Request, which may be subsequently changed by mutual agreement between Vendor and Customer. Vendor 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.** Vendor shall respond to Customer Requests as described below.

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

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

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

**1.5.4 Circumvention:** Vendor’s 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 Vendor 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 Vendor does not control the timing. If a Resolution cannot be accomplished in a timely manner and a temporary solution has been provided, Vendor 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, Vendor 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 Vendor Software:** Vendor 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 Vendor, Customer shall pay Vendor the applicable Additional Support fee and Travel Expenses associated with the deployment.
- 2.2 **Maintenance Patches:** In the course of providing support for Software, Vendor may determine it is necessary to make modifications to the Software or related documentation that correct errors or deficiencies or are identified by Vendor as mandatory changes to the Software.
- 2.3 **New Releases:** From time to time, as Vendor sees fit, Vendor 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, or to provide other updates, or are identified by Vendor as mandatory change to the Software.
- 2.4 **New Versions:** From time to time, as Vendor sees fit, Vendor 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 Vendor does not make generally available to customers who have contracted to receive 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:** Esri, IBM and Oracle 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, Vendor 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 Vendor of its intentions through a Customer Request. Vendor shall then determine if an update to the Software is required. Vendor shall notify Customer of the need to update or not. If Vendor 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:** Vendor may, at its sole discretion, provide updates to Software to support new versions of applicable Third Party Products. If Customer requests Vendor to update Software to support a Third Party Product new version, Customer shall pay Vendor 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 covered under standard support as 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. Developer support for Customer
  5. Enhancement requests associated with Software
  6. Support outside of the Principal Period of Support
  7. 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 Vendor written notice of the change. Vendor will direct all official communications to the primary contact.
- 6.2 Provide Vendor 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 Vendor while providing services hereunder.
- 6.4 Be responsible for installation, testing and deployment of New Version, 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 Vendor 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 Vendor's obligations under this Exhibit apply to the Customer only. Vendor has no obligation to provide any Support or other services to Customer's customers, agents or vendors.
- 7.2 Customer acknowledges that Vendor does not provide help desk or similar services to Customer's end users.
- 7.3 This Exhibit does not obligate Vendor to provide on-site services, except to the extent that Vendor believes on-site Support is necessary for it to fulfill its obligations hereunder.
- 7.4 Support and Upgrades are contingent upon the use of unmodified Software, unless modifications were approved by Vendor, operated in accordance with Vendor's 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, Vendor 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 Vendor 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 Vendor.

**Schedule 1**  
**Authorized Customer Contact Information**

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

**Schedule 2**  
**Vendor 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



**EXHIBIT C**  
**GeoWorx® Software License Fees**

**Term: October 1, 2018 to September 30, 2021 (3-Year Term)**

ITEM	ANNUAL FEE	3 YEAR FEE
GeoWorx Suite 3-Year ELA <i>Includes technical support and software updates/fix packs.</i>	\$120,000.00	\$360,000.00
<b>Total Software License Fee</b>	<b>\$120,000.00</b>	<b>\$360,000.00</b>