



Town of Highland Park, Texas
TOWN COUNCIL MEETING
AGENDA

8:00 AM
February 17, 2026

4700 Drexel Drive Highland Park, TX 75205
Town Council Chambers

I. CALL TO ORDER

II. INVOCATION

III. PUBLIC COMMENT

This portion of the agenda is the public's opportunity to address the Town Council about any item listed on the agenda, except public hearings. Comments related to public hearings will be heard when the specific hearing begins. Public comments are limited to three (3) minutes per speaker, unless otherwise required by law. Per the Texas Open Meetings Act, the Town Council is not permitted to take action on or discuss any item not listed on the agenda. Items suggested for action may be placed on a future agenda at the Town Council's sole discretion.

IV. CONSENT AGENDA

All items under the Consent Agenda are considered to be routine by the Town Council and will be enacted by one motion and vote. There will be no separate discussion of items unless a request by a Council Member is made prior to the time of the Town Council voting on the motion. In such event, the item will be removed, without debate, from the general order of business and considered in its normal sequence.

- A. Take action to authorize the Town Administrator to execute a contract with SC Tracking Solutions and approve an ordinance for Backflow Prevention.
- B. Take action authorizing the Town Administrator to execute an Interlocal Agreement with the North Central Texas Council of Governments for NearMap imagery.
- C. Take action on the minutes of the Town Council meeting held on February 3, 2026.
- D. Take action on the minutes of the Town Council study session held on February 3, 2026.

V. ADJOURNMENT

Any item on this posted agenda could be discussed in closed session as long as it is within one of the permitted categories under Sections 551.071 through 551.076 and 551.087 of the Texas Government Code.

A member of the public may address the governing body regarding an item on the agenda either before or during the body's consideration of the item, upon being recognized by the presiding officer or the consent of the body.

SPECIAL ACCOMMODATIONS FOR TOWN COUNCIL MEETINGS: Let us know if you need special assistance of any kind.

Please contact the Town of Highland Park Administrative staff at (214) 521-4161 from 7:30 a.m.

- 4:30 p.m., Monday through Friday.



**Town of Highland Park
Town Council
Tuesday, February 17, 2026**

Item Coversheet

Take action to authorize the Town Administrator to execute a contract with SC Tracking Solutions and approve an ordinance for Backflow Prevention.

PRESENTED BY: Lori Chapin, Director of Engineering

BACKGROUND:

Town Council directed Town staff to create a concierge-based service to assist residents with testing their backflow devices. The Town will perform the testing utilizing a 3rd party vendor. The cost of the service will be reimbursed through the Town water bill. The following describes the details of the program.

GOVERNING AGENCIES

The governing agencies for this program include the U.S. Environmental Protection Agency (“EPA”) via the Texas Commission on Environmental Quality (“TCEQ”). The program, as required through the U.S. EPA Federal Clean Water Act of 1972, and the TCEQ Texas Administrative Code (“TAC”) Title 30, Part 1, Chapter 290, Subchapter D and Chapter 344, Subchapter E, mandates that all public water suppliers require the installation, maintenance, and ongoing testing of backflow prevention assemblies to protect against contamination of the public water supply. This requirement applies to fire suppression, irrigation systems, and commercial equipment.

CURRENT STATUS

The Town adopted the 2024 International Residential Code (“IRC”) and the 2024 International Plumbing Code (“IPC”). The Town relies on the IPC as the primary means of cross-connection installation control and backflow prevention, requiring backflow prevention assemblies for all new residential and commercial construction.

Cross connection

A cross connection refers to an actual or potential contamination hazard between potable water supplies and any non-potable substances or sources that could make water unsafe to drink. Common cross-connections include lawn sprinklers, foundation watering systems, and garden hoses.

Backflow

Water flowing in the reverse of its intended direction, which can occur from a loss of pressure in the supply lines. Pressure changes can occur for many reasons, including broken water valves, malfunctioning sprinklers, emergency water usage, and improperly installed valves.

Cross connections and backflow can cause pollutants and contaminants to enter the clean water supply, compromising its safety and quality. While these devices are required for new residential and commercial construction, the Town does not currently have a formal program to address testing requirements, frequency, and enforcement. In addition, the Town does not currently have a full inventory of installed backflow prevention assemblies or operational status.

SOLUTION

Town staff recommend engaging SC Tracking Solutions (“SCTS”) to assist the Town with its Backflow Prevention Program. SCTS will provide a full-service solution to notify entities and identify, track, and test backflow prevention assemblies. The service will include all new and existing residential and commercial entities for irrigation and fire lines. The following outlines the general process for locating and testing each device:

Existing Residential/Commercial Entities

- a. Notify each entity
- b. Entity schedules a time to locate and test the device
- c. The device is tested:
 - i. Pass - information is recorded and is placed on an annual inspection schedule
 - ii. Fail - entity is notified and responsible for scheduling and making repairs via an approved tester (list/link will be provided); once repairs are made and device has been fully tested, it is placed on an annual inspection schedule
- d. Entity will receive an annual notice by SCTS when it is time to schedule the next inspection

New Construction

- a. Builders are provided a list of registered testers
- b. Fee is paid by the registered tester
- c. Tester processes the report with SCTS and the Town receives a copy
- d. This report is required as part of the Certification of Occupancy release
- e. Device is placed on annual testing schedule
- f. Entity will receive an annual notice by SCTS when it is time to schedule the next inspection

COST

The contract with SCTS includes all requirements for implementing the Backflow Prevention Program. The contract includes:

- A one-time fee of \$25,000 to help with discovery (based on an hourly not to exceed amount) and will only be used as needed to find locations not obviously identified or missing. Examples may include medians, parks, Town Hall, etc.
- Payment for Commercial or Residential testing, price per unit:

Irrigation/Domestic	\$75 per unit
Fire	\$85 per unit

Price includes driving to and from, testing, reporting, tester insurance and background check. Price is fixed for three years and includes all notices and postage. It is estimated that the Town has approximately 6,000 backflow devices.

The Town will be billed by SCTS for the devices tested monthly. As the devices are tested, the cost for the test will be conveniently included on the entity's water bill.

PUBLIC ENGAGEMENT

An important part of the program is the public education component. The public engagement includes several steps:

- Mailer – introducing the program
- Introductory letter - describing the program and what to expect
- Scheduling letter - instruction for scheduling the backflow device testing
- Door hanger - notification to entity if any repairs are needed
- Letter to building community - regarding the new program and required steps for testing/reporting

ENFORCEMENT

To formalize the Town's Backflow Prevention Program, Town staff recommend developing an ordinance to address, among other items, testing frequency and enforcement.

Testing frequency has been established by the International Plumbing Code (IPC), 2024 Edition, and International Residential Code (IRC), 2024 Edition, which states that upon installation, backflow prevention assemblies shall be tested annually for high hazard locations. This would include fire suppression, irrigation and commercial equipment (as applicable). The ordinance details this frequency.

Once the backflow assembly inventory has been completed and owners have been notified, there may be some that do not respond or comply with the requirements. Options for enforcement to address these instances could include one, or some combination, of the following:

- First, second, and third (final) notices, with the final notice providing a timeframe for shutting off the water.
- Violations of the backflow ordinance are enforced as a Class C misdemeanor, punishable in accordance with Section 1.01.009 of the Town's Code of Ordinances.

RECOMMENDATION

Town staff recommend authorizing the Town Administrator to execute a contract and approving an ordinance for Backflow Prevention.

FINANCIAL IMPACT

While the anticipated annual cost of the program is approximately \$600,000, the FY 2025-2026 Budget included half of the anticipated cost, or \$300,000, in anticipation of beginning the program mid-year. The total cost of the program will be based on the actual number of backflow devices tested. However, the cost will be reimbursed by the residential and commercial entities through the Town water bill.

ATTACHMENTS

Ord. No. 2164 Backflow Prevention Ordinance - 2026 - FINAL, HP-SCTS Professional Services Form Contract 02-2026 REV SBT 2026.02.04 - FINAL

ORDINANCE NO. 2164

AN ORDINANCE OF THE TOWN OF HIGHLAND PARK, TEXAS, AMENDING CHAPTER 13 "UTILITIES" OF THE CODE OF ORDINANCES OF THE TOWN OF HIGHLAND PARK, TEXAS, BY ADDING A NEW ARTICLE 13.09 ENTITLED "BACKFLOW PREVENTION"; PROVIDING A PENALTY CLAUSE; PROVIDING A SAVINGS/REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING FOR SAID ORDINANCE TO TAKE EFFECT FROM AND AFTER ITS DATE OF PUBLICATION.

WHEREAS, the Town Council of the Town of Highland Park ("Town Council") has determined the necessity of adopting backflow prevention regulations to comply with the requirements of Chapter 290 of the Texas Commission on Environmental Quality Rules and Regulations for Public Water Systems and to ensure the protection of the water supply of the Town of Highland Park ("Town"); and

WHEREAS, the Town Council is of the opinion that the adoption of backflow prevention regulations is in the best interest of the Town and will promote the health, safety, and welfare of the citizens of the Town and the general public.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF HIGHLAND PARK, TEXAS:

SECTION 1. Findings Incorporated. The findings set forth above are incorporated into the body of this ordinance as if fully set forth herein.

SECTION 2. Amendment. Chapter 13, "Utilities," of the Code of Ordinances of the Town is hereby amended by adding a new article 13.09, entitled "Backflow Prevention" as set forth in Exhibit A attached hereto and incorporated herein for all purposes.

SECTION 3. Penalty. Any person, firm, entity or corporation who violates any provision of this Ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in a sum not exceeding Two Thousand and No/100 Dollars (\$2,000.00). Each continuing day's violation shall constitute a separate offense. The penal provisions imposed under this Ordinance shall not preclude the City from filing a civil suit to enjoin the violation. The City retains all legal rights and remedies available to it pursuant to local, state, and federal law.

SECTION 4. Savings/Repealing. All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

SECTION 5. Severability. Should any section, subsection, sentence, clause, or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. The Town hereby declares that it would have passed this Ordinance, and each

section, subsection, sentence, clause, or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, and phrases be declared unconstitutional or invalid.

SECTION 6. Incorporation. This ordinance shall be deemed to be incorporated into the Code of Ordinances of the Town of Highland Park, Texas.

SECTION 7. Effective Date. This ordinance shall be in effect immediately following its passage, approval, and publication as provided by law, and it is accordingly so ordained.

DULY PASSED, APPROVED, AND ADOPTED this 17th day of February, 2026.

APPROVED AS TO FORM:

APPROVED:

Susan B. Thomas
Town Attorney

Will C. Beecherl
Mayor

ATTEST:

Joanna Mekeal
Town Secretary

Exhibit A
Backflow Prevention Ordinance

ARTICLE 13.09 Backflow Prevention

§ 13.09.001 Purpose and Authority

This Ordinance is adopted to protect the public potable water supply from contamination and pollution due to backflow or back-siphonage. This Ordinance is enacted pursuant to the authority granted under the Texas Health and Safety Code and Title 30 of the Texas Administrative Code (TAC), including but not limited to 30 TAC §290.44(h), as administered by the Texas Commission on Environmental Quality (TCEQ). The purpose of this Ordinance is to ensure compliance with all applicable federal and state regulations governing public water systems and to safeguard public health as follows:

- (a) To protect the public potable water supply of the Town from the possibility of contamination or by isolating within the customer's internal distribution system(s), such contaminants or pollutants which could backflow into the public water system.
- (b) To promote the elimination or control of the existing cross-connections, actual or potential, between the potable water system and the nonpotable systems, plumbing fixtures and industrial piping systems.
- (c) To provide for the maintenance of a continuing program of cross-connection control that will systematically and effectively prevent the contamination or pollution of all potable water systems.

§ 13.09.002 Definitions

For the purposes of this Ordinance, the following terms shall have the meanings set forth below:

Approved. Accepted by the Town as meeting an applicable specification stated or cited in this article or as suitable for the proposed use.

Backflow. The reversal of the normal direction of water flow, which may allow contaminants or pollutants to enter the public water system.

Backflow Prevention Assembly (BPA). An approved mechanical device designed to prevent backflow, including but not limited to Reduced Pressure Principle Assemblies (RP), Pressure Vacuum Breakers (PVB), and Double Check Valve Assemblies (DC).

Backflow prevention assembly tester (BPAT). A tester who is qualified to test backflow prevention assemblies on any domestic, commercial, industrial or irrigation service except firelines. Recognized backflow prevention assembly testers shall have completed a TCEQ Executive Director approved course on cross-connection control and backflow prevention assembly testing, pass an examination administered by the TCEQ Executive Director, and hold a current license as a backflow prevention assembly tester. The two main categories for a BPAT are as follows:

- General Tester means backflow prevention assembly testers that has completed an executive director approved course on cross-connection control and backflow prevention assembly testing, pass an examination administered by the executive director, and hold a current license as a backflow prevention assembly tester.
- Fireline Tester means a licensed backflow prevention assembly tester that has completed an executive director approved course on cross-connection control and backflow prevention assembly testing, pass an examination administered by the executive director, and hold a current

license as a backflow prevention assembly tester may test and repair assemblies on a fire protection sprinkler system only if they are permanently employed by a fire sprinkler contractor registered through the State Fire Marshal's Office. The Texas Insurance Code requires that any person performing maintenance on any part of the overhead or underground piping of a fire sprinkler system, including backflow prevention assemblies, must be employed by a registered fire sprinkler contractor unless exempted in the sprinkler licensing law.

Backflow Prevention Assembly Test Gauge. Differential pressure gauge used for testing the backflow device.

Cross-Connection. Any physical connection between the public water system and a source of non-potable water or potential contaminant.

Certified Tester. An individual licensed or certified by the State and registered with the Town to test backflow prevention assemblies.

Commercial. A property or location which is used primarily for manufacture, production, storage, wholesaling or retailing of services which is or may be placed in the flow of commerce or any property or location which is used primarily for the provision of any service

Customer. A person or entity that receives water service from the Town at a service address, including but not limited to the owner, tenant, lessee, occupant, property manager, or any other person or entity in control of the premises or responsible for water utility service.

Health hazard. An actual or potential threat of contamination of a physical, chemical, biological or toxic nature to the public water system or a consumer's potable water system that would present a danger to health.

High-Hazard Connection. Any connection that, in the judgment of the Town, poses an actual or potential threat of contamination to the public water system.

Owner. A person, firm, corporation, partnership, association, or other legal entity holding legal title to real property, as reflected in the records of the county appraisal district or deed records of the county in which the property is located.

Pressure loss, Any water pressure drop caused by the installation of a backflow assembly.

Thermal expansion. An increase in pressure created when water is heated in a closed plumbing system.

Town. The Town of Highland Park, Texas, including any third-party contractor or agent performing services on behalf of the Town in accordance with this article.

Town Administrator. The Town Administrator of the Town of Highland Park or his/her designee.

§ 13.09.003 Applicability

This Ordinance shall apply to all water service connections to the public water system, including but not limited to residential, commercial, industrial, institutional, irrigation, and fire protection systems.

§ 13.09.004 Mandatory Installation of Backflow Prevention Assemblies

- (a) In accordance with 30 TAC §290.44(h), backflow prevention assemblies shall be required on all:
 - (1) High-hazard connections;
 - (2) Commercial facilities;
 - (3) Fire protection systems;
 - (4) Irrigation and lawn sprinkler systems;
 - (5) Specific residential connections where an actual or potential hazard exists, including but not limited to properties with auxiliary water supplies, swimming pools, private wells, rainwater harvesting systems connected to plumbing, or chemical injection systems.
- (b) The type of backflow prevention assembly required shall be determined by the degree of hazard in accordance with TCEQ rules.
- (c) Reduced Pressure Principle (RP) assemblies shall be required for high-hazard commercial or industrial connections where contaminants or pollutants may enter the water system.
- (d) Double Check Valve Detector (DCDA) assemblies shall be required for fire and irrigation systems, unless otherwise approved by the Town.

§ 13.09.005 Device Standards and Installation Requirements

- (a) All backflow prevention assemblies shall:
 - (1) Be approved by TCEQ-recognized testing agencies and listed on the current TCEQ-approved backflow prevention device list;
 - (2) Be installed in accordance with manufacturer specifications, TCEQ requirements, and applicable provisions of the International Plumbing Code (IPC), 2024 Edition, and International Residential Code (IRC), 2024 Edition, as adopted and amended by the Town;
 - (3) Be installed with adequate clearance for testing, maintenance, and repair as required by 30 TAC §290.44(h);
 - (4) Be protected from freezing, flooding, and physical damage.
- (b) No backflow prevention assembly shall be bypassed, removed, relocated, or rendered inoperative without written approval from the Town.
- (c) It shall be the responsibility of the customer to eliminate the possibility of thermal expansion if a closed system has been created by the installation of a backflow assembly.
- (d) Any water pressure loss caused by the installation of a backflow assembly shall be the responsibility of the customer and not the Town.

§ 13.09.006 Inspection and Testing

- (a) All required backflow prevention assemblies shall be tested in accordance with TCEQ requirements, and applicable provisions of the International Plumbing Code (IPC), 2024 Edition, and International Residential Code (IRC), 2024 Edition, as adopted and amended by the Town:

- (1) At the time of installation;
 - (2) Upon repair, overhaul, or relocation;
 - (3) At least annually for all assemblies;
 - (4) At additional intervals as required by the Town or TCEQ.
- (b) Annual testing shall be conducted by the Town. The cost of the annual testing is the responsibility of the customer, and such cost shall be included on the customer's water bill. Any device failing inspection shall be repaired, at the sole expense of the customer, within the time-frame determined by the Town. The customer shall engage a Certified Tester to perform the repairs and follow up testing. Follow-up test results shall be submitted to the Town within the timeframe and in the format prescribed by the Town and shall include all information required by TCEQ rules.
- (c) The Town may inspect or require an inspection of any premises, facilities, real property, or buildings connected to the public water system. An inspection may include:
- (1) a survey of the property or facilities, real property, or buildings for cross connections;
 - (2) inspection of existing backflow prevention assembly installation;
 - (3) annual testing and certification of assemblies by a licensed backflow prevention assembly tester, on or before the date established by the Town; and
 - (4) a customer service inspection that the Town has determined reasonably necessary to identify or prevent cross-connections, potential contaminant hazards, and illegal lead materials.
- (d) Existing residential/commercial customers.
- (1) For premises existing prior to the start of this program, the Town or its third-party contractor will notify each customer of the need to locate and test its backflow assemblies.
 - (2) Upon notification, the customer shall, within fifteen (15) calendar days, schedule a time with the Town or its third-party contractor to locate and test the device(s). Failure to schedule the required inspection may result in interruption of water service.
 - (3) The Town or its third-party contractor will perform evaluations and inspections and inform the customer in writing of the inspection results.
 - (4)
 - (5) If the backflow device passes inspection, the information about the device will be recorded and it will be placed on an annual inspection schedule.
 - (6) If the backflow device fails inspection, the customer will be notified in writing of the corrective action required, the approved method(s) of achieving the correction, and the time allowed for the correction to be made. Once repairs are made and the device has been fully tested, it will be placed on an annual inspection schedule.
 - (7) The cost of the testing is the responsibility of the customer, and such cost shall be included on the customer's water bill.
- (e) New construction.
- (1) The builder shall be provided with a list of registered testers as part of the building process.
 - (2) The builder will pay the required fee to the registered tester.
 - (3) The registered tester will test the device and process the report with the Town or its third-party contractor.
 - (4) Permanent water service shall not be provided until all backflow prevention assemblies have been tested, are operational, and a CSI has been completed. Except in cases where the testing of backflow prevention assemblies must be delayed until the installation of internal production or auxiliary equipment, the Town shall not approve a certificate of occupancy until all backflow

prevention assemblies are operational, have been tested, and all assembly test reports have been turned in to the Town in conformance with the Town's reporting procedures.

- (5) The device will be placed on an annual inspection schedule.
- (f) The Town shall not be liable for damage caused to any backflow prevention assembly as a result of inspection or testing performed under this section.
- (g) If the Town determines at any time that a serious threat to public health exists, the water service may be terminated immediately.

§ 13.09.007 Right of Way Encroachment

- (a) No person shall install or maintain a backflow prevention assembly upon or within any Town right-of-way except as allowed by this section.
- (b) The owner of a backflow prevention assembly that has been installed upon or within a Town right-of-way as provided by this division shall, at the request of the Town and at the owner's sole expense, immediately relocate the assembly when such relocation is deemed necessary or appropriate by the Town.
- (c) The Town shall not be liable for any damage done to or caused by an assembly installed in the Town right-of-way.
- (d) A person commits an offense if the person fails to relocate a backflow prevention assembly located in or upon any Town right-of-way after receiving a written notice from the Town.

§ 13.09.008 Customer Responsibilities

- (a) The customer shall be responsible for:
 - (1) Installation of required backflow prevention assemblies;
 - (2) Ongoing maintenance and repair;
 - (3) Scheduling annual testing in accordance with this ordinance;
 - (4) All costs associated with compliance with this Ordinance.
- (b) Failure of a backflow prevention assembly shall be promptly corrected at the customer's expense.

§ 13.09.009 Tester Registration

- (a) All Certified Testers performing testing within the Town shall hold a current Backflow Prevention Assembly Tester (BPAT) license issued by TCEQ and shall be registered with the Town prior to conducting any tests.
- (b) Registration may require proof of current licensure, calibration records for test equipment, and compliance with Town administrative requirements.
- (c) The Town may maintain and publish a list of registered testers for customer convenience; however, customers may use any TCEQ-licensed and Town-registered tester.

§ 13.09.010. Inspections and Right of Entry

The Town shall have the right to enter properties at reasonable times and with reasonable notice to customer to inspect for cross-connections and verify compliance with this Ordinance, subject to applicable law.

§ 13.09.011 Enforcement and Penalties

- (a) Non-compliance with this Ordinance or with 30 TAC §290.44(h), including failure to install required assemblies, failure to submit test reports, or failure to maintain assemblies in proper working condition, shall constitute grounds for enforcement action.
- (b) The Town may provide written notice of violation and a reasonable compliance period, except where an immediate threat to public health exists.
- (c) Enforcement actions may include administrative penalties as allowed by Texas law and termination of water service in accordance with TCEQ rules and Town policies.
- (d) Water service shall not be restored until all violations are corrected, required test reports are submitted, and all applicable fees are paid.
- (e) Criminal Penalty. A person violating this article commits a Class C misdemeanor, punishable in accordance with Section 1.01.009 of the Town's Code of Ordinances.
- (f) Civil Remedies. The Town attorney may enforce this article by injunction, declaratory relief, or other action at law or in equity. The Town attorney may initiate a suit against the owner, occupant, tenant, manager, or water customer of the property or facility that is the source of a violation of this article, to recover a civil penalty not to exceed \$2000 for each violation. Each day that a violation continues constitutes a separate violation.

§ 13.09.012 Appeals

Any customer aggrieved by a determination made under this Ordinance may submit a written appeal to the Town Administrator. The Town Administrator's decision shall be final for purposes of the Town's administrative process, without affecting any rights the customer may have under state law to appeal to the Texas Commission on Environmental Quality or other regulatory authorities.

§ 13.09.013 Conflicts with other codes

Where the provisions of this article conflict with any other Town building, plumbing, or technical code provisions related to backflow prevention or cross-connection control, the more restrictive provision shall govern.

AGREEMENT FOR CONSULTANT SERVICES

This agreement (“Agreement”) is made by and between the Town of Highland Park, Texas, a water customer-rule municipal corporation (“Town”) and SC Tracking Solutions, a Texas LLC (“Consultant”) (each a “Party” and collectively the “Parties”), acting by and through their authorized representatives.

RECITALS:

WHEREAS, the Town desires to engage the services of the Consultant as an independent contractor, and not as an employee, to provide the services described in **Exhibit “A”** (the “Scope of Services” or “Services”) to assist the Town with the following project: **Backflow Testing, Discovery and Record Management** on the terms and conditions set forth in this Agreement; and

WHEREAS, the Consultant desires to render services for the Town on the terms and conditions set forth in this Agreement; and

WHEREAS, Town has determined the Consultant is qualified to provide the Services set forth in this Agreement; and

NOW THEREFORE, in consideration of the foregoing recitals, the mutual covenants set forth herein, and other valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the Parties agree as follows:

Article I

Incorporation of Recitals/Agreement Documents/Term

1.1 Incorporation of Recitals. The foregoing recitals are true and correct and are incorporated herein.

1.2 Agreement. This Agreement shall be comprised of the following documents:

- (1) this Agreement, duly authorized written change orders, and any amendment hereto;
- (2) **Exhibit “A”** Scope of Services;
- (3) **Exhibit “B”** Project Schedule;
- (4) **Exhibit “C”** Insurance Requirements; and
- (5) **Exhibit “D”** Pricing and Fee Schedule

In the event of a conflict between one or more of the terms and provisions contained within the foregoing documents, in order to resolve any such conflict, priority of interpretation shall be given in the order that those documents are listed in this section.

1.3 Term. This Agreement shall commence on the last date of execution hereof (“Effective Date”) and continue until completion of the Services, unless sooner terminated as provided herein.

Article II Scope of Service

2.1 The Consultant shall perform the Services in connection with the Project as set forth in the Scope of Services. The Consultant, if a licensed engineer or registered architect shall perform the Services: (i) with the prevailing professional skill and care ordinarily provided by competent engineers or architects, as the case may be, practicing in the same or similar locality and under the same or similar circumstances and professional license but not limited to the exercise of reasonable, informed judgments and prompt, timely action; and (ii) as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer or architect, as the case may be. If the Consultant is not a licensed engineer or registered architect, the Consultant shall perform the Services: (i) with the professional skill and care ordinarily provided by similar consultants practicing in the same or similar locality and under the same circumstances and applicable licenses or certifications; and (ii) as expeditiously as is prudent considering the ordinary skill and care of similar competent consultants.

2.2 The Parties acknowledge and agree that any and all opinions provided by the Consultant in connection with the Scope of Services represent the professional judgment of the Consultant, in accordance with the standard of care applicable by law to the Services performed hereunder.

2.3 All information, documents, records and reports developed as a result of the Services provided under this Agreement shall be the property of the Town (hereinafter “Documents”). Any use by Consultant of the Documents developed hereunder, whether for publication or for work with other clients, must receive prior written permission from the Town. During the term and all renewals of this Agreement, all such Documents generated, compiled, collected or collated shall be maintained in the format required by Town. Further, all such Documents shall be returned to Town upon termination of this Agreement, and upon such termination shall be returned in the format required by Town.

Article III Schedule of Work – Project Completion

The Consultant agrees to complete the required Services and submit all work required by the Town in accordance with the Project Schedule, a copy of which is attached hereto and

incorporated herein as **Exhibit “B”, “Project Schedule”** and as outlined in **Exhibit “A” “Scope of Services”**, ongoing annually with a price lock for 3 consecutive years, exclusive of any review time by Town, from the date of written Notice to Proceed from Town to Consultant. The Parties hereto agree and understand that time is of the essence and that failure to timely perform obligations as required under this Agreement will result in damages to the other Party.

Article IV Compensation and Method of Payment

4.1 Compensation to Consultant for performance of Services shall not exceed **\$75 per irrigation test and \$85 per fire test**. Consultant will be compensated in accordance with the Fee Schedule included in Consultant’s Proposal, a copy of which is attached hereto and incorporated herein as **Exhibit “D” “Pricing and Fee Schedule”**. Unless otherwise provided herein, payment to the Consultant shall be monthly based on the Consultant’s monthly progress report and detailed monthly itemized statement for Services that shows the names of the Consultant’s employees, agents, contractors performing the Services, the time worked, the actual Services performed, the rates charges for such service, reimbursable expenses, the total amount of fee earned to date, percentage of work completed on the Project through the end of the then submitted billing period, and the amount due and payable as of the current statement, in a form reasonably acceptable to the Town. Monthly statements shall include authorized non-salary expenses with supporting itemized invoices and documentation. The Town shall pay such approved monthly statements within thirty (30) days after receipt and Town verification of the Services and expenses unless otherwise provided herein. The final payment of the compensation shall be made after satisfactory completion of the Services following the Town acceptance of the study, report, recommendation or other work set forth in the Scope of Services. Nothing contained in this Agreement shall require Town to pay for any work that is unsatisfactory as determined by Town or which is not submitted in compliance with the terms of this Agreement, nor shall failure to withhold payment pursuant to the provisions of this section constitute a waiver of any right, at law or in equity, which Town may have if Consultant is in default, including the right to bring legal action for damages or for specific performance of this Agreement. Waiver of any default under this Agreement shall not be deemed a waiver of any subsequent default.

4.2 Unless otherwise provided in the Scope of Services, the Consultant shall be responsible for all expenses related to the Services provided pursuant to this Agreement including, but not limited to, travel, copying and facsimile charges, telephone, internet and email charges. If additional services, trips or expenses are requested, Consultant will not provide such additional services until authorized by Town in writing to proceed. The Scope of Services shall be strictly limited. Town shall not be required to pay any amount in excess of the amount identified in the

preceding paragraph unless Town shall have approved in writing in advance (prior to the performance of additional work) the payment of additional amounts.

4.3 The hourly rates set forth in the Scope of Services, if any, shall remain in effect during the term of this Agreement. Any changes to established hourly rates shall require the prior written consent of the Town.

4.4 Consultant shall keep accurate records of its Services and expenses incurred in the performance of this Agreement and shall make the same available to Town for inspection and copying upon five (5) days' notice thereof. These records shall be kept by Consultant for two (2) years following the expiration of this Agreement.

Article V

Devotion of Time; Personnel; and Equipment

5.1 The Consultant shall devote such time as reasonably necessary for the satisfactory performance of the Services under this Agreement. Should the Town require additional services not included under this Agreement, the Consultant shall make reasonable effort to provide such additional services within the time schedule without decreasing the effectiveness of the performance of services required under this Agreement, and shall be compensated for such additional services on a time and materials basis, in accordance with Consultant's standard hourly rate schedule, or as otherwise agreed between the Parties. When Consultant is directed to revise or expand the Scope of Services under this Section of the Agreement, Consultant shall provide Town a written proposal for the entire costs involved in performing such additional services. Prior to Consultant undertaking any revised or expanded services as directed by Town under this Agreement, Town must authorize in writing the nature and scope of such services and accept the method and amount of compensation and the time involved in all phases of the Project. It is expressly understood and agreed by Consultant that any compensation not specified in Article IV herein above may require Highland Park Town Council approval and is subject to the current budget year limitations.

5.2 To the extent reasonably necessary for the Consultant to perform the Services under this Agreement, the Consultant shall be authorized to engage the services of any agents, assistants, persons, or corporations that the Consultant may deem proper to aid or assist in the performance of the Services under this Agreement. The Consultant shall provide written notice to and obtain written approval from the Town prior to engaging services not referenced in the Scope of Services. The cost of such personnel and assistance shall be included as part of the total compensation to be paid Consultant hereunder and shall not otherwise be reimbursed by the Town unless otherwise provided herein.

5.3 The Consultant shall furnish the facilities, equipment and personnel necessary to perform the Services required under this Agreement unless otherwise provided herein.

5.4 The Town may require that Consultant submit monthly progress reports and attend monthly progress meetings scheduled by the Town or more frequently as may be required by the Town from time to time based upon Project demands. Each progress report shall detail the work accomplished and special problems or delays experienced on the Project during the previous report period, and the planned work activities and special problems or delays anticipated for the next report period.

Article VI Miscellaneous

6.1 Entire Agreement. This Agreement constitutes the sole and only agreement between the Parties and supersedes any prior understandings written or oral agreements between the Parties with respect to this subject matter.

6.2 Assignment. The Consultant may not assign this Agreement without the prior written consent of Town. In the event of an assignment by the Consultant to which the Town has consented, the assignee shall agree in writing with the Town to personally assume, perform, and be bound by all the covenants and obligations contained in this Agreement.

6.3 Successors and Assigns. Subject to the provisions regarding assignment, this Agreement shall be binding on and inure to the benefit of the Parties to it and their respective heirs, executors, administrators, legal representatives, successors and assigns.

6.4 Governing Law and Venue. The Agreement is entered into subject to the Town Charter and ordinances of the Town, as same may be amended from time to time, and is subject to and is to be construed, governed and enforced under all applicable State of Texas and federal laws. Consultant will make any and all reports required per federal, state or local law including, but not limited to, proper reporting to the Internal Revenue Service, as required in accordance with Consultant's income. Situs of this Agreement is agreed to be Dallas County, Texas, for all purposes, including performance and execution. The parties to this Agreement agree and covenant that this Agreement will be enforceable in Highland Park, Texas; and that if legal action is necessary to enforce this Agreement, exclusive venue will lie in Dallas County, Texas.

6.5 Amendments. This Agreement may be amended by the mutual written agreement of the Parties.

6.6 Severability. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

6.7 Independent Contractor. It is understood and agreed by and between the Parties that the Consultant, in satisfying the conditions of this Agreement, is acting independently, and that the Town assumes no responsibility or liabilities to any third party in connection with these actions. All Services to be performed by Consultant pursuant to this Agreement shall be in the capacity of an independent contractor, and not as an agent or employee of the Town. Consultant will have exclusive control of and the exclusive right to control the details of the work performed hereunder, and shall be liable for the acts and omissions of its officers, agents, employees, contractors, subcontractors and engineers and the doctrine of respondeat superior shall not apply as between Town and Consultant, its officers, agents, employees, contractors, subcontractors and engineers, and nothing herein shall be construed as creating a partnership or joint enterprise between Town and Consultant.

6.8 Right-of-Access. The Consultant shall not enter onto private property without lawful right-of-access to perform the required surveys, or other necessary investigations. The Consultant will take reasonable precautions to minimize damage to the private and public property in the performance of such surveys and investigations. Any right of access to public or private property shall be obtained in accordance with the Scope of Services.

6.9 Notice. Any notice required or permitted to be delivered hereunder may be sent by first class mail, courier, or by confirmed telefax or facsimile to the address specified below, or to such other Party or address as either Party may designate in writing, and shall be deemed received three (3) days after delivery or on the day actually received if sent by courier or otherwise hand delivered:

If intended for Town:

Town Administrator
Town of Highland Park, Texas
4700 Drexel Drive
Highland Park, Texas 75205

w/ a copy to:

Susan Thomas
Town Attorney
6371 Preston Rd., Suite 200
Frisco, Texas 75034

If intended for Consultant:

Name	SC Tracking Solutions, LLC
Address	PO Box 323
Town State Zip	Rockwall, TX 75087

6.10 **Insurance.** Before commencing work, Consultant shall, at its own expense, procure, pay for and shall maintain during the term of this Agreement insurance in accordance with the requirements set forth in , **Exhibit “C”**, entitled “**Insurance Requirements**”, and written by companies approved by the state of Texas and acceptable to the Town. Consultant shall furnish to the Town certificates of insurance executed by the insurer or its authorized agent stating coverages, limits, expiration dates and compliance with all applicable required provisions. Certificates shall reference the Project and be provided to the Town.

6.11 **Indemnification.** **CONSULTANT DOES HEREBY COVENANT AND CONTRACT TO WAIVE ANY AND ALL CLAIMS, RELEASE, DEFEND, INDEMNIFY, AND HOLD HARMLESS THE TOWN, ITS TOWN COUNCIL, OFFICERS, EMPLOYEES, AND AGENTS, IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES, FROM AND AGAINST ALL LIABILITY, CAUSES OF ACTION, CITATIONS, CLAIMS, COSTS, DAMAGES, DEMANDS, EXPENSES, FINES, JUDGMENTS, LOSSES, PENALTIES OR SUITS, WHICH IN ANY WAY ARISE OUT OF, RELATE TO, ARE CAUSED BY OR RESULT FROM CONSULTANT’S PERFORMANCE UNDER THIS AGREEMENT OR WHICH ARE CAUSED BY INTENTIONAL WRONGFUL ACTS OR NEGLIGENT ACTS OR OMISSIONS OF CONSULTANT, ITS SUBCONTRACTORS, ANY OFFICERS, AGENTS OR EMPLOYEES OF EITHER CONSULTANT OR ITS SUBCONTRACTORS, AND ANY OTHER THIRD PARTIES FOR WHOM OR WHICH CONSULTANT IS LEGALLY RESPONSIBLE (THE “INDEMNIFIED ITEMS”) THE NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY CONSULTANT, ITS AGENT, ITS CONSULTANT UNDER CONTRACT, OR ANY OTHER ENTITY OVER WHICH THE CONSULTANT EXERCISES CONTROL SUBJECT TO THE LIMITATIONS IN TEXAS LOCAL GOVERNMENT CODE § 271.904 AND TEXAS CIVIL PRACTICE AND REMEDIES CODE, § 130.002 (B).**

BY WAY OF EXAMPLE, THE INDEMNIFIED ITEMS MAY INCLUDE PERSONAL INJURY AND DEATH CLAIMS AND PROPERTY DAMAGE CLAIMS, INCLUDING THOSE FOR LOSS OF USE OF PROPERTY.

INDEMNIFIED ITEMS SHALL INCLUDE ATTORNEYS' FEES AND COSTS, COURT COSTS, AND SETTLEMENT COSTS. INDEMNIFIED ITEMS SHALL ALSO INCLUDE ANY EXPENSES, INCLUDING ATTORNEYS' FEES AND EXPENSES, INCURRED BY AN INDEMNIFIED INDIVIDUAL OR ENTITY IN ATTEMPTING TO ENFORCE THIS INDEMNITY.

IN ITS SOLE DISCRETION, THE TOWN SHALL HAVE THE RIGHT TO APPROVE COUNSEL TO BE RETAINED BY CONSULTANT IN FULFILLING ITS OBLIGATION TO DEFEND AND INDEMNIFY THE TOWN. CONSULTANT SHALL RETAIN TOWN'S APPROVED COUNSEL FOR THE TOWN WITHIN SEVEN (7) BUSINESS DAYS AFTER RECEIVING WRITTEN NOTICE FROM THE TOWN THAT IT IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF CONSULTANT DOES NOT RETAIN COUNSEL FOR THE TOWN WITHIN THE REQUIRED TIME, THEN THE TOWN SHALL HAVE THE RIGHT TO RETAIN COUNSEL AND THE CONSULTANT SHALL PAY THESE ATTORNEYS' FEES AND EXPENSES. THE TOWN RETAINS THE RIGHT TO PROVIDE AND PAY FOR ANY OR ALL COSTS OF DEFENDING INDEMNIFIED ITEMS, BUT IT SHALL NOT BE REQUIRED TO DO SO.

THE CONSULTANT'S OBLIGATIONS UNDER THIS SECTION SHALL NOT BE LIMITED TO THE LIMITS OF COVERAGE OF INSURANCE MAINTAINED OR REQUIRED TO BE MAINTAINED BY CONSULTANT UNDER THIS AGREEMENT.

THIS INDEMNIFICATION PROVISION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

6.12 Sovereign Immunity. Nothing in the Agreement shall be deemed or construed as a waiver of any immunity or defense that may be available to the Town under the law, including without limitation the doctrine of sovereign immunity or governmental immunity. The Town expressly reserves all immunities and defenses under the Texas Tort Claims Act and Chapter 271 of the Local Government Code. This Agreement is entered into solely for the purpose of providing goods or services to the Town as authorized by Texas Local Government Code section 271.151 et seq., and nothing herein shall be construed as expanding the Town's waiver of immunity beyond the limited waiver provided by that statute. No term or condition of this Agreement shall be

interpreted to create or acknowledge any debt, liability, or obligation of the Town in violation of the Texas Constitution.

6.13 Counterparts. This Agreement may be executed by the Parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of any number of copies hereof each signed by less than all but together signed by all of the Parties hereto.

6.14 Exhibits. The exhibits attached hereto are incorporated herein and made a part hereof for all purposes.

6.15 Consultant's Liability. Acceptance of the Documents by the Town shall not constitute nor be deemed a release of the responsibility and liability of Consultant, its employees, associates, agents or Consultants for the accuracy and competency of their designs, working drawings, specifications or other documents and work; nor shall such acceptance be deemed an assumption of responsibility by Town for any defect in the designs, working drawings, specifications or other documents and work; nor shall such acceptance be deemed an assumption of responsibility by Town for any defect in the designs, working drawings, specifications or other documents and work prepared by said Consultant, its employees, associates, agents or sub-Consultants.

6.16 Right to Inspect Records. Consultant agrees that Town shall have access to and the right to examine any directly pertinent books, documents, papers and records of Consultant involving transactions relating to this Agreement. Consultant agrees that Town shall have access during normal working hours to all necessary Consultant facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. Town shall give Consultant reasonable advance notice of intended audits. Consultant further agrees to include in subcontract(s), if any, a provision that any subcontractor or engineer agrees that Town shall have access to and the right to examine any directly pertinent books, documents, papers and records of such engineer or sub-contractor involving transactions to the subcontract, and further, that Town shall have access during normal working hours to all such engineer or sub-contractor facilities and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with the provisions of the paragraph. Town shall give any such engineer or sub-contractor reasonable advance notice of intended audits.

6.17 Default/Termination. If at any time during the term of this Agreement, Consultant shall fail to commence the work in accordance with the provisions of this Agreement or fail to diligently provide Services in an efficient, timely and careful manner and in strict accordance with

the provisions of this Agreement or fail to use an adequate number or quality of personnel to complete the work or fail to perform any of its obligations under this Agreement in accordance with its terms, including without limitation the Scope of Services and/or the Project Schedule, then Town shall have the right, if Consultant shall not cure any such default after ten (10) days written notice thereof, to terminate this Agreement on the eleventh (11th) day following the date of Town's written notice of default. Any such act by Town shall not be deemed a waiver of any other right or remedy of Town.

6.18 Termination Without Cause. In addition to termination for default as set forth in Section 6.17 of this Agreement, the Town may terminate this Agreement at any time by Town without cause by providing Consultant thirty (30) days written notice of such termination.

6.19 Payment Obligations Upon Termination. Upon receipt of termination notice under either Section 6.18 or Section 6.19, Consultant shall immediately terminate working on, placing orders or entering into contracts for supplies, assistance, facilities or materials in connection with this Agreement and shall proceed to promptly cancel all existing contracts insofar as they are related to this Agreement. Upon termination, Town shall pay all money owed to Consultant based upon tasks satisfactorily completed as of the date of notice of termination. If Consultant has not met one or more percentage benchmarks as identified in **Exhibit "A", "Scope of Services"**, Consultant shall submit an invoice containing an itemized list of tasks performed with the associated hourly fee. In no event shall individual fees or the cost of such itemized list exceed the Lump Sum payment for the specific service provided by Consultant as listed in **Exhibit "D", "Pricing and Fee Schedule"**. Consultant shall be entitled to compensation for any Services completed to the reasonable satisfaction of the Town in accordance with this Agreement prior to such termination.

In addition to the foregoing, If after exercising any such remedy due to Consultant's nonperformance under this Agreement, the cost to Town to complete the work to be performed under this Agreement is in excess of that part of the Agreement sum which has not theretofore been paid to Consultant hereunder, Consultant shall be liable for and shall reimburse Town for such excess. Town's remedies for Consultant's default or breach under this Agreement shall include monetary damages as allowed by law, re-performance of this Agreement at no extra charge to Town, or equitable remedies, including without limitation specific performance of this Agreement. Notwithstanding the foregoing, damages shall be limited to actual damages. Consequential damages and exemplary damages are not recoverable as a remedy.

6.20 Dispute Resolution/Mediation. The parties may resolve/mediate any controversy, claim or dispute arising out of or relating to the interpretation or performance of this Agreement, or breach thereof, by voluntary mediation to be conducted by a mutually acceptable mediator.

6.21 Confidential Information. Consultant hereby acknowledges and agrees that its representatives may have access to or otherwise receive information during the furtherance of its obligations in accordance with this Agreement, which is of a confidential, non-public or proprietary nature. Consultant shall treat any such information received in full confidence and will not disclose or appropriate such Confidential Information for its own use or the use of any third party at any time during or subsequent to this Agreement. As used herein, “Confidential Information” means all oral and written information concerning Town, its affiliates and subsidiaries, and all oral and written information concerning Town or its activities, that is of a non-public, proprietary or confidential nature including, without limitation, information pertaining to customer lists, services, methods, processes and operating procedures, together with all analyses, compilation, studies or other documents, whether prepared by Consultant or others, which contain or otherwise reflect such information. The term “Confidential Information” shall not include such materials that are or become generally available to the public other than as a result of disclosure of Consultant, or are required to be disclosed by a governmental authority.

6.22 Conflict of Interest. Consultant covenants and agrees that Consultant and its associates and employees will have no interest, and will acquire no interest, either direct or indirect, which will conflict in any manner with the performance of the Services called for under this Agreement. All activities, investigations and other efforts made by Consultant pursuant to this Agreement will be conducted by employees, associates or subcontractors of Consultant. Consultant agrees that it is further aware of the vendor disclosure requirements set forth in Chapter 176, Local Government Code, as amended, and will abide by the same. In this connection, a lawful representative of Consultant shall execute the Conflict of Interest Questionnaire, Form CIQ.

6.23 No Third Party Beneficiary. For purposes of this Agreement, including its intended operation and effect, the parties (Town and Consultant) specifically agree and contract that: (1) the Agreement only affects matters/disputes between the parties to this Agreement, and is in no way intended by the parties to benefit or otherwise affect any third person or entity notwithstanding the fact that such third person or entity may be in contractual relationship with Town or Consultant or both; and (2) the terms of this Agreement are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either Town or Consultant.

6.24 Appropriation of Funds. All obligations of the Town under this agreement are subject to the availability and appropriation of funds by the Town Council each fiscal year. Town obligations hereunder shall not create a debt under Article XI, Sections 5 or 7 of the Texas Constitution.

6.25 Statutory Compliance.

- A. Iran, Sudan and Foreign Terrorist Organizations. The Owner represents that neither it nor any of its parent company, wholly- or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code. The foregoing representation is made pursuant to Section 2252.152, Texas Government Code, and excludes the Owner and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. The Owner understands “affiliate” to mean any entity that controls, is controlled by, or is under common control with the Owner and exists to make a profit. Notwithstanding anything contained herein, the representations and covenants contained in this Section, “Iran, Sudan and Foreign Terrorist Organizations,” shall survive termination of the Agreement until the statute of limitations has run.
- B. Verifications Pursuant to Chapter 2276, Texas Government Code. The Owner hereby verifies that it and its parent companies, wholly- or majority- owned subsidiaries, and other affiliates, if any, do not boycott energy companies and will not boycott energy companies during the term of this Agreement. The foregoing verification is made pursuant to Section 2276.002, Texas Government Code, as amended. As used in the foregoing verification, “boycott energy companies” shall have the meaning assigned to the term “boycott energy company” in Section 809.001, Texas Government Code. The Owner understands “affiliate” to mean an entity that controls, is controlled by, or is under common control with the Owner and exists to make a profit. Notwithstanding anything contained herein, the representations and covenants contained in this Section, “Verifications Pursuant to Chapter 2276, Texas Government Code,” shall survive termination of the Agreement until the statute of limitations has run
- C. Verification Pursuant to Chapter 2274, Texas Government Code. The Owner hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any:
- (1) do not have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association; and
 - (2) will not discriminate during the term of this Agreement against a firearm entity or firearm trade association during the term of this Agreement.

The foregoing verification is made pursuant to Section 2274.002, Texas Government Code, as amended. As used in the foregoing verification, “discriminate against a firearm entity or firearm trade association” shall have the meaning assigned to such term in Section 2274.001(3), Texas Government Code, “firearm entity” shall have the meaning assigned to such term in Section 2774.001(6), Texas Government Code, and “firearm trade association” shall have the meaning assigned to such term in Section 2274.001(7), Texas Government Code. The Owner understands “affiliate” to mean an entity that controls, is controlled by, or is under common control with the Owner and exists to make a profit. Notwithstanding anything contained herein, the representations and covenants contained

in this Section, Verification Pursuant to Chapter 2274, Texas Government Code”, shall survive termination of the Agreement until the statute of limitations has run.

(Signature Page to Follow)

EXECUTED this _____ day of _____, 20__.

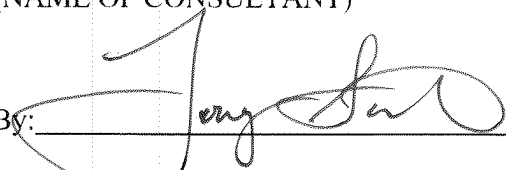
TOWN OF HIGHLAND PARK, TEXAS

By: _____
Tobin Maples, Town Administrator

EXECUTED this 6 day of February, 2026

CONSULTANT

(NAME OF CONSULTANT)

By:  _____
Name: Tony Santoro

Title: CEO

EXHIBIT “A”
SCOPE OF SERVICES

OBJECTIVES

1. Provide a TCEQ compliant Backflow Prevention Data Management Assistance
2. Conduct Discovery and Testing of All Backflow Assemblies
3. Test Residential and Commercial Backflow Assemblies Annually

TASK A – STORAGE, SUPPORT AND SECURITY

Features of the storage area are listed below:

- The primary location is an undisclosed facility in Frisco, Texas, with an off-site secondary location plus a global data center.
- Utilize HP ProLiant dl360 dual Xeon, 32 gb memory, 1TB of Raid-5 storage, replicated to 2tb NAS.
- Utilize Intels Xeon E3-1270 v6, 4 Cores (HT) x 3.8 Ghz. 32 gb DDR5 ECC memory, 2,000 gb Data storage,
- The data center provides multiple redundant connections to the internet and can guarantee up-time in the five nines.
- Utilize 256-bit encryption for transaction data plus unique user single-authentication processes.
- The application is web-based and does not need additional components at this time.
- The applications are IE 10+, Firefox, and Chrome compatible.
- Email and phone support. Available between 8:00 AM to 5:00 PM - Monday thru Friday, Central Standard Time located in the DFW Metroplex.
- The Town of Highland Park owns the data; SC Tracking Solutions owns the software and service. Per the contract should the two parties discontinue service, all data will be returned to the Town via CSV file or means suitable.
- All support is provided through SC Tracking Solutions customer service department and the Town’s assigned account executive.
- If an issue arises that a customer service representative deems technical, the representative will forward the ticket to the IT department.
- Users are currently redirected to a 3rd party credit card processing company. Credit card numbers nor the information provided for billing is stored or viewable by any SC Tracking personnel.
- Insurance required.
- SC Tracking Solutions will schedule, complete and organize services with water customers.
- All Testers will have password protected logins.
- The site uses SSL protection through the host of the site.

TASK B – TESTERS

One account, one Tester, one password per the rules of TCEQ, allows for full accountability of each Tester.

Testers will be required to set up a password protected account at www.sctrackingsolutions.com. At which time they will also turn in by fax, email, scan, mail or upload all required documentation/credentials as determined by state law and Town ordinance. SC Tracking Solutions will cross check all registrations, required license and documentation with TCEQ and the State Fire Marshal's database as well as verify all credentials prior to issuing the Tester temporary password. Once a temporary password is issued the Tester will log in to the site and change the temporary password to a permanent password of their choosing.

The SCTS software has restrictions that keep the Tester from entering data unless all credentials remain current. They will be notified via their profile page to forward any expiring documentation to SCTS for verification and reactivation. All Testers have access to their personnel profile for updating and uploading any new data that may have changed.

TASK C – INSPECTOR/TESTER/HAULER/PROVIDER REPORT FEES

- \$12.95 (New Construction/Repairs) plus sales tax (Standard Rate), Backflow (Added Town Fees Reimbursed Quarterly with Itemized Form). Paid by the Tester (New Construction/Repairs only)
- All mailing fees paid by SC Tracking Solutions
- All credit card processing fees paid by SC Tracking Solutions. New Construction/Repairs only.
- Additional Fees apply if Town applies additional fees to Standard Rate. (50 cent increase for each \$5 increment over standard rate) (Example: \$25 fee would incur a \$1 SCTS fee, added to the standard rate, since there is (2) full \$5 increments over the standard rate) **This covers the additional credit card fees associated with a higher combined rate. New Construction/Repairs only if applicable.
- 60 days prior to any report rate increase, SC Tracking Solutions will notify the local purveyor. Rates normally increase due to costs related to postage and handling. New Construction/Repairs only.
- Sales taxes apply to the data processing portion of the report fee only.

TASK D – TOWN REPRESENTATIVE REPORT/SUPPORT MANAGEMENT

- Private Access to Live, Real time reporting system 24 HOURS/DAY/365 DAYS/YEAR
- Printable reports in compatible, functional outlines
- Accessibility to all phone, mailing, Tester and email logs.
- Customized reporting
- SC Tracking Solutions assigned Account Manager for daily support.

- Audit, Non-Compliance and 5-year history reports (5 yr. report disallows date creeping)
- Search by multiple configurations.
- Live Support Customer Service Agents 8am-5pm Monday-Friday Central time

Task E – QUALITY CONTROL (DATA INTEGRITY) MULTI-LAYER QUALITY CONTROL FOR DATA ACCURACY

- Daily Report Management and Remarks Update using system restrictions.
- Weekly Report Management for Date Integrity
- Monthly Review of all Data

STANDARD TERMS AND CONDITIONS

RELIANCE UPON INFORMATION PROVIDED BY OTHERS.

If Consultant's performance of services hereunder requires Consultant to rely on information provided by other parties (excepting Consultant's Contractors), Consultant shall not independently verify the validity, completeness or accuracy of such information unless otherwise expressly engaged to do so in writing by Town.

NO BENEFIT FOR THIRD PARTIES

The services to be performed by Consultant hereunder are intended solely for the benefit of Town, and no right nor benefit is conferred on, nor any contractual relationship intended or established with any person or entity not a Party to this Agreement. No such person or entity shall be entitled to rely on Consultant's performance of its services hereunder.

SUSPENSION OF WORK

Work under this Agreement may be suspended as follows:

1. **By Town.** By written notice to Consultant, Town may suspend all or a portion of the Work under this Agreement if unforeseen circumstances beyond Town 's control make normal progress of the Work impracticable. Consultant shall be compensated for its reasonable expenses resulting from such suspension including mobilization and demobilization. If suspension is greater than 30 days, then Consultant shall have the right to terminate this Agreement in accordance with Article VI, Termination of Work.
2. **By Consultant.** By written notice to Town , Consultant may suspend the Work if Consultant reasonably determines that working conditions at the Site (outside Consultant's control) are unsafe, or in violation of applicable laws, or in the event Town has not made timely payment in accordance with Article I, Compensation, or for other circumstances not caused by Consultant that are interfering with the normal progress of the Work. Consultant's suspension of Work hereunder shall be without prejudice to any other remedy of Consultant at law or equity.

ACCOUNT TERMS

1. Town representatives are permitted access to the Services. Each representative will be required to set up a unique username and password.
2. Town is responsible for maintaining the security of account passwords. Consultant cannot and will not be liable for any loss or damage from Town failure to comply with this security obligation.

3. Town agrees to forward all testers, inspectors, technicians, owners, landlords, property managers and any related inspections, including new construction and existing commercial or residential occupancies, to sctrackingsolutions.com. Town agrees that Consultant is not an enforcement agency and at no time will be asked to enforce local or state laws or codes.
4. Designated Town enforcement personnel will make every attempt to follow up on inspections that are overdue within a reasonable amount of time.
5. Town may not use the Service for any illegal or unauthorized purpose. Town must not, in the use of the Service, violate any laws in its jurisdiction (including but not limited to copyright laws).
6. Consultant will store all information and data at a secure location at the address Frisco, TX. The IT Department for the Town may review the data security policies for Consultant to ensure that they meet applicable standards for data security.
7. Consultant acknowledges that the Town is a governmental entity subject to public information laws of the State of Texas as codified in chapter 552 of the Texas Governmental Code. Consultant understands that, by maintaining Town data, Consultant may be subject to the public information laws of Texas. Consultant agrees to fully cooperate with the Town in regard to the Town fulfilling its obligations under the public information laws of the state.

COPYRIGHT AND CONTENT OWNERSHIP

1. Consultant claims no intellectual property rights over the material Town, or any users provide to the Service. Town retains access rights to any information provided to Consultant by third parties who are using the Service to comply with any state or local requirement. Consultant will allow Town access to site to view any data submitted. Such data shall be made available to Town in easily accessible format.
2. Consultants will retain information submitted to them until the Town Secretary, in implementing Town records retention policy, determines that such information can be disposed.

GENERAL CONDITIONS

1. Consultant agrees that the Services shall be fully functional at least ninety-eight percent (98%) of the time in any given calendar month. Consultant further agrees, to the extent practicable, to schedule any site maintenance between the hours of 1:00am and 5:00 am.

2. Technical support is provided to paying account holders and is available via email or phone.
3. Town agrees not to reproduce, duplicate, copy, sell, resell, or exploit any portion of the Service, use the Service, or access to the Service without express written permission by Consultant.
4. Consultant may, but have no obligation to, remove Content and Accounts containing Content that Consultant determines in its sole discretion are unlawful, offensive, threatening, libelous, defamatory, pornographic, obscene, or otherwise objectionable or violates any Party's intellectual property of these Terms of Service. The Town will be notified of the content in a reasonable amount of time so that it may take appropriate action.
5. Consultant does not warrant that (i) the service will meet Town 's specific requirements, (ii) the results that may be obtained from the use of the service will be accurate or reliable, and (iii) the quality of any products, services, information, or other material purchased or obtained by the Town through the service will meet Town expectations. Notwithstanding any disclaimer of warranty listed herein, Consultant warrants that all services, reports, and deliverables shall materially conform to the requirements and specifications set forth in this Scope of Services, and Consultant represents that it will use professional methods to verify and validate all results in accordance with the professional standard of care applicable by law to the Services performed hereunder.

EXHIBIT “B”
PROJECT SCHEDULE

Commercial Locations

Start and complete initial testing and discovery in February/March 2026. Testing will be annually thereafter.

Commercial Water Customers will be approached by the testing company with a letter from the Town prior to testing. Testers will make every attempt not to interrupt normal business hours. Restaurants will not be tested during breakfast or lunch normal hours.

Residential Locations

Approximately 300-400 notices will be mailed per month starting in March/April of 2026. The intent is to mail addresses on the same street in the same month, where possible.

Residential Water Customers will be mailed/mailed a notice to sign up for a block time, which is divided into three-hour blocks, four days a week. Saturday testing will be available.

SC Tracking Solutions to mail one notice per location in the month it is due advising water customers to call/email/QR code and schedule the required testing. The letter will have Town logo, language and contact information.

All internal and external correspondence will be approved by Town staff prior to distribution.

Note:

1. The Town has a Zero Square Footage Ordinance, so all meters need to be checked for a Backflow Assembly.
2. Approximately 3300 addresses/locations for inspections and discovery.
3. Each inspection is estimated to take approximately 10-15 minutes.
4. SC Tracking inspectors will wear the Town of Highland approved Backflow Tester collared shirts, jeans, boots, and Town contractor badges, as required.

EXHIBIT “C”
TOWN INSURANCE REQUIREMENTS

1. Insurance Requirements. Consultant agrees to procure and maintain at all times, at Consultant’s sole cost and expense, during the performance of the Services and for so long as this Agreement remains in effect, policies of insurance with carriers reasonably acceptable to the Owner in the minimum amounts outlined below:
 - a. Workers’ Compensation and Employer’s Liability. Consultant shall maintain Workers’ Compensation and Employer’s Liability coverage in accordance with the laws of the state in which the employees performing the Services are located, covering all employees, agents, and representatives of Consultant. Employer’s Liability coverage shall have a minimum limit of \$1,000,000 for liability arising out of any accident related to the Services. For employees performing Services in Texas, coverage shall meet Texas statutory requirements.
 - b. Commercial General Liability Insurance. Consultant shall maintain comprehensive general liability insurance in Consultant’s name, with combined bodily injury and property damage limits of not less than \$1,000,000 per occurrence, and a minimum of \$2,000,000 in the aggregate, and shall include, without limitation, the following coverages:
 - i. Contractual Liability Coverage;
 - ii. Completed Operations and/or Products Liability Coverage, if applicable;
 - iii. Waiver of any exclusions that would limit coverage for professional activities, to the extent reasonable.
 - iv. Umbrella or Excess Liability coverage of at least \$2,000,000 may be used to satisfy these limits.
 - c. Professional Liability / Errors & Omissions Insurance. Consultant shall maintain professional liability insurance with a limit of not less than \$1,000,000 per claim and a minimum of \$2,000,000 in the aggregate covering negligent acts, errors, or omissions in the performance of professional services under this Agreement.
 - d. Automobile Liability Insurance. If Consultant or its employees or agents use vehicles in the performance of Services, Consultant shall maintain automobile liability insurance, with a combined single limit for bodily injury and property damage of not less than \$1,000,000 per occurrence, covering owned, hired, and non-owned vehicles.
2. Required limits may be satisfied by any combination of primary and umbrella liability insurances. Consultant may maintain reasonable and customary deductibles, subject to review by Owner.
3. Consultant shall require all of its subconsultants to provide the foregoing coverages, as well as any other coverage Consultant considers necessary. Consultant shall ensure all subconsultants maintain a commercial general liability policy with minimum limits of \$1,000,000 per

occurrence. Any exclusions must first be approved by Owner. Consultant is responsible for assuring compliance. Subconsultants shall provide a waiver of subrogation in favor of Owner on all required policies, and additional insured status on a primary and non-contributory basis for general liability and automobile liability.

4. With reference to the foregoing insurance requirement, Consultant shall specifically endorse applicable insurance policies as follows:
 - a. General Liability, Professional Liability, and Automobile Liability policies shall name Owner as additional insured where applicable.
 - b. All insurance policies, which name the Owner as an additional insured, must be endorsed to read as primary coverage regardless of the application of other insurance.
 - c. A waiver of subrogation in favor of the Owner shall be contained in the Workers Compensation and all liability policies.
 - d. All liability policies shall contain no cross-liability exclusions or insured versus insured restrictions.
 - e. All insurance policies shall be endorsed to require the insurer to immediately notify the Owner of any material change in coverage and to provide at least thirty (30) days' prior written notice to Owner of any cancellation, non-renewal, or material modification.
 - f. All insurance policies shall be issued by insurers that are (1) licensed to do business in the State of Texas, and (2) rated "A" or better by Best's Key Rating Guide.
 - g. Certificates of Insurance shall reference the project title and bid number, if applicable, and shall be provided within three (3) business days of execution of this Agreement. If the Agreement is renewed or extended, updated certificates shall be provided prior to the renewal or extension.
5. All insurance must be written on forms filed with and approved by the Texas Department of Insurance. Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent and shall contain provisions representing and warranting the following:
 - a. Sets forth all endorsements and insurance coverages according to requirements and instructions contained herein.
 - b. Shall specifically set forth the notice-of-cancellation or termination provisions to the Owner.
6. Consultant shall, before the Agreement is signed, and at any time following execution thereof at the request of the Owner, furnish Owner with a certificate and proof of such additional endorsements and/or declaration pages or other documentary evidence that the aforementioned insurance policies have been procured with such additional endorsements, that premiums have been paid and that such policies remain in place.
7. Consultant and subconsultants must meet minimum OSHA safety requirements as applicable to their operations.

**EXHIBIT “D”
PRICING & FEE SCHEDULE**

Existing Residential and Commercial Locations

The contract with SC Tracking Services includes all requirements for implementing the Backflow Prevention Program. The contract includes:

- A one-time fee of \$25,000 to assist with discovery (based on an hourly not to exceed amount) and will only be used as needed to find locations not obviously identified or missing. Examples may include medians, parks, Town Hall, etc.
- Payment for Commercial or Residential testing, price per unit:

Irrigation/Domestic	\$75 per unit
Fire/Commercial	\$85 per unit

Price includes driving to and from, testing, reporting, tester insurance and background check. Price is fixed for three years and includes all notices and postage.

For failed backflow assemblies only - Failed notices for correction will be mailed to the water customer by the Town within 30 days. All repairs are the responsibility of the owner.

The Town will be billed by SCTS for the devices tested monthly. Terms of payment - billed every 30 days with net 30.

New Construction

New commercial and residential SC Tracking Services fee is \$12.95, paid by the tester.

Backflow devices are required by Building Inspections prior to release of the Certification of Occupancy (CO). Testers for new construction backflow assemblies are hired by the builder.

A tester will register with SCTS. The report is processed and sent to the town. The system will convert the location to annual testing and will be tested by SC Tracking Services.



**Town of Highland Park
Town Council
Tuesday, February 17, 2026**

Item Coversheet

Take action authorizing the Town Administrator to execute an Interlocal Agreement with the North Central Texas Council of Governments for NearMap imagery.

PRESENTED BY: Lori Chapin, Director of Engineering

BACKGROUND:

The Town of Highland Park ("Town") currently partners with the North Texas Council of Governments ("NCTCOG") for its aerial mapping needs. The previous Interlocal Agreement ("ILA") was approved by the Town Council in January 2023, was for a three-year term, and expires on March 13, 2026. NearMap imagery offers the following:

- Flown three times a year (Jan/Feb; May/June; Oct/Nov)
- Available the week it is flown
- Pulled from the cloud and ready to use immediately
- Can zoom in close without pixelation

The attached ILA provides an opportunity to extend the Town's contract with the NCTCOG, to purchase the NearMap imagery at a discounted price (see attached ILA). The contract will be for a five-year term. The cost of the imagery is \$4,768.75 per year and billed annually for a total five-year cost of \$23,843.75. Pricing has unfortunately increased due to inflation and is reflected in the new ILA (previous pricing was from the year 2020 at \$3,500 per year). While the cost has increased, this imagery is important for the Town to assist with site visits, support modernization, enhance mapping and GIS capabilities for multiple departments, detect changes over time, and assist in managing the Town's infrastructure.

RECOMMENDATION

Town staff recommends authorizing the Town Administrator to execute an Interlocal Agreement with the North Central Texas Council of Governments for NearMap imagery. The Town's attorney has reviewed and approved the ILA.

FINANCIAL IMPACT

Funding is provided within the Town's operating budget.

ATTACHMENTS

ILA_Nearmap_HighlandPark_5yr Draft



**INTERLOCAL AGREEMENT BETWEEN
THE NORTH CENTRAL TEXAS COUNCIL OF GOVERNMENTS AND
Town of Highland Park**

WHEREAS, the North Central Texas Council of Governments (NCTCOG) is a voluntary association of, by and for local governments and has an interest in providing information to its members to support planning, engineering, public safety, and municipal management activities; and,

WHEREAS, the Town of Highland Park wishes to have its map-based information system include the Nearmap's recurring and/or oblique imagery and has determined that the acquisition of this resource provides information for a multitude of uses throughout the Entity and thus serves a valid public purpose; and,

WHEREAS, the Entity requires this information to accomplish this purpose and has determined that NCTCOG can provide this information; and,

WHEREAS, this Agreement is authorized by Chapter 791 of the Texas Government Code; and,

WHEREAS, NCTCOG and Entity are local governments as that term is defined in Section 791.003(4) of the Texas Government Code; and,

WHEREAS, Section 791.025 of the Texas Government Code authorizes local governments to agree with another local government to purchase goods and services; and,

WHEREAS, a local government that purchases goods and services under Section 791.025 of the Texas Government Code satisfies the requirement of the local government to seek competitive bids for the purchase of goods and services; and,

WHEREAS, NCTCOG and Entity, acting by and through their respective governing bodies, adopt the foregoing premises as findings of said governing bodies.

NOW, THEREFORE, the parties, Entity and NCTCOG, agree to the following terms and conditions regarding the purchase of Nearmap's recurring and/or oblique imagery under Master Service Agreement #2020-078.

I. LICENSE AGREEMENT

The personnel specified in Appendix A will serve as points of contact for their respective organizations. NCTCOG has contracted with Nearmap to provide their product at negotiated not-to-exceed rates to the North Texas region.

Nearmap retains all ownership of intellectual property rights in its aerial and oblique imagery and data. Entity is purchasing a data license through NCTCOG and pursuant to the subscription terms set out in Appendix B. Notwithstanding **Section 2.3 of Appendix B**, Entity is permitted to grant access to the Content under the License to its contractor(s) for the purpose of performing work for Entity, provided that the contractor(s) enter into an agreement which requires them to (a) use the Content only to the extent necessary to perform work for the Entity, and (b) immediately delete and destroy the Content in their control or possession at the completion of such work. Entity understands and agrees that it is responsible for compliance with Appendix B and its failure may result in NCTCOG disabling or revoking its data license(s) hereunder.

II. OBLIGATIONS

NCTCOG agrees to provide the Product(s) listed below for Entity's use consistent with the terms herein. Upon delivery of the Product(s), NCTCOG shall invoice Entity in the amount(s) provided and Entity agrees to pay NCTCOG within thirty (30) days.

Population: 8864

Recurring Aerial Photography	Amount
1-year subscription	
2-year subscription	
3-year subscription	
4-year subscription	
5-year subscription	

Recurring Aerial Photography + Obliques	Amount
1-year subscription	
2-year subscription	
3-year subscription	
4-year subscription	
5-year subscription	\$4,768.75

Annual Subscription Cost	\$ 4,768.75
Total Subscription Cost	\$23,843.75

You have agreed to the payment terms listed above and have secured the total amount with purchase order (PO) number _____ (please enter PO number and send PO document with returned agreement).

Invoice Term: Full Payment Invoice Annually (at beginning of term)

III. TERMINATION

Provisions for terminating Nearmap's aerial and/or oblique imagery subscription can be found in Appendix B. Section 6. In the event Entity terminates this Agreement early for any reason, all funds paid to NCTCOG by Entity are non-refundable. In the event payment obligations for Entity's subscription exceed the amounts paid at the time of early termination, Entity shall be responsible for payment of all such amounts to NCTCOG subject to the non-appropriation clause contained herein.

IV. MISCELLANEOUS

Entirety of Agreement The terms and provisions of this Agreement constitute the entire agreement of the undersigned parties and in the event of a conflict between this Agreement and any attachment thereto, the terms of this Agreement shall prevail.

Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the state of Texas and venue shall lie exclusively in Tarrant County, Texas. In performing its obligations hereunder, each party shall operate and perform in accordance with all applicable state and federal laws.

Severability. In the event that one or more provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability of the Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein, and shall not affect the remaining provision of this Agreement, which shall remain in force and effect.

Assignment. No party to this Agreement may assign or otherwise transfer any of its interest in this Agreement without the express written consent of the other party.

Immunity. It is expressly understood and agreed that in the execution of this Agreement, that the parties, either individually or jointly, do not waive, nor shall they be deemed to waive, any immunity or defense that would otherwise be available to each against claims arising in the exercise of its powers or functions.

Non-appropriation of Funds. Each party paying for the performance of governmental functions in this Agreement must make those payments from current revenues available to the paying party. In the event no funds or insufficient funds are appropriated by the Entity in any fiscal period for any payments due hereunder, Entity will notify NCTCOG of such occurrence and this Agreement shall terminate on the last day of the fiscal period for which appropriations were

APPENDIX A

NORTH CENTRAL TEXAS COUNCIL OF GOVERNMENTS

	MAIN CONTACT	ADDITIONAL CONTACT
Name:	Shelley Broyles	Donna Coggeshall
Title:	Program Manager - Research	Senior Program Manager - Research
Department	Information and Innovation Services	Information and Innovation Services
Organization:	NCTCOG	NCTCOG
Street Address:	616 Six Flags Drive, Suite 200	616 Six Flags Drive, Suite 200
City, State, Zip	Arlington, Texas 76011	Arlington, Texas 76011
Phone/Fax:	(817) 695-9156 (817) 640-4428	(817) 695-9168 (817) 640-4428
E-mail:	sbroyles@nctcog.org	dcoggeshall@nctcog.org

**APPENDIX B
NEARMAP LICENSING TERMS**



MASTER SUBSCRIPTION AGREEMENT

THIS MASTER SUBSCRIPTION AGREEMENT IS ENTERED INTO BY AND BETWEEN NEARMAP AND CUSTOMER. BY EXECUTING AN ORDER FORM ATTACHED TO THIS MASTER SUBSCRIPTION AGREEMENT OR INCORPORATING THIS MASTER SUBSCRIPTION AGREEMENT BY REFERENCE, NEARMAP AND CUSTOMER AGREE TO BE BOUND BY THIS MASTER SUBSCRIPTION AGREEMENT, THE ORDER FORM, AND ALL TERMS INCORPORATED BY REFERENCE (COLLECTIVELY, THE “**AGREEMENT**”). THIS AGREEMENT BECOMES EFFECTIVE UPON THE EARLIER OF CUSTOMER ACCESSING OR USING ANY NEARMAP PRODUCTS OR AS SET FORTH ON THE ORDER FORM (“**EFFECTIVE DATE**”). IF CUSTOMER DOES NOT AGREE TO THIS MASTER SUBSCRIPTION AGREEMENT, CUSTOMER MUST NOT ACCESS OR USE ANY NEARMAP PRODUCTS. CAPITALIZED TERMS NOT DEFINED IN THIS MASTER SUBSCRIPTION AGREEMENT HAVE THE MEANINGS GIVEN TO THEM IN THE ORDER FORM.

1. DEFINITIONS

- 1.1. “**Affiliate**” means (a) if Customer contracts with Nearmap AU, a “Subsidiary” or “Related Party,” each as defined in the Corporations Act; or (b) if Customer contracts with Nearmap US, an entity that, directly or indirectly, controls, is controlled by, or is under common control with a party. As used herein, “control” means the power to direct the management or affairs of an entity or the beneficial ownership of fifty percent (50%) or more of the voting equity securities or other equivalent voting interests of an entity.
- 1.2. “**APIs**” means Nearmap’s application programming interfaces made available by Nearmap under the Agreement.
- 1.3. “**Applicable Laws**” means all existing and future federal, state, provincial, regional, territorial and local laws, international treaties, statutes, statutory instruments, ordinances, regulations, rules, executive orders, supervisory requirements, directives, circulars, opinions, interpretive letters and other office releases, guidelines, and policies with the force of law, of or by any government, or any governmental authority, department, or agency thereof (including all federal and state banking laws, regulations, guidance, and policies), or any court of competent jurisdiction that are applicable to the parties in their performance of their obligations or exercise of their rights under the Agreement.
- 1.4. “**Authorized User**” means Customer’s employees, agents, independent contractors, and consultants that use the Products on Customer’s behalf; provided that, to the extent Customer desires its agents, independent contractors, and consultants to be Authorized Users, it must receive Nearmap’s prior, written consent (email to suffice).
- 1.5. “**Confidential Information**” has the meaning set forth in Section 10.1.
- 1.6. “**Corporations Act**” means Corporations Act 2001 (Cth) of Australia, as amended.
- 1.7. “**Customer**” has the meaning set forth in the applicable Order Form.
- 1.8. “**Customer Data**” means information, data, and other content, in any form or medium, that is uploaded to, or otherwise received by, the Platform, directly (including via a third-party provider) from an Authorized User.
- 1.9. “**De-identified Data**” has the meaning set forth in Section 3.4.
- 1.10. “**Derivative Works**” means a work that is based upon another work, such as a revision, modification, or any other form in which the original work may be recast, transformed, or adapted and that if prepared without the authorization of the owner of the copyright in the original work, would constitute a copyright infringement.
- 1.11. “**Documentation**” means any end user technical documentation provided by Nearmap for the Products located at <https://help.nearmap.com>.
- 1.12. “**Feedback**” has the meaning set forth in Section 4.2.
- 1.13. “**Fees**” has the meaning set forth in Section 5.1.
- 1.14. “**Nearmap**” means (a) if Customer is located in Australia or New Zealand, as determined by Customer’s billing address set forth in an Order Form, then the Nearmap contracting entity is Nearmap Australia Pty Ltd

(ABN 16 120 677 250) (NZCN 6603574) (“**Nearmap AU**”), with offices located at Level 4, Tower One, International Towers, 100 Barangaroo Avenue, Barangaroo NSW 2000; or (b) if Customer is located in the United States of America, Canada, or any other jurisdiction other than Australia or New Zealand, as determined by Customer’s billing address set forth in an Order Form, then the Nearmap contracting entity is Nearmap US, Inc. (“**Nearmap US**”), with offices located at 1850 Ashton Blvd, Ste 500, Lehi, UT 84043.

1.15. “**Nearmap Data**” means any data made available by or on behalf of Nearmap to the Customer in connection with the APIs or a Platform.

1.16. “**Nearmap Policies**” has the meaning set forth in Section 2.9.

1.17. “**Order Form**” means a written document or electronic form, including any order, statement of work, proposal, quote, schedule, or other such documentation, whether or not labeled “Order Form,” that details the Products, including quantities, specifications, pricing, payment terms, and any other pertinent terms and conditions agreed upon by both parties.

1.18. “**Output**” has the meaning set forth in Section 2.1.1.

1.19. “**Personal Data**” means any data or information that is linked or reasonably linkable to an identified or identifiable

natural person.

1.20. “**Platform**” means Nearmap’s online web-based application provided by Nearmap, as further described in the

“Products” section of an Order Form.

1.21. “**Privacy Policy**” has the meaning set forth in Section 13.

1.22. “**Process**” or “**Processing**” means any operation or set of operations performed, whether by manual or automated means, on information or on sets of information, such as the collection, use, storage, disclosure by transmission, dissemination or otherwise making available, alignment or combination, analysis, restriction, deletion, or modification of information.

1.23. “**Products**” means, collectively, the API and Platform.

1.24. “**Product-Specific Terms**” means the terms and conditions governing the use of specific then-current Products generally available to Nearmap customers via the Nearmap website at <https://www.nearmap.com/us/en/legal/product-specific-terms>.

1.25. “**Service Level Agreement**” means the service level agreement provided by Nearmap for the Platform, as further described at <https://www.nearmap.com/legal/service-level-agreement>.

1.26. “**Subscription Term**” means the term specified on the Order Form, including without limitation in the “License Term,” “Subscription Term,” or “Subscription Period” section of the Order Form, together with any renewal terms.

1.27. “**Support Policy**” has the meaning set forth in Section 2.6.

1.28. “**Territory**” means, as applicable, Australia, Canada, New Zealand, and/or the United States of America. Coverage by Nearmap within the Territory is outlined at <https://www.nearmap.com/us/en/current-aerial-maps-coverage> for Canada and the United States of America, at <https://www.nearmap.com/au/coverage> for Australia, and at <https://www.nearmap.com/nz/coverage> for New Zealand.

1.29. “**Third-Party Services**” has the meaning set forth in Section 3.5.

1.30. “**Usage Data**” has the meaning set forth in Section 3.4.

2. NEARMAP PRODUCTS AND SERVICES

2.1. **Access to Products.** Subject to and conditioned on Customer’s and its Authorized Users’ compliance with the terms and conditions of the Agreement:

2.1.1. **Platform.** To the extent Customer elects to use the Platform or the Platform is specified in an Order Form, Nearmap hereby grants Customer a non-exclusive, non-sublicensable (unless otherwise permitted in this Agreement), royalty-free, non-transferable (except in compliance with Section 14.1)

right to access and use the Platform in the Territory during the Subscription Term to: (a) use the Platform and the Nearmap Data for Customer's internal business purposes subject to any further limitations set forth in an Order Form; (b) create Derivative Works of the Nearmap Data (subject to Section 2.2), strictly in the form of reports, presentations, maps or other documents for internal purposes only that are fixed in a non-manipulable medium (the "Output"); and (c) use, and make a reasonable number of copies of, the Documentation solely in connection with the exercise of Customer's rights under this Section 2.1.1, solely for use by Authorized Users in accordance with the Documentation and the terms and conditions herein.

2.1.2. **API.** To the extent Customer elects to use an API or an API is specified in an Order Form, Nearmap hereby grants to Customer a non-exclusive, non-sublicensable (unless otherwise permitted in this Agreement), royalty-free, and non-transferable (except in compliance with Section 14.1) right and license in the Territory during the

Subscription Term to: (a) access and use the APIs to receive Nearmap Data; (b) use the Nearmap Data for Customer's internal business purposes subject to any further limitations set forth in an Order Form; (c) create Output for internal purposes only; and (d) use, and make a reasonable number of copies of, the Documentation solely in connection with the exercise of Customer's rights under this Section 2.1.2.

2.1.3. **Other Rights Reserved.** Other than as expressly set out in Sections 2.1.1 and 2.1.2, Customer may not use the Platform, an API, or Nearmap Data for any other purpose without Nearmap's prior written consent, and all other rights therein and thereto are hereby reserved by Nearmap.

2.2. **Nearmap Attribution.** If Customer creates Output, Customer must expressly acknowledge Nearmap in a reasonably prominent manner on each Output (by displaying the Nearmap logo or such other attribution as reasonably requested by Nearmap), as the source of any data underlying the Output. Unless otherwise permitted in writing by Nearmap, Customer must not remove or cause to be removed any Nearmap logo, watermark, or other Nearmap attribution in any Output. Customer must include all requisite legends indicating and preserving Nearmap's rights in and to the Products. All Output must include the following copyright notice on the work: "Created with [TITLE OF PRODUCT]© [year] Nearmap US, Inc.", if the Nearmap contracting entity is Nearmap US; or "Created with [TITLE OF PRODUCT]© [year] Nearmap Australia Pty Ltd", if the Nearmap contracting entity is Nearmap AU.

2.3. **Authorized Users.** Authorized Users may use the Products on Customer's behalf, provided Customer remains liable and responsible for the acts and omissions of each such Authorized User. Customer acknowledges and agrees that each Authorized User must have its own unique password and cannot share such password with any other users. If Customer is given passwords to access the Products on Nearmap's systems, Customer shall require that all Authorized Users keep user ID and password information strictly confidential and not share such information with any unauthorized person. Customer shall be responsible for any and all actions taken using Customer's accounts and passwords.

2.4. **Use by Affiliates.** Each of Customer's Affiliates will be entitled to access and use the Products in accordance with the terms and conditions of this Master Subscription Agreement, provided that such Affiliate executes a separate Order Form with Nearmap.

2.5. **General Restrictions.** Customer shall not, and shall not allow or induce any third party (including any Authorized User) to: (a) sell, rent, lease, or use the Products for time sharing purposes; (b) use the Products to help develop, or help provide to any third party, any product or service similar to or competitive with the Products, or copy any ideas, features, functions, documentation, content, audio or visual material, images, graphics, photos, digitalmedia, or other materials or content of any type that are provided by, derived from, or based on the Products; (c) reverse engineer, decompile, disassemble, or otherwise seek to obtain the source code of the Products; (d) copy, modify, or create Derivative Works from the Products or any Documentation (except as permitted in Section 2.1.1(b) or Section 2.1.2(c));

(e) remove or obscure any copyright or proprietary or other notice contained in the Products or Documentation; (f) create an internal or commercial imagery dataset or Derivative Works composed principally of the Nearmap Data; (g) unless otherwise stated in an Order Form, make the Products publicly accessible or viewable; (h) use the Products for the purpose of product development, tuning, training, or modification of internal models, generation of aggregated analysis, or creation of data elements related to the Products; (i) create any Derivative Works from the Products combined with any third party imagery or based on any third party imagery; (j) propagate any virus, Trojan horse, or other malware or programming routine intended to damage any system or data; (k) access or use the Products in a manner intended to circumvent or exceed service account limitations, contractual usage limits, or requirements; (l) disrupt, disable, interfere with, or disrupt the integrity or performance of the Products or the data contained therein, including

through excessive use; (m) use any Products in a manner that violates any Applicable Law, regulation, or legal requirement or obligation; (n) use any Products in violation of any third-party rights of privacy or intellectual property rights; (o) use or permit the use of any tools in order to probe, scan, or attempt to penetrate or benchmark any Products; (p) post, upload, transmit, or provide any Customer Data that Nearmap reasonably deems to be unlawful, harmful, abusive, or otherwise objectionable; (q) attempt to gain unauthorized access to the Products or its related systems or networks; (r) utilize any machine learning products, including any open-source products, in connection with the use of the Products; or (s) use the Products except as expressly permitted by the Agreement.

- 2.6. **Support; Improvements.** Customer acknowledges that Nearmap may improve and modify the features and functionality of the Products during the Subscription Term. Nearmap will provide Customer with commercially reasonable notice of any changes made to a material feature or functionality of the Products and will provide support to Customer in accordance with its then-current support policies generally available to Nearmap customers via the Nearmap website: <https://support.nearmap.com> (“**Support Policy**”). Notwithstanding the foregoing, Nearmap has no obligation to provide Customer with any additional support, but if Nearmap and Customer agree to do so, Nearmap may charge Customer reasonable additional fees for the additional support provided to Customer by Nearmap.
- 2.7. **Product-Specific Terms.** For any Products listed on an Order Form, the applicable Product-Specific Terms are hereby incorporated into the Agreement by reference.
- 2.8. **Service Level Agreement.** Nearmap’s uptimes, metrics, and provision of the Products are in accordance with the system status located at: <https://www.nearmap.com/status> (“**Status**”). Customer may subscribe to receive optional Status updates. Nearmap will provide the Platform in accordance with the availability obligations, service credits, and other terms set forth in the Service Level Agreement.
- 2.9. **Nearmap Policies.** Nearmap reserves the right to update its Product-Specific Terms, Support Policy, Documentation, and Privacy Policy (collectively “**Nearmap Policies**”) at any time in its sole discretion provided that any updates shall not materially diminish the level of privacy, support, or obligations set forth in such Nearmap Policies during the Subscription Term in which Nearmap updates such Nearmap Policies.

3. CUSTOMER’S OBLIGATIONS; CUSTOMER DATA

- 3.1. **Customer Obligations.** Customer is solely responsible for the accuracy, content, and legality of all Customer Data. Customer represents and warrants to Nearmap that: (a) Customer’s use of the Products and all Customer Data is and will be at all times compliant with all Applicable Laws; (b) Customer has provided all required notices and obtained and will maintain (and acknowledges it is solely responsible for obtaining and maintaining) all necessary consents as may be required by Applicable Laws to grant the Customer Data rights granted to Nearmap in Section 3.3, and Process such Customer Data as contemplated by the Agreement; (c) Nearmap’s use of the Customer Data does not infringe or otherwise violate the rights of any third party, including any intellectual property rights, fiduciary duty, and/or privacy rights; (d) Customer will access the APIs using only the login credentials and API key(s) assigned to Customer and as provided by Nearmap; (e) Customer will comply with any limits placed on access to and use of the APIs in the Order Form or in the Documentation, including any rate or data limits on queries to the API; and (f) Customer is responsible for all activities that occur with respect to the Products, use of the Products, and compliance with the Agreement. Customer is responsible for, and will hold confidential, all login credentials, including usernames and passwords, for administrator accounts, as well as the accounts of the Authorized Users. Nearmap will not be responsible for any damages, losses, or liability to Customer, Authorized Users, or anyone else due to such information not being kept confidential by Customer or the Authorized Users, or if such information is correctly provided by an unauthorized third-party logging into and accessing the products.
- 3.2. **Customer Restrictions.** Unless otherwise agreed to in writing, Customer is prohibited from uploading, or otherwise providing, directly or indirectly (including via a third-party provider or an Authorized User) by or through the Products, or provided by Customer to Nearmap to input into the Products, Customer Data that includes any sensitive information, including a social security number, passport number, driver’s license number, or similar identifier, credit card or debit card number, or any other similar information which may be subject to specific data privacy and security laws. Nearmap does not make any representations as to the adequacy of the Products to Process Customer Data or to satisfy any legal or compliance requirements which may apply to Customer Data, other than as described herein.
- 3.3. **Rights in Customer Data.** As between the parties, Customer shall retain all right, title and interest (including all patent, copyright, trade secret, and other intellectual property rights) in and to Customer Data. Customer hereby grants to Nearmap a non-exclusive, worldwide, irrevocable, transferable, sublicensable (through

multiple tiers), fully paid-up, royalty-free right and license to use, copy, store, transmit, modify, and display Customer Data in order to: (a) provide the Products to Customer; (b) perform such other actions as authorized or instructed by Customer in writing (email to suffice); and (c) as otherwise permitted by Applicable Laws. Nearmap will not share Customer Data with any third parties, except with (i) Nearmap's Affiliates, (ii) a subcontractor for a business purpose pursuant to a written agreement, provided that Nearmap shall be liable to Customer for the acts or omissions of any subcontractor to whom Nearmap has disclosed or permitted to access Customer Data as if they were the acts or omissions of Nearmap; and (iii) to third parties as necessary to comply with Applicable Laws.

3.4. **Usage Data and De-identified Data.** Customer acknowledges and agrees that Nearmap may create, collect, analyze, retain, and use data and other information that results or is derived from (a) Customer's use of the Products ("**Usage Data**"); and (b) Customer Data that is used solely in a deidentified manner such that the information is no longer Personal Data under Applicable Laws ("**De-identified Data**"), for the purposes of developing, maintaining, operating, improving, or providing the Products. For clarity, Usage Data and De-identified Data, and all intellectual property and proprietary rights therein, shall be exclusively owned by Nearmap. In the event Customer gains or retains any interest in the Usage Data or De-identified Data, Customer hereby irrevocably assigns to Nearmap any and all right, title, and interest in and to any Usage Data or De-identified Data.

3.5. **Third Party Application Service Providers.** Customer may be able to access and use certain third-party services or products (e.g., a third-party service that integrates with Nearmap via opt-in or uses Nearmap's APIs) through or with

its use of the Products ("**Third-Party Services**"). IF CUSTOMER USES ANY THIRD-PARTY SERVICES, CUSTOMER AGREES TO SUCH THIRD-PARTY SERVICES' TERMS AND CONDITIONS AND NEARMAP WILL NOT BE RESPONSIBLE FOR ANY ACT OR OMISSION OF ANY PROVIDER OF SUCH THIRD-PARTY SERVICES. NEARMAP DOES NOT WARRANT OR PROVIDE DIRECT SUPPORT FOR ANY THIRD-PARTY SERVICES. CUSTOMER ACKNOWLEDGES AND AGREES THAT NEARMAP WILL HAVE NO RESPONSIBILITY OR LIABILITY FOR THE ACTS OR OMISSIONS OF ANY AUTHORIZED USERS IN CONNECTION WITH ANY THIRD-PARTY SERVICES.

4. IP OWNERSHIP

4.1. Ownership.

4.1.1. **Nearmap Ownership.** Customer agrees that Nearmap or the providers of Third-Party Services own and retain all right, title, and interest (including all patent, copyright, trade secret, and other intellectual property rights) in and to (a) the Products, Documentation, Nearmap Data, Usage Data, De-identified Data, and any and all related and underlying technology, documentation, content, audio or visual material, images, graphics, photos, digital media, or other materials or content of any type, trademarks, and other information and (b) any idea, discovery, design, method, material, formula, trade secret, invention (including any discovery of a new technology and any improvement to existing technology), know-how, innovation, writing, work of authorship, compilation, and other development or improvement, whether or not patented or patentable, copyrightable, or reduced to practice or writing and all intellectual property rights thereto.

4.1.2. **Customer Ownership.** Subject to Section 6.4, Customer may continue using the Output provided that Nearmap may, by written notice to Customer at any time, limit Customer's use of certain Output or require Customer to cease using certain Output (and delete any copies of them) if Nearmap forms the view, in Nearmap's sole and absolute discretion, that Customer's use of the Output may infringe the rights of any third party. For the avoidance of doubt, Nearmap will continue to own all rights in and to any Nearmap Data embedded in any Output, but all other rights in and to the Output will belong to Customer.

4.2. **Feedback.** In the event Customer or its Authorized Users provide Nearmap with any suggestions, ideas, improvements, or other feedback with respect to any aspect of the Products ("**Feedback**"), Customer hereby irrevocably assigns to Nearmap any and all right, title, and interest in and to any Feedback.

5. FEES AND PAYMENT

5.1. **Fees and Payment.** All undisputed fees set forth in the Order Form (the "**Fees**") shall be paid by Customer within thirty

(30) days of Nearmap's provision of an invoice to Customer. All Fees are due and payable in advance at the start of the applicable Subscription Term (and each renewal term), and except as set forth in an Order Form, all payments shall be

made in the currency detailed in the invoice provided by Nearmap via ACH, credit card, or such other method as Nearmap communicates to Customer. Except as expressly set forth in Section 7.1, or 9.1(iii), all Fees are non-refundable. Any late payments shall be subject to a service charge equal to the maximum amount allowed by law (plus the costs of collection and reasonable attorneys' fees). Nearmap's other contractual and/or statutory rights, claims, and remedies remain unaffected. Fees for the Products are based on units purchased during the Subscription Term and not actual usage. Customer acknowledges and agrees that the number of units purchased cannot be decreased during a Subscription Term and that the units purchased will not roll over to the next Renewal Subscription Term.

- 5.2. **Excess Fees.** Customer is responsible for paying all actual excess fees incurred by Nearmap based on: excess data, storage, processing, API calls, and access fees charged by Nearmap's third-party cloud service providers as a result of Customer's use in excess of the amount(s) permitted in the Agreement.
- 5.3. **Fee Dispute.** If Customer has a good faith belief that a particular invoice is incorrect, Customer must contact Nearmap in writing (email to suffice) within sixty (60) days of such invoice date detailing the basis of the dispute. Customer may only withhold payment on the timely disputed amount in accordance with this Section. Any payment not received by Nearmap by the due date and not subject to a good faith dispute may accrue late charges at the maximum rate permitted by law, from the date such payment was due until the date paid. Nearmap's other contractual and/or statutory rights, claims, and remedies remain unaffected.
- 5.4. **Taxes.** If Customer contracts with (a) Nearmap AU, Customer will be responsible for the payment of any and all local, state, federal, or foreign taxes, levies, and duties of any nature, including value-added, sales, use, withholding taxes, and applicable goods and services tax (GST) under A New Tax System (Goods and Services Tax) Act 1999 (Cth) (GST Law) of Australia and its associated regulations, as amended; or (b) Nearmap US, Customer will be responsible for the payment of any and all local, state, federal, or foreign taxes, levies, and duties of any nature, including value-added, sales, use, and withholding taxes. If GST is payable on a supply made by Nearmap, Customer must pay as additional consideration an amount equal to the amount of GST payable on that supply. Customer is responsible for paying all

taxes, excluding only taxes based on Nearmap's net income. If Nearmap has the legal obligation to pay or withhold taxes for which Customer is responsible under this Section 5.4, the appropriate amount shall be invoiced to and paid by Customer unless Customer is exempt from paying such taxes or subject to a reduced state of withholding tax and the Customer provides Nearmap with proof of a valid tax exemption certificate authorized by the appropriate taxing authority.

- 5.5. **Audit.** During the Subscription Term and for two (2) years after termination or expiration of the Agreement, Customer shall maintain accurate and complete records regarding its access and use of the Products. Customer shall permit Nearmap (or its auditors) access to such records, books, systems and Authorized Users to confirm compliance with the Agreement. Nearmap will give at least thirty (30) days' prior written notice of an audit and will not conduct an audit more than once per calendar year unless non-compliance findings are noted, in which case the audit period may be extended. If an audit results in findings of non-compliance, Nearmap may, at its discretion: (a) invoice any additional license fees due based on the Fees set forth in the applicable Order Form; (b) recover the reasonable cost of the audit if additional Fees exceed five percent (5%) of the Fees paid during the audit period; and (c) terminate the Agreement in accordance with Section 6.2. Customer must pay all invoices issued under this Section 5.5 within thirty (30) days following the date of invoice.

6. TERM; TERMINATION; SUSPENSION

- 6.1. **Subscription Term.** The initial term of the Products shall begin on the Effective Date of the subscription specified in the Order Form and extend for the Subscription Term specified in the applicable Order Form. Upon the expiration of the initial term specified in the applicable Order Form, the term will automatically renew for successive terms of twelve

(12) months each unless either party provides the other party at least thirty (30) days written notice prior to the expiration of the then-current Subscription Term of its intention not to renew the Subscription Term.

- 6.2. **Termination.** Either party may terminate the Agreement if the other party (a) fails to cure any material breach of the Agreement (including a failure to pay Fees) within thirty (30) days after written notice (such notice must contain sufficient detail as to the nature of the breach and state the intent to terminate and email notice is valid only in the case of termination for non-payment of Fees); (b) ceases operation without a successor; (c) seeks protection under any bankruptcy, receivership, trust deed, creditors' arrangement, composition, or comparable proceeding, or if any such proceeding is instituted against that party (and not dismissed within sixty (60) days thereafter); or (d) if applicable, a party suspends payment of its debts generally, or is or

becomes unable to pay its debts when they are due, or is or becomes unable to pay its debts within the meaning of the Corporations Act.

- 6.3. **Suspension of Products.** Upon written notice (email to suffice) to Customer, in addition to any of its other rights or remedies, Nearmap may immediately suspend Customer's access to the Products if (a) except as provided in Section 5.1, Customer's account is ten (10) days or more overdue until such amounts are paid in full; (b) Customer is in material breach of any term in this Agreement, provided that such suspension will be narrowly tailored to address the cause of suspension for only the duration needed for Customer to cure such breach; (c) there is an attack on the Products, the Products are accessed or manipulated by a third party, or there is another event for which Nearmap reasonably believes that the suspension of Customer's access to the Products is necessary to protect Nearmap's network or its other customers; (d) Nearmap is required to do so by law (e.g., where providing access to Customer or an Authorized User may be, or become, unlawful); or (e) a licensor, supplier, or provider of Third-Party Services offering its products or services to Nearmap has terminated its relationship with Nearmap or ceased to offer such products or services.
- 6.4. **Effect of Termination.** Upon termination or expiration, Customer agrees to: (a) stop all uses of the Products, Nearmap Data, and any Output; (b) permanently delete the Products, Nearmap Data, and any Output from all devices and systems of all Authorized Users (provided that, however, Customer may retain one copy of the Output and Nearmap Data included therein for compliance, regulatory, and archival purposes as required by Applicable Laws provided that such Output and Nearmap Data included therein shall remain subject to the confidentiality and non-use obligations set forth herein for so long as such Output and the Nearmap Data included therein is retained); and (c) within five (5) days of such termination, ensure that an officer of Customer certifies in writing that all applicable copies of the Products, Nearmap Data, and Output have been permanently deleted or destroyed. Except as otherwise set forth herein, termination of the Agreement is not an exclusive remedy and the exercise by either party of any remedy under the Agreement will be without prejudice to any other remedies it may have under the Agreement, by law, or otherwise. Except in the case of Customer's termination for Nearmap's material breach pursuant to Section 6.2, Customer shall pay to Nearmap all Fees accrued or payable to Nearmap upon the effective date of termination in accordance with Section 5.
- 6.5. **Customer Data.** Customer acknowledges that if Customer or an Authorized User deletes or modifies Customer Data from the Products, Customer Data may still reside in Nearmap's systems, applications, databases, and servers (including as backups and/or archives). Customer acknowledges that Customer's deletion or modification of Customer

Data during any Subscription Term may have an adverse impact on Customer's use of the Products (and Nearmap is not liable with respect thereto).

- 6.6. **Survival.** The following Sections shall survive any expiration or termination of the Agreement: 2.2, 3, 4, 5, 6.4, 6.5, 7.2, 8, 9, 10, 12, and 14.

7. LIMITED WARRANTY; DISCLAIMER

- 7.1. **Limited Warranty.** Nearmap warrants that (a) it will provide the Products in a manner consistent with general industry standards reasonably applicable to the provision thereof; and (b) Nearmap will not materially decrease the overall functionality of the Products. Nearmap's sole liability (and Customer's sole and exclusive remedy) for any breach of the warranties set forth in Section 7.1(a) and 7.1(b) shall be, in Nearmap's sole discretion and at no additional charge to Customer, to use commercially reasonable efforts to offer Customer an error correction or work-around so that the Product(s) materially conform(s) to the warranty, or if Nearmap determines such remedies to be impracticable, Nearmap may terminate the remaining Subscription Term and Customer shall receive as its sole remedy and Nearmap's entire liability shall be, a refund of any prepaid Fees for Products not used as of the date of the warranty claim. The limited warranty set forth in this Section 7.1 shall not apply: (a) unless Customer makes a written claim in accordance with Section 14.7 within thirty (30) days of the date on which the condition giving rise to the claim first appeared, (b) if the error was caused by misuse, unauthorized modifications or third-party hardware, software, or services, (c) if the decrease in functionality is caused by the combination of the Products with any services, hardware, connection, interface, data, or business processes not provided by Nearmap, or (d) to the Products provided on a no-charge or evaluation basis.
- 7.2. **Warranty Disclaimer.** EXCEPT FOR THE WARRANTIES SET FORTH IN THIS SECTION 7, THE PRODUCTS, AND ANY AND ALL RELATED AND UNDERLYING TECHNOLOGY, CONTENT, AUDIO OR VISUAL MATERIAL, IMAGES,

GRAPHICS, PHOTOS, DIGITAL MEDIA OR OTHER MATERIALS OR CONTENT OF ANY TYPE, TRADEMARKS, AND OTHER INFORMATION ARE PROVIDED "AS IS" AND NEARMAP AND ITS THIRD-PARTY PROVIDERS, AGENTS, MANDATARIES, AND AFFILIATES HEREBY DISCLAIM, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, OF MERCHANTABILITY, OR THAT THE PRODUCTS AND ANY AND ALL RELATED AND UNDERLYING TECHNOLOGY, CONTENT, AUDIO OR VISUAL MATERIAL, IMAGES, GRAPHICS, PHOTOS, DIGITAL MEDIA OR OTHER MATERIALS OR CONTENT OF ANY TYPE, TRADEMARKS, AND OTHER INFORMATION, OR ANY RESULTS OF OR THE USE THEREOF, WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, BE COMPATIBLE OR WORK WITH ANY PRODUCTS, SYSTEM OR OTHER SERVICES, OR BE SECURE, ACCURATE, CORRECT, RELIABLE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR-FREE. ADDITIONALLY, NEARMAP STRICTLY DISCLAIMS ALL WARRANTIES WITH RESPECT TO ANY THIRD-PARTY PRODUCTS. CUSTOMER IS SOLELY RESPONSIBLE FOR ITS AND ITS AUTHORIZED USERS' INTERACTIONS AND SHARING OF INFORMATION WITH OTHER USERS.

- 7.3. Notwithstanding any other provision, the rights of a party under this Agreement are in addition to and do not exclude or limit any other rights or remedies under the Australian Consumer Law in the Competition and Consumer Act 2010 (Cth), to the extent the Customer contracts with Nearmap AU.

8. LIMITATION OF LIABILITY.

- 8.1. NEITHER PARTY SHALL BE LIABLE, UNDER ANY LEGAL OR EQUITABLE THEORY OF LAW, WITH RESPECT TO ANY SUBJECT MATTER OF THE AGREEMENT FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY KIND, INCLUDING LOST PROFITS, BUSINESS, CONTRACTS, REVENUE, GOODWILL, PRODUCTION, AND ANTICIPATED SAVINGS OR DATA, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE.

- 8.2. EXCEPT WITH RESPECT TO (A) EITHER PARTY'S OBLIGATIONS UNDER SECTION 9 (INDEMNIFICATION) (WHICH SHALL BE LIMITED IN THE AGGREGATE TO TWO TIMES (2X) THE FEES PAID BY CUSTOMER TO NEARMAP UNDER THE APPLICABLE ORDER FORM DURING THE TWELVE (12) MONTH PERIOD PRIOR TO WHEN THE CLAIM AROSE); (B) EITHER PARTY'S OBLIGATIONS UNDER SECTION 10 (CONFIDENTIAL INFORMATION) (WHICH SHALL BE LIMITED IN THE AGGREGATE TO TWO TIMES (2X) THE FEES PAID BY CUSTOMER TO NEARMAP UNDER THE APPLICABLE ORDER FORM DURING THE TWELVE (12) MONTH PERIOD PRIOR TO WHEN THE CLAIM AROSE); (C) CUSTOMER'S PAYMENT OBLIGATIONS UNDER THE AGREEMENT; (D) CUSTOMER'S BREACH OF SECTION 2.5 (GENERAL RESTRICTIONS); OR (E) EITHER PARTY'S GROSS NEGLIGENCE, WILLFUL MISCONDUCT, OR FRAUD AS DETERMINED BY A COURT OF FINAL AND COMPETANT JURISDICTION: EACH PARTY'S AGGREGATE LIABILITY SHALL IN NO EVENT EXCEED THE FEES PAID BY

CUSTOMER TO NEARMAP UNDER THE APPLICABLE ORDER FORM DURING THE TWELVE (12) MONTH PERIOD PRIOR TO WHEN THE CLAIM AROSE.

- 8.3. THE LIMITATIONS UNDER THIS SECTION 8 APPLY WITH RESPECT TO ALL LEGAL THEORIES, WHETHER IN CONTRACT, TORT OR OTHERWISE, AND TO THE EXTENT PERMITTED BY LAW. THE PROVISIONS OF THIS SECTION 8 ALLOCATE THE RISKS UNDER THE AGREEMENT BETWEEN THE PARTIES, AND THE PARTIES HAVE RELIED ON THESE LIMITATIONS IN DETERMINING WHETHER TO ENTER INTO THE AGREEMENT AND THE PRICING FOR THE PRODUCTS.

9. INDEMNIFICATION.

- 9.1. **Nearmap Indemnification.** Nearmap shall defend Customer at Nearmap's expense against any claims, costs, damages, losses, liabilities and expenses (including reasonable attorneys' fees and costs) arising from the direct infringement of a U.S. and Australia registered intellectual property rights asserted against Customer by a third party based upon Customer's use of the Products as delivered by Nearmap in accordance with the terms of the Agreement and Nearmap shall indemnify and hold Customer harmless against all reasonable costs (including attorneys' fees) finally awarded against Customer by a court of competent jurisdiction, or agreed in a written settlement agreement signed by Nearmap, provided that Nearmap shall have received from Customer: (a) prompt written notice of such claim (but in any event notice in sufficient time for Nearmap to respond without prejudice); (b) the exclusive right to control and direct the investigation, defense, or settlement (if applicable) of such claim (as long as such settlement releases Customer from any and all liability); and (c) all reasonable necessary cooperation of Customer. If Customer's use of any Products is, or in Nearmap's opinion is likely to be, enjoined due to the type of infringement specified above, or if required by settlement, or Nearmap exercises its right to require Customer to limit or

cease using Output under Section 4.1.2, Nearmap may, in its sole and reasonable discretion: (i) substitute substantially functionally similar products or services; (ii) procure for Customer the right to continue using the Products; or if (i) and (ii) are commercially impracticable, (iii) terminate the Agreement and refund to Customer any unused, prepaid Fees paid by Customer for the terminated period. The foregoing indemnification obligation of Nearmap shall not apply to the extent that the alleged infringement arises from: (1) any modification of the Products by any other party other than Nearmap; (2) access to or use of any Products in combination with any hardware, system, software, network, or other products, materials, or services not provided by Nearmap; (3) use of the Products in breach of the Agreement; or (4) Customer Data. THIS SECTION 9.1 SETS FORTH NEARMAP'S SOLE LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY CLAIM OF INTELLECTUAL PROPERTY INFRINGEMENT.

9.2. **Customer Indemnification.** Customer agrees to defend, indemnify and hold harmless Nearmap and its affiliates, licensors, and suppliers, and Nearmap's and their respective employees, contractors, agents, officers, and directors, from and against any and all claims, damages, obligations, losses, liabilities, costs or debt, and expenses (including reasonable attorneys' fees and costs) arising from: (a) Customer's and any Authorized User's use of the Products; and

(b) Customer's violation of Section 2.5 (General Restrictions).

10. CONFIDENTIALITY.

10.1. **Confidential Information.** Each party, as a receiving party, agrees to retain in confidence the non-public information and know-how disclosed to it pursuant to the Agreement which is either designated in writing as proprietary and/or confidential, if disclosed in writing, or if disclosed orally, is designated in writing (which may be via email) as confidential within thirty (30) days of the oral disclosure or should reasonably be understood to be confidential by the recipient (the "**Confidential Information**"). Notwithstanding any failure to so designate them, the Products, the Documentation, the Usage Data, the De-identified Data, the Nearmap Data, the Feedback, and the commercial terms of the Agreement as set forth in any Order Form shall be Nearmap's Confidential Information. Each party agrees to:

(a) preserve and protect the confidentiality of the other party's Confidential Information, using at least the same degree of care which it uses to prevent the disclosure of its own confidential information of like importance, but in no event less than reasonable care; (b) refrain from using the other party's Confidential Information except as contemplated herein; and (c) not disclose such Confidential Information to any third party except to employees, officers, affiliates, controlling stockholders, agents, advisors, subcontractors, and other representatives as is reasonably required in connection with the exercise of its rights and obligations under the Agreement (and only subject to binding use and disclosure restrictions at least as protective as those set forth herein). Each party agrees to promptly notify the other party of any unauthorized disclosure or use of any Confidential Information and to assist the other party in remedying such unauthorized use or disclosure by taking such steps as are reasonably requested.

10.2. **Exceptions.** Notwithstanding the foregoing, Confidential Information shall not include information which is:

(a) already publicly known without breach of the Agreement; (b) discovered, created or independently developed by the receiving party without use of, reliance upon, or reference to, the Confidential Information of the disclosing party, as shown in records of the receiving party; (c) otherwise known to the receiving party through no wrongful conduct of the receiving party, or (d) required to be disclosed by law or court order or by the listing rules of any stock exchange where the

recipient's securities are listed or quoted; provided that the receiving party shall provide prompt notice thereof and commercially reasonable assistance to the disclosing party to enable the disclosing party to seek a protective order or otherwise prevent or restrict such disclosure. Moreover, either party hereto may disclose any Confidential Information hereunder to such party's agents, attorneys and other representatives (and only subject to confidentiality obligations at least as protective as those set forth herein) or any court of competent jurisdiction as reasonably required to resolve any dispute between the parties hereto. Each party agrees and acknowledges that any breach or threatened breach of this Section 10 may cause irreparable injury to the disclosing party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, the disclosing party shall be entitled to seek injunctive relief against the threatened breach of the Agreement or the continuation of any such breach by the receiving party, without the necessity of proving actual damages or posting any bond, in addition to any other rights or remedies provided by law.

11. **SECURITY.** Each party shall comply with all Applicable Laws. Nearmap shall use reasonable physical, technical, and administrative procedures, which procedures may include SOC 2 certification or the equivalent thereof depending on the Product, designed to protect, safeguard and help prevent loss, misuse, and unauthorized access, disclosure, alteration or destruction of Customer Data, and will choose these safeguards based on the sensitivity of the information that is collected, Processed, and stored and the current state of applicable

technology. Upon Customer's written request, Nearmap shall, not more than once per rolling twelve (12) months, respond to a reasonable security questionnaire provided by Customer regarding Nearmap's compliance with the obligations set forth in this Section 11. All Nearmap's responses and information provided in response to Customer's security questionnaires are Confidential Information under this Agreement. In lieu of completing Customer's security questionnaire, Nearmap may make available to Customer information regarding Nearmap's compliance with the obligations set forth in this Section 11 in the form of a copy of the summary of Nearmap's the then- current applicable security audit report.

12. **PUBLICITY.** Except as otherwise agreed in writing (email to suffice), neither party may use the other party's name, logos, or marks without such party's written pre-approval in each case.
13. **DATA PROCESSING.** Nearmap's data security and privacy practices form an integral part of Nearmap's product engineering and service delivery principles. Customer understands and acknowledges that to the extent Nearmap Processes any Personal Data, Nearmap shall do so in accordance with its privacy notice, which is available at <https://www.nearmap.com/us/en/legal/privacy-policy> (if contracting with Nearmap US) defined data or information under Applicable Laws, Nearmap will Process such information as a data "processor" or "service provider" (each term, as applicable) and a list of Nearmap's sub-processors will be made available upon Customer's written request (email to suffice).
14. **GENERAL TERMS**
 - 14.1. **Assignment.** The Agreement will bind and inure to the benefit of each party's permitted successors and assigns. Neither party may assign the Agreement except upon the advance written consent of the other party, except that either party may assign the Agreement without such consent in connection with a merger, reorganization, acquisition, or other transfer of all or substantially all of such party's assets or voting securities (other than, in the case of Customer, to an entity that is reasonably deemed to be a direct competitor of Nearmap). Any attempt to transfer or assign the Agreement except as expressly authorized under this Section 14.1 will be null and void.
 - 14.2. **Force Majeure.** Neither party shall be liable to the other for any delay or failure to perform any obligation under the Agreement if the delay or failure is due to unforeseen events which occur after the signing of the Agreement and which are beyond the reasonable control of such party, such as a strike, blockade, war, act of terrorism, riot, natural disaster, or failure or diminishment of power or telecommunications or data networks or services.
 - 14.3. **Subcontractors.** Nearmap may use the services of subcontractors for performance of services under the Agreement, provided that Nearmap remains responsible for such subcontractors' compliance with the terms of the Agreement.
 - 14.4. **Independent Contractors.** The parties to the Agreement are independent contractors. There is no relationship of partnership, joint venture, employment, franchise, or agency created hereby between the parties. Neither party will have the power to bind the other or incur obligations on the other party's behalf without the other party's prior written consent.
 - 14.5. **Severability.** If any provision of the Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited to the minimum extent necessary so that the Agreement shall otherwise remain in effect.
 - 14.6. **Governing Law and Venue; Waiver of Jury Trial.**
 - 14.6.1. If Customer contracts with Nearmap AU, then the Agreement and any disputes arising out of or related hereto shall be governed by and construed in accordance with the laws of the State of New South Wales, Australia, without giving effect to its conflicts of laws rules, the United Nations Convention on the International Sale of Goods, or the Uniform Computer Information Transactions Act. Except for claims for injunctive or equitable relief or claims regarding intellectual property rights (which may be brought in any competent court in New South Wales). The jurisdiction and venue for actions related to the subject matter hereof shall be the state and federal courts located in New South Wales, Australia and both parties hereby submit to the personal jurisdiction of such courts. Each party also hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to the Agreement.
 - 14.6.2. If Customer contracts with Nearmap US, then the Agreement and any disputes arising out of or related hereto shall be governed by and construed in accordance with the laws of the State of Utah, United

States of America, without giving effect to its conflicts of laws rules, the United Nations Convention on the International Sale of Goods, or the Uniform Computer Information Transactions Act. The jurisdiction and venue for actions related to the subject matter hereof shall be the state and United States federal courts located in Salt Lake County, Utah except for claims for injunctive or equitable relief or claims regarding intellectual property rights (which may be brought in any competent court in Salt Lake County) and both parties hereby submit to the personal jurisdiction of such courts. Each party also hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to the Agreement.

- 14.7. **Notice.** Notwithstanding anything to the contrary herein, any notice or communication required or permitted under the Agreement shall be in writing to the parties at the addresses set forth in the applicable Order Form or at such other address as may be given in writing by either party to the other in accordance with this Section. A notice shall be deemed to have been received by the addressee (a) if given by hand, immediately upon receipt; (b) if given by overnight courier service, immediately upon receipt; or (c) if given by registered or certified mail, postage prepaid and return receipt requested, the fourth day (excluding holidays) after such notice is deposited in the mail. In addition, any legal notices to Nearmap must be delivered to the following email address: legal@nearmap.com but, notwithstanding earlier receipt via email, legal notices will be deemed received when the physical notice is received as set forth in the preceding sentence.
- 14.8. **Order of Precedence.** In the event of any conflict between this Master Subscription Agreement, an Order Form, and the Product-Specific Term, the order of precedence shall be (a) Order Form; (b) this Master Subscription Agreement; and (c) the Product-Specific Terms (unless expressly stated otherwise in the Product-Specific Terms), in order of appearance.
- 14.9. **Amendments; Waivers.** All supplements, modifications, or amendments of the Agreement shall be executed in writing by a duly authorized representative of each party to the Agreement. No waiver will be implied from conduct or failure to enforce or exercise rights under the Agreement, nor will any waiver be effective unless in writing signed by a duly authorized representative on behalf of the party claimed to have waived. Purchase orders (and similar documents) issued by Customer are for administrative purposes only (e.g., setting forth products and services ordered and associated fees) and any additional or different terms or conditions contained in any such order shall not apply (even if the order is accepted, or performed on by Nearmap).
- 14.10. **Interpretation.** The words “hereof,” “herein,” and “hereunder” and words of similar import, when used in the Agreement, will refer to the Agreement as a whole and not to any particular provision of the Agreement. Terms defined in the singular will have correlative meanings when used in the plural, and vice versa. The headings herein are for convenience of reference only, do not constitute part of the Agreement and will not be deemed to limit or otherwise affect any of the provisions hereof. Where a reference in the Agreement is made to a section, exhibit, or schedule, such reference will be to a section, exhibit, or schedule to the Agreement unless otherwise indicated. Whenever the words “include,” “includes” or “including” are used in the Agreement, they will be deemed to be followed by the words “without limitation,” unless preceded by the word “not.” If a link herein redirects to a geographic-specific link, including but not limited to geographic-specific sites for Australia, New Zealand, and Canada, that geographic-specific link shall be given the same effect as if it were explicitly included in the Agreement in lieu of the link from which the redirect occurred that is set forth in the Agreement.
- 14.11. **No Third-Party Rights.** There are no third-party beneficiaries to the Agreement.
- 14.12. **Export Compliance.** Each party shall comply with all applicable export and re-export control and trade and economic sanctions laws, including the Export Administration Regulations maintained by the U.S. Department of Commerce, trade and economic sanctions maintained by the U.S. Treasury Department’s Office of Foreign Assets Control (OFAC), and the International Traffic in Arms Regulations maintained by the U.S. State Department. Neither party, nor any of its subsidiaries or any person acting on its behalf or owning fifty percent (50%) or more of its equity securities or other equivalent voting interests, is (a) a person on the List of Specially Designated Nationals and Blocked Persons or any other list of sanctioned persons administered by OFAC or any other governmental entity, or (b) a national or resident of, or a segment of the government of, any country or territory for which the United States of America has embargoed goods or imposed trade sanctions.
- 14.13. **Compliance with Anti-corruption Laws.** Each party shall comply with the U.S. Foreign Corrupt Practices Act and any Applicable Laws related to anti-corruption of other countries, to the extent applicable. Each party shall not, at any time, directly or indirectly (through a subcontractor or other third party), pay, offer, give, or

promise to pay or give, or authorize the payment of, any monies or any other thing of value to influence the improper performance of any individual government officials and employees of state-owned enterprises.

- 14.14. **Entire Agreement.** The Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements and communications, relating to the subject matter of the Agreement. Unless expressly agreed between the parties in writing in an Order Form, the terms, conditions, or provisions of any purchase order, invoice, or other administrative document issued by Customer in connection with the Agreement will not modify, alter, or expand the rights, duties, or obligations of the parties under, or will not otherwise modify, the Agreement, irrespective of the timing of its issuance or any failure of Nearmap to object to such terms, conditions, or provisions.

**ADDENDUM TO MASTER SUBSCRIPTION AGREEMENT
(GOVERNMENT CUSTOMERS)**

1. Section 1.1 (Affiliate) of the Agreement is deleted in its entirety and replaced with the following:

“ **“Affiliate”** means an entity that, directly or indirectly, controls, is controlled by, or is under common control with a party. As used herein, “control” means the power to direct the management or affairs of an entity or the beneficial ownership of fifty percent (50%) or more of the voting equity securities or other equivalent voting interests of an entity.”

2. Section 1.6 (Corporations Act) of the Agreement is deleted in its entirety and replaced with “Intentionally Omitted”.

3. Section 1.14 (Nearmap) of the Agreement is deleted in its entirety and replaced with the following:

“ **“Nearmap”** means Nearmap US, Inc. (“Nearmap US”), with offices located at 1850 Ashton Blvd, Ste 500, Lehi, UT 84043.”

4. Section 1.28 (Territory) of the Agreement is deleted in its entirety and replaced with the following:

“ **“Territory”** means the United States of America. Coverage by Nearmap within the Territory is outlined at <https://www.nearmap.com/us/en/current-aerial-maps-coverage>.”

5. Section 2.2 (Nearmap Attribution) of the Agreement is deleted in its entirety and replaced with the following:

“**2.2 Nearmap Attribution.** If Customer creates Output, Customer must expressly acknowledge Nearmap in a reasonably prominent manner on each Output (by displaying the Nearmap logo or such other attribution as reasonably requested by Nearmap), as the source of any data underlying the Output. Unless otherwise permitted in writing by Nearmap, Customer must not remove or cause to be removed any Nearmap logo, watermark, or other Nearmap attribution in any Output. Customer must include all requisite legends indicating and preserving Nearmap’s rights in and to the Products. All Output must include the following copyright notice on the work: “Created with [TITLE OF PRODUCT]@[year] Nearmap US, Inc.”.

6. A new section 2.10 (Data Use for Government Customers) is inserted into the Agreement as follows:

“**2.10 Government Products.** Where the Customer purchases unlimited allowance Products, if set forth in the applicable Order Form, that are exclusively offered to government customers (“**Government Products**”), these Government Products will be subject to Nearmap’s Fair Use Policy, which is available at <https://www.nearmap.com/legal/fair-use-policy>. The following conditions will apply to the Customer’s use of Government Products: (a) the amount of Nearmap Data used by Customer when accessing the Government Products will be monitored and then calculated at the end of every Subscription Term based on the total data of all Authorized Users who access and use Customer’s Nearmap account during the Subscription Term; and (b) if the Customer elects to download and/or export Government Products available to Customer through the Platform, this will be applied to the calculation of the Licensee’s use of the Government Products.”

7. Section 5.1 (Fees and Payment) is deleted in its entirety and replaced with the following:

“**5.1 Fees and Payment.** All undisputed fees set forth in the Order Form (the “Fees”) shall be paid in accordance with the payment terms outlined in the Order Form. All Fees are due and payable in advance at the start of the applicable Subscription Term (and each renewal term), and except as set forth in an Order Form, all payments shall be made in the currency detailed in the invoice provided by Nearmap via ACH, credit card, or such other method as Nearmap communicates to Customer. Except as expressly set forth in Section 7.1, or 9.1(iii), all Fees are nonrefundable. Fees for the Products are based on units purchased during the Subscription

Term and not actual usage. Customer acknowledges and agrees that the number of units purchased cannot be decreased during a Subscription Term and that the units purchased will not roll over to the next Renewal Subscription Term.

8. Section 5.2 (Excess Fees) of the Agreement is deleted in its entirety and replaced with the following:

“5.2 Excess Fees. With the exception of Government Products, Customer is responsible for paying all actual excess fees incurred by Nearmap based on: excess data, storage, processing, API calls, and access fees charged by Nearmap’s third- party cloud service providers as a result of Customer’s use in excess of the amount(s) permitted in the Agreement.”

9. Section 5.4 (Taxes) of the Agreement is deleted in its entirety and replaced with the following:

“5.4 Taxes. Customer will be responsible for the payment of any and all local, state, federal, levies, and duties of any nature, including value-added, sales, use, and withholding taxes. Customer is responsible for paying all taxes, excluding only taxes based on Nearmap's net income. If Nearmap has the legal obligation to pay or withhold taxes for which Customer is responsible under this Section 5.4, the appropriate amount shall be invoiced to and paid by Customer unless Customer is exempt from paying such taxes or subject to a reduced state of withholding tax and the Customer provides Nearmap with proof of a valid tax exemption certificate authorized by the appropriate taxing authority.”

10. Section 5.5 (Audit) of the Agreement is deleted in its entirety and replaced with “Intentionally Omitted”.

11. Section 6.2 (Termination) of the Agreement is deleted in its entirety and replaced with the following:

“6.2 Termination. Either party may terminate the Agreement if the other party (a) fails to cure any material breach of the Agreement (including a failure to pay Fees) within thirty (30) days after written notice (such notice must contain sufficient detail as to the nature of the breach and state the intent to terminate and email notice is valid only in the case of termination for non-payment of Fees); (b) ceases operation without a successor; (c) seeks protection under any bankruptcy, receivership, trust deed, creditors’ arrangement, composition, or comparable proceeding, or if any such proceeding is instituted against that party (and not dismissed within sixty (60) days thereafter); or (d) if applicable, a party suspends payment of its debts generally, or is or becomes unable to pay its debts when they are due.

6.2.1. Non Appropriation of Funding. Nearmap acknowledges that the terms of the Agreement are contingent upon appropriation of Federal, State, or other sources of funding being provided to Customer, and that funding is on a fiscal year basis and subject to annual appropriations. Should Customer not receive funding during the Subscription Term, Customer shall be permitted to terminate the remaining Subscription Term of the Agreement at the end of the current appropriation period without further obligation or penalty, upon no less than thirty (30) days written notice before the end of the current appropriation period. Customer agrees to submit certified evidence to Nearmap of such non-appropriation of funding. Such termination will not affect Customer’s obligation with Fees during the current fiscal year for which funding is received and any termination of the Agreement will not entitle Customer to a refund of any prepaid Fees. Customer agrees that it will use best efforts to obtain sufficient funds, including but not limited to, requesting in its budget for each fiscal period during the Subscription Term sufficient funds to meet its obligations under the Agreement.”

12. Section 7.3 (Limited Warranty, Disclaimer) is deleted in its entirety and replaced with “Intentionally Omitted”.

13. Section 9.2 (Customer Indemnification) of the Agreement is deleted in its entirety and replaced with “Intentionally Omitted”.

14. Section 13 (Data Processing) of the Agreement is deleted in its entirety and replaced with the following:

“13. **DATA PROCESSING.** Nearmap’s data security and privacy practices form an integral part of Nearmap’s product engineering and service delivery principles. Customer understands and acknowledges that to the extent Nearmap Processes any Personal Data, Nearmap shall do so in accordance with its privacy notice, which is available at <https://www.nearmap.com/us/en/legal/privacy-policy> (“**Privacy Policy**”); provided, however, that to the extent Customer Data includes any information which is defined as “personal data,” “personal information,” “personal identifiable information,” or similarly defined data or information under Applicable Laws, Nearmap will Process such information as a data “processor” or “service provider” (each term, as applicable) and a list of Nearmap’s sub- processors will be made available upon Customer’s written request (email to suffice).”

15. Section 14.6 (Governing Law and Venue; Waiver of Jury Trial) is deleted in its entirety and replaced with the following:

“14.6 **Governing Law and Venue; Waiver of Jury Trial.** The Agreement and any disputes arising out of or related hereto shall be governed by and construed in accordance with the laws of the State of Utah, United States of America, without giving effect to its conflicts of laws rules, the United Nations Convention on the International Sale of Goods, or the Uniform Computer Information Transactions Act. The jurisdiction and venue for actions related to the subject matter hereof shall be the state and United States federal courts located in Salt Lake County, Utah except for claims for injunctive or equitable relief or claims regarding intellectual property rights (which may be brought in any competent court in Salt Lake County) and both parties hereby submit to the personal jurisdiction of such courts. **Each party also hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to the Agreement.**”

16. Section 14.8 (Order of Precedence) is amended to insert the following language at the end of the section:

“If Customer purchases the Products through a reseller, the terms and conditions under this Agreement will apply. This Agreement between Nearmap and Customer supersedes all terms and conditions attached to Customer’s and/or reseller’s purchase order.”

FAIR USE POLICY

GENERAL

1. It is important to Nearmap that all customers are able to access the Products and Services. Accordingly, we have devised a Fair Use Policy that applies to the data usage of the Products and Services.
2. In this Fair Use Policy:
 - a. **Excessive Use** has the meaning given to that term in section 7 of this Fair Use Policy;
 - b. **Fair Use Policy** means this policy;
 - c. **Nearmap, we, us or our** means Nearmap US, Inc.;
 - d. **Products** has the meaning given to that term in Your Nearmap Agreement;
 - e. **Services** has the meaning given to that term in Your Nearmap Agreement;
 - f. **You or Your** means any customer of Nearmap;
 - g. **Your Nearmap Agreement** means the agreement pursuant to which Nearmap provides You with various products and services;and
 - h. **Unreasonable Use** has the meaning given to that term in section 5 of this Fair Use Policy.
3. We reserve the right to vary the terms of this Fair Use Policy from time to time.
4. This Fair Use Policy is in addition to Your Nearmap Agreement and in the event of any inconsistency between the terms of this Fair Use Policy and the terms and conditions of Your Nearmap Agreement, Your Nearmap Agreement prevails.

UNREASONABLE USE

1. We consider Your use of the Products and Services unreasonable where You use it in a manner which is reasonably considered by Nearmap to be fraudulent use, to be contrary to Your Nearmap Agreement or to adversely affect other Nearmap customers' use of or access to the Products and Services.
2. Among other things, "fraudulent use" includes resupply of the Products and Services without Nearmap's consent so that someone else may access or use the Products and Services or take advantage of the Products and Services.

EXCESSIVE USE

1. Excessive Use is a continuing and unreasonably disproportionate use of the Products and Services when compared to other average individual named users.

NEARMAP'S RIGHTS

1. Where Your use of the Products and Services constitutes Unreasonable Use and/or Excessive Use, Nearmap may contact You to discuss changing Your usage pattern so that it conforms with this Fair Use Policy, or to upgrade to a more suitable Product or Service (if applicable).
2. If, after Nearmap has contacted You, Your Unreasonable Use and/or Excessive Use continues, Nearmap may, without further notice to You:
 - a. restrict Your access to low resolution imagery for the remainder of the month; and/or
 - b. restrict Your access to low resolution imagery for the remainder of the month until Your data allowance is reset at the beginning of the next month (if applicable); and/or
 - c. restrict Your access for the remainder of the month; and/or
 - d. restrict Your access to Nearmap until Your data allowance is reset at the beginning of the next

- month (if applicable); and/or
- e. immediately cease Your access to Nearmap; and/or
 - f. exercise any other right available to Nearmap under the terms of Your Nearmap Agreement.



**Town of Highland Park
Town Council
Tuesday, February 17, 2026**

Item Coversheet

**Take action on the minutes of the Town Council meeting held on
February 3, 2026.**

PRESENTED BY: Joanna Mekeal, Town Secretary

BACKGROUND:

Minutes of the Town Council meeting held on February 3, 2026.

RECOMMENDATION

Staff recommends approval.

FINANCIAL IMPACT

This item has no financial impact.

ATTACHMENTS

2026-2-3 TC Minutes

MINUTES OF A MEETING OF THE TOWN COUNCIL OF THE TOWN OF HIGHLAND PARK, TEXAS, HELD AT THE TOWN HALL, 4700 DREXEL DRIVE, HIGHLAND PARK, TX, 75205, AT 8:00 A.M. ON TUESDAY, FEBRUARY 3, 2026.

Mayor Will C. Beecherl, Mayor Pro Tem Don Snell, and Council Members Alan Friedman, Marc Myers, Lydia Novakov, and Leland White attended the meeting.

I. Mayor Will C. Beecherl called the meeting to order at 8:00 a.m.

II. Council Member Lydia Novakov gave the Invocation.

III. PUBLIC COMMENT

Mayor Beecherl asked if anyone wished to address the Town Council about any item listed on the agenda and explained that the Town Council may not discuss or make decisions on items not listed on the agenda. Public comments are limited to three minutes per speaker unless otherwise required by law. Items suggested for action may be placed on a future agenda at the Town Council's discretion. No comment was made.

IV. CONSENT AGENDA

On a motion made by Council Member Lydia Novakov, seconded by Mayor Pro Tem Don Snell, the Town Council voted unanimously to approve Items A. through E. on the Consent Agenda. Prior to the vote, Mayor Beecherl explained that all items under the Consent Agenda are considered routine or discussed at a previous meeting. There will be no separate discussion of items unless a request by a Council Member is made prior to the Town Council voting on the motion.

- A. *Take action on an ordinance ordering the General Municipal Election on Saturday, May 2, 2026, for the purpose of electing a Mayor and five Town Council Members and authorizing the Mayor to execute an election services agreement.*
- B. *Take action on an ordinance establishing an all-way stop intersection at the Douglas Avenue and Lorraine Avenue intersection.*
- C. *Take action on an ordinance amending the Town's Records Management Program Ordinance and a Resolution adopting the policies and procedures for the Program.*
- D. *Take action on the minutes of the Town Council meeting held on January 20, 2026.*
- E. *Take action on the minutes of the Town Council study session held on January 20, 2026.*

V. MAIN AGENDA

A. *Review, discuss, and take action to extend the construction time period from 24 to 32 months for a new single-family residence at 3705 Gillon Avenue.* Jeff Armstrong, A.I.C.P., Director of Community Development, reported that the applicant, Matt Cain of Tatum Brown Custom Homes, requested an eight-month extension of a building permit to complete construction of a new single-family residence at 3705 Gillon Avenue. The proposed residence would encompass 14,611 square feet under roof and include a full basement. The 4,300-square-foot basement would include living

space and a mechanical room. The extension request was submitted prior to the commencement of construction, and the proposed 32-month construction period would begin upon permit issuance. In response to questions from Town Council Member Marc Myers, Mr. Cain stated that the primary justification for the extension is the extensive scope of the basement construction, which is 14 feet deep and mirrors the footprint of the residence. On a motion made by Mayor Pro Tem Don Snell, seconded by Council Member Lydia Novakov, the Town Council voted unanimously to approve the construction time period from 24 to 32 months for a new single-family residence at 3705 Gillon Avenue.

VI. ADJOURNMENT

Mayor Beecherl adjourned the Town Council meeting at 8:12 a.m.

APPROVED on the 17th day of February 2026.

APPROVED:

Will C. Beecherl
Mayor

ATTEST:

Joanna Mekeal
Town Secretary



**Town of Highland Park
Town Council
Tuesday, February 17, 2026**

Item Coversheet

**Take action on the minutes of the Town Council study session held
on February 3, 2026.**

PRESENTED BY: Joanna Mekeal, Town Secretary

BACKGROUND:

Minutes of the Town Council study session held on February 3, 2026.

RECOMMENDATION

Staff recommends approval.

FINANCIAL IMPACT

This item has no financial impact.

ATTACHMENTS

2026-02-03 TCSS Minutes

MINUTES OF A STUDY SESSION OF THE TOWN COUNCIL OF THE TOWN OF HIGHLAND PARK, TEXAS, HELD AT TOWN HALL, 4700 DREXEL DRIVE, HIGHLAND PARK, TX, 75205, AT 8:17 A.M. ON TUESDAY, FEBRUARY 3, 2026.

Mayor Will C. Beecherl, Mayor Pro Tem Don Snell, and Council Members Alan Friedman, Marc Myers, Lydia Novakov, and Leland White attended the meeting.

- I. Mayor Will C. Beecherl called the meeting to order at 8:17 a.m.
- II. PUBLIC COMMENT

Mayor Beecherl asked if anyone wished to address the Town Council about any item listed on the agenda and explained that the Town Council may not discuss or make decisions on items not listed on the agenda. Public comments are limited to three minutes per speaker unless otherwise required by law. Items suggested for action may be placed on a future agenda at the Town Council's discretion. There was no comment.

- III. FUTURE AGENDA DISCUSSIONS

A. Review, discuss, and consider the opportunity for a Town Council Member to request an item to be placed on a future Town Council Meeting agenda. Mayor Beecherl asked if any Town Council Member would like to request that an item be placed on a future Town Council study session agenda for discussion or consideration. Council Member Marc Myers recommended that staff utilize available resources to assess potential implications, particularly those affecting the Town's infrastructure related to basement construction, and to incorporate relevant findings into the Zoning Ordinance rewrite initiative.

- IV. REPORTS

A. Review and discuss the Backflow Prevention Program. Lori Chapin, P.E., Director of Engineering, stated this is an opportunity to review the proposed Backflow Prevention Program, which is required by the U.S. Environmental Protection Agency ("EPA") through the Texas Commission on Environmental Quality ("TCEQ") to protect the public water supply from contamination. In November 2024, the Town Council directed staff to develop a concierge-style testing program coordinated by the Town and performed by a third-party vendor, with the associated costs added to water bills. Staff recommend contracting with SC Tracking Solutions. Tony Santoro, Operations Specialist, presented to the Town Council that SC Tracking Solutions will implement a comprehensive program to inventory, notify, test, and track backflow prevention assemblies for residential and commercial properties, including irrigation and fire lines, and to place compliant devices on an annual inspection schedule. The proposed contract includes a one-time discovery fee of up to \$25,000 to locate unidentified devices, along with fixed per-unit testing costs of \$75 for irrigation/domestic systems and \$85 for fire systems, locked in for three years. Ms. Chapin explained that the Town would be billed monthly based on completed tests, and testing costs would be billed to customers on their water bills. Approximately 6,000 backflow devices are estimated to exist within the Town. To formalize the program, staff recommend adopting an ordinance establishing frequency testing and enforcement measures consistent with the

International Plumbing Code and the International Residential Code, which require annual testing for high-hazard installations. Enforcement options would include escalating notices and potential disconnection of water service for noncompliance, with violations subject to Class C misdemeanor penalties under the Town's Code of Ordinances. Town Council Member Lydia Novakov and Mayor Pro Tem Don Snell raised questions regarding resident communication methods and recommended that all messaging clearly state that this testing is required by law.

V. CLOSED SESSION

A. In accordance with the Texas Government Code, Chapter 551, Subchapter D, Section 551.072 – REAL ESTATE – the Town Council will convene into closed session to deliberate the purchase, exchange, lease, or value of real property.

B. In accordance with the Texas Government Code, Chapter 551, Subchapter D, Section 551.071 – CONSULTATION WITH ATTORNEY – the Town Council will convene in closed session for consultation with and to receive legal advice from the Town Attorney regarding pending or contemplated litigation or settlement offer or regarding a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with this chapter re: (i) DART withdrawal election; (ii) Brandon Simpson v. Town of Highland Park.

Mayor Beecherl recessed the study session at 8:43 a.m. and convened a closed session at 8:44 a.m., pursuant to: (A) In accordance with the Texas Government Code, Chapter 551, Subchapter D, Section 551.072 – REAL ESTATE – the Town Council will convene into closed session to deliberate the purchase, exchange, lease, or value of real property, and (B) In accordance with the Texas Government Code, Chapter 551, Subchapter D, Section 551.071 – CONSULTATION WITH ATTORNEY – the Town Council will convene in closed session for consultation with and to receive legal advice from the Town Attorney regarding pending or contemplated litigation or settlement offer or regarding a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with this chapter re: (i) DART withdrawal election; (ii) Brandon Simpson v. Town of Highland Park.

Mayor Beecherl ended the closed session at 9:21 a.m. and reconvened the study session in open session at 9:22 a.m. No final action, decision, or vote was taken during the closed session.

VI. OPEN SESSION

A. Pursuant to Section 551.102 of the Texas Government Code, the final action, decision, or vote regarding Closed Session Item A. and B. above shall be made, if any. On a motion made by Council Member Leland White, seconded by Council Member Alan Friedman, the Town Council voted unanimously to approve the Brandon Simpson settlement agreement.

VII. ADJOURNMENT – Mayor Beecherl adjourned the Study Session at 9:33 a.m.

APPROVED on the 17th day of February 2026.

APPROVED:

Will C. Beecherl
Mayor

ATTEST:

Joanna Mekeal
Town Secretary