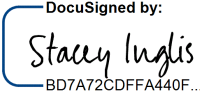


To: Honorable Mayor and City Council Members

From: David Frizzell, IT Manager 
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Date: Submitted July 19, 2022 for the August 1, 2022 Regular City Council Meeting

Agenda Item: Approval of a Products Agreement and Addendum between the City of Milton and Nearmap US, Inc. to provide 3D Elevation Data for GIS Mapping Purposes.

Department Recommendation:

Purchase the annual subscription for Nearmap elevation data, and then maintain the subscription to keep pace with land development in the city.

Executive Summary: The City needs to periodically update its base elevation data in its GIS applications. This data is used to perform analysis for Public Works and Community Development projects such as stormwater infrastructure planning, runoff analysis, etc. This data will also give emergency services information regarding building footprint and height data for emergency management and planning purposes. The GIS team will integrate this into its existing map applications.

The Nearmap solution uses the equivalent technology as the other bidders listed in this memo. The reduced price is the result of a group rate negotiated for all Fulton County cities.

Procurement Summary:

Purchasing method used: 3 Written Quotes (\$5,000-\$49,999)

Account Number: 100-1535-542401000

Requisition Total: \$7,991.75



Financial Review: Bernadette Harvill, July 19, 2022

DocuSigned by:
Bernadette Harvill
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Legal Review: Jeff Strickland, Jarrard & Davis, LLP – July 18, 2022

Concurrent Review: Steven Krokoff, City Manager

DocuSigned by:
Steven Krokoff
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Attachment: Products Agreement and Addendum

NEW SUBSCRIPTION QUOTE

Nearmap US, Inc.
 10897 South River Front Parkway, Suite 150
 South Jordan, UT 84095 USA
Phone: +1 (801) 609 7250

Customer Name	City of Milton, GA	Quote Number	Q072336
Contract Commencement	Contract commences upon signing of quote.	Quote Expiry	08/31/2022
Subscription Term	12 Month	Account Rep	Jackson Adams jackson.adams@nearmap.com
Subscription Start Date	07/01/2022	Payment Term	Net 30
		Payment Method	Invoice
Bill To	City of Milton, GA Justin Rowell 2006 Heritage Walk, Milton, Georgia, 30004 678-242-2500 justin.rowell@cityofmiltonga.us	Ship To	City of Milton, GA Justin Rowell 2006 Heritage Walk, Milton, Georgia, 30004 678-242-2500 justin.rowell@cityofmiltonga.us

PRODUCT	ALLOWANCE	COVERAGE	SEATS
AI Offline Vector	12767 Credits/Year	Please refer to the attached Survey Specification for details	NA
Offline DEM	NA	Please refer to the attached Survey Specification for details	NA
Subtotal			\$7,991.75
Estimated Tax			\$0.00
Total			USD \$7,991.75

ACCEPTANCE OF Q072336 will constitute an Agreement with Nearmap

By selecting "Yes" or signing below, you acknowledge that (a) you have read, understood and agree to the Products Agreement attached to this Quote, (b) the Product-Specific Terms which can be found at <https://www.nearmap.com/us/en/legal/product-agreements>, (c) you have the authority to agree to this New Subscription Quote and (d) you agree to pay the fees set forth herein. This New Subscription Quote constitutes a binding commitment for the Contract Term stated above. You acknowledge that the Coverage Area by Nearmap is outlined at <https://www.nearmap.com/us/en/current-aerial-maps-coverage>.

Signature / Digital Acceptance:

Date:

Full Name:

Position:

PO Number (if required):

If printed, please sign, scan and email to: orders.us@nearmap.com

Additional Terms and Conditions

1. The parties agree that despite any other provisions of the Agreement:

the Licensee is permitted to:

- a. publish 3D data and AI data made available to the Licensee under this Agreement provided that such data is within the Licensee's administrative boundaries; and
- b. allow 3D data and AI data to be exported and/or downloaded from the Licensee's Website, provided that such data must be at least 12 months old or greater in currency.

2. The publishing, distribution, or granting access to 3D data and AI data excludes all Commercial Purposes and the Licensee must use its reasonable endeavours to make all end users aware that use of such data is for their personal use only and excludes all Commercial Purposes.

3. The display of 3D data and AI data set out section 1(a) above are subject to the Product Specific Terms for the Public Display License for Government and where such provisions conflict, the sections of this Schedule 1 prevail.

4. Despite Section 1.3 (Renewal), this Agreement will not automatically renew for another Term. The parties may renew the Agreement for successive periods of twelve (12) month each, subject to a mutual written agreement between both parties.



PLEASE READ THIS PRODUCTS AGREEMENT CAREFULLY. BY ACCEPTING THIS AGREEMENT BY EXECUTING A QUOTE, YOU AGREE TO BE BOUND BY THIS PRODUCTS AGREEMENT, THE QUOTE AND ALL TERMS INCORPORATED BY REFERENCE. IF YOU DO NOT AGREE TO ALL OF THESE TERMS, DO NOT ACCESS OR USE, YOU MUST NOT ACCEPT THIS PRODUCTS AGREEMENT AND NOT USE ANY NEARMAP PRODUCTS AND SERVICES.

PRODUCTS AGREEMENT

Recitals

- A. Nearmap is a provider of aerial imagery and location data and associated products and services.
- B. Nearmap agrees to supply the Licensee with the Products described in the Quote, subject to the terms of this agreement, the Additional Terms and Conditions, Product-Specific Terms, any Schedules and the Quote which together constitute the legal agreement between the Licensee and Nearmap (the "**Agreement**").

Definitions of capitalized words are set out in section 18 of the Agreement.

1. GRANT OF LICENSE TO USE PRODUCTS

- 1.1 **Grant** Subject to the terms of this Agreement and payment by the Licensee of the Fees, Nearmap grants to the Licensee a limited, non-exclusive, non-transferrable license for the Term to use the Products for and to the extent of the Permitted Purpose (the "**License**").
- 1.2 **Authorized Users** The Products available under this License are only to be used by the total number of Authorized Users. The Licensee shall implement reasonable controls to ensure that it does not exceed the number of Authorized Users. If the number of users exceeds the total number of Authorized Users, the Licensee will be in breach of this Agreement.
- 1.3 **Renewal** Upon the expiration of the initial Term, this Agreement, subject to any amendments to this Agreement required by Nearmap, shall be renewed automatically for successive renewal terms of twelve (12) months each (each a "**Renewal Term**") unless terminated by either party by providing at least thirty (30) days written notice of its intention not to renew this Agreement prior to the expiry of the initial Term or any current Renewal Term.
- 1.4 **Replacement Product** Nearmap may from time to time supply the Licensee with a replacement Product of no lesser quality than the previously supplied Product at its absolute discretion. If requested by Nearmap, the Licensee must stop using any previously supplied Product and use the replacement Product from the date of delivery from Nearmap.
- 1.5 **Acknowledge Nearmap source** The Licensee must expressly acknowledge Nearmap, in a reasonably prominent manner (by displaying the Nearmap logo or other appropriate attribution), as the source of any Product or Derivative Works that the Licensee uses, copies, modifies, or distributes. Unless otherwise permitted in writing, the Licensee must not remove or cause to be removed any Nearmap logo, watermark, or other Nearmap attribution in any Product or Derivative Works.
- 1.6 **Data Use for Government Products** Nearmap measures data usage by the Licensee under this License for Government Products. When using Government Products, Nearmap's Fair Use Policy regulates the Licensee's consumption of data during the Term (or Renewal Term). The following conditions also apply to the Licensee's use of Government Products:
 - (a) the amount of data used by the Licensee on the Government Products will be monitored and then calculated at the end of every Term or Renewal Term based on the total data of all users who access and use the Licensee's Nearmap account during that Period; and
 - (b) if the Licensee elects to download and/or export Government Products available to the Licensee on the Website, this will be applied to the calculation of the Licensee's use of the Government Products.
- 1.7 **Allowance for Non-Government Products** Non-Government Products licensed to the Licensee may be subject to additional Allowance, Periodic Allowance, or Periodic Data Allowance terms that are published in the Product-Specific Terms, and if applicable, the Periodic Allowance Section.
- 1.8 **Unavailability** Subject to section 12, if a Product is not available for a period of three (3) consecutive days, the Term will be extended by the period of such unavailability.

2. RESTRICTIONS ON RIGHT TO USE PRODUCTS

- 2.1 **Permitted Purpose** The Products must only be used for the Permitted Purpose.
- 2.2 **No right to distribute, transfer, resell, assign or sublicense** This License is granted only to the Licensee. The Licensee must not distribute, transfer, resell, assign, rent, lease, or sublicense any Product or any of the Licensee's rights under this License without Nearmap's prior written consent.
- 2.3 **No third party access** Unless otherwise provided in this Agreement, the Licensee must not make any Product available in any medium or manner to any third party (including but not limited to the Licensee's subsidiaries, affiliates, any lower or higher tiered governments and any neighbouring local government).
- 2.4 **Employees** The Licensee may make Products available to any employee of the Licensee, subject to that person complying with the terms of the Agreement as if they were a party to it and the total number of Authorized Users has not been exceeded. Such employees are deemed to be Authorized Users. The Licensee is responsible and liable for any person who uses the Licensee's account access details or uses Products made available to the Licensee in breach of this Agreement, including, without limitation, for any additional fees that become payable if the Licensee exceeds the number of Authorized Users.

- 2.5 **No machine learning** The Licensee must not conduct machine learning work in connection with this Agreement or any Products, which includes but is not limited to any:
 - (a) machine learning models (including the model form and model parameters);
 - (b) outputs of machine learning models;
 - (c) software that processes or transforms input data for training a machine learning model or getting a prediction from a machine learning model into a format suitable for training or making such prediction; or
 - (d) software used to train a machine learning model or compute outputs of a machine learning model for a given set of input data.
- 2.6 **No caching and creation of database** Except as expressly permitted under this Agreement, the Licensee is not permitted to:
 - (a) use its access to the Products under this Agreement for the purposes of creating a database of imageries for resale, distribution, sublicense, or other commercial purposes and mass downloads or bulk feeds of any imagery; and
 - (b) pre-fetch, retrieve, cache, index, or store any Content or portion of the Products.
- 2.7 **Restriction on integration methods** The Licensee is only permitted to use API integration methods, or other integration methods, as authorised by Nearmap in writing, including but not limited to integration with the Licensee's or other third party platforms or software.
- 2.8 **Limits on use of Website** In the Licensee's use of the Website, the Licensee must not (without the prior written consent of Nearmap):
 - (a) provide a link to another URL;
 - (b) upload content or other information to the Website (except as necessary to use the Products);
 - (c) do anything to damage, interfere or disrupt access to the Website or do anything which might impair its functionality;
 - (d) use the Website in any way to send any unsolicited email (commercial or otherwise) or any other material for marketing or publicity purposes;
 - (e) publish, post, distribute, disseminate, or otherwise transmit, defamatory, offensive, infringing, obscene, indecent, or other unlawful or objectionable confidential material or information;
 - (f) make available, upload, or distribute by any means any material or files that contain any viruses, bugs, corrupt data, "trojan horses", "worms", or any other harmful software;
 - (g) remove any content or information from the Website, other than that permitted under the terms of this License;
 - (h) falsify the true ownership of a Product or other material or information made available via the Website;
 - (i) obtain or attempt to obtain unauthorized access, through whatever means, to the Website;
 - (j) use the Website other than in accordance with this Agreement;
 - (k) attempt any of the above acts or engage, encourage or permit another person to do any of the above acts; or
 - (l) provide or allow access to the Website which exceeds the total number of Authorized Users in connection with use of the Product.
- 2.9 **Breach** If the Licensee breaches any of sections 2.1 to 2.8 inclusive, Nearmap reserves its rights to terminate the Agreement in accordance with section 6.2, restrict the Licensee's access to the Products, and take any other steps available to it at law.

3. THE LICENSEE'S ACCESS TO PRODUCTS AND SERVICES

- 3.1 **Authorized Users** Any password/ID issued by Nearmap to an Authorized User is personal and confidential to that Authorized User. If Nearmap suspects that any password/ID is being used by an unauthorized person, by a different Authorized User to the person to whom it was issued, or the number of Authorized Users has been exceeded, Nearmap may:
 - (a) cancel that password/ID;
 - (b) restrict the Licensee's access to the Product to low resolution imagery, or apply any other restrictions on access that Nearmap determines in its absolute discretion;
 - (c) immediately cease the Licensee's access to the Product;
 - (d) require the Licensee to pay for any additional fees due based on the standard Nearmap Fees for the applicable Product, in respect of any such unauthorized use; and/or

- (e) exercise any other right available to Nearmap under the terms of this Agreement or at law.
- 3.2 **Downtime** Nearmap will use reasonable efforts to ensure that the Website remains available but cannot guarantee that this will be the case at all times. Nearmap agrees that, wherever possible, all planned maintenance will be done out of normal Operational Hours to ensure optimal uptime of the Website. The Licensee may elect to subscribe to the Nearmap status page at <https://status.nearmap.com/> to receive notifications and updates relating to planned maintenance and uptime/downtime of the Website and APIs. When Nearmap becomes aware of any Fault, Nearmap will use reasonable efforts to:
- (a) allocate such resources as may be necessary to remedy the Fault; and
- (b) otherwise take all reasonable steps to remedy the Fault so as to minimize any disruption to the Licensee's use of the Products.
- 3.3 **Expiry** The Licensee's License will expire at the end of the Term unless renewed in accordance with section 1.3 and may be suspended or terminated, in accordance with section 6.2, if the Licensee is in breach of this Agreement.
- 3.4 **Unauthorized Use** Licensee shall take reasonable steps to prevent unauthorized access to the Products, including without limitation, protecting its passwords and other log-in information. The Licensee shall notify Nearmap immediately of any known or suspected unauthorized use of the Products, or breach of its security, and shall use best efforts to stop said breach and minimize the adverse impact of said breach on Nearmap.
- 3.5 **Audit** During the Term of this Agreement, and for two (2) years after termination or expiry of this Agreement, the Licensee shall maintain records regarding its use of the Products according to its record keeping policies and procedures. The Licensee shall permit Nearmap (or its auditors) access to the Licensee's records pertaining to the Licensee's use of the Products. 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.
- 3.6 **Audit Findings** If an audit results in findings of non-compliance, Nearmap may, at its discretion:
- (a) invoice any additional license fees due based on the standard Nearmap Fees in place at the time of the original license grant;
- (b) recover the reasonable cost of the audit if additional Fees exceed 5% of the Fees paid during the audit period; and
- (c) terminate this Agreement in accordance with section 6.3. Licensee must pay all invoices issued under this section within thirty (30) days following the date of invoice or such other period agreed between the parties.
4. **FEES**
- 4.1 **Fees** The Fees payable by the Licensee are set out in the Quote.
- 4.2 **Payment** The Fees are payable by the Licensee to Nearmap in the manner and by the due date, as set out in the Quote, at the beginning of each Term unless otherwise agreed by Nearmap. Where the Fees are payable by credit card, the Licensee authorizes Nearmap to charge the Licensee's credit card for all purchased Products listed in the Quote for the initial Term and any Renewal Term.
- 4.3 **No cancellation** Subject to section 4.4, all Fees are non-cancellable and non-refundable, except as expressly set out in the Agreement.
- 4.4 **Refund of Fees** If the Licensee is not in breach of the Agreement, and Nearmap elects to terminate the Agreement under section 6.3, Nearmap will refund the Licensee any pre-paid fees relating to the portion of Term remaining as at the date of termination.
- 4.5 **Taxes** Unless otherwise stated, Fees and Late Payment Fee do not include any direct or indirect local, state, provincial, federal, or foreign taxes, levies, duties, or similar governmental assessments of any nature, including value-added, excise, use or withholding taxes (collectively, "**Taxes**"). Licensee is responsible for paying all Taxes, except those assessable against Nearmap based on its income. Nearmap will invoice Licensee for such Taxes if Nearmap believes it has a legal obligation to do so and Licensee agrees to pay such Taxes if invoiced.
- 4.6 **Late Payment** If a scheduled Fee payment is still overdue after seven (7) days notice from Nearmap, to remedy the payment default, the Licensee agrees that Nearmap may charge the Licensee a Late Payment Fee and/or immediately limit or terminate access to the Products provided under this License.
- 4.7 **Amendments** Fees of the relevant Product may only be increased at the end of the Term (including any Renewal Term) subject to Nearmap and the Licensee agreeing in writing.
5. **THE LICENSEE'S WARRANTIES**
- 5.1 **Warranty** The Licensee warrants that:
- (a) any information the Licensee supplies to Nearmap in respect of the Agreement is complete and correct. The Licensee must keep Nearmap informed of any change to the Licensee's information provided to Nearmap, including any change to the Licensee's contact details, or the details of a credit card used for payment;
- (b) the Licensee will immediately notify Nearmap of any usage of any Product outside the Permitted Purpose, and provide any other information reasonably requested by Nearmap;
- (c) the Licensee has the power to enter into this Agreement and to perform the obligations under it; and
- (d) the Licensee has and will comply with all relevant laws relating to the Licensee's use of the:
- (i) License;
- (ii) Products; and
- (iii) Website.
6. **TERMINATION AND EXPIRY**
- 6.1 **Initial Term** This Agreement commences on the Commencement Date and continues until expiry of the Term unless terminated earlier in accordance with

the terms of this Agreement or renewed under section 1.3.

- 6.2 **Termination by Either Party** Either party may terminate this Agreement with immediate effect by giving notice to the other party if:
- (a) the other party breaches any of its obligation under this Agreement capable of remedy and fails to remedy that breach within fourteen (14) days after receiving notice requiring it to do so;
- (b) the other party breaches any of its obligations under this Agreement incapable of remedy and Content; or
- (c) the other party files for protection under bankruptcy laws, makes an assignment for the benefit of creditors, appoints, or suffers appointment of a receiver or trustee over its property, files a petition under any bankruptcy or insolvency act, or has any such petition filed against it which is not discharged within sixty (60) days of the filing thereof, or admits in writing its inability to pay its debt generally as they become due.
- 6.3 **Termination by Nearmap** Notwithstanding anything else in the Agreement, but subject to section 4.4, Nearmap has the right, in its absolute discretion and upon giving the Licensee ten (10) Business Days' notice, to terminate the Agreement and the License.
- 6.4 **Consequences** If the Agreement is terminated under sections 6.2 or 6.3 or expires at the end of the Term:
- (a) the License immediately terminates and the Products will no longer be available to the Licensee;
- (b) the Licensee must immediately destroy, delete, or return to Nearmap all Products; and
- (c) subject to section 7.3, the Licensee and the Authorized Users are not permitted to use any Products for any purpose.
- 6.5 **Costs** Nearmap reserves all rights following termination of this Agreement, including any rights available to Nearmap to collect any outstanding Fees which may be owed by the Licensee. The Licensee will be liable for any reasonable legal costs incurred by Nearmap in enforcing its rights following termination of this Agreement.
- 6.6 **Continuing obligations** After expiry or termination of the Agreement, or a License, sections 1.5, 2, 4, 6.5, 7, 8, 9, 10, 13, 14, 15, and 17 will still be binding on the Licensee in relation to Products licensed or obtained during the Term.
7. **INTELLECTUAL PROPERTY**
- 7.1 **Ownership** Unless otherwise indicated, the Website, the Products, the Content, and all associated Intellectual Property Rights, data, information, and software are owned by Nearmap and are protected by copyright, moral rights, trademark, and other laws relating to the protection of intellectual property. Nearmap reserves all of its Intellectual Property Rights. Except for the limited License granted to the Licensee in section 1.1, no ownership or Intellectual Property Rights in the Website, any Product, or Content will pass or be licensed to the Licensee.
- 7.2 **Trademarks** The Nearmap trademarks and all associated Intellectual Property Rights are owned by Nearmap. Nothing in the Agreement confers upon the Licensee any rights to use or modify any of Nearmap's trademarks, except that Nearmap grants the Licensee a royalty free, limited, non-exclusive, non-transferable, non-sublicensable license to reproduce and display Nearmap trademarks only to the extent necessary to comply with the Licensee's obligations under the Agreement. Any such reproduction and display of those marks must comply with the policies and rules Nearmap makes available to the Licensee from time to time.
- 7.3 **Derivative Works** Subject to compliance with all other terms of this Agreement, the Licensee is granted a non-exclusive right to produce and use Derivative Works for a Permitted Purpose. Unless otherwise notified to the Licensee by Nearmap, the Licensee may continue using Derivative Works following termination or expiry of this Agreement. For the avoidance of doubt, Nearmap will continue to own all rights in and to any Products and Content embedded in a Derivative Work, but all other rights in and to the Derivative Work will belong to the Licensee.
8. **THIRD PARTY PROVIDERS**
- 8.1 Nearmap engages Third Party Providers in order to provide the Products and comply with its obligations under this Agreement and for the Licensee to receive the intended benefit of this Agreement. The Licensee agrees to comply with all requirements and restrictions that Third Party Providers may impose on the Licensee directly or indirectly by imposition on Nearmap, in relation to their respective products and/or services, at the time of, or subsequent to, the Agreement. The Licensee acknowledges that provision of the Products is subject to, and dependent upon, adequate delivery of products and services by the Third Party Providers. In accordance with section 9 of the Agreement, Nearmap's liability is reduced to the extent that loss or damage of any kind is caused or contributed to, by Third Party Providers. For the Licensee's convenience, Nearmap has set out in this section 8 links to the terms and conditions of these Third Party Providers with which the Licensee is required to comply. The Licensee further acknowledges that by entering into the Agreement, the Licensee is deemed to accept the respective terms and conditions of Third Party Providers, which currently include the Third Party Providers set out below. Third Party Providers and their terms of supply may change from time to time during the Term of the Agreement.
- (a) **Google** Nearmap engages Google to supply navigation and geo-location data, and related content. By entering into the Agreement, the Licensee agrees to the Google Terms of Service as they apply to the Licensee.
https://www.google.com/enterprise/earthmaps/legal/us/maps_purchase_agreement_apac.html;
- (b) **Amazon Web Services (AWS)** Nearmap engages Amazon Web Service, Inc. to provide services (the "**AWS Services**") which enables delivery of the

Products. By entering into the Agreement, the Licensee agrees to comply with the AWS Customer Agreement (<http://aws.amazon.com/agreement/>) as it applies to the Licensee. Use of the Products is also subject to the Licensee's compliance with the following AWS policies:

- (i) <http://aws.amazon.com/privacy/> Privacy Policy
- (ii) <http://aws.amazon.com/aup/> Acceptable Use Policy
- (iii) <http://aws.amazon.com/terms/> Terms of Use
- (iv) <http://aws.amazon.com/serviceterms/> Service Terms
- (v) <http://aws.amazon.com/trademark-guidelines/> Trademark Guidelines

- (c) **NASA/NCAS** By entering into the Agreement, the Licensee agrees to the following NASA/NCAS terms and conditions: (<https://www.nearmap.com/us/en/legal/copyright/>).

9. **WARRANTY AND LIABILITY**

- 9.1 **Warranty** Nearmap agrees to use industry standard GPS to ensure captured imagery has accurate geographical positioning.
- 9.2 **DISCLAIMER OF WARRANTIES** OTHER THAN AS SET FORTH IN SECTION 9.1, THE WEBSITE AND THE PRODUCTS ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITHOUT ANY WARRANTIES OF ANY KIND, TO THE FULLEST EXTENT PERMITTED BY LAW. NEARMAP AND ITS CONTENT PROVIDERS, AGENTS, MANDATARIES, AND AFFILIATES EXPRESSLY DISCLAIM ANY AND ALL REPRESENTATIONS, WARRANTIES, CONDITIONS, AND GUARANTEES, WHETHER EXPRESS, STATUTORY OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED REPRESENTATIONS, WARRANTIES, CONDITIONS, OR GUARANTEES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND COURSE OF DEALING OR PERFORMANCE.
- 9.3 **NO REPRESENTATIONS** WHILE NEARMAP USES REASONABLE EFFORTS TO ENSURE THE ACCURACY, CORRECTNESS AND RELIABILITY OF THE CONTENT, THE PRODUCTS, AND THE WEBSITE, NEARMAP MAKES NO REPRESENTATIONS, WARRANTIES, CONDITIONS, OR GUARANTEES AS TO THE ACCURACY, CORRECTNESS, OR RELIABILITY OF ANY PRODUCT OR CONTENT CONTAINED ON THE WEBSITE. THE PRODUCTS AND THE WEBSITE ARE SUBJECT TO ERRORS, OMISSIONS, INACCURACIES, AND DISTORTIONS, AND NEARMAP WILL NOT BE RESPONSIBLE FOR, OR LIABLE FOR ANY CLAIMS MADE BY OR ARISING OUT OF, ANY PERSON OR ENTITY SEEKING TO RELY ON ANY OF THE PRODUCTS OR THE WEBSITE.
- 9.4 **LIMIT OF LIABILITY** NEARMAP'S LIABILITY FOR: (A) A BREACH OF A WARRANTY UNDER SECTION 9.1; OR (B) A BREACH OF A REPRESENTATION, WARRANTY, CONDITION, OR GUARANTEE WHICH IS IMPLIED OR IMPOSED IN RELATION TO THIS LICENSE UNDER LEGISLATION AND CANNOT BE EXCLUDED, WILL BE LIMITED TO, AT NEARMAP'S OPTION, REPLACING OR REPAIRING THE PRODUCTS OR SUPPLYING PRODUCTS EQUIVALENT TO THE RELEVANT PRODUCTS, OR PAYING THE COST OF REPLACING OR REPAIRING THE PRODUCTS.
- 9.5 **NO LIABILITY FOR CLAIMS** TO THE EXTENT PERMITTED BY LAW, IN NO EVENT WILL NEARMAP, ITS CONTENT PROVIDERS, AGENTS, MANDATARIES, OR AFFILIATES BE LIABLE FOR ANY CLAIMS OF ANY KIND ARISING FROM OR CONNECTED WITH THE USE OF THE WEBSITE, THE CONTENT OR THE PRODUCTS, OR THE UNAVAILABILITY OF THE SAME, INCLUDING BUT NOT LIMITED TO, LOSS OF USE, LOSS OF PROFITS, OR LOSS OF DATA, AND DIRECT, INDIRECT, INCIDENTAL, PUNITIVE, AND CONSEQUENTIAL DAMAGES, WHETHER IN CONTRACT, TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE), EXTRACONTRACTUAL LIABILITY, OR OTHERWISE. THE LICENSEE IS RESPONSIBLE FOR THE ENTIRE COST OF ALL SERVICING, REPAIR, OR CORRECTION REQUIRED DUE TO THE LICENSEE'S USE OF THIS WEBSITE, THE CONTENT OR THE PRODUCTS. THIS EXCLUSION APPLIES, WITHOUT LIMITATION, TO ANY CLAIMS CAUSED BY OR RESULTING FROM RELIANCE BY A USER ON ANY INFORMATION OBTAINED FROM NEARMAP.
- 9.6 **AGGREGATE LIMIT** IN NO EVENT WILL THE AGGREGATE LIABILITY OF NEARMAP, WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE, WHETHER ACTIVE, PASSIVE OR IMPUTED), EXTRACONTRACTUAL LIABILITY, PRODUCT LIABILITY, STRICT LIABILITY OR OTHER THEORY, ARISING OUT OF OR RELATING TO THE USE OF THE PRODUCTS, THE CONTENT, OR THE WEBSITE EXCEED ANY COMPENSATION OR FEE THE LICENSEE HAS PAID, IF ANY, TO NEARMAP FOR ACCESS TO OR USE OF THE PRODUCTS OVER THE TWELVE (12) MONTH PERIOD PRIOR TO THE ALLEGED DEFAULT, BREACH, OR EVENT GIVING RISE TO THE LIABILITY.
- 9.7 **Third Party Providers** The Licensee acknowledges that Nearmap relies on the services of Third Party Providers in order to supply the Products and related services. Without limiting any of the above, to the fullest extent permitted by applicable law, Nearmap will not be liable for any loss, damage, or cost of any kind, which is caused, or contributed to, by a third party service provider.
- 9.8 **Indemnity** To the extent permitted by law, the Licensee agrees to indemnify Nearmap and its directors, officers, employees, agents, mandataries, and subcontractors, from and against any and all direct or indirect claims, damages, losses, liabilities, expenses, and costs (including reasonable attorney's fees and costs) arising from or out of:
 - (a) the Licensee's actual or alleged breach of any provisions of this Agreement;
 - (b) the Licensee's use of the Product for any purpose; and

- (c) the Licensee's use of, or any third party's use of, or inability to use, any Derivative Works, including without limitation, any output from the Derivative Works.
- 9.9 **Notice of claim** Nearmap will provide the Licensee with notice of any claim or allegation, under section 9.8, and Nearmap has the right to participate in the defense of any such claim at its expense.
- 10. COPYRIGHT COMPLAINTS**
- 10.1 Subject to section 9, if any third party brings a Claim against the Licensee alleging that the Licensee's use of the Products, in accordance with this License, infringes their copyright ("**Infringement Claim**"), Nearmap will defend the Licensee against the Claim and pay any settlement to which Nearmap consents or final court-awarded damages for which the Licensee is liable.
- 10.2 The Licensee must:
 - (a) promptly notify Nearmap of any such Infringement Claim;
 - (b) not make any admissions in relation to the Infringement Claim without Nearmap's prior written consent;
 - (c) permit Nearmap to conduct the defense of the Infringement Claim including all negotiations for settlement; and
 - (d) provide Nearmap with any assistance reasonably requested to allow Nearmap to defend the Infringement Claim.
- 10.3 Nearmap will have no liability for any Infringement Claim:
 - (a) that arises from any:
 - (i) use of the Product in violation of this Agreement;
 - (ii) modification of the Product by anyone other than Nearmap, or a party authorized by Nearmap, in writing to modify the portion of the Product applicable to the Infringement Claim; or
 - (iii) third-party products, services, hardware, software, or other materials, or a combination of these with the Products, which would not be infringing without this combination; or
 - (b) if the Licensee fails to comply with section 10.2.
- 10.4 To the maximum extent permitted by law, this section 10 sets out Nearmap's sole and exclusive liability, and the Licensee's sole and exclusive remedy, for any third party Infringement Claims brought against the Licensee in relation to an infringement of Intellectual Property Rights.
- 11. PRIVACY POLICY**
- 11.1 Nearmap will collect, use, and disclose any personal information supplied by the Licensee as set out in Nearmap's Privacy Policy, as amended from time to time, and currently available at <https://www.nearmap.com/us/en/legal/privacy-policy>. The Licensee hereby consents to those collections, uses, and disclosures.
- 11.2 To the maximum extent permitted by law, by entering into this Agreement, the Licensee expressly consents to receiving general emails relating to product updates, new products, or anything related to the usage of the product from Nearmap, but prior written consent is required to receive by email direct marketing communications from Nearmap.
- 11.3 By entering into this Agreement, the Licensee acknowledges that personal information provided by the Licensee in the course of accessing Products (including, without limitation, credit or debit card details provided by the Licensee for the purpose of paying Nearmap) may be disclosed to and held by one or more of Nearmap's third party suppliers and partners (including, without limitation, providers of payment processing services), and used by those third parties in connection with the supply of Products. Nearmap will have no liability whatsoever with respect to any personal information held by a third party in connection with the supply of Products.
- 12. FORCE MAJEURE**
- 12.1 **Force Majeure Event** If a party is unable to perform or is delayed in performing an obligation under this Agreement (except for any obligation to pay money, including Fees) because of an act of war, terrorism, hurricane, earthquake, other act of God or of nature, strike or other labor dispute, riot or other act of civil disorder, embargo, or other cause beyond the performing party's reasonable control ("**Force Majeure Event**"):
 - (a) that obligation is suspended but only so far and for so long as that party is affected by the Force Majeure Event; and
 - (b) the affected party will not be responsible for any loss or expense suffered or incurred by the other party, as a result of, and to the extent that, the affected party is unable to perform, or is delayed in performing, its obligations under this Agreement because of the Force Majeure Event.
- 12.2 **Notice of Force Majeure Event** If a Force Majeure Event occurs, the party affected by the Force Majeure Event must:
 - (a) Promptly (when reasonably possible to do so) give the other party notice of the Force Majeure Event and an estimate of the non-performance and delay;
 - (b) take all reasonable steps to overcome the effects of the Force Majeure Event; and
 - (c) resume compliance as soon as practicable after the Force Majeure Event no longer affects it.
- 13. CONFIDENTIALITY**
- 13.1 The Licensee must not use any Confidential Information for any purpose not expressly permitted hereunder. The Licensee will disclose Confidential Information only to its employees who have a need to know, for purposes of this Agreement, and who are under a duty of confidentiality no less restrictive than the Licensee's duty hereunder. The Licensee will protect Confidential Information from unauthorized use, access, or disclosure in the same manner as it would protect its own confidential or proprietary information of similar nature and with no less than reasonable care.
- 14. NOTICES**
- 14.1 All notices and consents will be in writing and will be considered delivered and effective upon receipt (or when delivery is refused) when (a) personally delivered; (b) sent by registered or certified mail (postage prepaid, return receipt requested); (c) sent by nationally recognized private courier (with signature required and all

fees prepaid); or (d) sent by email with confirmation of transmission. Notices must be sent to the Licensee at the address set forth in the Quote (or if none is specified, the address to which Nearmap sends invoices) and for Nearmap to 10897 South River Front Parkway, Suite 150, South Jordan, UT 84095, USA, or at another address as a party may designate in writing.

15. TECHNOLOGY EXPORT

15.1 The Licensee shall not: (a) permit any third party to access or use the Product in violation of any U.S. or Canadian law or regulation; or (b) export any software provided by Nearmap, or otherwise remove it from the United States or Canada, except in compliance with all applicable U.S. and Canadian laws and regulations. Without limiting the generality of the foregoing, the Licensee shall not permit any third party to access or use the Product in, or export such software to, a country subject to a United States embargo (as of the Effective Date, Cuba, Iran, North Korea, Sudan, and Syria) or a Canadian embargo.

16. NEARMAP NOW

16.1 **Survey** During the Term, the Licensee may request a survey of an area which is not covered (in its entirety or in part) by the Coverage Area ("Survey"). The Licensee must provide a detailed description of the area that is to be covered by the Survey and which is to be included in the Survey Specification. Upon receipt of such a request in writing, Nearmap may, in its absolute discretion, agree to provide the Survey to the Licensee for a Survey Fee.

16.2 **Delivery of Survey** Subject to sections 12 and 16.1, Nearmap will deliver the Survey to the Licensee by uploading the Survey to the Website within six (6) months of the date on which Nearmap receives payment of the Survey Fee in full from the Licensee. Nearmap will notify the Licensee in writing once the Survey has been uploaded to the Website.

16.3 **Availability to other Nearmap customers** Nearmap may, at its absolute discretion, allow other customers of Nearmap to access the Survey on the Website.

16.4 **Refund of Survey Fee** If the Licensee is not in breach of the Agreement, and Nearmap elects to terminate the Agreement under section 6.3 prior to delivery of the Survey, Nearmap will refund the Survey Fee to the Licensee.

16.5 **Other Products** This Section 16 will not be applicable to the Licensee if the Licensee has not purchased a Survey.

17. MISCELLANEOUS TERMS

17.1 **Nearmap customer** Licensee grants Nearmap the right to use Licensee's name and logo to identify as a Nearmap customer for marketing or promotional purposes in public or private communications with our existing or potential customers, subject to Licensee's standard trademark usage guidelines as provided to us from time to time.

17.2 **Additional Terms and Conditions** The Additional Terms and Conditions form part of, and should be read in conjunction with, this Agreement.

17.3 **Precedence of Documents** This Agreement is comprised of:
(a) the Additional Terms and Conditions;
(b) the Quote;
(c) any Product-Specific Terms; and
(d) this products agreement.
If there is any ambiguity or inconsistency between the documents comprising the Agreement, the document appearing higher in the list will have precedence. This Agreement between Nearmap and the Licensee supersedes all terms and conditions attached to the Licensee's purchase order.

17.4 **Independent Contractors** The parties are independent contractors and will so represent themselves in all regards. Neither party is the agent of the other, and neither may make commitments on the other's behalf. The parties agree that neither party's employee or contractor is an employee of the other party.

17.5 **Construction** The parties agree that the terms of this Agreement result from negotiations between them. This Agreement will not be construed in favor of or against either party by reason for authorship.

17.6 **Waiver** Neither party will be deemed to have waived any of its rights under this Agreement by lapse of time or by any statement or representation other than by an authorized representative in an explicit written waiver. No waiver of a breach of this Agreement will constitute a waiver of any other breach of this Agreement.

17.7 **Severability** If one or more of the terms of the Agreement are found to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining terms will not be affected.

17.8 **Amendments** Other than as expressly specified in this Agreement, this Agreement may only be varied with the written consent of Nearmap and the Licensee.

17.9 **Assignment** This Agreement shall not be assigned by either party without the prior written consent of the other party which shall not be unreasonably withheld; provided, however, that Nearmap may, upon written notice to the Licensee, assign all of its rights under this Agreement to (i) a parent, subsidiary or Affiliate of Nearmap, (ii) a purchaser of all or substantially all assets related to this Agreement, or (iii) a third party participating in a merger, acquisition, sale of assets or other corporate reorganization in which Nearmap is participating. Any attempt to assign this Agreement in violation of this provision shall be void and of no effect. This Agreement shall bind and inure to the benefit of the parties and their respective successors and permitted assigns.

17.10 **Entire Agreement** This Agreement:
(a) comprises the entire agreement and understanding between the parties on everything connected with the subject matter of this Agreement; and supersedes any prior agreement or understanding on anything connected with that subject matter.

17.11 **Counterparts** This Agreement may consist of a number of counterparts and, if so, the counterparts taken together constitute one and the same instrument. This Agreement is not binding on any party unless one or more counterparts

have been duly executed by, or on behalf of, Nearmap and the Licensee.

17.12 **Language** The parties have expressly agreed that this Agreement, and all ancillary agreements, documents, or notices relating to the Agreement, be drafted solely in the English language. Les parties aux présentes ont expressément convenu que cet accord et toute autre convention, document ou avis y afférent soient rédigés en anglais seulement.

17.13 **Governing Law** This Agreement will be governed by and construed in accordance with the laws of the State where the Licensee is carrying on business (without giving effect to the conflicts of laws provisions thereof).

18. DEFINITIONS

In this Agreement:

Additional Terms and Conditions means the additional terms and conditions (if any) set out in the Quote.

Affiliate means, with respect to Nearmap, any entity that controls or is controlled by Nearmap, or is under common control with Nearmap. For purposes of this definition, an entity shall be deemed to control another entity if it owns or controls, directly or indirectly, at least 50% of the voting equity of another entity (or other comparable interest for an entity other than a corporation).

Allowance means any usage allowance the Licensee is permitted to use and/or drawn down against for any Licensed Non-Government Products as specified in the Quote.

API means application programming interface.

Authorized User means the number of persons specified in the "Seats" section of the Quote, who have been granted access to the Product by the Licensee pursuant to the term and conditions of this Agreement, and who either has been assigned a unique Nearmap user login credential or whom the Licensee has assigned a user login credential that enables access to the Product.

Business Days means any day other than a Saturday, a Sunday or a recognized public holiday in Utah, USA.

Claim means any claim, cost (including legal costs on a solicitor and client basis), damages, debt, expense, tax, liability, loss, obligation, allegation, suit, action, demand, cause of action, proceeding, or judgment of any kind, however calculated or caused, and whether direct or indirect, consequential, incidental or economic.

Commencement Date means (a) for New Subscription Quotes, the date as specified in the "Contract Commencement" section or the "Subscription Start Date" section of the Quote, whichever is later, or (b) for Renewal Quotes or Amendment Quotes, the date as specified in the "Subscription Start Date" section of the Quote.

Commercial Purpose means to distribute, transfer, sell, sublicense, or pass possession of any Products (in whole or in part) for the purpose of direct commercial benefit or gain by the Licensee.

Confidential Information means the terms of this Agreement, the pricing, and any other information relating to the business, finances, strategy, methods, processes, products, metadata, services or other affairs of Nearmap or its representatives or related bodies corporate which is disclosed to, learnt by or accessed by the Licensee in connection with the Agreement, whether before or after the Licensee entered into the Agreement, whether orally, electronically, in writing or otherwise, but excludes information which:

- is or becomes part of the public domain otherwise than as a consequence of a breach of the Agreement;
- the Licensee has obtained from a source other than Nearmap which source is entitled to disclose it; or
- the Licensee has developed or acquired independently before the date of the Agreement, and can provide reasonable proof.

Content means any content made available by or on behalf of Nearmap to the Licensee in connection with the License, whether or not through the Website or an API.

Coverage Area means the area specified in the "Coverage" section of the Quote for which Nearmap has available Products, which may cover part or all of that area and which may cover part (but not all) of the area covered by the Survey.

Derivative Work means any new work created by or for the Licensee that incorporates, embeds, or includes all or part of a Nearmap Product or Content.

Fair Use Policy means the policy as attached to the Quote.

Fault means any fault, failure, error, or defect which prevents the Licensee from accessing the Products, other than where access is prevented due to a planned outage, because of an unforeseeable event beyond Nearmap's reasonable control or any conduct or activity undertaken by the Licensee, the Licensee's employees, agents, or mandataries.

Fees means the fees specified in the Quote, payable by the Licensee for the License, or as otherwise agreed in writing between Nearmap and the Licensee. **Government Products** means any Products specified in the Quote that are described as "Nearmap Vertical for Government" and "Nearmap Oblique for Government" and includes any other Products offered by Nearmap for government customers only where use of its License is connected to the Fair Use policy.

Intellectual Property Rights includes all industrial and intellectual property rights throughout the world, including copyright, moral rights, trademarks, patents, rights to protect confidential information, and any other similar rights.

Late Payment Fee means a fee, as notified by Nearmap to the Licensee, corresponding to the costs incurred by Nearmap (including, without limitation, administrative and other costs) in recovering any payment not made by the Licensee on the due or scheduled date for payment. Late fees incur interest at the rate of 1.5% per month (being 18% per year).

License means the license granted in section 1.1.

Licensee means the person or entity specified in the "Customer Name" section of the Quote.

Nearmap means Nearmap US, Inc.

Non-Government Products means all Products specified in the Quote that do not fall under the definition of Government Products.

Operational Hours means 9am to 5pm PT.

Periodic Allowance or **Periodic Data Allowance** means the data allowance specified in the "Allowance" section of the Quote unless otherwise agreed in writing between Nearmap and the Licensee.

Periodic Allowance Section means section 1.6 (or its equivalent) in the most current version of the products agreement currently located at [here](#).

Permitted Purpose means the use of Products by the Licensee for internal purposes in the Licensee's ordinary business, and at all times excludes any:

- (a) Commercial Purpose;
- (b) Unlawful Purpose;
- (c) Integration, or attempt to integrate, the Product in an internal system of the Licensee or of a third party; and
- (d) Redistribution or copying of files, images, or photographs, or making such files, images, or photographs available in any medium or manner that is contained in the Products to any third party (except as expressly permitted under this Agreement).

Products means any Nearmap products specified in the Quote (and further described on the Website) and, if applicable, the Survey. For the avoidance of doubt, Products include Content.

Product-Specific Terms means additional terms and conditions that apply to certain Products, currently located [here](#).

Quote the document produced after the Licensee places an initial order for the Product(s), requests any changes to its' License, or renews its License, which may be titled "New Subscription Quote", "Renewal Quote" or "Amendment Quote".

Schedule means a schedule to this Agreement, where such schedule has been incorporated by reference to form part of this Agreement.

Subscription Period means the period stated in the "Subscription Period" column of the Quote.

Subscription Start Date means the date specified in the "Subscription Start Date" section of the Quote.

Survey has the meaning (if any) given to that section 16.1.

Survey Fee means the fee for the Survey as agreed in writing between Nearmap and the Licensee.

Survey Specification means the survey specification referred to in the Quote.

Term means the term specified in the "Subscription Term" section of the Quote, commencing on the Commencement Date. Where a Subscription Period is stated on the Quote, "Term" means the Subscription Period.

Third Party Providers means third party providers of products and services to Nearmap.

Unlawful Purpose means any unlawful purpose, including but not limited to stalking, harassing or intimidating any person or engaging in misleading or deceptive conduct.

Website means all pages and sub-sites available within the nearmap.com domain.

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

5. 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.
6. 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

7. 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

8. 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).
9. 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.

PRODUCTS AGREEMENT WITH NEARMAP US, INC.

Schedule 2 - Contract Addendum

This Contract Addendum supplements that certain Products Agreement (the “Agreement”) between the **CITY OF MILTON**, a Georgia municipality (“Customer”), and **NEARMAP US, INC.**, a Delaware corporation (“Nearmap”), of even date herewith, to add the following provisions thereto:

1. Conflicting Provisions.

Notwithstanding any language to the contrary, including Agreement, Section 17.3 (Precedence of Documents), the provisions of this Contract Addendum supersede and control over any conflicting provisions written into the Agreement to which this Contract Addendum is attached, including, but not limited to, any “Additional Terms and Conditions,” “Product-Specific Terms,” any “Schedules,” any “Quote,” or any “Google Terms of Service,” any “AWS Policies,” or any “NASA/NCAS Terms and Conditions,” whether such terms or provisions are attached hereto, included in the Agreement documents, or available through online access managed and operated by Nearmap.

2. Customer; Principal Place of Business.

The Customer under the Agreement is the City of Milton, a Georgia municipality, on behalf of its Fire-Rescue Department. Customer’s primary business address is 2006 Heritage Walk, Milton, Georgia 30004.

3. Term of Agreement.

The term of this Agreement shall commence, as of the Effective Date, being August 1, 2022 through and including July 31, 2023.

4. Nondiscrimination.

In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and all other provisions of Federal

law, Nearmap agrees that, during performance of this Agreement, Nearmap, for itself, its assignees and successors in interest, will not discriminate against any employee or applicant for employment, any subcontractor, or any supplier because of race, color, creed, national origin, gender, age or disability. In addition, Nearmap agrees to comply with all applicable implementing regulations and shall include the provisions of this Section in every subcontract for services contemplated under this Agreement.

5. Confidentiality.

Nearmap acknowledges that Customer's disclosure of documentation is governed by Georgia's Open Records Act, and Nearmap further acknowledges that if Nearmap submits records containing trade secret information, and if Nearmap wishes to keep such records confidential, Nearmap must submit and attach to such records an affidavit affirmatively declaring that specific information in the records constitutes trade secrets pursuant to Article 27 of Chapter 1 of Title 10, and the Parties shall follow the requirements of O.C.G.A. § 50-18-72(a)(34) related thereto.

6. Sovereign Immunity; Indemnification.

Nothing contained in the Agreement shall be construed to be a waiver of Customer's sovereign immunity or any individual's qualified, good faith or official immunities. Any provision of the Agreement requiring the Customer to indemnify the Nearmap is only valid to the extent allowed by Georgia law. The parties hereto agree and acknowledge that the Customer is under no obligation to procure additional insurance related to the Agreement, including this Addendum.

7. Governing Law.

This Agreement is governed by the laws of the State of Georgia to the extent that such laws apply to the County as a political subdivision of the State of Georgia and as a party to this Agreement.

8. Material Condition.

Each term of this Agreement is material, and either Nearmap's or Customer's breach of any term of this Agreement shall be considered a material breach of the entire Agreement and shall be grounds for termination or exercise of any other remedies available to the non-breaching at law or in equity.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Customer and Nearmap have executed the Agreement, including this Contract Addendum, effective as of this 21st day of July, 2022.

NEARMAP US, INC.

By: Anthony Capone
Print Name: Anthony "Tony" Capone
Title: Deputy General Counsel, Americas

ATTEST:

[See the attached document]

By: _____
Print Name: _____
Title: _____

[AFFIX CORPORATE SEAL]

CITY OF MILTON, GEORGIA

By: _____
Peyton Jamison, Mayor

ATTEST:

By: _____
Tammy Lowit, City Clerk

[AFFIX CITY SEAL]

Approved as to form:

DocuSigned by:
Jeff M Strickland 7/21/22
City Attorney Date

**ACTION BY UNANIMOUS WRITTEN CONSENT
OF THE BOARD OF DIRECTORS OF
NEARMAP US, INC.**

The undersigned, being all the members of the Board of Directors (the "**Board**") of Nearmap US, Inc., a Delaware corporation (the "**Company**") pursuant to section 141(f) of the Delaware General Corporation Law, hereby adopt the following resolutions by unanimous written consent in lieu of a regular meeting, which resolutions shall be deemed adopted when all the members of the Board have signed this consent.

1. **Appointment of Officer**

RESOLVED, that the following person is hereby appointed as the Company's officer to the office set forth below, to serve until his or her death, resignation or removal from Office, or until his or her respective successor is duly appointed and qualified.

Senior Legal Counsel

Tony Capone

2. **Omnibus Resolutions**

RESOLVED, that the Company's officers are authorized and empowered, in the name and on behalf of the Company, to execute, certify, file and record such additional agreements, documents and instruments as may be or become reasonably necessary or convenient to carry out and put into effect the purposes of the foregoing resolutions all of which have officially been approved by the Board.

RESOLVED FURTHER, that any and all actions heretofore taken by the Company's officers in the name and on behalf of the Company in furtherance of the preceding resolutions are ratified, approved and adopted.

[Signature Page Follows]


IN WITNESS THEREOF, this Action by Unanimous Written Consent has been executed by the undersigned as of dates set forth below and shall be effective as of the date when all the members of the Board have signed the Consent. This Consent may be signed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one instrument.

Dated: 15 September 2021



Robert Melville Newman

Dated: 14 September 2021



Andrew David Watt

Certificate Of Completion

Envelope Id: D70BEA83A4A345309E8C6AAC3183D597	Status: Completed
Subject: Please DocuSign: Agreement_City of Milton GA_220721_NEARMAP (J&D clean)_vendor signed.pdf	
Source Envelope:	
Document Pages: 14	Signatures: 1
Certificate Pages: 4	Initials: 0
AutoNav: Enabled	Envelope Originator:
Envelope Stamping: Disabled	Honor Motes
Time Zone: (UTC-05:00) Eastern Time (US & Canada)	2006 Heritage Walk
	Milton, GA 30004
	honor.motes@miltonga.gov
	IP Address: 23.127.130.129

Record Tracking

Status: Original	Holder: Honor Motes	Location: DocuSign
7/25/2022 10:43:57 AM	honor.motes@miltonga.gov	
Security Appliance Status: Connected	Pool: StateLocal	
Storage Appliance Status: Connected	Pool: City of Milton	Location: DocuSign

Signer Events

Jeff M Strickland
jstrickland@jarrard-davis.com
Security Level: Email, Account Authentication (None)

Signature

DocuSigned by:

21FB1A1FFF2A40C...

Signature Adoption: Pre-selected Style
Using IP Address: 23.127.130.129

Timestamp

Sent: 7/25/2022 10:44:54 AM
Viewed: 7/25/2022 10:59:36 AM
Signed: 7/25/2022 11:02:45 AM

Electronic Record and Signature Disclosure:

Accepted: 7/25/2022 10:59:36 AM
ID: a364ef26-a59c-46b2-8b43-392fff3186d8

In Person Signer Events**Signature****Timestamp****Editor Delivery Events****Status****Timestamp****Agent Delivery Events****Status****Timestamp****Intermediary Delivery Events****Status****Timestamp****Certified Delivery Events****Status****Timestamp****Carbon Copy Events****Status****Timestamp****Witness Events****Signature****Timestamp****Notary Events****Signature****Timestamp****Envelope Summary Events****Status****Timestamps**

Envelope Sent	Hashed/Encrypted	7/25/2022 10:44:54 AM
Certified Delivered	Security Checked	7/25/2022 10:59:36 AM
Signing Complete	Security Checked	7/25/2022 11:02:45 AM
Completed	Security Checked	7/25/2022 11:02:45 AM

Payment Events**Status****Timestamps****Electronic Record and Signature Disclosure**

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, City of Milton (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to this Electronic Record and Signature Disclosure (ERSD), please confirm your agreement by selecting the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact City of Milton:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: sudie.gordon@cityofmiltonga.us

To advise City of Milton of your new email address

To let us know of a change in your email address where we should send notices and disclosures electronically to you, you must send an email message to us at sudie.gordon@cityofmiltonga.us and in the body of such request you must state: your previous email address, your new email address. We do not require any other information from you to change your email address.

If you created a DocuSign account, you may update it with your new email address through your account preferences.

To request paper copies from City of Milton

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an email to sudie.gordon@cityofmiltonga.us and in the body of such request you must state your email address, full name, mailing address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with City of Milton

To inform us that you no longer wish to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an email to sudie.gordon@cityofmiltonga.us and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

The minimum system requirements for using the DocuSign system may change over time. The current system requirements are found here: <https://support.docusign.com/guides/signer-guide-signing-system-requirements>.

Acknowledging your access and consent to receive and sign documents electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please confirm that you have read this ERSD, and (i) that you are able to print on paper or electronically save this ERSD for your future reference and access; or (ii) that you are able to email this ERSD to an email address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format as described herein, then select the check-box next to ‘I agree to use electronic records and signatures’ before clicking ‘CONTINUE’ within the DocuSign system.

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- Until or unless you notify City of Milton as described above, you consent to receive exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by City of Milton during the course of your relationship with City of Milton.