



Department of Administration
Purchasing Division
2019 Washington Street East
Post Office Box 50130
Charleston, WV 25305-0130

State of West Virginia
Contract

Order Date: 09-01-2022

CORRECT ORDER NUMBER MUST APPEAR
ON ALL PACKAGES, INVOICES, AND
SHIPPING PAPERS. QUESTIONS
CONCERNING THIS ORDER SHOULD BE
DIRECTED TO THE DEPARTMENT
CONTACT.

Order Number:	CCT 1400 4902 AGR2300000001 1	Procurement Folder:	1074213	
Document Name:	WEB-BASED CONSERVATION MANAGEMENT SOFTWARE	Reason for Modification:		
Document Description:	WEB-BASED CONSERVATION MANAGEMENT SOFTWARE			
Procurement Type:	Central Contract - Fixed Amt			
Buyer Name:	Crystal G Hustead			
Telephone:	(304) 558-2402			
Email:	crystal.g.hustead@wv.gov			
Shipping Method:	Best Way	Effective Start Date:	2022-10-01	
Free on Board:	FOB Dest, Freight Prepaid	Effective End Date:	2023-09-30	

VENDOR	DEPARTMENT CONTACT																				
Vendor Customer Code: 000000160983 GANNETT FLEMING INC 207 SENATE AVE CAMP HILL PA 17011-2316 US Vendor Contact Phone: 717-763-7211 Extension: 2828 Discount Details: <table><thead><tr><th></th><th>Discount Allowed</th><th>Discount Percentage</th><th>Discount Days</th></tr></thead><tbody><tr><td>#1</td><td>No</td><td>0.0000</td><td>0</td></tr><tr><td>#2</td><td>Not Entered</td><td></td><td></td></tr><tr><td>#3</td><td>Not Entered</td><td></td><td></td></tr><tr><td>#4</td><td>Not Entered</td><td></td><td></td></tr></tbody></table>		Discount Allowed	Discount Percentage	Discount Days	#1	No	0.0000	0	#2	Not Entered			#3	Not Entered			#4	Not Entered			Requestor Name: Christopher J Martin Requestor Phone: (304) 558-2204 Requestor Email: cmartin@wvca.us 23 FILE LOCATION _____
	Discount Allowed	Discount Percentage	Discount Days																		
#1	No	0.0000	0																		
#2	Not Entered																				
#3	Not Entered																				
#4	Not Entered																				

INVOICE TO	SHIP TO
PROCUREMENT OFFICER 304-558-2221 AGRICULTURE DEPARTMENT OF ADMINISTRATIVE SERVICES 1900 KANAWHA BLVD E CHARLESTON WV 25305-0173 US	ADMINISTRATIVE SERVICES 304-558-2204 WEST VIRGINIA CONSERVATION AGENCY WEST VIRGINIA CONSERVATION AGENCY 255 GUS R DOUGLASS LN CHARLESTON WV 25305-0193 US

9-26-22 BAT

Purchasing Division's File Copy

Total Order Amount: \$54,760.00

ENTERED

CAH 9/17/22

PURCHASING DIVISION AUTHORIZATION DATE: <i>Tunali 9/23/2022</i> ELECTRONIC SIGNATURE ON FILE	ATTORNEY GENERAL APPROVAL AS TO FORM DATE: <i>John S. Grou...</i> ELECTRONIC SIGNATURE ON FILE	ENCUMBRANCE CERTIFICATION <i>Beverly Toler</i> DATE: <i>9-28-2022</i> ELECTRONIC SIGNATURE ON FILE
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9/28/2022

Extended Description:

THE VENDOR, GEODECISIONS, A DIVISION OF GANNETT FLEMING, INC, AGREES TO ENTER WITH THE AGENCY, WEST VIRGINIA CONSERVATION AGENCY, INTO A CONTRACT FOR WEB-BASED CONSERVATION MANAGEMENT SOFTWARE PER THE TERMS AND CONDITIONS, BID REQUIREMENTS, AND THE VENDOR'S BID DATED 08/02/2022, INCORPORATED HEREIN BY REFERENCE, AND MADE A PART OF HEREOF.

Line	Commodity Code	Quantity	Unit	Unit Price	Total Price
1	43230000	0.00000		0.000000	\$54,760.00
Service From	Service To	Manufacturer		Model No	
2022-10-01	2023-09-30				

Commodity Line Description: Web-Based Custom Software

Extended Description:

Web-Bases Software Application, Updates, and Maintenance Year 1 (Includes Set Up)

ORDER OF PRECEDENT AND MODIFICATION AGREEMENT

THIS ORDER OF PRECEDENT AND MODIFICATION AGREEMENT, by and between **GANNETT FLEMING INC** ("Gannett") and the **STATE OF WEST VIRGINIA** ("State") is intended to provide an order of priority for the various documents that comprise the contract resulting from the solicitation identified as CRFQ AGR2300000001, Procurement Folder # 1074213, (the "Contract") and to modify those documents as necessary

The Parties Agree as follows:

- 1. Order of Precedence:** The Contract is comprised of the documents listed in this section. The terms and conditions contained in the various documents shall be interpreted according to the priority given to the Contract document in this section.

Contract Documents:

- a. This Addendum - First in priority.
 - b. State of West Virginia General Terms and Conditions attached as part of Exhibit A – Second Priority
 - c. State of West Virginia Web-Based Conservation Management Software Application Specifications attached as part of Exhibit A – Third Priority
 - d. Gannet Quote Attached as part of Exhibit A – Fourth Priority
 - e. Gannet Software Subscription and Services Agreement GeoDecisions PracticeKeeper Application attached as part of Exhibit A – Fifth Priority
- 2. Additional Contract Terms.** The following additional terms are added to the Contract.
 - a. **VOID CONTRACT CLAUSES** – This Contract is subject to the provisions of West Virginia Code § 5A-3-62, which automatically voids certain contract clauses that violate State law.
 - b. **LATE PAYMENT PENALTIES** – Any language in any document imposing any interest or charges due to late payment is deleted.

The Parties are signing this Addendum on the date stated below the signature.

GANNETT FLEMING INC.

STATE AGENCY

By: 

By: 

Its: Trent M Park, Vice President

Its: Executive Director

Date: 9/6/2022

Date: Sep 7, 2022

EXHIBIT A

GENERAL TERMS AND CONDITIONS:

1. CONTRACTUAL AGREEMENT: Issuance of an Award Document signed by the Purchasing Division Director, or his designee, and approved as to form by the Attorney General's office constitutes acceptance by the State of this Contract made by and between the State of West Virginia and the Vendor. Vendor's signature on its bid, or on the Contract if the Contract is not the result of a bid solicitation, signifies Vendor's agreement to be bound by and accept the terms and conditions contained in this Contract.

2. DEFINITIONS: As used in this Solicitation/Contract, the following terms shall have the meanings attributed to them below. Additional definitions may be found in the specifications included with this Solicitation/Contract.

2.1. "Agency" or "Agencies" means the agency, board, commission, or other entity of the State of West Virginia that is identified on the first page of the Solicitation or any other public entity seeking to procure goods or services under this Contract.

2.2. "Bid" or "Proposal" means the vendors submitted response to this solicitation.

2.3. "Contract" means the binding agreement that is entered into between the State and the Vendor to provide the goods or services requested in the Solicitation.

2.4. "Director" means the Director of the West Virginia Department of Administration, Purchasing Division.

2.5. "Purchasing Division" means the West Virginia Department of Administration, Purchasing Division.

2.6. "Award Document" means the document signed by the Agency and the Purchasing Division, and approved as to form by the Attorney General, that identifies the Vendor as the contract holder.

2.7. "Solicitation" means the official notice of an opportunity to supply the State with goods or services that is published by the Purchasing Division.

2.8. "State" means the State of West Virginia and/or any of its agencies, commissions, boards, etc. as context requires.

2.9. "Vendor" or "Vendors" means any entity submitting a bid in response to the Solicitation, the entity that has been selected as the lowest responsible bidder, or the entity that has been awarded the Contract as context requires.

3. CONTRACT TERM; RENEWAL; EXTENSION: The term of this Contract shall be determined in accordance with the category that has been identified as applicable to this Contract below:

☒ **Term Contract**

Initial Contract Term: The Initial Contract Term will be for a period of one (1) year. The Initial Contract Term becomes effective on the effective start date listed on the first page of this Contract, identified as the State of West Virginia contract cover page containing the signatures of the Purchasing Division, Attorney General, and Encumbrance clerk (or another page identified as n/a), and the Initial Contract Term ends on the effective end date also shown on the first page of this Contract.

Renewal Term: This Contract may be renewed upon the mutual written consent of the Agency, and the Vendor, with approval of the Purchasing Division and the Attorney General's office (Attorney General approval is as to form only). Any request for renewal should be delivered to the Agency and then submitted to the Purchasing Division thirty (30) days prior to the expiration date of the initial contract term or appropriate renewal term. A Contract renewal shall be in accordance with the terms and conditions of the original contract. Unless otherwise specified below, renewal of this Contract is limited to three (3) successive one (1) year periods or multiple renewal periods of less than one year, provided that the multiple renewal periods do not exceed the total number of months available in all renewal years combined. Automatic renewal of this Contract is prohibited. Renewals must be approved by the Vendor, Agency, Purchasing Division and Attorney General's office (Attorney General approval is as to form only)

☐ **Alternate Renewal Term** – This contract may be renewed for _____ successive _____ year periods or shorter periods provided that they do not exceed the total number of months contained in all available renewals. Automatic renewal of this Contract is prohibited. Renewals must be approved by the Vendor, Agency, Purchasing Division and Attorney General's office (Attorney General approval is as to form only)

Delivery Order Limitations: In the event that this contract permits delivery orders, a delivery order may only be issued during the time this Contract is in effect. Any delivery order issued within one year of the expiration of this Contract shall be effective for one year from the date the delivery order is issued. No delivery order may be extended beyond one year after this Contract has expired.

☐ **Fixed Period Contract:** This Contract becomes effective upon Vendor's receipt of the notice to proceed and must be completed within _____ days.

☐ **Fixed Period Contract with Renewals:** This Contract becomes effective upon Vendor's receipt of the notice to proceed and part of the Contract more fully described in the attached specifications must be completed within _____ days. Upon completion of the work covered by the preceding sentence, the vendor agrees that:

☐ the contract will continue for _____ years;

☐ the contract may be renewed for _____ successive _____ year periods or shorter periods provided that they do not exceed the total number of months contained in all available renewals. Automatic renewal of this Contract is prohibited. Renewals must be approved by the Vendor, Agency, Purchasing Division and Attorney General's Office (Attorney General approval is as to form only).

☐ **One-Time Purchase:** The term of this Contract shall run from the issuance of the Award Document until all of the goods contracted for have been delivered, but in no event will this Contract extend for more than one fiscal year.

☐ **Construction/Project Oversight:** This Contract becomes effective on the effective start date listed on the first page of this Contract, identified as the State of West Virginia contract cover page containing the signatures of the Purchasing Division, Attorney General, and Encumbrance clerk (or another page identified as _____), and continues until the project for which the vendor is providing oversight is complete.

☐ **Other:** Contract Term specified in _____

4. AUTHORITY TO PROCEED: Vendor is authorized to begin performance of this contract on the date of encumbrance listed on the front page of the Award Document unless either the box for "Fixed Period Contract" or "Fixed Period Contract with Renewals" has been checked in Section 3 above. If either "Fixed Period Contract" or "Fixed Period Contract with Renewals" has been checked, Vendor must not begin work until it receives a separate notice to proceed from the State. The notice to proceed will then be incorporated into the Contract via change order to memorialize the official date that work commenced.

5. QUANTITIES: The quantities required under this Contract shall be determined in accordance with the category that has been identified as applicable to this Contract below.

☐ **Open End Contract:** Quantities listed in this Solicitation/Award Document are approximations only, based on estimates supplied by the Agency. It is understood and agreed that the Contract shall cover the quantities actually ordered for delivery during the term of the Contract, whether more or less than the quantities shown.

☐ **Service:** The scope of the service to be provided will be more clearly defined in the specifications included herewith.

☒ **Combined Service and Goods:** The scope of the service and deliverable goods to be provided will be more clearly defined in the specifications included herewith.

☐ **One-Time Purchase:** This Contract is for the purchase of a set quantity of goods that are identified in the specifications included herewith. Once those items have been delivered, no additional goods may be procured under this Contract without an appropriate change order approved by the Vendor, Agency, Purchasing Division, and Attorney General's office.

6. EMERGENCY PURCHASES: The Purchasing Division Director may authorize the Agency to purchase goods or services in the open market that Vendor would otherwise provide under this Contract if those goods or services are for immediate or expedited delivery in an emergency. Emergencies shall include, but are not limited to, delays in transportation or an unanticipated increase in the volume of work. An emergency purchase in the open market, approved by the Purchasing Division Director, shall not constitute of breach of this Contract and shall not entitle the Vendor to any form of compensation or damages. This provision does not excuse the State from fulfilling its obligations under a One-Time Purchase contract.

7. REQUIRED DOCUMENTS: All of the items checked in this section must be provided to the Purchasing Division by the Vendor as specified:

☐ **BID BOND (Construction Only):** Pursuant to the requirements contained in W. Va. Code § 5-22-1(c), All Vendors submitting a bid on a construction project shall furnish a valid bid bond in the amount of five percent (5%) of the total amount of the bid protecting the State of West Virginia. The bid bond must be submitted with the bid.

☐ **PERFORMANCE BOND:** The apparent successful Vendor shall provide a performance bond in the amount of 100% of the contract. The performance bond must be received by the Purchasing Division prior to Contract award.

☐ **LABOR/MATERIAL PAYMENT BOND:** The apparent successful Vendor shall provide a labor/material payment bond in the amount of 100% of the Contract value. The labor/material payment bond must be delivered to the Purchasing Division prior to Contract award.

In lieu of the Bid Bond, Performance Bond, and Labor/Material Payment Bond, the Vendor may provide certified checks, cashier's checks, or irrevocable letters of credit. Any certified check, cashier's check, or irrevocable letter of credit provided in lieu of a bond must be of the same amount and delivered on the same schedule as the bond it replaces. A letter of credit submitted in lieu of a performance and labor/material payment bond will only be allowed for projects under \$100,000. Personal or business checks are not acceptable. Notwithstanding the foregoing, West Virginia Code § 5-22-1 (d) mandates that a vendor provide a performance and labor/material payment bond for construction projects. Accordingly, substitutions for the performance and labor/material payment bonds for construction projects is not permitted.

☐ **MAINTENANCE BOND:** The apparent successful Vendor shall provide a two (2) year maintenance bond covering the roofing system. The maintenance bond must be issued and delivered to the Purchasing Division prior to Contract award.

☐ **LICENSE(S) / CERTIFICATIONS / PERMITS:** In addition to anything required under the Section of the General Terms and Conditions entitled Licensing, the apparent successful Vendor shall furnish proof of the following licenses, certifications, and/or permits upon request and in a form acceptable to the State. The request may be prior to or after contract award at the State's sole discretion.

☐☐☐☐

The apparent successful Vendor shall also furnish proof of any additional licenses or certifications contained in the specifications regardless of whether or not that requirement is listed above.

8. INSURANCE: The apparent successful Vendor shall furnish proof of the insurance identified by a checkmark below and must include the State as an additional insured on each policy prior to Contract award. The insurance coverages identified below must be maintained throughout the life of this contract. Thirty (30) days prior to the expiration of the insurance policies, Vendor shall provide the Agency with proof that the insurance mandated herein has been continued. Vendor must also provide Agency with immediate notice of any changes in its insurance policies, including but not limited to, policy cancelation, policy reduction, or change in insurers. The apparent successful Vendor shall also furnish proof of any additional insurance requirements contained in the specifications prior to Contract award regardless of whether that insurance requirement is listed in this section.

Vendor must maintain:

☒ **Commercial General Liability Insurance** in at least an amount of: \$1,000,000 per occurrence.

☐ **Automobile Liability Insurance** in at least an amount of: _____ per occurrence.

☐ **Professional/Malpractice/Errors and Omission Insurance** in at least an amount of: _____ per occurrence. Notwithstanding the forgoing, Vendor's are not required to list the State as an additional insured for this type of policy.

☐ **Commercial Crime and Third Party Fidelity Insurance** in an amount of: _____ per occurrence.

☒ **Cyber Liability Insurance** in an amount of: \$1,000,000 per occurrence.

☐ **Builders Risk Insurance** in an amount equal to 100% of the amount of the Contract.

☐ **Pollution Insurance** in an amount of: _____ per occurrence.

☐ **Aircraft Liability** in an amount of: _____ per occurrence.

☒ ***THE STATE OF WV MUST BE LISTED AS ADDITIONAL INSURED ON INSURANCE CERTIFICATE

☒ ***CERTIFICATE HOLDER SHOULD READ AS FOLLOWS:
WV DEPT OF AGRICULTURE
1900 KANAWHA BLVD E, CHARLESTON, WV 25305

☐☐

Notwithstanding anything contained in this section to the contrary, the Director of the Purchasing Division reserves the right to waive the requirement that the State be named as an additional insured on one or more of the Vendor's insurance policies if the Director finds that doing so is in the State's best interest.

9. WORKERS' COMPENSATION INSURANCE: Vendor shall comply with laws relating to workers compensation, shall maintain workers' compensation insurance when required, and shall furnish proof of workers' compensation insurance upon request.

10. [Reserved]

11. LIQUIDATED DAMAGES: This clause shall in no way be considered exclusive and shall not limit the State or Agency's right to pursue any other available remedy. Vendor shall pay liquidated damages in the amount specified below or as described in the specifications:

☐ _____ for _____.

☐ Liquidated Damages Contained in the Specifications.

☐ Liquidated Damages Are Not Included in this Contract.

12. ACCEPTANCE: Vendor's signature on its bid, or on the certification and signature page, constitutes an offer to the State that cannot be unilaterally withdrawn, signifies that the product or service proposed by vendor meets the mandatory requirements contained in the Solicitation for that product or service, unless otherwise indicated, and signifies acceptance of the terms and conditions contained in the Solicitation unless otherwise indicated.

13. PRICING: The pricing set forth herein is firm for the life of the Contract, unless specified elsewhere within this Solicitation/Contract by the State. A Vendor's inclusion of price adjustment provisions in its bid, without an express authorization from the State in the Solicitation to do so, may result in bid disqualification. Notwithstanding the foregoing, Vendor must extend any publicly advertised sale price to the State and invoice at the lower of the contract price or the publicly advertised sale price.

14. PAYMENT IN ARREARS: Payments for goods/services will be made in arrears only upon receipt of a proper invoice, detailing the goods/services provided or receipt of the goods/services, whichever is later. Notwithstanding the foregoing, payments for software maintenance, licenses, or subscriptions may be paid annually in advance.

15. PAYMENT METHODS: Vendor must accept payment by electronic funds transfer and P-Card. (The State of West Virginia's Purchasing Card program, administered under contract by a banking institution, processes payment for goods and services through state designated credit cards.)

16. TAXES: The Vendor shall pay any applicable sales, use, personal property or any other taxes arising out of this Contract and the transactions contemplated thereby. The State of West Virginia is exempt from federal and state taxes and will not pay or reimburse such taxes.

17. ADDITIONAL FEES: Vendor is not permitted to charge additional fees or assess additional charges that were not either expressly provided for in the solicitation published by the State of West Virginia, included in the Contract, or included in the unit price or lump sum bid amount that Vendor is required by the solicitation to provide. Including such fees or charges as notes to the solicitation may result in rejection of vendor's bid. Requesting such fees or charges be paid after the contract has been awarded may result in cancellation of the contract.

18. FUNDING: This Contract shall continue for the term stated herein, contingent upon funds being appropriated by the Legislature or otherwise being made available. In the event funds are not appropriated or otherwise made available, this Contract becomes void and of no effect beginning on July 1 of the fiscal year for which funding has not been appropriated or otherwise made available. If that occurs, the State may notify the Vendor that an alternative source of funding has been obtained and thereby avoid the automatic termination. Non-appropriation or non-funding shall not be considered an event of default.

19. CANCELLATION: The Purchasing Division Director reserves the right to cancel this Contract immediately upon written notice to the vendor if the materials or workmanship supplied do not conform to the specifications contained in the Contract. The Purchasing Division Director may also cancel any purchase or Contract upon 30 days written notice to the Vendor in accordance with West Virginia Code of State Rules § 148-1-5.2.b.

20. TIME: Time is of the essence regarding all matters of time and performance in this Contract.

21. APPLICABLE LAW: This Contract is governed by and interpreted under West Virginia law without giving effect to its choice of law principles. Any information provided in specification manuals, or any other source, verbal or written, which contradicts or violates the West Virginia Constitution, West Virginia Code, or West Virginia Code of State Rules is void and of no effect.

22. COMPLIANCE WITH LAWS: Vendor shall comply with all applicable federal, state, and local laws, regulations and ordinances. By submitting a bid, Vendor acknowledges that it has reviewed, understands, and will comply with all applicable laws, regulations, and ordinances.

SUBCONTRACTOR COMPLIANCE: Vendor shall notify all subcontractors providing commodities or services related to this Contract that as subcontractors, they too are required to comply with all applicable laws, regulations, and ordinances. Notification under this provision must occur prior to the performance of any work under the contract by the subcontractor.

23. ARBITRATION: Any references made to arbitration contained in this Contract, Vendor's bid, or in any American Institute of Architects documents pertaining to this Contract are hereby deleted, void, and of no effect.

24. MODIFICATIONS: This writing is the parties' final expression of intent. Notwithstanding anything contained in this Contract to the contrary no modification of this Contract shall be binding without mutual written consent of the Agency, and the Vendor, with approval of the Purchasing Division and the Attorney General's office (Attorney General approval is as to form only). Any change to existing contracts that adds work or changes contract cost, and were not included in the original contract, must be approved by the Purchasing Division and the Attorney General's Office (as to form) prior to the implementation of the change or commencement of work affected by the change.

25. WAIVER: The failure of either party to insist upon a strict performance of any of the terms or provision of this Contract, or to exercise any option, right, or remedy herein contained, shall not be construed as a waiver or a relinquishment for the future of such term, provision, option, right, or remedy, but the same shall continue in full force and effect. Any waiver must be expressly stated in writing and signed by the waiving party.

26. SUBSEQUENT FORMS: The terms and conditions contained in this Contract shall supersede any and all subsequent terms and conditions which may appear on any form documents submitted by Vendor to the Agency or Purchasing Division such as price lists, order forms, invoices, sales agreements, or maintenance agreements, and includes internet websites or other electronic documents. Acceptance or use of Vendor's forms does not constitute acceptance of the terms and conditions contained thereon.

27. ASSIGNMENT: Neither this Contract nor any monies due, or to become due hereunder, may be assigned by the Vendor without the express written consent of the Agency, the Purchasing Division, the Attorney General's office (as to form only), and any other government agency or office that may be required to approve such assignments.

28. WARRANTY: The Vendor expressly warrants that the goods and/or services covered by this Contract will: (a) conform to the specifications, drawings, samples, or other description furnished or specified by the Agency; (b) be merchantable and fit for the purpose intended; and (c) be free from defect in material and workmanship.

29. STATE EMPLOYEES: State employees are not permitted to utilize this Contract for personal use and the Vendor is prohibited from permitting or facilitating the same.

30. PRIVACY, SECURITY, AND CONFIDENTIALITY: The Vendor agrees that it will not disclose to anyone, directly or indirectly, any such personally identifiable information or other confidential information gained from the Agency, unless the individual who is the subject of the information consents to the disclosure in writing or the disclosure is made pursuant to the Agency's policies, procedures, and rules. Vendor further agrees to comply with the Confidentiality Policies and Information Security Accountability Requirements, set forth in <http://www.state.wv.us/admin/purchase/privacy/default.html>.

31. YOUR SUBMISSION IS A PUBLIC DOCUMENT: Vendor's entire response to the Solicitation and the resulting Contract are public documents. As public documents, they will be disclosed to the public following the bid/proposal opening or award of the contract, as required by the competitive bidding laws of West Virginia Code §§ 5A-3-1 et seq., 5-22-1 et seq., and 5G-1-1 et seq. and the Freedom of Information Act West Virginia Code §§ 29B-1-1 et seq.

DO NOT SUBMIT MATERIAL YOU CONSIDER TO BE CONFIDENTIAL, A TRADE SECRET, OR OTHERWISE NOT SUBJECT TO PUBLIC DISCLOSURE.

Submission of any bid, proposal, or other document to the Purchasing Division constitutes your explicit consent to the subsequent public disclosure of the bid, proposal, or document. The Purchasing Division will disclose any document labeled "confidential," "proprietary," "trade secret," "private," or labeled with any other claim against public disclosure of the documents, to include any "trade secrets" as defined by West Virginia Code § 47-22-1 et seq. All submissions are subject to public disclosure without notice.

32. LICENSING: In accordance with West Virginia Code of State Rules § 148-1-6.1.e, Vendor must be licensed and in good standing in accordance with any and all state and local laws and requirements by any state or local agency of West Virginia, including, but not limited to, the West Virginia Secretary of State's Office, the West Virginia Tax Department, West Virginia Insurance Commission, or any other state agency or political subdivision. Obligations related to political subdivisions may include, but are not limited to, business licensing, business and occupation taxes, inspection compliance, permitting, etc. Upon request, the Vendor must provide all necessary releases to obtain information to enable the Purchasing Division Director or the Agency to verify that the Vendor is licensed and in good standing with the above entities.

SUBCONTRACTOR COMPLIANCE: Vendor shall notify all subcontractors providing commodities or services related to this Contract that as subcontractors, they too are required to be licensed, in good standing, and up-to-date on all state and local obligations as described in this section. Obligations related to political subdivisions may include, but are not limited to, business licensing, business and occupation taxes, inspection compliance, permitting, etc. Notification under this provision must occur prior to the performance of any work under the contract by the subcontractor.

33. ANTITRUST: In submitting a bid to, signing a contract with, or accepting a Award Document from any agency of the State of West Virginia, the Vendor agrees to convey, sell, assign, or transfer to the State of West Virginia all rights, title, and interest in and to all causes of action it may now or hereafter acquire under the antitrust laws of the United States and the State of West Virginia for price fixing and/or unreasonable restraints of trade relating to the particular commodities or services purchased or acquired by the State of West Virginia. Such assignment shall be made and become effective at the time the purchasing agency tenders the initial payment to Vendor.

34. VENDOR CERTIFICATIONS: By signing its bid or entering into this Contract, Vendor certifies (1) that its bid or offer was made without prior understanding, agreement, or connection with any corporation, firm, limited liability company, partnership, person or entity submitting a bid or offer for the same material, supplies, equipment or services; (2) that its bid or offer is in all respects fair and without collusion or fraud; (3) that this Contract is accepted or entered into without any prior understanding, agreement, or connection to any other entity that could be considered a violation of law; and (4) that it has reviewed this Solicitation in its entirety; understands the requirements, terms and conditions, and other information contained herein.

Vendor's signature on its bid or offer also affirms that neither it nor its representatives have any interest, nor shall acquire any interest, direct or indirect, which would compromise the performance of its services hereunder. Any such interests shall be promptly presented in detail to the Agency. The individual signing this bid or offer on behalf of Vendor certifies that he or she is authorized by the Vendor to execute this bid or offer or any documents related thereto on Vendor's behalf; that he or she is authorized to bind the Vendor in a contractual relationship; and that, to the best of his or her knowledge, the Vendor has properly registered with any State agency that may require registration.

35. VENDOR RELATIONSHIP: The relationship of the Vendor to the State shall be that of an independent contractor and no principal-agent relationship or employer-employee relationship is contemplated or created by this Contract. The Vendor as an independent contractor is solely liable for the acts and omissions of its employees and agents. Vendor shall be responsible for selecting, supervising, and compensating any and all individuals employed pursuant to the terms of this Solicitation and resulting contract. Neither the Vendor, nor any employees or subcontractors of the Vendor, shall be deemed to be employees of the State for any purpose whatsoever. Vendor shall be exclusively responsible for payment of employees and contractors for all wages and salaries, taxes, withholding payments, penalties, fees, fringe benefits, professional liability insurance premiums, contributions to insurance and pension, or other deferred compensation plans, including but not limited to, Workers' Compensation and Social Security obligations, licensing fees, etc. and the filing of all necessary documents, forms, and returns pertinent to all of the foregoing.

Vendor shall hold harmless the State, and shall provide the State and Agency with a defense against any and all claims including, but not limited to, the foregoing payments, withholdings, contributions, taxes, Social Security taxes, and employer income tax returns.

36. INDEMNIFICATION: The Vendor agrees to indemnify, defend, and hold harmless the State and the Agency, their officers, and employees from and against: (1) Any claims or losses for services rendered by any subcontractor, person, or firm performing or supplying services, materials, or supplies in connection with the performance of the Contract; (2) Any claims or losses resulting to any person or entity injured or damaged by the Vendor, its officers, employees, or subcontractors by the publication, translation, reproduction, delivery, performance, use, or disposition of any data used under the Contract in a manner not authorized by the Contract, or by Federal or State statutes or regulations; and (3) Any failure of the Vendor, its officers, employees, or subcontractors to observe State and Federal laws including, but not limited to, labor and wage and hour laws.

37. NO DEBT CERTIFICATION: In accordance with West Virginia Code §§ 5A-3-10a and 5-22-1(i), the State is prohibited from awarding a contract to any bidder that owes a debt to the State or a political subdivision of the State. By submitting a bid, or entering into a contract with the State, Vendor is affirming that (1) for construction contracts, the Vendor is not in default on any monetary obligation owed to the state or a political subdivision of the state, and (2) for all other contracts, neither the Vendor nor any related party owe a debt as defined above, and neither the Vendor nor any related party are in employer default as defined in the statute cited above unless the debt or employer default is permitted under the statute.

38. CONFLICT OF INTEREST: Vendor, its officers or members or employees, shall not presently have or acquire an interest, direct or indirect, which would conflict with or compromise the performance of its obligations hereunder. Vendor shall periodically inquire of its officers, members and employees to ensure that a conflict of interest does not arise. Any conflict of interest discovered shall be promptly presented in detail to the Agency.

39. REPORTS: Vendor shall provide the Agency and/or the Purchasing Division with the following reports identified by a checked box below:

☐ Such reports as the Agency and/or the Purchasing Division may request. Requested reports may include, but are not limited to, quantities purchased, agencies utilizing the contract, total contract expenditures by agency, etc.

☐ Quarterly reports detailing the total quantity of purchases in units and dollars, along with a listing of purchases by agency. Quarterly reports should be delivered to the Purchasing Division via email at purchasing.division@wv.gov.

40. BACKGROUND CHECK: In accordance with W. Va. Code § 15-2D-3, the State reserves the right to prohibit a service provider's employees from accessing sensitive or critical information or to be present at the Capitol complex based upon results addressed from a criminal background check. Service providers should contact the West Virginia Division of Protective Services by phone at (304) 558-9911 for more information.

41. PREFERENCE FOR USE OF DOMESTIC STEEL PRODUCTS: Except when authorized by the Director of the Purchasing Division pursuant to W. Va. Code § 5A-3-56, no contractor may use or supply steel products for a State Contract Project other than those steel products made in the United States. A contractor who uses steel products in violation of this section may be subject to civil penalties pursuant to W. Va. Code § 5A-3-56. As used in this section:

- a. "State Contract Project" means any erection or construction of, or any addition to, alteration of or other improvement to any building or structure, including, but not limited to, roads or highways, or the installation of any heating or cooling or ventilating plants or other equipment, or the supply of and materials for such projects, pursuant to a contract with the State of West Virginia for which bids were solicited on or after June 6, 2001.
- b. "Steel Products" means products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated or otherwise similarly processed, or processed by a combination of two or more or such operations, from steel made by the open heath, basic oxygen, electric furnace, Bessemer or other steel making process.
- c. The Purchasing Division Director may, in writing, authorize the use of foreign steel products if:
 1. The cost for each contract item used does not exceed one tenth of one percent (.1%) of the total contract cost or two thousand five hundred dollars (\$2,500.00), whichever is greater. For the purposes of this section, the cost is the value of the steel product as delivered to the project; or
 2. The Director of the Purchasing Division determines that specified steel materials are not produced in the United States in sufficient quantity or otherwise are not reasonably available to meet contract requirements.

42. PREFERENCE FOR USE OF DOMESTIC ALUMINUM, GLASS, AND STEEL: In Accordance with W. Va. Code § 5-19-1 et seq., and W. Va. CSR § 148-10-1 et seq., for every contract or subcontract, subject to the limitations contained herein, for the construction, reconstruction, alteration, repair, improvement or maintenance of public works or for the purchase of any item of machinery or equipment to be used at sites of public works, only domestic aluminum, glass or steel products shall be supplied unless the spending officer determines, in writing, after the receipt of offers or bids, (1) that the cost of domestic aluminum, glass or steel products is unreasonable or inconsistent with the public interest of the State of West Virginia, (2) that domestic aluminum, glass or steel products are not produced in sufficient quantities to meet the contract requirements, or (3) the available domestic aluminum, glass, or steel do not meet the contract specifications. This provision only applies to public works contracts awarded in an amount more than fifty thousand dollars (\$50,000) or public works contracts that require more than ten thousand pounds of steel products.

The cost of domestic aluminum, glass, or steel products may be unreasonable if the cost is more than twenty percent (20%) of the bid or offered price for foreign made aluminum, glass, or steel products. If the domestic aluminum, glass or steel products to be supplied or produced in a "substantial labor surplus area", as defined by the United States Department of Labor, the cost of domestic aluminum, glass, or steel products may be unreasonable if the cost is more than thirty percent (30%) of the bid or offered price for foreign made aluminum, glass, or steel

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products. This preference shall be applied to an item of machinery or equipment, as indicated above, when the item is a single unit of equipment or machinery manufactured primarily of aluminum, glass or steel, is part of a public works contract and has the sole purpose or of being a permanent part of a single public works project. This provision does not apply to equipment or machinery purchased by a spending unit for use by that spending unit and not as part of a single public works project.

All bids and offers including domestic aluminum, glass or steel products that exceed bid or offer prices including foreign aluminum, glass or steel products after application of the preferences provided in this provision may be reduced to a price equal to or lower than the lowest bid or offer price for foreign aluminum, glass or steel products plus the applicable preference. If the reduced bid or offer prices are made in writing and supersede the prior bid or offer prices, all bids or offers, including the reduced bid or offer prices, will be reevaluated in accordance with this rule.

43. INTERESTED PARTY SUPPLEMENTAL DISCLOSURE: W. Va. Code § 6D-1-2 requires that for contracts with an actual or estimated value of at least \$1 million, the Vendor must submit to the Agency a disclosure of interested parties prior to beginning work under this Contract. Additionally, the Vendor must submit a supplemental disclosure of interested parties reflecting any new or differing interested parties to the contract, which were not included in the original pre-work interested party disclosure, within 30 days following the completion or termination of the contract. A copy of that form is included with this solicitation or can be obtained from the WV Ethics Commission. This requirement does not apply to publicly traded companies listed on a national or international stock exchange. A more detailed definition of interested parties can be obtained from the form referenced above.

44. PROHIBITION AGAINST USED OR REFURBISHED: Unless expressly permitted in the solicitation published by the State, Vendor must provide new, unused commodities, and is prohibited from supplying used or refurbished commodities, in fulfilling its responsibilities under this Contract.

45. VOID CONTRACT CLAUSES – This Contract is subject to the provisions of West Virginia Code § 5A-3-62, which automatically voids certain contract clauses that violate State law.

46. ISRAEL BOYCOTT: Bidder understands and agrees that, pursuant to W. Va. Code § 5A-3-63, it is prohibited from engaging in a boycott of Israel during the term of this contract.

Web-Based Conservation Management Software Application

SPECIFICATIONS

- 1. PURPOSE AND SCOPE:** The West Virginia Purchasing Division is soliciting bids on behalf of WV Conservation Agency to establish a contract for the one-time purchase of Web-Based Conservation Management Software.
- 2. DEFINITIONS:** The terms listed below shall have the meanings assigned to them below. Additional definitions can be found in section 2 of the General Terms and Conditions.
 - 2.1 “Contract Item”** means Web-Based Software Application as more fully described by these specifications.
 - 2.2 “Pricing Page”** means the pages, contained in WVOASIS or attached as Exhibit A, upon which Vendor should list its proposed price for the Contract Items.
 - 2.3 “Solicitation”** means the official notice of an opportunity to supply the State with goods or services that is published by the Purchasing Division.
- 3. GENERAL REQUIREMENTS:**
 - 3.1 Mandatory Contract Item Requirements:** Contract Item must meet or exceed the mandatory requirements listed below.
 - 3.1.1 Web-Based Conservation Management Software Application**
 - 3.1.1.1** Web-Based Software Application must have capability to create, map, administer and evaluate conservation plans.
 - 3.1.1.2** Web-Based Software Application Administration and Evaluation capabilities must include ability to identify funding sources, tracking verifications, tracking lifespans and future verifications, documenting plan review and approval.
 - 3.1.1.3** Web-Based Software Application must have the capability to upload and attach documents, files, and photos.

Web-Based Conservation Management Software Application

- 3.1.1.4** Web-Based Software Application must contain database of best-management practices including narratives, with user modification abilities.
- 3.1.1.5** Web-Based Software Application must contain grazing plan calculation tool.
- 3.1.1.6** Software Application must be web-based.
- 3.1.1.7** Web-Based Software Application must provide secure hosting.
- 3.1.1.8** Web-Based Software Application must be user friendly.
- 3.1.1.9** Web-Based Software Application must have custom reporting capabilities based on entries. Including, per-user, per-county, per-conservation district, and statewide.
- 3.1.1.10** Web-Based Software Application must include technical support.
- 3.1.1.11** Web-Based Software Application must include setup.
- 3.1.1.12** Web-Based Software Application must include 4 hours of remote, web-based training minimum which can be split into multiple sessions as desired by WVCA.
- 3.1.1.13** Web-Based Software Application must have the capability to modify modules and develop novel ones as needed.
- 3.1.1.14** Web-Based Software Application must contain user-maintained data to include contact and farm information, watershed information, document management.
- 3.1.1.15** Web-Based Software Application must contain search capabilities.
- 3.1.1.16** Web-Based Software Application must include mapping symbology and measuring capabilities for land units and BMPs (best management practices), with the ability to be modified.

Web-Based Conservation Management Software Application

- 3.1.1.17** Web-Based Software Application must have capability to add map layers including but not limited to:
- 3.1.1.17.1** Topo
 - 3.1.1.17.2** Aerial
 - 3.1.1.17.3** LiDAR layer
 - 3.1.1.17.4** Soils (Prime Farmland, locally and statewide important soils, hydric soils, drainage class, K factor and T values)
 - 3.1.1.17.5** HUC 8, 10, 12, and 14 land use data, (pasture grassland, grassland, cropland, forest, and residential) wetland data, parcel data, karst layer, streams, rivers, lakes, and road data.
- 3.1.1.18** Web-Based Software Application must have capability to export a geospatial file to be utilized in ArcMap.
- 3.1.1.19** Web-Based Software Application should have capability to create, map, administer, and evaluate nutrient management plans.
- 3.1.1.20** Web-Based Software Application should include soils loss calculator based on RUSLE and BEHI for streambank erosion.
- 3.1.1.21** Web-Based Software Application should have capability to provide tracking of water quality monitoring results.
- 3.1.1.22** Web-Based Software Application should have mobile access.

Web-Based Conservation Management Software Application

- 3.1.1.23** Web-Based Software Application should have a read-only access option.
- 3.1.1.24** Should have the capability to produce reports that are compatible with National Environmental Information Exchange Network (NEIEN) and Grants Report and Tracking System (GRTS).
- 3.1.1.25** Vendor should have experience working with conservation districts and/or government conservation or agriculture agencies.
- 3.1.1.26** Must include mapping of land units and BMP's (Best Management Practices), along with capturing spatial data, such as county, watershed, and soil map units.
- 3.1.1.27** Measuring tools must be available for the map(s).
- 3.1.1.28** Must provide Soil Survey Geographic Database (SSURGO) soil layer and automatically clip to plan boundaries.
- 3.1.1.29** Must include NRCS BMP's, including standard narratives and the ability to add and customize BMPs and associated narratives.
- 3.1.1.30** Must include tools to export tabular and spatial data.
- 3.1.1.31** Must provide access to background maps including Streets, Imagery, and Topographic.
- 3.1.1.32** Must provide ability for client to add client-provided map services to maps, such as topo maps, aerial imagery, soils, hydrologic units, utilities, and land use data.
- 3.1.1.33** Must have Role-Based access to viewing and editing.

Web-Based Conservation Management Software Application

- 3.1.1.34** Web-based Conservation Management Software must have separate log-in access to both WVCA and individual Conservation District(s).
- 3.1.1.35** Must include Conservation Plan Module.
- 3.1.1.36** Conservation Plan Module must have ability to search for existing conservation plans.
- 3.1.1.37** Conservation Plan Module must have ability to map conservation plan land units with ability to measure and print maps.
- 3.1.1.38** Conservation Plan Module must have ability to create and manage related Participants.
- 3.1.1.39** Conservation Plan Module must have ability to create and manage related BMP's.
- 3.1.1.40** Conservation Plan Module must have ability to create and manage related funding.
- 3.1.1.41** Conservation Plan Module must have ability to view related soil map units.
- 3.1.1.42** Conservation Plan Module must have ability to create and manage related Verification Inspections.
- 3.1.1.43** Conservation Plan Module must have ability to generate a Conservation Plan Report.
- 3.1.1.44** Conservation Plan Module must have ability to add and manage file attachments

Web-Based Conservation Management Software Application

- 3.1.1.45** Should include Nutrient Management Plan Module.
- 3.1.1.46** Nutrient Management Plan Module must have ability to search for existing nutrient management plans
- 3.1.1.47** Nutrient Management Plan Module must have ability to create and manage nutrient management plan details.
- 3.1.1.48** Nutrient Management Plan Module must have ability to map nutrient management plan land units and include ability to measure and print maps.
- 3.1.1.49** Nutrient Management Plan Module must have ability to create and manage related Participants.
- 3.1.1.50** Nutrient Management Plan Module must have ability to create and manage related BMP's.
- 3.1.1.51** Nutrient Management Plan Module must have ability to create and manage related Funding.
- 3.1.1.52** Nutrient Management Plan Module must have ability to create and manage related Generated Manure.
- 3.1.1.53** Nutrient Management Plan Module must have ability to create and manage related Exported Manure.
- 3.1.1.54** Nutrient Management Plan Module must have ability to create and manage related Imported Manure.
- 3.1.1.55** Nutrient Management Plan Module must have ability to create and manage related storage facilities.

Web-Based Conservation Management Software Application

- 3.1.1.56** Nutrient Management Plan Module must have ability to create and manage related Status reviews.
- 3.1.1.57** Nutrient Management Plan Module must have ability to create and manage file attachments.
- 3.1.1.58** Must Include BMP module.
- 3.1.1.59** BMP module must have ability to search for existing BMPs.
- 3.1.1.60** BMP module must have ability to create and manage BMP details
- 3.1.1.61** BMP module must have ability to map BMPs including the ability to measure and print maps.
- 3.1.1.62** BMP module must have ability to manage related Participants.
- 3.1.1.63** BMP module must have ability to create and manage related Funding.
- 3.1.1.64** BMP module must have ability to create and manage related Inspections.
- 3.1.1.65** Must include Data Export.
- 3.1.1.66** Must have ability to export tabular data.
- 3.1.1.67** Must have ability to export spatial data.
- 3.1.1.68** Must include Standard Reports.

Web-Based Conservation Management Software Application

- 3.1.1.69** Standard Reports must include Conservation Planning Work Report
- 3.1.1.70** Standard Reports must include Technical Work Report.
- 3.1.1.71** Standard Reports must include Technical Design Report.
- 3.1.1.72** Standard Reports must include BMP Progress Report.
- 3.1.1.73** Must include Web-Based Conservation Management Software Administration functions.
- 3.1.1.74** Web-Based Conservation Management Software Administration must include User Account Management.
- 3.1.1.75** Web-Based Conservation Management Software Administration must include management of subscription assignment to user accounts.
- 3.1.1.76** Web-Based Conservation Management Software Administration must include Participant Record Management.
- 3.1.1.77** Web-Based Conservation Management Software Administration must include Drop-down values management.
- 3.1.1.78** Web-Based Conservation Management Software Administration must include Practice Type Management.
- 3.1.1.79** Web-Based Conservation Management Software Administration must include management of external map services for display on maps.

Web-Based Conservation Management Software Application

- 3.1.1.80 Should have audit log capability to track user activity.
- 3.1.1.81 Must provide user access to application, maintenance, bug-fixes, and general support for term of contract totaling 4 years. (1 year plus 3 annual renewals).
- 3.1.1.82 Must provide a total quantity of 25 users minimum.
- 3.1.1.83 Should provide Admin capability for one of the 25 users.

4. CONTRACT AWARD:

4.1 Contract Award: The Contract is intended to provide Agencies with a purchase price for the Contract Items. The Contract shall be awarded to the Vendor that provides the Contract Items meeting the required specifications for the lowest overall total cost as shown on the Pricing Pages.

4.2 Pricing Page: Vendor should complete the Pricing Page by inserting the Unit Price and multiply by the Quantity to calculate the Extended Amount. The Extended Amount for each Item is to be added together to calculate the Total Bid Amount. Vendor should complete the Pricing Page in full as failure to complete the Pricing Page in its entirety may result in Vendor's bid being disqualified.

Vendor should type or electronically enter the information into the Pricing Page to prevent errors in the evaluation.

5. PAYMENT:

5.1 Payment: Vendor shall accept payment in accordance with the payment procedures of the State of West Virginia.

Web-Based Conservation Management Software Application

6. DELIVERY AND RETURN:

6.1 Shipment and Delivery: Vendor shall ship the Contract Items immediately after being awarded this Contract and receiving a purchase order or notice to proceed. Vendor shall deliver the Contract Items within 90 calendar days after receiving a purchase order or notice to proceed. Contract Items must be delivered to WV Conservation Agency, 255 Gus R Douglass Lane, Charleston, WV 25312.

6.2 Late Delivery: The Agency placing the order under this Contract must be notified in writing if the shipment of the Contract Items will be delayed for any reason. Any delay in delivery that could cause harm to an Agency will be grounds for cancellation of the Contract, and/or obtaining the Contract Items from a third party.

Any Agency seeking to obtain the Contract Items from a third party under this provision must first obtain approval of the Purchasing Division.

6.3 Delivery Payment/Risk of Loss: Vendor shall deliver the Contract Items F.O.B. destination to the Agency's location.

6.4 Return of Unacceptable Items: If the Agency deems the Contract Items to be unacceptable, the Contract Items shall be returned to Vendor at Vendor's expense and with no restocking charge. Vendor shall either make arrangements for the return within five (5) days of being notified that item(s) are unacceptable or permit the Agency to arrange for the return and reimburse Agency for delivery expenses. If the original packaging cannot be utilized for the return, Vendor will supply the Agency with appropriate return packaging upon request. All returns of unacceptable items shall be F.O.B. the Agency's location. The returned product shall either be replaced, or the Agency shall receive a full credit or refund for the purchase price, at the Agency's discretion.

6.5 Return Due to Agency Error: Items ordered in error by the Agency will be returned for credit within 30 days of receipt, F.O.B. Vendor's location. Vendor shall not charge a restocking fee if returned products are in a resalable condition. Items shall be deemed to be in a resalable condition if they are unused and in the original packaging. Any restocking fee for items not in a resalable condition shall be the lower of the Vendor's customary restocking fee or 5% of the total invoiced value of the returned items.

Web-Based Conservation Management Software Application

7 VENDOR DEFAULT:

7.1 The following shall be considered a vendor default under this Contract.

- 7.1.1 Failure to provide Contract Items in accordance with the requirements contained herein.
- 7.1.2 Failure to comply with other specifications and requirements contained herein.
- 7.1.3 Failure to comply with any laws, rules, and ordinances applicable to the Contract Services provided under this Contract.
- 7.1.4 Failure to remedy deficient performance upon request.

7.2 The following remedies shall be available to Agency upon default.

- 7.2.1 Immediate cancellation of the Contract.
- 7.2.2 Immediate cancellation of one or more release orders issued under this Contract.
- 7.2.3 Any other remedies available in law or equity.

8 MISCELLANEOUS:

8.1 No Substitutions: Vendor shall supply only Contract Items submitted in response to the Solicitation unless a contract modification is approved in accordance with the provisions contained in this Contract.

8.2 Vendor Supply: Vendor must carry sufficient inventory of the Contract Items being offered to fulfill its obligations under this Contract. By signing its bid, Vendor certifies that it can supply the Contract Items contained in its bid response.


8.3 Reports: Vendor shall provide quarterly reports and annual summaries to the Agency showing the Agency's items purchased, quantities of items purchased, and total dollar value of the items purchased. Vendor shall also provide reports, upon request, showing the items purchased during the term of this Contract, the quantity purchased for each of those items, and the total value of purchases for each of those items. Failure to supply such reports may be grounds for cancellation of this Contract.

Web-Based Conservation Management Software Application

8.4 Contract Manager: During its performance of this Contract, Vendor must designate and maintain a primary contract manager responsible for overseeing Vendor's responsibilities under this Contract. The Contract manager must be available during normal business hours to address any customer service or other issues related to this Contract. Vendor should list its Contract manager and his or her contact information below.

Contract Manager: _____
Telephone Number: _____
Fax Number: _____
Email Address: _____

Exhibit A Pricing Page

Item No.	Description	Quantity	Unit Price	Extended Amount
1	Web-Based Conservation Management Software Application, Updates, and Maintenance-Year 1 (Includes Set Up)	25	\$650.00	\$54,760.00
2	Web-Based Conservation Management Software Application, Updates, and Maintenance-Year 2 Renewal	25	\$650.00	\$16,250.00
3	Web-Based Conservation Management Software Application, Updates, and Maintenance-Year 3 Renewal	25	\$650.00	\$16,250.00
4	Web-Based Conservation Management Software Application, Updates, and Maintenance-Year 4 Renewal	25	\$650.00	\$16,250.00
Total Bid Amount 				\$103,510.00
Failure to use this form may result in disqualification				

Bidder / Vendor Information
Name: GeoDecisions, a division of Gannett Fleming, Inc.
Address: 207 Senate Avenue, Camp Hill, PA 17011
Phone: (804) 767-1958
Email Address: tpark@gdecisions.com
Authorized Signature: signed in attached PDF

**SOFTWARE SUBSCRIPTION AND SERVICES AGREEMENT
GeoDecisions PracticeKeeper Application**

This Software Subscription and Services Agreement – GeoDecisions PracticeKeeper Application ("Agreement") between GeoDecisions, a division of Gannett Fleming, Inc., a Delaware corporation, having a place of business at 209 Senate Avenue, Camp Hill, Pennsylvania 17011 ("GeoDecisions") and West Virginia Conservation Agency having its principal place of business at 255 Gus R. Douglass Lane, Charleston, WV 25305 ("Customer") is effective upon the date the Agreement is signed by both parties ("Effective Date").

1. Background.

- A. The GeoDecisions PracticeKeeper Application was developed to assist customers with resource conservation related management by providing the ability to manage, analyze, and report information including, but not limited to, conservation plans, nutrient management plans, erosion and sedimentation plans, watershed plans, and BMPs, and to access such data on web maps.
- B. GeoDecisions desires to configure and provide access to the GeoDecisions PracticeKeeper Application through subscriptions.
- C. Customer desires to access and operate the GeoDecisions PracticeKeeper Application in accordance with the terms and conditions of this Agreement.

2. Definitions.

- A. "Application" shall mean a data management and analytical tool known as GeoDecisions PracticeKeeper Application and hosted by GeoDecisions. The Application shall have the features and functions and perform substantially in accordance with the interface functional and performance specifications set forth in this Agreement, in Exhibit A, and in all future executed Task Orders under this Agreement. Exhibit A is attached to and incorporated into this Agreement.
- B. "Confidential Information" means nonpublic proprietary information other than Trade Secrets, of value to its owner, and any data or information defined as a Trade Secret, but which is determined by a court of competent jurisdiction not to be trade secret under applicable law.
- C. "Customer Data" means any information about the Customer, information about the Customer's customers, and information about Customer's assets and summaries thereof, that is entered into the Application or generated, developed or created by the interaction and use of the Application. Customer Data includes both identifiable and aggregated or device information (e.g., compiled in statistical reports).
- D. "GeoDecisions Intellectual Property" means the Application (exclusive of any underlying software that is specifically identified as third party software whether licensed to the Customer by GeoDecisions or a third party), source and object code, specifications, designs, processes, techniques, concepts, improvements, discoveries and inventions, including without limitation, modifications, improvements or derivative works thereof, and all works of authorship created, invented, reduced to practice, or delivered by GeoDecisions or any third party, either solely or jointly with others, arising from this Agreement or any amendment to it, whether made under the direction of GeoDecisions or Customer. GeoDecisions Intellectual Property shall also mean any and all known or hereafter known tangible and intangible worldwide patents, copyrights, moral rights, trademarks, Trade Secrets, Confidential Information or other intellectual property rights of GeoDecisions, whether arising by operation of law, contract, license, subscription, or otherwise, and all registrations, initial applications, renewals, extensions, continuations, divisions or reissues thereof now or hereafter in force (including any rights in the foregoing).
- E. "Named Users" means Customer's personnel that are authorized to access the Application.
- F. "Proprietary Information" means collectively and without regard to any form, any Confidential Information, and Trade Secrets of either GeoDecisions or Customer accessed or provided under

this Agreement.

- G. "Trade Secrets" means information which: (a) derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.
- H. "Software" shall mean GeoDecisions' proprietary software, the Application software including the Application interface as set forth and described in this Agreement, in Exhibit A, and in all future executed Task Orders under this Agreement (including updates, modifications or enhancements to GeoDecisions' proprietary application software or the Application interface), associated third party supplied software (unless excluded from the subscription under this Agreement) and user's manuals, specifications or documentation accompanying the Application.
- I. "Source Code" shall mean those statements in a computer language, which once processed by a compiler, assembler, or interpreter become executable by a computer.
- J. "Object Code" shall mean the binary machine-readable version of the Software.
- K. "Territory" shall mean the United States.
- L. "Esri Data" means any Esri or Esri-furnished third-party digital dataset(s) including, but not limited to geographic vector data coordinates, raster, reports, or associated tabular attributes, included in the Application under this Agreement.
- M. "Professional Services" means any consulting services that the Customer requests and GeoDecisions agrees to provide, which are not expressly included in Exhibit B. Such Professional Services will be the subject of written Task Orders signed by both parties and will be performed in accordance with the terms of this Agreement for additional compensation as described in Section 9.2.
- N. "Task Order" means a written order for Professional Services to be performed by GeoDecisions under the terms of this Agreement. Each Task Order shall specify the scope of services required, the schedule for provision of such services, and the method for compensation of such services as described in Section 9.2. Task Orders shall be signed and accepted by both the Customer and GeoDecisions.

3. Application Configuration.

- A. The Application requires configuration for use by Customer and will be configured based on requirements set forth in Task Orders.
- B. Application configuration does not grant Customer access to the Application. Access is granted through purchase of subscriptions.
- C. If applicable, Customer shall grant GeoDecisions proper access to Customer's facility/facilities as needed to perform this Agreement. In addition, Customer shall be solely responsible for preparing the equipment at its facility/facilities for access and use of the Application as required by GeoDecisions and this Agreement, unless otherwise stated and agreed upon in the Scope of Services and future executed Task Orders under this Agreement.

4. Grant of Rights and Restrictions.

- A. Subscription. Subject to the provisions of this Agreement, upon payment of subscription fees, and during the duration of the subscription period, GeoDecisions grants to Customer and Customer accepts a limited, non-exclusive, non-transferable right to access and use the Application by Named Users, solely for Customer's internal use in the Territory during the Term. Notwithstanding the foregoing, Customer may not reduce the total number of subscriptions, for which annual fees are paid, below the quantity of subscriptions listed on the most recent executed Task Order for subscription purchase under this Agreement. For avoidance of doubt, Customer may increase the number of subscriptions at any time during the Term, for a fee. This subscription and its limitations apply to the Application and to any documentation relating to or

describing the Application (or any component of the Application), including, but not limited to, logic manuals and flow charts provided by GeoDecisions, instructions for use of the Application and formulation of theory upon which the Application is based.

- B. Limitation. The Application includes certain third-party software owned by Environmental Systems Research Institute, Inc. ("Esri"). The Esri Material, as further defined in Exhibit A, is included in the Application for which a subscription is granted under Subsection 4.A. The subscription includes the Esri Material, but only to the limited extent required for Customer and its Named Users to access and use the Application and subject to all restrictions on use of the Application in this Agreement and the additional restrictions on use of the Esri Material in Subsection 4.E. All terms of the Esri click-through License Agreement that may be included with Esri Material are expressly disclaimed. This Agreement is the sole Agreement governing Customers' use of Esri Material incorporated into the Application.
- C. Reservation of Rights. GeoDecisions reserves the right, in its sole discretion to modify, discontinue, add, adapt, or otherwise change any design or specification of the Application and/or GeoDecisions policies, procedures, and requirements specified in or related hereto. Customer acknowledges and agrees that it does not acquire any stand-alone license to the software underlying the Application or any rights of ownership in any materials provided by GeoDecisions in connection with the Application. Customer is permitted to allow access to the Application to the number of employees or contractors for which use rights have been secured (as described in future executed Task Orders under this Agreement that contain subscription purchase). All rights not specifically granted to Customer under this Agreement are expressly reserved to GeoDecisions or third party software providers who own any software underlying the Application.
- D. Named Users. Customer shall have the right to change the individuals listed as Named Users at any time during the Term. Named Users must be assigned a subscription to access the Application.
- E. User Restrictions. Customer's use of the Application shall be subject to the following restrictions:
1. Except as expressly provided in this Agreement, the Application shall not be operated directly or indirectly by persons other than Customer's employees or agents of Customer who are Named Users and who are not directly or indirectly competitors of GeoDecisions and shall only be operated for Customer's use. The parties understand and acknowledge the subscription to use the Application is granted only to Customer and its Named Users.
 2. Customer is prohibited from copying, translating, reverse engineering, decompiling, recompiling, updating or modifying all or any part of the Application, or merging the Software into any other software, without the prior written consent of GeoDecisions. Customer is prohibited from accessing or in any way modifying the Source Code or the Object Code. Customer is prohibited from sub-licensing the Application, or any component of the Application, to any party and from creating derivative works from the Application (including, without limitation, the Software, Object Code or Source Code).
 3. Customer shall take all reasonable steps to ensure that its Named Users have been properly granted access to the Application prior to accessing the Application. Customer shall ensure that Customer's Named Users abide by and comply with the restrictions of this Agreement, including but not limited to this Subsection 4.E and Subsection 5.A, as well as any use policy implemented by GeoDecisions related to use of the Application, including but not limited to the then current privacy policy or terms of use, both of which are incorporated herein by reference.
 4. At no time may the Application or any of its components be disclosed to third parties, sold, assigned, leased, or otherwise made available or disposed of, or commercially exploited or marketed in any way with or without charge without the prior written consent of a Vice President of GeoDecisions (or a higher level GeoDecisions' officer). However, Customer may disclose the Software to Customer's attorneys, certified public accountants or consultants not in competition with GeoDecisions if reasonably required by Customer in order to exercise its legal rights under this Agreement.

5. The subscription granted in this Agreement is subject to Customer's timely making all payments due.
6. Customer will not have direct access to Esri Material as part of the Application.
7. Customer shall ensure full compliance with all relevant export laws and regulations to ensure that the Application or any direct product thereof, is not exported, directly or indirectly, in violation of United States law.
8. Customer shall not remove or obscure any copyright trademark notice, or restrictive legend associated with either the Application or the Esri Material.

F. Proprietary Rights.

1. GeoDecisions owns and retains all right, title, and interest in and to the GeoDecisions Intellectual Property and the Proprietary Information of GeoDecisions.
2. Customer owns and retains all right, title and interest in and to the Customer Data and Proprietary Information of Customer.
3. Esri owns and retains all right, title and interest to the Esri Material that is included as part of the Application and any Esri Data.

G. Customer Data. Customer assumes full responsibility for the Customer Data provided, stored or transmitted by means of the Application and the use of such Customer Data, including the results obtained therefrom.

H. In performing the services under this Agreement, including the configuration, maintenance and technical support services, and any additional Professional Services, GeoDecisions will use the degree of care and skill ordinarily exercised under similar circumstances by providers of similar services. Any problems relating to the services provided under this Agreement should be brought to the attention of GeoDecisions as soon as encountered and before any obligation is incurred. If reasonable under the circumstances, GeoDecisions reserves the right to correct any errors. GeoDecisions shall have no obligation or liability in connection with errors arising from misuse, neglect, alteration by Customer or failure to repair or maintain any portion of the Application in accordance with the documentation supplied by GeoDecisions.

EXCEPT AS SET FORTH IN THIS SUBSECTION 4.H, THE APPLICATION AND SERVICES ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND. GEODECISIONS MAKES NO EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE SOFTWARE, THE APPLICATION, CONFIGURATION SERVICES, PROFESSIONAL SERVICES OR ANY MAINTENANCE AND TECHNICAL SUPPORT SERVICES OR THEIR CONDITION, MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE OR USE BY CUSTOMER. GEODECISIONS FURNISHES THE ABOVE REPRESENTATION IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE APPLICATION MAY CONTAIN SOME NONCONFORMITIES, DEFECTS, ERRORS, OR OMISSIONS.

- I.** CUSTOMER ACKNOWLEDGES CERTAIN SOFTWARE COMPONENTS REQUIRED FOR USE OF THE APPLICATION ARE PROVIDED BY THIRD PARTY VENDORS AND THAT GEODECISIONS MAKES NO WARRANTIES, EITHER EXPRESS OR IMPLIED WITH RESPECT TO SUCH SOFTWARE.
- J.** Without limiting the generality of the disclaimers of warranty provided in Subsections 4.H and 4.I, Esri and GeoDecisions do not warrant that Esri Data, Online Services, and the Application will meet the Customer's needs or expectations, that the use of Esri Data, Online Services, and Application will be uninterrupted, or that all nonconformities can or will be corrected. Esri and GeoDecisions are not inviting reliance on Esri Data, Online Services, and Application, and Customer should always verify actual Esri Data, Online Services and Application.

5. Conduct of Customer's Employees and Agents Using the Application

- A.** All employees and/or agents of Customer and Named Users who access the Application shall

observe the following standards of conduct, and Customer shall be responsible for any failure of Customer's employees and/or agents to do so:

1. Employees and/or agents of Customer shall not use the Application for any purpose that is unlawful or prohibited by this Agreement. Employees and/or agents of Customer may not use the Application in any manner that could damage, disable, overburden or impair the Application or interfere with any other party's use and enjoyment of the Application. Employees and/or agents of Customer shall not obtain or attempt to obtain any materials or information through any means not intentionally made available or provided for through the Application.
2. Without limiting the foregoing, employees and/or agents of Customer shall not use the Application to:
 - a. Defame, abuse, harass, stalk, threaten or otherwise violate the legal rights (such as rights of privacy and publicity) of others;
 - b. Publish, post, upload, distribute or disseminate any inappropriate, profane, defamatory, infringing, obscene, indecent or unlawful topic, name, material or information;
 - c. Upload messages or files that contain software or other material protected by intellectual property laws;
 - d. Upload files that contain viruses, corrupted files or any other similar software programs that may damage the operation of another customer's computer network;
 - e. Violate or fail to comply fully with any applicable federal, state, local or international law or regulation (including, without limitation, any laws regarding the export of data or software to and from the US or other countries);
 - f. Impersonate or attempt to impersonate GeoDecisions, a GeoDecisions employee, another user or any other person or entity or to otherwise defraud any person;
 - g. Engage in conduct which, as determined by GeoDecisions, may harm GeoDecisions or users of the Application or expose them to liability;
 - h. Interfere with any other party's use of the Application, including their ability to engage in real time activities through the Application;
 - i. Use any robot, spider or other automatic device, process or means to access the Application for any purpose, including monitoring or copying any of the material from the Application;
 - j. Use any device, software or routine that interferes with the proper working of the Application; or
 - k. Introduce any viruses, trojan horses, worms, logic bombs or other material which is malicious or technologically harmful; or attempt to gain unauthorized access to, interfere with, damage or disrupt any parts of the Application, the server on which the Application is stored, or any server, computer or database connected to the Application.
3. If Customer is provided with a username, password or any other piece of information in connection with the Application or any other services provided by GeoDecisions, Customer must treat such information as confidential and must not provide third parties with, or permit third parties to use, user names, passwords or other security information. Individuals, including Named Users, may not share login or password information with third parties or other individuals. Customer agrees not to permit any other person to authorize the account associated with user names and passwords (sometimes referred to as Customer's "account") and not to use the account of, or to impersonate, any other person. Customer agrees to notify GeoDecisions immediately of any unauthorized access to or use of a user name or password or any other breach of security with respect to the Application involving Customer's account. Customer also agrees to ensure that User's exit from their account at the end of each session. Customer should use particular caution when accessing account from a public or shared

computer so that others are not able to view or record their respective password or other personal information.

- B. Customer agrees to indemnify, defend and hold harmless GeoDecisions from and against any and all claims, demands, causes of action, losses, damages, costs and reasonable expenses arising out of or related to the failure of Customer to comply with the terms of Subsection 4.E or the failure of Customer's employees and/or agents to abide by the terms of Subsection 5.A or any other material breach of this Agreement by Customer.

6. Application and Software Maintenance.

- A. GeoDecisions or its subcontractors shall maintain the off-site components of the Application on a 24-hour per day, 7-day per week basis. All routine maintenance costs are included in the annual subscription fee set forth in future executed Task Orders. For any non-routine maintenance and maintenance necessitated by willful damage or negligence on the part of Customer, fortuitous casualty losses such as lightning, fire, smoke, water damage or theft, GeoDecisions will bill Customer and Customer will pay (in addition to and not in place of the annual subscription fee) for actual labor (at GeoDecisions' then current rates), parts, and reasonable travel expenses required to effect such repairs.
- B. GeoDecisions will provide customer support and respond to problems identified by Customer as specified in Exhibit B.
- C. During the term of this Agreement, GeoDecisions will make available to Customer at no cost to Customer changes to Application, including all updates that are released generally to GeoDecisions' customers as they become commercially available. In some cases, GeoDecisions may release a new feature or function that will be presented to the Customer as an option to purchase for an additional fee to their current fees; the Customer will have the right to accept the new function or feature for the agreed upon fee or reject the use of the new functions or feature and continue to access the Application at the same fee. Customer agrees to pay GeoDecisions for implementation of any changes requested by Customer, other than updates and enhancements released generally to GeoDecisions' customers. GeoDecisions' services to implement such changes shall be considered Professional Services under this Agreement and shall be executed through a Task Order with compensation as described in Section 9.2.

7. Data Development and Updating.

- A. Customer shall be responsible for the development, compilation, and updating of the data utilized in the operation of the Application, including, but not limited to, Customer business data and Customer location-based data not including data created or generated by the Application.
- B. If applicable, GeoDecisions shall provide assistance and guidance in the design of the data, and GeoDecisions shall continue to provide such assistance and guidance for so long as Customer pays all fees and charges due under Section 9 in a timely manner. Customer agrees to develop, compile, and update said data in accordance with GeoDecisions' specifications. If Customer fails to develop, compile, and update said data in accordance with GeoDecisions' specifications, GeoDecisions shall be relieved of liability for any failure of Software utilized under this Agreement to perform as agreed upon to the extent such failure results from Customer's use of such non-conforming data.

8. Operating Requirement.

Customer, at its sole expense, shall provide and maintain a suitable Internet connection.

9. Costs and Payment.

9.1 Compensation for GeoDecisions PracticeKeeper Application

- A. The Customer will be provided with a Task Order on a yearly basis for the PracticeKeeper Annual Subscription fee. Payments shall be due and payable in accordance with the schedule set forth in the Task Order. The Annual Subscription Fee rate is subject to adjustment on an annual basis,

with advance notification being sent to the customer. The Annual Subscription Fee Task Order will be based on the current number of subscriptions.

- B. For the first subscription year, Customer shall pay GeoDecisions a pro-rated portion of the subscription fee as set forth in the Task Order.
- C. If payment has not been made by Customer within thirty (30) calendar days after it is due, GeoDecisions may assess a late charge equal to one and one-half percent (1-½%) per month or the maximum amount permitted by law from the date of invoice on the unpaid balance until the account is paid in full.
- D. Invoicing contacts and payment methods shall be as specified in section 9.3.
- E. In the event Customer obtains additional software or hardware, GeoDecisions may increase the subscription fee to reflect additional usage and maintenance costs.
- F. Customer shall pay all federal and state taxes, assessments, charges and other taxes which are imposed by any governmental authority by virtue of this Agreement exclusive of taxes based upon revenues or gross income of GeoDecisions.

9.2 Compensation for Professional Services:

- A. Where the parties agree to an Hourly Task Order for Professional Services, payments for such Professional Services rendered and expenses incurred shall be made monthly upon presentation of GeoDecisions' monthly invoices and shall be based on staff time and materials used. Such invoices shall be computed in accordance with Schedule of Hourly Rates defined within said Hourly Task Order and are due and payable upon receipt. Hourly rate classifications for staff working under this Agreement are provided in the Schedule of Hourly Rates. Travel and other in-house expenses will be invoiced at cost. Outside expenses for suppliers and other vendors identified in specific Hourly Task Orders, will be invoiced at cost plus ten percent (10%).
- B. In the case of a Lump Sum Task Order, payments for services rendered and expenses incurred shall be made based upon a payment schedule detailed in the Task Order. Such invoices shall be computed in accordance with the terms of the Lump Sum Task Order and are due and payable upon receipt.
- C. Customer agrees to review invoices promptly and raise any questions regarding the invoiced items or amounts within 30 days of the date of the invoice. Otherwise, the invoice shall be considered correct and payable. It is understood that any sums quoted in the Agreement as an estimate are an estimate only and Customer will be responsible for all services actually rendered whether the actual cost is lesser than or exceeds the estimate.
- D. In the event of nonpayment of the account within thirty (30) days after invoices are rendered, the Customer further agrees to pay a late charge of 1-1/2% per month from the date of invoice on the unpaid balance until such account is paid in full. If the account remains delinquent for more than forty-five (45) days, GeoDecisions shall have the right to cease all further work on the project by giving written notice of that decision to the Customer.
- E. Invoicing contacts and payment methods shall be as specified in section 9.3.
- F. Customer shall pay all federal and state taxes, assessments, charges and other taxes which are imposed by any governmental authority by virtue of this Agreement exclusive of taxes based upon revenues or gross income of GeoDecisions.
- G. Customer shall pay all reasonable out-of-pocket expenses of GeoDecisions in providing services to Customer pursuant to this Agreement, including but not limited to travel, lodging and meals at cost.

9.3 Invoicing:

- A. Invoices will be sent as defined in Task Orders. Invoices can be distributed in one of two methods: Emailed (GeoDecisions' preferred method) or Mailed hard copy via the U.S. Postal

Service. The Customer should complete the section below indicating their preferred method of invoice distribution.

- ☐ Emailed invoices will be sent to the attention of:

Name: _____

Email: _____

Phone Number: _____

---OR---

- ☐ Mailed hard copy invoices sent via regular mail will be sent to the attention of:

Name: _____

Address: _____

Phone Number: _____

B. Payments can be made via one of the following methods:

1. Send Check payments to:
Gannett Fleming Companies
P.O. Box 829160
Philadelphia, PA 19182-9160
2. Send ACH/EFT payments to:
ABA: 031312738
Acct No: 5003165655
Account Name: Gannett Fleming Companies

10. Indemnification, Insurance and Liability Limits.

- A. GeoDecisions shall indemnify and hold harmless Customer and its directors, officers and employees from and against any and all claims, demands, causes of action, losses, damages and reasonable expenses arising out of or related to any claim that Customer's use or possession of the Application or any materials furnished by GeoDecisions infringes or violates the copyright, patent, trademark, trade secret or any other right of any third party, provided Customer gives GeoDecisions prompt written notice of any alleged claim after Customer learns of the claim.
1. GeoDecisions shall defend and settle, at its expense, all suits or proceedings arising out of the foregoing.
 2. If an infringement is found to have been committed, or if GeoDecisions deems it probable that such an infringement has been or is likely to be committed, GeoDecisions may, in its sole

discretion and at GeoDecisions' expense:

- a. procure for Customer the right to continue to use the infringing Application or Application component;
 - b. replace the infringing Application or component with a non-infringing program containing equivalent functionality;
 - c. modify the Application so that an infringement is not committed; or
 - d. take back the infringing Application or component and refund to Customer an amount equal to the full amount paid by Customer to GeoDecisions for the Application subscription (such amount not to include any fees paid by Customer pursuant to Subsection 9.2).
3. GeoDecisions shall not be required to indemnify, defend or hold harmless Customer to the extent the claim of infringement is related to any changes made to the Application by Customer or a third party not under the control of GeoDecisions or Customer's use of the Application with hardware or software not approved by GeoDecisions.
4. The remedies set forth in Subsection 10.A are Customer's sole remedies in the event of a third-party infringement claim.
- B. In addition to Customer's indemnification obligations set forth in Subsection 5.B, Customer shall indemnify and hold harmless GeoDecisions and its directors, officers and employees from and against any and all claims, demands, causes of action, losses, damages and reasonable expenses (including reasonable attorney's fees) arising out of or related to any claim arising out of or related to any act or omission on the part of Customer, its officers, directors, employees or agents under or in connection with this Agreement. Customer shall not be required to indemnify, defend or hold harmless GeoDecisions its directors, officers or employees to the extent the claims, demands, causes of action, losses, damages and reasonable expenses arise from the actions or negligence of GeoDecisions.
- C. GeoDecisions shall maintain insurance to protect Customer and GeoDecisions from claims that may arise out of or result from the services to be performed under this Agreement, as follows:

Type	Minimum Amounts
Worker's Compensation	Statutory
Employer's Liability	\$100,000
Automobile Liability Insurance	\$250,000 per person \$500,000 per accident
Commercial General Liability Insurance	\$1,000,000 each occurrence \$1,000,000 aggregate
Errors and Omissions Insurance Policy	\$1,000,000

- D. GeoDecisions' liability for losses or damages arising out of errors, omissions, interruptions, delays, or defects in any of the services or facilities provided by GeoDecisions shall be limited to a pro rata abatement of the charges payable by the Customer for the period during which the services or facilities were affected by the error, omission, interruption, delay, or defect.
- E. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, GEODECISIONS SHALL NOT BE LIABLE FOR ANY (A) SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF PROFITS, ARISING FROM OR RELATED TO A BREACH OF THIS AGREEMENT OR THE OPERATION OR USE OF THE APPLICATION AND MAINTENANCE OR SUPPORT SERVICES, INCLUDING, WITHOUT LIMITATION, SUCH DAMAGES ARISING FROM LOSS OF DATA OR PROGRAMMING, LOSS OF REVENUE OR PROFITS, FAILURE TO REALIZE SAVINGS OR OTHER BENEFITS, DAMAGE TO EQUIPMENT, AND CLAIMS AGAINST CUSTOMER BY ANY THIRD PERSON, EVEN IF GEODECISIONS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; (B) DAMAGES (REGARDLESS OF THEIR NATURE) FOR ANY DELAY OR FAILURE BY GEODECISIONS TO PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT DUE TO

ANY CAUSE BEYOND GEODECISIONS' REASONABLE CONTROL, INCLUDING THOSE CAUSED IN WHOLE OR IN PART BY ACT OR OMISSION OF UNDERLYING INTERNET OR PHONE SERVICE PROVIDES; OR (C) CLAIMS MADE A SUBJECT OF A LEGAL PROCEEDING AGAINST GEODECISIONS MORE THAN ONE YEAR AFTER ANY SUCH CAUSE OF ACTION FIRST AROSE.

- F. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, GEODECISIONS' LIABILITIES UNDER THIS AGREEMENT, WHETHER UNDER CONTRACT LAW, TORT LAW, WARRANTY OR OTHERWISE SHALL BE LIMITED TO DIRECT DAMAGES NOT TO EXCEED THE AMOUNTS ACTUALLY RECEIVED BY GEODECISIONS FROM CUSTOMER PURSUANT TO THIS AGREEMENT.
- G. In no event shall Esri be liable for any damages or loss of any kind, whether direct, special, indirect, incidental, or consequential, arising from the use of the Application including, but not limited to, liability for use of Application in high-risk activities or liability related to any data supplied by Esri.

11. Term and Termination.

11.1 Termination of Agreement

- A. The initial term of this Agreement shall commence on the Effective Date and continue through December 31, 2024 ("Term"). After the Term expires, this Agreement shall automatically renew for additional 3-year periods (each shall be deemed a "Term") until either party gives the other party written notice that the Agreement shall not renew. This notice shall be given at least 30 days prior to the end of the then current Term.
- B. Should the Customer terminate this agreement in writing prior to the end of a Term, the Customer will pay a termination fee equal to the amount of twenty percent (20%) of one year's recurring fees, based on the most recent subscription renewal. If the agreement is terminated during the execution of any Task Orders, the Customer will pay a termination fee of at least twenty percent (20%) of the active Task Order(s) defined budgets as well as all monies owed under this Agreement for all work performed up to the date of written termination.
- C. GeoDecisions shall have the right to terminate this Agreement and terminate access to the Application, if Customer neglects or fails to perform or observe any of its obligations under this Agreement and if such condition is not remedied within thirty (30) days after Customer's receipt of written notice from GeoDecisions to Customer setting forth Customer's breach.
- D. Notwithstanding anything contained in this Agreement, GeoDecisions shall have the right to immediately terminate this Agreement for cause and without notice if Customer breaches Subsection 4.E or Subsection 5.A or otherwise intentionally misuses the Application in contravention of this Agreement.
- E. In the event of termination under either Subsection 11.1.C or 11.1.D, within ten (10) calendar days of the termination, Customer shall return the original and any and all copies (authorized and unauthorized) of the Application and Software and any documentation relating to or describing the Application. GeoDecisions will provide the client with a copy of their data from PracticeKeeper at the request of the client.
- F. In the event that GeoDecisions is in material breach or default of any of the terms, conditions, or covenants of this Agreement, and such breach or default is not remedied within thirty (30) days after the receipt of Customer's written notice to GeoDecisions, Customer shall have the right to terminate this Agreement without any further charge, obligation, or liability whatsoever, except as to the payment for subscription fees and fees assessed pursuant to Subsection 9.2 already received and accepted by Customer.
- G. Upon termination or expiration of this Agreement for any reason, Customer shall immediately cease access to and use of the Application and clear the client-side data cache, uninstall, remove and return all Application components in Customer's possession to GeoDecisions within ten (10) days of the effective date of the termination or expiration. In addition, Customer shall

certify in writing within ten (10) days of the effective date of the expiration or termination of this Agreement that the actions required under this subsection have been taken. In the event Customer does not take the actions above, or in the event Customer cannot provide such certification, Customer shall be liable to GeoDecisions for all damages incurred by GeoDecisions arising out of any unauthorized use of the Software by Customer or any other third party gaining access to the Software through Customer.

11.2 Termination of a Task Order for Professional Services

- A. Any Task Order for Professional Services issued under This Agreement may be terminated by either party at any time upon thirty (30) days prior written notice to the other party. Upon such termination, the Customer shall pay to GeoDecisions all monies owed under the Task Order for all work performed up to the date of receipt of written verification, plus any applicable termination costs if GeoDecisions is the non-breaching party. Termination costs shall include, but not be limited to, the cost of terminating any contracts, leases or other obligations incurred by GeoDecisions in connection with this Agreement.
- B. If the Customer fails to make payment when due or otherwise in breach of this Agreement, GeoDecisions may suspend performance of services upon five (5) calendar days' notice to the Customer. GeoDecisions shall have no liability whatsoever to the Customer for any costs or damages as a result of such suspension caused by any breach of this Agreement.
- C. Customer agrees that in the event the Professional Service of GeoDecisions under a Task Order are terminated with or without cause, GeoDecisions shall not be required to release its files or work product to the Customer until such time as payment in full is made for all services and expenses under this Agreement.

12. Confidentiality.

- A. Nondisclosure. Each party agrees: (i) to hold the Proprietary Information of the other party in the strictest confidence, (ii) not to, directly or indirectly, copy, reproduce, distribute, manufacture, duplicate, reveal, report, reverse engineer, publish, disclose, cause to be disclosed, or otherwise transfer the Proprietary Information of the other party to any third party, subject to the provisions of subsection (iv) below, (iii) not to make use of the Proprietary Information of the other party other than for the permitted purposes under of this Agreement, and (iv) to disclose the Proprietary Information of the other party only to their respective representatives requiring such material for effective performance of this Agreement and who have undertaken an obligation of confidentiality and limitation of use consistent with this Agreement. In the event that Customer is required by law or legal process to disclose any of the Proprietary Information, Customer shall provide GeoDecisions with prompt oral and written notice of any such requirement, unless notice is prohibited by law (in which case such notice shall be provided as early as may be legally permissible), so that GeoDecisions may seek a protective order or other appropriate remedy. Customer agrees to cooperate with GeoDecisions in any reasonable efforts to obtain such remedies. Customer agrees not to, directly or indirectly, copy, reproduce, distribute, manufacture, duplicate, reveal, report, reverse engineer, publish, disclose, cause to be disclosed, or otherwise transfer the GeoDecisions Intellectual Property to any third party.
- B. Nondisclosure Survival. The nondisclosure obligations described in Subsection 12.A will survive termination of this Agreement for any reason. The obligations will remain in effect with respect to Trade Secrets for as long as the owner of such information is entitled to protection thereof, and with respect to Proprietary Information for a period of three (3) years after termination hereof. In the event either party breaches any of the obligations described in Subsection 12.A, the parties acknowledge and agree that damages may not be an adequate remedy to compensate such aggrieved party, and accordingly the parties agree that in addition to any and all other remedies available, the aggrieved shall be entitled to obtain relief by way of a temporary or permanent injunction to enforce the obligations described in Section 12.
- C. Each party agrees promptly to return to the owning party all Confidential Information provided in written form or any other media upon the termination or expiration of this Agreement or upon the written request from the owning party.

- D. GeoDecisions will not be held liable for disclosure of Customer's data, including personal identifying information, stored within the Microsoft Azure cloud computing service where such disclosure is not caused by GeoDecisions' gross negligence or willful misconduct.

13. Notice.

- A. Any notices required or permitted to be given shall be in writing and delivered in person, sent by return receipt or certified first class mail, or express courier, or via facsimile with a confirmation of delivery to the addresses set forth below. Notices will be effective upon receipt.

To GeoDecisions:

Trent M. Park
Senior Vice President
GeoDecisions
115 S. 15th Street #400
Richmond, Virginia 23219
Phone: (804) 767-1870
tpark@geodecisions.com

with a copy to:

Sonja Schultheis
Administrative Manager
GeoDecisions
209 Senate Avenue
Camp Hill, PA 17011
Fax: 717 763 8150
ssschultheis@geodecisions.com

To Customer:

with a copy to (if applicable):

TBD

14. Choice of Law and Dispute Resolution.

- A. The Parties agree that certain breaches of this Agreement may result in irreparable harm to the other that may not be adequately compensated by money damages. Therefore, the parties agree that the harmed party shall be entitled to injunctive and other equitable relief as may be necessary to protect its Confidential Information or intellectual property rights in the event of breach by the other party. In addition to injunctive and equitable remedies, the parties shall have all rights and remedies available to them in law and equity.
- B. The laws of the Commonwealth of Pennsylvania shall govern the interpretation of this Agreement and the parties' performance under this Agreement without regard to its conflict of laws provisions.
- C. The parties shall attempt to resolve or settle disputes, controversies or claims arising in connection with this Agreement by negotiations between the senior management of the parties, after a notice is sent by one party to the other party that includes a detailed description of the dispute.
- D. Other than breaches of this Agreement that may result in irreparable harm to one Party that may not be adequately compensated by money damages, if the negotiations required by Subsection 14.C have not resolved the dispute after at least one month from the date of receipt of the notice of the dispute, then either party may pursue any available legal remedy in a court of competent jurisdiction. The parties agree that the federal and state courts located in Dauphin County Pennsylvania have jurisdiction and venue over the parties.

15. Other Provisions.

- A. Media releases, public announcements or public disclosures, and promotional or marketing materials relating to this Agreement or the subject matter of this Agreement by either party shall be coordinated with and approved by the other party prior to release. Neither party shall unreasonably withhold approval of the other party's releases.
- B. Neither party may assign or transfer its interest in this Agreement without the prior written consent of the other party, except in connection with the sale of all or substantially all of its assets. In the event either party assigns this Agreement as in connection with the sale of all or substantially all of its assets, that party shall give the other party reasonable written notice. Any

attempted assignment in contravention of this provision shall be void. Any assignee shall be bound to the terms and conditions of this Agreement.

- C. In the event that any provision of this Agreement is held to be unenforceable, the validity of the remaining portions or provisions of this Agreement shall not be affected by such unenforceability.
- D. This Agreement is the entire agreement between the parties and supersedes all prior negotiations or agreements, if any, and is not subject to modification, amendment or alteration except by writing, signed by an authorized representative of both parties.
- E. If either party's performance of any of its obligations under this Agreement is delayed by strike, labor dispute, unavailability of materials or products, war (declared or undeclared), terrorism, act of God, governmental action, flood, fire, explosion or other matters not within its reasonable control or by the inability of either Party to procure and obtain needed government consents or approvals, then the date for performance shall be extended by the time of such delay; provided, however, that as to any and all such causes, the party so affected shall pursue with reasonable diligence the avoidance or removal of such delay if reasonably feasible.
- F. The relationship of the parties is that of independent contractors and neither party will hold itself out to be a partner, joint venture, agent, franchisee or representative of the other party. Neither party will have any right to enter into contracts or commitments in the name of, or on behalf of, the other party or to bind the other party in any respect whatsoever.
- G. This Agreement and all of the terms and provisions of this Agreement have been negotiated between the parties and mutually arrived at by the parties; therefore, neither party shall be or is to be deemed to be the draftsman of it. With respect to any dispute that may arise as to the terms of this Agreement any ambiguities that may subsequently be determined to exist shall not be construed against either party as draftsman of this Agreement.
- H. This Agreement may be executed in counterparts exchanged via e-mail as pdf files, with each counterpart being of the same force and effect as the other.

Intending to be legally bound, authorized representative of the parties execute this Agreement effective as of the date set forth in the introductory paragraph.

Gannett Fleming,

Customer

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT A

Scope of Services and Party Responsibilities

The Scope of Services shall be comprised of all future executed Task Orders under this Agreement.

GeoDecisions agrees to provide the following functionality and services for Customer through its PracticeKeeper subscription:

- a. No pre-existing functionality or services

Professional Services

GeoDecisions will provide Professional Services for the Customer, at its request, either through Hourly Task Orders or Lump Sum Task Orders. Professional Services include, but are not limited to, PracticeKeeper upgrades/enhancements, PracticeKeeper module development, PracticeKeeper report and module customization, training, and GIS layer updates and development. When a task has been identified, GeoDecisions will develop a task order (See Exhibit A-1 – Sample Task Order), defining the scope of work, budget and schedule, and any project assumptions associated with the work to be done. If the Customer agrees with the task order, it will be executed, and work will begin upon notice to proceed. All future task orders will be governed by the terms and conditions of this Agreement.

EXHIBIT A – 1

SAMPLE TASK ORDER

Client:	
Project Name:	
Client PM:	
GeoDecisions PM:	
Task Order Number	
Governed by the Terms and Conditions of the Professional Services Agreement Dated:	
Date Submitted:	

DESCRIPTION OF TASK ORDER

SCOPE OF WORK – REQUIRED TASKS

SCHEDULE

TASK BUDGET AND INVOICING

PROJECT ASSUMPTIONS

SIGN-OFF

By accepting this Task Order, CUSTOMER understands and agrees to the scope and budget specified in this document.

☐ **Accepted**

☐ **Rejected**

Client Project Manager Name

SAMPLE
Client Project Manager Signature

Date

GeoDecisions Vice President Name

GeoDecisions Vice President Signature

Date

Client Comments:

EXHIBIT B

GeoDecisions Service Level Agreement – GeoDecisions PracticeKeeper

This “GeoDecisions Service Level Agreement” (**‘GSLA’**) specifies the terms of customer support services and the service levels provided by GeoDecisions for its GeoDecisions PracticeKeeper Customers. The GSLA defines the on-going GeoDecisions PracticeKeeper Application to be provided at the agreed level to support each Customer in return for the associated annual GeoDecisions PracticeKeeper fee. The GSLA also defines the Availability target for operational performance of GeoDecisions PracticeKeeper.

1. Definitions:

- a) **“Availability”** means, for each calendar month, an amount of time the software is available for customer use, calculated by total ‘up time’ of PracticeKeeper core software as monitored by GeoDecisions. The monitoring will include the GeoDecisions PracticeKeeper website along with the hardware, software, and hosting facilities used by GeoDecisions. The foregoing excludes failed tests resulting from (i) force majeure events, and (ii) Customer’s and/or End User(s)’ connections (including but not limited to the Internet and/or Customer’s and/or End User(s)’ devices).
- b) **“Business Day(s)”** means a day other than Saturday, Sunday or customary rest days and public holidays in the United States. Public holidays include including January 1, Memorial Day, July 4, Labor Day, Thanksgiving, the day following Thanksgiving, and Christmas Day.
- c) **“Customer Reported Incident” or “CRI”** is defined as an event that:
 - i) indicates an interruption to the GeoDecisions PracticeKeeper services;
 - ii) is not part of the standard operation of GeoDecisions PracticeKeeper; and
 - iii) is reported by Customer to the GeoDecisions representative.
- d) **“Eastern Time”** means either Eastern Standard Time or Eastern Daylight Time, whichever is in effect in the Eastern U.S. at the time of the request for service.
- e) **“Essential Capability”** includes the delivery of all modules and administrative capabilities available within Customer’s GeoDecisions PracticeKeeper account.
- f) **“GeoDecisions PracticeKeeper”** means the GeoDecisions PracticeKeeper Application data collection, update, mapping, and reporting services provided by GeoDecisions to its Customers for an established fee.
- g) **“Major Revision”** means a software or hardware revision that must be implemented and requires more than 3 hours to implement and verify.
- h) **“Minor Revision”** means a software revision that can be accomplished inside a three (3) hour window of time.
- i) **“Non-essential Capability”** includes reporting capability and data exports.
- j) **“Operational Representative”** means an individual designated by Customer to represent Customer for the purpose of requesting and facilitating Customer Support Services.
- k) **“Support Hours”** means Business Days during the normal work hours of 8:00 a.m. to 4:00 p.m. Eastern Time

2. Services Provided. During the Term of the Software Licensing and Service Agreement, GeoDecisions will provide the following support services as part of the Application, to Customer’s Operational Representatives, as designated by Customer in accordance with this GSLA.

- a) *Electronic Support:* GeoDecisions will provide reasonable consultation and support over the Internet regarding the operation of the Application, including both technical and user issues.
- b) *Telephone Support:* In the event Customer encounters a problem that its Operational Representatives are unable to resolve, such Operational Representatives will have access to

telephone support during GeoDecisions Support Hours.

- c) *Scheduled Maintenance*: From time to time, GeoDecisions may restrict access to some parts of the Application, or all of the Application for scheduled maintenance or for other purposes.

3. GeoDecisions Operations Principles:

- a) GeoDecisions shall assign a representative to oversee the GeoDecisions PracticeKeeper Application provided for the Customer.
- b) GeoDecisions reserves the right to apply Application-wide revisions in any manner deemed appropriate when such planned changes will have no noticeable adverse effect on the GeoDecisions PracticeKeeper Application. When possible, notification will be given to the customer 48 hrs ahead of the time and GeoDecisions will do its best to fit such revisions into the default maintenance window.
- c) GeoDecisions responds to CRIs according to the assigned Impact Level with the following priority: TOP, HIGH, MEDIUM, and LOW. GeoDecisions will initiate corrective actions necessary to maintain the GeoDecisions Service Levels when the need is identified by either Party.
- d) GeoDecisions shall work with the Customer(s) to schedule pre-established and mutually agreed upon times for Application maintenance and anticipated Minor Revisions outside of the Customer(s)' normal business hours. The default Maintenance Window is every day between 8:00 p.m. to 4:00 a.m. (Eastern Time) if needed, and once per quarter for Major Revisions longer than three (3) hours, if needed or as agreed to by the parties in writing during the term of this Agreement. GeoDecisions will notify the Customer(s) 48 hours in advance of its intent to use the default or an agreed upon Maintenance Window. In the event that an external, third-party provider of services has a need to ensure the quality of services through intrusive testing, the parties will immediately discuss the setting of a maintenance window for the work to be performed.

4. Commencement of Service Levels:

The Service Levels within this GSLA commence on the Effective Date of the live use of the GeoDecisions PracticeKeeper Application by the Customer.

5. GeoDecisions' Operations Service Levels

GeoDecisions will use commercially reasonable efforts to maintain a target Availability of 98.0% per month ("Standard Service Level"). If Availability falls below the specified Standard Service Level, GeoDecisions shall use reasonable commercial efforts to restore Operations.

6. Incident Priority Levels

The following table provides the priorities to be applied for all Customer Reported Incidents ("CRI").

Impact Level	Incident Priority Level Description
TOP	A CRI is classified as a "TOP" Impact Level if the Essential Capabilities of the GeoDecisions PracticeKeeper Application are inoperative for more than one (1) hour after the Customer notifies the GeoDecisions representative and there is no alternative method of achieving a similar outcome.
HIGH	A CRI is classified as a "HIGH" Impact Level if the Essential Capabilities of the GeoDecisions PracticeKeeper Application are inoperative for more than one (1) hour after the Customer notifies the GeoDecisions representative, however there is an alternative method of achieving a similar outcome.
MEDIUM	A CRI is classified as a "MEDIUM" Impact Level if the Non-essential Capabilities of the GeoDecisions PracticeKeeper Application are inoperative for more than twenty-four (24) hours after the Customer notifies the GeoDecisions representative.
LOW	A CRI is classified as a "LOW" Impact Level if the Customer is reporting a need that is cosmetic or does not affect normal operations.

7. Customer Responsibilities:

- a) The Customer shall designate at least one, and up to two, Operational Representatives who will be the contact persons through which all support and/or problem communications will be made. Customer may, from time to time, change any of the designated Operational Representatives, which the change will be effective only upon GeoDecisions' receipt of written notice thereof. Customer will ensure that any appointed Operational Representative is knowledgeable in the operation and use of the Application. In addition, one Operational Representative shall be designated for each of the Customer's tenants in the GeoDecisions PracticeKeeper Application.
- b) The Customer is responsible for the following:
 - i) The Customer shall not make or permit to be made any unauthorized connections to the GeoDecisions PracticeKeeper Application. Unauthorized connections made by Customer to the GeoDecisions PracticeKeeper Application will void the GSLA.
 - ii) The Customer shall not open or otherwise access, reverse engineer or decompile any of the GeoDecisions PracticeKeeper Application.
 - iii) The Customer shall not modify, adapt or repurpose the GeoDecisions PracticeKeeper Application for any purpose.
 - iv) The Customer shall not give third parties the opportunity to examine, photograph or view photos of, or otherwise inspect the GeoDecisions PracticeKeeper Application.
- c) The Customer shall cooperate with GeoDecisions in remotely trouble shooting a problem, e.g., be available for call-back from GeoDecisions to gather further information on an incident. If the Customer is not available for a call-back from GeoDecisions, then response times for CRI fixes shall be eliminated in their entirety for that CRI.

8. Exceptions

GeoDecisions shall not be responsible for any failure to meet a target GeoDecisions Service Level to the extent that such failure results solely or primarily from:

- a) CRIs caused by issues with Customer controlled infrastructure – Customer's wiring, phone system or CRIs jointly determined in a review to be caused by user error (beyond GeoDecisions' control);
- b) Events of Force Majeure;
- c) Mutually agreed implementation of urgent proactive maintenance;
- d) Failure by the Customer or the Customer's authorized agents to provide timely access to the affected systems, including, but not limited to, all remote access required to enable GeoDecisions' own diagnostic systems;
- e) Failures or CRI issues due to failure on the part of Customer to provide adequate physical security of systems, hardware or Services;
- f) Downtime associated with the implementation of enhancements, options or customer requested changes or repairs; and
- g) Downtime on services provided by third-party suppliers, including but not limited basemap and service providers (e.g., Esri, Microsoft Azure, etc.).

9. Data Management

GeoDecisions reserves the right to adjust annual subscription fees based on data size and quantity yearly. It is understood that Customer will compensate GeoDecisions time and a half, for emergency retrieval of critical business data based on GeoDecisions' Schedule of Hourly Rates to be included in an issued Task Order under the Software Subscription and Services Agreement. Emergency retrieval is defined as less than 24-hour notice or retrieval on weekends or holidays.