



Huntsville, Alabama

305 Fountain Circle
Huntsville, AL 35801

Cover Memo

Meeting Type: City Council Regular Meeting **Meeting Date:** 11/7/2024

File ID: TMP-4776

Department: Traffic Engineering

Subject:

Type of Action: Approval/Action

KorTerra, Inc.- KorWeb Services to enhance the 811 Locate requests services for the City of Huntsville.

Resolution No.

Finance Information:

Account Number: 1000-75-75100-515370-00000000-

City Cost Amount: \$8,635/year

Total Cost: \$8,635/year

Special Circumstances:

Grant Funded: N/A

Grant Title - CFDA or granting Agency: N/A

Resolution #: N/A

Location: (list below)

Address: N/A

District: District 1 District 2 District 3 District 4 District 5

Additional Comments:

The purpose of the contract with KorTerra is to provide incoming 811 locate requests to COH users on mobile phone/laptop/desktop and to provide incoming 811 locate requests to as many users as COH desires to make this a more efficient process for all. 811 currently only sends e-mails to one user per customer (utility) to disperse as they wish. This contract will benefit all COH departments that use the 811 services.

RESOLUTION NO. 24-_____

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be, and he is hereby authorized to enter into an Agreement between the City of Huntsville and KorTerra, Inc., on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said agreement is substantially in words and figures similar to that certain document attached hereto and identified as "Agreement Between the City of Huntsville and KorTerra, Inc. KorWeb Services" consisting of thirteen (13) pages and the date of November 7, 2024 appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, an executed copy of said document being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

ADOPTED this the 7th day of November, 2024.

President of the City Council
Of the City of Huntsville,
Alabama

APPROVED this the 7th day of November, 2024.

Mayor of the City of Huntsville,
Alabama



KORTERRA SERVICES AGREEMENT

This KorTerra Services Agreement (this “**Agreement**”) is made and entered into effective November 7, 2024 (the “**Effective Date**”), by and between City of Huntsville (“**you**” and “**your**”), having its principal offices at 305 Fountain Circle, Huntsville, AL 35801 and KorTerra, Inc. (“**KorTerra**” “**we**”, “**us**” and “**our**”), having its principal offices at 1851 Lake Drive West, Chanhassen, MN 55317.

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Definitions.

“**Beta Services**” means KorTerra services, features, or functionality that may be made available to you to try at your option, at no additional charge, which we have not made generally available and which are designated as beta, pre-release, preview, non-production, evaluation, or by a similar description.

“**One Call Center**” means a designated notification center that individuals and entities contact prior to commencing an excavation in or on the ground which is intended to provide registered parties having underground infrastructure of pipes, mains and lines for producing, storing, conveying, transmitting or distributing communications, electricity, power, light, heat, gas, oil, petroleum products, water, steam, sewage, and other commodities and services with advanced notification of such excavation.

“**Order Form**” means an ordering document signed by you and us that references this Agreement and specifies the Services to be provided by us to you under this Agreement.

“**Service(s)**” means the software-as-a-service offering to which you have subscribed via an Order Form, as well as its related components, platform, and any ancillary online or offline applications, products and services provided by us for your access and use of our Services.

“**Service Fee(s)**” means the fees you are to pay us for your access to and use of the Services as well as for any Professional Services provided by us to you. This may also include any ancillary fees associated with the provision of the Services.

“**Statement of Work**” means a document signed by you and us that references this Agreement and describes certain Professional Services (if any) purchased by you under this Agreement and/or pursuant to an Order Form.

“**Professional Services**” means any consulting, implementation, configuration or other services provided by us to you pursuant to a Statement of Work or an Order Form.

“**Ticket**” means (i) any transmission to the Services from a One Call Center or other third-party in relation to you or your customer; (ii) a ticket generated by you; and (iii) a ticket generated by system configuration in the Services.

“**Ticket Volume**” means the aggregate number of Tickets for a specific time frame. Ticket Volume may be used as a basis of any Service Fees charged to you.

2. Services.

2.1 Access and Use of the Services. Subject to and conditioned upon your payment of Service Fees and compliance with all terms and conditions of this Agreement and the applicable Order Form, we grant you a non-exclusive, non-transferable (except in compliance with Section 19.3) right to access and use the Services during the term stated in the applicable Order Form solely for your internal use in accordance with the terms and conditions of this Agreement and the applicable Order Form.

2.2 Restrictions. You shall not use the Services for any purpose beyond the scope of the access granted in this Agreement and the applicable Order Form. You shall not and will not permit any third party to: (i) use the Services for any unlawful purpose or in any manner not permitted by this Agreement or the applicable Order Form; (ii) use the Services in any manner which could damage, disable, overburden or impair the Services or interfere with any other party's use and enjoyment of the Services; (iii) modify or change the Services; (iv) reverse engineer, decompile, decrypt, hack, emulate, exploit, disassemble or make any attempt to discover the source code relevant to the Services; (v) circumvent or bypass any technological protection measures in or relating to the Services; or (vi) publish, copy, rent, lease, sell, license, sublicense, assign, transfer, export, import, distribute, or lend or otherwise make the Services available to any third party not previously approved by us in writing; (vii) access, monitor or copy any content or information of the Services, or use any "robot", "spider", "deep link", "scraper" or other automated means, methodology, algorithm or device or any manual process on the Services for any purpose; (v) obtain or attempt to obtain any materials, documents or information through any means not purposely made available through the Services, unless we expressly authorize you to do so; (vi) remove any proprietary notices from the Services; (vii) use the Services in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any third party; or (viii) access or use the Services for purposes of competitive analysis of the Services, the development, provision, or use of a competing software service or product or any other purpose that is to our detriment or commercial disadvantage.

You shall not perform penetration or vulnerability testing ("**Penetration Tests**") of the Services. Penetration Tests include any effort to identify design, and/or functionality, issues in the infrastructure of our systems, or of the networks connected to our systems which probe for weaknesses in the network perimeters or other infrastructure elements as well as weaknesses in process or technical countermeasures relating to our systems that could be exploited by a malicious party.

You shall not cause harm to the Services or to any hardware, servers, operating software, or network components used in connection with furnishing the Services, and you shall not introduce malicious code. Malicious code includes, without limitation, any virus, malware or undocumented or hidden functionality or performance capability contained within electronic files, Your Data, or software.

You shall not utilize software designed or modified to be run, without authorization from us, on our computers or network-capable devices, that performs either: (i) the unauthorized extraction of data or information from a computer or network-capable device, or modification of system user data; (ii) the modification of the Services or user data to facilitate the avoidance of fees incurred on a computer or network-capable device by parties other than parties authorized by us.

2.3 Maintenance and Support. During the term of the applicable Order Form we will provide standard maintenance and support of the Services. We may make commercially reasonable updates to the Services from time to time including improvements, corrections of substantial defects in the Services, periodic maintenance releases, and technical support regarding the use of the Services or response to errors in the Services. Technical support not involving the Services, custom programming, on-site installation and/or maintenance, training, and

hardware issues are not included in the Services and if requested, will be billed at our then current rate. Our standard support hours are Monday - Friday, 7:00 A.M. - 6:00 P.M. Central Time excluding holidays. These hours are subject to change by us. Upon detection of any error in the Services by you, we may request you to provide us a listing of all output and any other data, some of which may be proprietary or contain confidential information, in order for us to reproduce operating conditions similar to those present when the error occurred. We agree to treat such information as Confidential Information pursuant to Section 6.

2.4 Availability. Subject to Section 2.6, the Services shall be accessible to you except for (i) scheduled maintenance and required repairs; and (ii) any interruption due to causes beyond our control or which are not reasonably foreseeable by us, including, but not limited to, interruption or failure of telecommunication or digital transmission links and internet slow-downs or failures or other Force Majeure events.

2.5 Backup Procedures and Emergency Tickets. We strive to keep the Services up and running, however, all online services suffer occasionally from disruptions and outages, and we are not liable for any disruption or loss you may suffer as a result. Because of the possibility of online service disruption, as a condition of obtaining the Services, you agree to establish and maintain manual business operating procedures to be used if the Services become unavailable ("**Backup Procedures**"). These Backup Procedures must permit you to operate your business without access to the Services for as long as necessary until such Services are restored. Because of the nature of the Services being provided to you, there may be events which require you to receive tickets from a One Call Center that require urgent attention ("**Emergency Tickets**"). In addition to receiving Tickets through the Services, you must arrange to be notified by every sender of Emergency Tickets via a mechanism outside of the Services.

2.6 Suspension of Services. Notwithstanding anything to the contrary in this Agreement or any Order Form, we may temporarily suspend your access to any portion or all of the Services: (i) if we reasonably determine that (A) there is a threat or attack on the Services; (B) your use of the Services disrupts or poses a security risk to the Services or to any of our other customers or vendors; (C) you are using the Services for fraudulent or illegal activities; (D) subject to applicable law, you have ceased to continue your business in the ordinary course, made an assignment for the benefit of creditors or similar disposition of its assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution, or similar proceeding; or (E) our provision of the Services to you is prohibited by applicable law; (ii) if any of our vendors have suspended or terminated our access to or use of any third-party services or products required to enable you to access the Services; or (iii) in accordance with subsection (iii) of Section 5 (any such suspension described in subsection (i), (ii), or (iii), a "**Services Suspension**"). We shall use commercially reasonable efforts to provide written notice of any Services Suspension to you and to provide updates regarding resumption of access to the Services following any Services Suspension. We shall use commercially reasonable efforts to resume providing access to the Services as soon as reasonably possible after the event giving rise to the Services Suspension is cured. We will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that you or and third party may incur as a result of a Services Suspension.

2.7 Beta Services. From time to time, we may offer you access to Beta Services in exchange for your feedback about your experience using the Beta Services. You may choose to participate in the evaluation of Beta Services at your sole discretion. Access to and use of the Beta Services is solely for your internal evaluation purposes and may be subject to additional rules or restrictions that we may place on their use. We make no representation that the Beta Services will ever be made generally available and we reserve the right to terminate your access to the Beta Services at any time, at which time, you agree to cease use of the Beta Services. Beta Services are provided AS IS, may contain bugs, errors or other defects, and your use of the Beta Services is at your sole risk. Beta Services are excluded from our support, warranty, and service level commitments. We may use information about your use of the Beta Services for improving and developing our services. Non-public information about the Beta Services is deemed to be our Confidential Information.

2.8 Professional Services. We will perform Professional Services as set forth in each applicable Statement of Work or Order Form, subject to the terms of this Agreement.

3. Your Obligations.

3.1 You are responsible for and must provide all required computer hardware, software and other services necessary to access the Services.

3.2 You agree to secure and protect the Services in a manner consistent with the maintenance of our rights and cause no harm to us or third-party equipment, software, or processes used in connection with furnishing the Services and any entities from whom we obtain network or web services. In addition to constituting a default under this Agreement, any breach of the terms and conditions of this Agreement may also result in civil and/or criminal penalties pursuant to applicable local, state and federal law.

3.3 The Services may require you to obtain a user identification and password for access and use, and certain specific Services may require additional codes. You shall use reasonable endeavors, including reasonable security measures relating to access, to ensure that no unauthorized person, including any employee or contractor for any parent, subsidiaries, affiliated entities or third parties, gains access to the Services without our prior written consent. You are solely responsible for maintaining the confidentiality of the user identification, passwords and codes (collectively, "**User Information**") assigned to you for any activity that occurs under your account as a result of your failing to keep User Information secure and confidential. You shall promptly inform us in writing of any need to deactivate or replace any User Information due to security concerns. We are not liable for any harm related to theft of your User Information, your disclosure of your User Information, or your authorization to allow another person or entity to access and use the Services using your User Information. You agree to notify us immediately as soon as you become aware of any unauthorized use of your User Information. You may not use anyone else's User Information at any time without the express permission and consent of the holder of that User Information and us.

3.4 You agree to identify your support staff who, to the maximum extent practicable, will be the primary source of communications from you to us.

4. Intellectual Property.

4.1 Your Data. All information provided by you, including, any technology, intellectual property, data, information, or material provided or submitted by you in the course of your use of the Services shall be referred to as "**Your Data**". Subject to Section 4.2, all right, title, and interest in and to Your Data and results from processing Your Data are and shall remain your property and no right, title, or interest in and to Your Data or the results from processing Your Data shall vest in us. You hereby irrevocably grant all such rights and permissions in or relating to Your Data as are necessary for us to exercise our rights and perform our obligations hereunder. We will maintain technical and security measures designed to prevent unauthorized disclosure of Your Data and shall comply with all applicable federal, state, and local, laws, regulations, and industry standards, in the performance of the Services. We shall notify you of any unauthorized use of Your Data, breach of security, or loss or theft of Your Data promptly upon discovery of such unauthorized use, breach, loss, or theft and shall take all commercially reasonable action for the protection of personal data and to mitigate such breach, loss, theft or unauthorized use.

4.2 Statistical Data and Anonymized Data. We track and collect certain information about how users interact with the Services and we use the information collected to obtain general statistics regarding the use of the Services and to evaluate how users use and navigate the Services (collectively, "**Statistical Data**"). We may use Statistical Data for our internal analytical purposes, including the improvement and enhancement of the Services and our

other offerings. At times, we may review the Statistical Data of multiple customers and may combine, in a non-personally-identifiable format, the Statistical Data with Statistical Data derived from other customers and users to create aggregate, anonymized data regarding usage history and statistics (collectively, “Anonymized Data”). Anonymized Data will not contain information that identifies or could be used to identify you or other users. You agree that Anonymized Data is not your Confidential Information and we may use Anonymized Data to create reports that we may use and disclose for our commercial or other purposes.

4.3 KorTerra Intellectual Property. At all times, the Services, including without limitation, the text, images, graphics, method of display and presentation, visual interfaces, user interfaces, photographs, copyrights, patents, trademarks, trade secrets, logos, sounds, music, artwork, computer code, and associated material and functionality contained therein (collectively “Intellectual Property”), shall remain the property of KorTerra. You acknowledge that the Services constitute commercially valuable, proprietary products, the design and development of which reflect the effort of skilled development experts and the investment of considerable time and money. You further acknowledge that we shall retain all right, title and interest in the Intellectual Property (including application development, business and technical methodologies, and implementation and business processes, used by us to develop or provide the Services), and any and all updates, enhancements, customizations, revisions, modifications, future releases and any other changes relating to the foregoing. Except for limited access and use rights granted pursuant to this Agreement, you do not acquire any interest in the Services. With respect to any Third-Party Services, the applicable third-party providers own all right, title, and interest, including all intellectual property rights, in and to the Third-Party Services. We reserve all rights not expressly granted to you in this Agreement. Except for the limited rights expressly granted under this Agreement, nothing in this Agreement grants, by implication, waiver, estoppel, or otherwise, to you or any third party, any intellectual property rights or other right, title, or interest in or to the Services.

4.4 Feedback. You agree that any suggestions, enhancements requests, feedback, recommendations or other information provided by you, or any of your employees relating to the Services and Beta Services may be used by us without restriction or obligation to you.

5. Service Fees. You shall pay us the Service Fees as set forth in an Order Form or Statement of Work. In addition to the Service Fees, you shall pay all sales, use, value added or other taxes, federal, state, local, or otherwise, however designated, which are levied or imposed by reason of the transactions contemplated by this Agreement excluding taxes based on our net income, property or employees. Payment obligations are non-cancelable and all amounts paid are non-refundable. If you fail to make any payment when due, without limiting our other rights and remedies: (i) you agree that we may charge and you will pay a late fee of one and one-half percent (1 ½ %) per month (18% APR) on all outstanding balances; (ii) you shall pay all costs of collection, including legal expenses, and attorney fees at any time paid or incurred by us (liability for attorney fees is not contingent upon a suit being filed by us) in the collection of any amounts due us from you; and (iii) if such failure continues for 10 days or more, we may suspend your access to any portion or all of the Services until such amounts are paid in full. We reserve the right to charge a reconnect fee for any suspended or discontinued Services access that is subsequently reconnected. We may increase Service Fees for any Order Form Renewal Term (as that term is defined in the applicable Order Form), by providing written notice to you at least 65 calendar days prior to the commencement of any Order Form Renewal Term, and the applicable Order Form will be deemed amended accordingly. Notwithstanding the foregoing, the Service Fees may be subsidized in part based on the partnership status between KorTerra and your One Call Center. Changes, such as discontinuation, to that partnership status may cause your Service Fees to be subject to re-evaluation and adjustment.

6. Confidential Information.

6.1 From time to time during the term of this Agreement, either you or we (as the “**Discloser**”) may disclose or make available to the other (as the “**Recipient**”) proprietary or confidential information including, but not limited to, information about the Discloser’s business affairs, products/services, intellectual property, trade secrets, third-party confidential information and other sensitive or proprietary information, whether orally or in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as “confidential” (collectively, “**Confidential Information**”). Your Confidential Information includes Your Data; our Confidential Information includes the Services and the terms and conditions of this Agreement and all Order Forms and Statements of Work (including pricing). Subject to the last sentence in this Section, the Recipient shall not disclose Confidential Information to any third party without the prior written consent of the Discloser and shall restrict dissemination of Confidential Information within its own organization to those employees who have a need to have access to the Confidential Information. The Recipient agrees to protect Confidential Information by using at least the same degree of care as it would use to protect its own information of like importance, but in no case less than reasonable care. You and we shall take appropriate measures, and in no event less than reasonable measures, by instruction and written agreement, with confidentiality terms no less stringent than those herein, prior to disclosure to such employees to protect against unauthorized use or disclosure. Notwithstanding the foregoing, we may disclose your Confidential Information to our subcontractors and providers who have signed confidentiality agreements with us containing protections not materially less protective of the Confidential Information than those herein, to the extent necessary for us to perform our obligations under this Agreement.

6.2 Exceptions. The obligations in Section 6.1 do not apply to Confidential Information which: (a) was rightfully in possession of or known to the Recipient without any obligation of confidentiality prior to receiving it from the Discloser, as evidenced by the Recipient’s records; (b) is or becomes publicly available without breach of this Agreement by the Recipient; (c) becomes known or available to the Recipient from a source other than the Discloser without a restriction on use or disclosure of such Confidential Information; or (d) is independently developed by the Recipient without use of or reference to the Discloser’s Confidential Information.

6.3 Compelled Disclosure. If the Recipient is required by applicable law or legal process to disclose any Confidential Information, it shall, if permitted, prior to making such disclosure, use commercially reasonable efforts to notify the Discloser of such requirements to afford the Discloser the opportunity to seek, at the Discloser’s sole cost and expense, a protective order or other remedy. The parties acknowledge and agree that approval of this Agreement by Customer’s City Council in an open meeting is required.

6.4 Equitable Relief. You and we acknowledge that the unauthorized use or disclosure of Confidential Information may cause irreparable harm to the Discloser. Accordingly, you and we agree that the Discloser shall be entitled to seek equitable relief, including injunctive relief, in addition to all other remedies available at law for any threatened or actual breach of this Agreement with respect to Confidential Information.

7. Term and Termination.

7.1 Term. The term of this Agreement begins on the Effective Date and, unless terminated earlier pursuant to this Agreement’s express provisions, will continue in effect until the term stated on all Order Forms and Statements of Work has expired or has otherwise been terminated. The term of each Order Form or Statement of Work will be as set forth on the Order Form or Statement of Work.

7.2 Termination by us. We may terminate this Agreement effective on written notice to you, if you, (i) fail to pay any amount when due hereunder, and such failure continues more than thirty (30) days after our delivery of written notice to you thereof; (ii) breach any of your obligations under Section 2.2 or Section 6, (iii) breach any provision of this Agreement, and such breach: (A) is incapable of cure; or (B) being capable of cure, remains uncured thirty (30) days after we provide you with written notice of such breach; or (iv) terminate or suspend your business,

become subject to any bankruptcy or insolvency proceeding under federal or state statutes, become insolvent or become subject to direct control by a trustee, receiver or similar authority, or have wound up or liquidated your business voluntarily or otherwise. If we terminate this Agreement pursuant to this Section 7.2, all Service Fees that would have become payable had the Agreement remained in effect until expiration of the current term of each Order Form and/or Statement of Work will become immediately due and payable, and you agree to pay such Service Fees, together with all previously-accrued but not yet paid Service Fees, on receipt of our invoice therefor.

7.3 Termination by you. You may terminate this Agreement effective on written notice to us, if we: (i) breach any material provision of this Agreement and such breach remains uncured thirty(30) days after you provide us with written notice of such breach; and (ii) without penalty to us, in the event we terminate or suspend our business without providing for the continued support and maintenance of the Services, become subject to any bankruptcy or insolvency proceeding under federal or state statutes, become insolvent or become subject to direct control by a trustee, receiver or similar authority, or have wound up or liquidated our business voluntarily or otherwise. If you terminate this Agreement pursuant to this Section 7.3, you will pay us all Service Fees owed as of the effective date of such termination, including any applicable taxes.

7.4 Effect of Termination. Termination or expiration of an individual Order Form or Statement of Work will not be deemed a termination of this Agreement so long as other Order Forms or Statements of Work remain in effect. Termination of this Agreement will, however, terminate all outstanding Order Forms and Statements of Work.

7.5 Survival. Sections 1 (Definitions), 2 (Restrictions), 4 (Intellectual Property), 5 (Service Fees) 6 (Confidential Information), 7.4 (Effect of Termination), 7.5 (Survival), 8.2 (Warranty Disclaimer), 9 (Indemnification), 10 (Limitations of Liability), 11 (Third-Party Services), 12 (Mapping Limitations), 13 (Risk Scoring), 17 (Employee Non-Solicitation), 18 (Notices) and 19 (General Provisions) will survive termination or expiration of this Agreement.

8. Limited Warranties and Warranty Disclaimer.

8.1 Limited Warranties. We warrant that (i) the Services shall operate substantially in accordance with the documentation provided by us when accessed and used in accordance with such documentation; and (ii) any Professional Services will be provided by us in a professional and workmanlike manner and substantially in accordance with the specifications in the applicable Order Form or Statement of Work.

8.2 Warranty Disclaimer. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTION 8.1, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, KORTERRA HEREBY DISCLAIMS ALL WARRANTIES OF ANY KIND WHETHER, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OR AS TO THE QUALITY, UTILITY OR PERFORMANCE OF THE SERVICES, ALL OF WHICH ARE HEREBY EXPRESSLY EXCLUDED. KORTERRA FURTHER MAKES NO WARRANTY THAT (i) THE SERVICES WILL MEET YOUR REQUIREMENTS, (ii) THE SERVICES WILL BE AVAILABLE, UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, (iii) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICES WILL BE ACCURATE OR RELIABLE, OR (iv) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL ACCESSED BY YOU THROUGH THE SERVICES WILL MEET YOUR EXPECTATIONS. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM KORTERRA SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THIS AGREEMENT. THE WARRANTIES IN SECTION 8.1 DO NOT APPLY, AND KORTERRA STRICTLY DISCLAIMS ALL WARRANTIES, WITH RESPECT TO ANY THIRD-PARTY SERVICES. BETA SERVICES ARE PROVIDED BY US ON AN "AS IS" AND "AS AVAILABLE" BASIS, EXCLUSIVE OF ANY WARRANTY WHATSOEVER.

9.1 Indemnification. You agree to indemnify us from any and all losses, damages, liabilities, costs and expenses (including reasonable attorneys' fees) resulting from, and, at our option, defend us against, any third-party claim, suit, demand, action, or proceeding ("**Third-Party Claim**") arising out of or relating to (i) your use of the Services in

a manner not authorized by us; (ii) use of the Services in combination with data, software, hardware, equipment, or technology not provided by us or authorized by us in writing; (iv) your breach of any of your representations, warranties, covenants, or obligations under this Agreement; or (v) any act or omission by you that results in personal injury, death, or damage to property; provided that you may not settle any Third-Party Claim against us unless we consent to such settlement in writing.

9.2 We agree to indemnify you and your elected officials, officers, employees, agents, and representatives (the "Indemnified Parties") from losses, damages, liabilities, costs and expenses (including reasonable attorneys' fees) and defend the Indemnified Parties from and against any third-party claim, suit, demand, action, or proceeding (a "Third-Party Claim") that the SaaS Services, in the form provided by us, or any use of the SaaS Services by you as expressly permitted by this Agreement, infringe or misappropriate such third party's intellectual property rights, provided that the Indemnified Parties promptly notify us in writing of the Third-Party Claim, cooperate with us, and allow us sole authority to control the defense and settlement of such Third-Party Claim. If such a Third-Party Claim is made or reasonably appears possible, you agree to permit us, at our sole discretion, to (i) modify or replace the SaaS Services, or portion thereof, to make the SaaS Services non-infringing, or (ii) obtain the right for you to continue to use the SaaS Services. If we determine that neither of these alternatives is reasonably available, we may terminate this Agreement and your right to use the SaaS Services, in their entirety or with respect to the affected portion of the SaaS Services, effective immediately on written notice to you, and provide a pro rata refund of any prepaid and unused subscription fees for such infringing SaaS Services or portion thereof. The foregoing indemnification obligation will not apply to the extent that the alleged infringement arises from: (i) use of the SaaS Services in combination with data, software, hardware, or technology not provided by us or authorized by us in writing; (ii) modifications to the SaaS Services not made by us; (iii) use of the SaaS Services other than in accordance with the Documentation or as expressly permitted by this Agreement; or (iv) third-party applications, databases, directories, information, maps, networks, products, programs, servers, services, software, systems, or websites.

10. Limitations of Liability. IN NO EVENT WILL KORTERRA BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (i) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES; (ii) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS; (iii) LOSS OF GOODWILL OR REPUTATION; (iv) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY, OR RECOVERY OF ANY DATA, OR BREACH OF DATA OR SYSTEM SECURITY; OR (v) COST OF REPLACEMENT GOODS OR SERVICES, IN EACH CASE REGARDLESS OF WHETHER KORTERRA WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE. IN NO EVENT WILL KORTERRA'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE EXCEED THE AMOUNTS ACTUALLY PAID TO KORTERRA UNDER THE ORDER FORM OR STATEMENT OF WORK FOR THE SERVICES OR PROFESSIONAL SERVICES GIVING RISE TO THE LIABILITY DURING THE THREE-MONTH PERIOD IMMEDIATELY PRECEDING THE FIRST INCIDENT OUT OF WHICH THE LIABILITY AROSE.

11. Third-Party Services. Through the Services, you may have access to third-party applications, databases, directories, information, maps, networks, products, programs, servers, services, software, systems, or websites, (collectively, "Third-Party Services"). We have no control over such Third-Party Services and we disclaim any and all responsibility and liability for the content, operation, or use of such Third-Party Services. All Third-Party Services are provided on an "as-is" basis, with no warranties of any kind.

12. Mapping Limitations. All maps are provided for REFERENCE AND INFORMATIONAL PURPOSES ONLY. All map features contained therein are APPROXIMATIONS, and are not accurate to surveying or engineering standards.

We make no representation, warranty or guarantee as to the content contained on any map (which may have been derived from third party sources), regarding accuracy, timeliness, or completeness of any of the data provided therein, and assume no legal responsibility or liability for the information contained on any map. Any use of any map with respect to accuracy and precision shall be your sole responsibility and you should not act, or abstain from acting, based upon mapping information obtained from the Services.

13. Risk Scoring. All excavations carry the risk of an excavator causing damage to a buried facility. The use of KorTerra's Risk Scoring functionality is intended to assist in identifying Tickets which may have an elevated level of risk to enable our customers to make informed decisions and best mitigate the risk of damage. A decision to perform or not perform a locate should not be based on the results of a risk score.

14. Data Archival, Accessibility, and Retrieval. All data stored in the Services as a result of your direct interactions with and use of the Services ("Transactional Data") will be retained by us and accessible to you during your use of the Services. Transactional Data not created or modified within the prior 24 months may be moved to and accessible through an archival site. For reporting made available through KorTerra Business Insights, Transactional Data will be available for a lookback period of 36 months. Notwithstanding the foregoing, we are not obligated to retain Your Data (of which Transactional Data is a subset) after the effective date of termination of this Agreement. If requested by you prior to the effective date of termination of this Agreement, we will provide to you, as a Professional Service, an export of the then most recent Transactional Data maintained by us, provided that all outstanding Service Fees and any amounts payable as a result of such termination have been paid. Pricing for such Professional Service will be provided based on our then-current rates and the volume of data requested for extraction.

15. Storage Limits and Additional Storage. KorTerra Visual Evidence includes storage of up to 100GB, unless otherwise specified on the applicable Order Form, for all photos, sketches, and other files uploaded by you through your use of the Service. Additional storage can be purchased if needed by contacting KorTerra. You are responsible for monitoring your storage usage and ensuring you do not exceed your allotted storage capacity. If you exceed your allotted storage capacity, we reserve the right to invoice you, and you agree to pay, for such additional storage usage. In the event you do not purchase additional storage capacity, we reserve the right to restrict your upload of additional files through your use of the Service. You may request up to once per quarter for aging attachment data to be removed from the Service. Upon request, data can be bulk offloaded and provided to you via physical removable media for an additional fee.

To increase the efficiency of attachment storage usage, images of compatible file types such as JPEGs may be compressed and resized when uploaded to the Service. Images are stored with the original aspect ratio maintained but may be resized to a maximum height or width of 1080 pixels and compressed using 70% JPEG image compression. We are not liable for any loss in image resolution or quality resulting from the compression and resizing process. You may request to disable image compression and resizing for your account by contacting KorTerra Support, however, this will result in larger file sizes and increased storage utilization, which may in turn result in additional fees. We are not liable for any loss or corruption of files stored via the Service.

16. Facility Mapping. Facility Mapping in KorTerra Ticket Management includes configuration of up to 10 facility layers. More layers can be made available to you for an additional fee. If you choose to make your maps available to us via a WMS endpoint hosted by you, you are responsible for ensuring that the endpoint is accessible and functional. Alternatively, KorTerra can host your facility maps on your behalf by you providing GIS files in the shapefile (SHP) format. Updated copies of each shapefile may be provided up to quarterly, with more frequent updates being available for an additional fee.

17. Employee Non-Solicitation. During the term of this Agreement and for two (2) years thereafter, you agree that you will not directly or indirectly, solicit for employment, hire, employ or otherwise retain as an independent contractor, any of our employees who been involved in the provision of Services to you. Notwithstanding the foregoing, you shall not be in breach of this prohibition by hiring any such employee as a result of the employee responding to a generally published advertisement for employment or that employee's contacts with a placement agency initiated by the employee.

18. Notices. Except as otherwise specified in this Agreement, all notices related to this Agreement will be in writing and will be effective upon (i) the delivery date if delivered personally; (ii) one (1) business day after deposit with a nationally recognized overnight carrier, with written verification of receipt, (iii) five (5) business days after the mailing date whether or not actually received, if sent by U.S. certified mail, return receipt requested, postage and charges pre-paid or any other means of rapid mail delivery for which a receipt is available; or (iv) the day of sending by email. Notices to KorTerra must be sent to: KorTerra, Inc., Attn: President, 1851 Lake Drive West, Chanhassen, MN 55317, or legalnotices@korterra.com; notices to you will be sent to the physical address set forth above or provided via email to _____. Either party may update its address by giving notice to the other party in accordance with this Section.

19. General Provisions.

19.1 Dispute Resolution. Prior to instituting formal legal proceedings, the parties agree to attempt to resolve all disputes arising out of or relating to this Agreement informally. To invoke this process a party shall appoint a designated executive with authority to settle the matter and request that the other party do the same. The other party shall make such appointment within five (5) days of receipt of the request. The designated executives shall then have up to thirty (30) days to attempt in good faith to resolve the matter. The informal dispute resolution process shall terminate at the end of the thirty (30) day period unless extended by mutual agreement. Disputes not resolved by informal dispute resolution as provided in this Section may be resolved by litigation, subject to Section 19.2, unless the parties mutually agree to an alternative dispute resolution method such as arbitration. Nothing in this Section shall prevent, or be construed as preventing, a party from (a) instituting formal proceedings to avoid the expiration of any applicable limitations period, or (b) seeking injunctive or other equitable relief in a court of appropriate jurisdiction. The parties agree that all negotiations pursuant to this Section will be confidential and therefore treated as compromise and settlement negotiations for purposes of all similar rules and codes of evidence of applicable legislation and jurisdictions.

19.2 Governing Law and Venue. This Agreement is governed by and construed in accordance with the laws of the State of Alabama without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any other jurisdiction. Any legal suit, action, or proceeding arising out of or related to this Agreement will be instituted exclusively Madison County Circuit Court located in Madison County, Alabama or United States District Court for the Northern District of Alabama, Northeastern Division located in Huntsville, Alabama, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

19.3 Successors and Assignment. Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld, conditioned or delayed). Notwithstanding the foregoing, either party may assign this Agreement in its entirety (including all Order Forms and Statements of Work), without consent of the other party, in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets not involving a direct competitor of the other party. Each party shall promptly provide notice of any such assignment. Any attempt by a party to assign its rights or obligations under this Agreement in breach of this Section shall be void and of no effect.

Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

19.4 No Waiver. No waiver of any term of this Agreement shall be deemed a further or continuing waiver of such term or any other term. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof.

19.5 Force Majeure. Neither party shall be required to perform any term, condition or covenant of this Agreement to the extent such performance is delayed or prevented by labor difficulties, governmental orders, civil commotions, pandemics, acts of God, or other conditions or circumstances beyond either party's reasonable control. We shall not be liable for interruptions caused by failure of equipment or services not provided by us, failure of communications, power outages, or other interruptions not within our complete control, and we shall not be liable for performance deficiencies caused or created by your equipment. We shall not be liable if changes in operation, procedures, or the Services require modification or alteration of your equipment, render the same obsolete or otherwise affect its performance. The foregoing shall not excuse either party from the payment of any monies due pursuant to this Agreement.

19.6 Severability. Each provision of this Agreement is intended to be severable. In the event that any provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this Agreement.

19.7 Marketing. You hereby grant to us the express right to use your company name and logo in marketing, sales, financial, and public relations materials and other communications solely to identify you as our customer. We hereby grant to you the express right to use our name and logo solely to identify us as a provider of services to you. Other than as expressly stated herein, neither party shall use the other party's trademarks or service marks without the prior written permission of the other party.

19.8 Entire Agreement and Order of Precedence. This Agreement, including and together with any related Order Forms or Statements of Work, constitutes the entire agreement between you and us pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No purchase order or other ordering document (excluding Order Forms or Statements of Work) submitted by you that purports to modify or supplement the terms of this Agreement shall add to or modify the terms of this Agreement in any way. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (1) the applicable Order Form, (2) this Agreement, and (3) the applicable Statement of Work.

19.9 No Third-Party Beneficiaries. Nothing in this Agreement is meant to create or creates any rights, obligations, or benefits directly or indirectly to any party not a signatory of this Agreement.

19.10 Relationship. The sole relationship between you and us is that of independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary relationship, or employment relationship between the parties.

19.11 Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

19.12 Counterparts; Electronic Copies. This Agreement may be executed in counterparts, each of which will be deemed an original and all of which together will be considered one and the same agreement. Signatures

transmitted by electronic mail in "portable document format" (".pdf"), or by any other electronic means will have the same effect as physical delivery of the paper document bearing the original signature.

19.13 Amendments. No amendment to or modification of this Agreement is effective unless it is in writing, identified as an amendment to this Agreement and signed by an authorized representative of each party.

The parties hereto have caused this Agreement to be executed as of the Effective Date by their respective duly authorized representatives.

City of Huntsville

KorTerra, Inc.

By: _____

By:  _____

Name: Tommy Battle

Name: Mitch Stendal

Title: Mayor

Title: President



Order Form

City of Huntsville agrees to purchase the KorTerra Services listed below. Support and maintenance are included in the fees listed below. This Order Form is effective November 7, 2024 (the "Order Form Effective Date"). Subscribed Ticket Volume: 35,000

Services	Overage Rate	Service Fee
KorTerra Locate Management Plus	\$0.22 per Ticket	\$8,635 per year
		Total Recurring Fees: \$8,635

This Order Form incorporates by reference and is governed by the terms and conditions of the KorTerra Services Agreement signed by the parties with an effective date of November 7, 2024. Capitalized terms used but not defined herein have the meaning set forth in the Services Agreement.

The initial term of this Order Form begins on the Order Form Effective Date set forth above and, unless terminated earlier pursuant to the Services Agreement's express provisions, will continue in effect for a period of thirty-six (36) months from such date (the "Initial Order Form Term"). At the end of the Initial Order Form Term, The parties may mutually agree to renew for an additional thirty-six (36) month term (each an "Order Form Renewal Term" and together with the Initial Order Form Term, the "Order Form Term"), unless earlier terminated pursuant to the Service Agreement's express provisions or either you or we notify the other of its intent to terminate this Order Form with advance written notice at least sixty (60) days prior to the commencement of the immediately subsequent Order Form Renewal Term. Should the end of the term be reached and no communication from the City be received by KorTerra of your desire to discontinue the use of the service, the renewal period would be activated by the City paying the invoice for the first year of the renewal period.

The Services will be invoiced in advance of each year of the Order Form Term and the Service Fee will remain fixed during the Initial Order Form Term unless you exceed your Subscribed Ticket Volume or other applicable limits. If in any given year of the Order Term ("Billing Period") the actual Ticket Volume is greater than the Subscribed Ticket Volume, an Overage Fee will be assessed equal to the excess Ticket Volume multiplied by the aggregate Overage Rate, and the actual Ticket Volume from the Billing Period will be used as the Subscribed Ticket Volume for subsequent Billing Periods. The Service Fee for subsequent Billing Periods will be increased by the amount of any Overage Fee(s).

Billing for the Services will begin on the Order Form Effective Date. All pricing is in US Dollars and is valid for 30 days. All invoices are due and payable net 30 days from the invoice date. If you fail to make any payment when due, without limiting our other rights and remedies, we may take the actions set forth in the Services Agreement, including charging late fees.

Please e-mail the signed Order Form to sales@korterra.com.

Billing Contact Information:

Contact Name:	<u>Melinda Mills</u>	Phone Number:	<u>(256) 427-6850</u>
Title:	<u>Office Services Supervisor</u>	Will payment be submitted via wire?*	<u>No</u>
E-mail:	<u>melinda.mills@huntsvilleal.gov</u>	Special Billing Instructions:	
Street:	<u>2100 Clinton Avenue West</u>		
City, State Zip:	<u>Huntsville, AL 35805</u>	Sales Tax Exempt (Y/N) Y	<u>If Y, please include exemption certificate</u>
		PO Required (Y/N) Y	<u>PO Number:</u>

*Please note any payment received via wire will incur a \$40 service charge.

ACCEPTED AND AGREED:

City of Huntsville:

Signed: _____
 Print Name: Tommy Battle
 Title: Mayor

KorTerra, Inc.:

Signed: 
 Print Name: Mitch Stendal
 Title: President