City of Scottsbluff, Nebraska
Tuesday, January 18, 2022
Regular Meeting

Item Consent7

Council to authorize the Mayor to sign the license agreement with Novotx for permitting and asset management software.

Staff Contact: Zachary Glaubius, Planning Administrator

Agenda Statement

Item No.

For Meeting of: __1-18-22__

AGENDA TITLE: Council to approve and Mayor to sign license agreement with Novotx for permitting and asset management software.

SUBMITTED BY DEPARTMENT/ORGANIZATION: Department of Development Services

PRESENTATION BY: Zachary Glaubius, Planning Administrator

SUMMARY EXPLANATION: Staff and legal counsel have reviewed the license agreement and sales order from Novotx for permitting and asset management. City Council awarded the bid to

BOARD/COMMISSION/STAFF RECOMMENDATION: Staff recommends approval of the license agreement.

Does this item require the expenditure of funds?		__x yes	_____no
Are funds budgeted?		__x_yes	_____no

If no, comments: _____

Estimated Amount _____

Amount Budgeted $59,250 at contract signature, remaining $59,250 due at **project completion**

Department Split between Development Services, Stormwater, Water, and Wastewater

Account Description _____

Approval of funds available ~~Elizabeth A Lautzenhiser~~

City Finance Director

EXHIBITS

Resolution ☐   Ordinance ☐   Contract ✓   Minutes ☐   Plan/Map ☐

Other (specify) _____

NOTIFICATION LIST: Yes ☐   No ☐   Further Instructions ☐
Please list names and addresses required for notification.

APPROVAL FOR SUBMITTAL: _____

Rev: 12/14/ City Clerk

NOVOTX LLC
SOFTWARE LICENSE AGREEMENT

This Software License Agreement ("**Agreement**") is made as of _____, 20__ (the "**Effective Date**"), by and between NOVOTX LLC, a Utah limited liability company with offices at 1436 Legend Hills Drive, Suite 335, Clearfield Utah 84015 ("**Novotx**") and the party identified below ("**Licensee**").

Licensee: _____	Contact name:
Address:	Contact title:
	Contact email
	Contact phone:

Licensee desires to obtain a license to certain proprietary software of Novotx. Novotx is willing to license such software to Licensee and provide certain software maintenance and support services in relation to such software, to the extent set forth in this Agreement and subject to the terms and conditions hereof.

1. BACKGROUND

1.1   Definitions. As used in the Agreement or in any Exhibit hereto:

(a) "**Confidential Information**" means all trade secrets and all non-public business and financial information, computer software and documentation, machine and operator instructions, business methods, procedures, know-how, and other information that relates to the business or technology of either party.

(b) "**Documentation**" means the Novotx user guides, manuals and associated documentation provided to Licensee with or for the Licensed Software.

(c) "**License Limits**" means the permitted number of users of the Licensed Software, the organizational unit(s) permitted to use the Licensed Software, the maximum organization size, and/or other applicable limitations or conditions associated with the pricing of Licensee's license, as specified in the Sales Order.

(d) "**License Term**" means the duration of the software license being procured by Licensee under this Agreement, as specified in the Sales Order and as may be renewed and/or terminated in accordance with this Agreement.

(e) "**License Type**" means the type of license (such as a production license, evaluation license, or development and/or demonstration license) being procured by Licensee under this Agreement, as specified in the Sales Order. If the License Type is not specified in the Sales Order, it will be presumed to be a production license or, if no license fees are being charged, a non-production evaluation license.

(f) "**Licensed Software**" means Novotx's computer software program(s) for which Licensee is procuring a license pursuant to the Sales Order, and any modules, add-ons, interfaces, modified versions, updates or enhancements to such programs that Novotx may provide to Licensee pursuant to Maintenance and Support or pursuant to the Sales Order or a separate, applicable services agreement (if any) between Licensee and Novotx.

(g) "**Maintenance and Support**" has the meaning given in Section 4.2.

(h) "**Sales Order**" means the Novotx order form or similar document that references or is attached to this Agreement, as executed by Licensee and Novotx, and that identifies the software being licensed hereunder.

(i) "**Online Services**" means any web, software, or data services or components, such as third-party geographic information services (GIS) or utility billing services, that supply information to, perform tasks for, or otherwise interact with the Licensed Software via the internet.

1.2   Applicability of Certain Terms. As more specifically indicated herein, certain terms and conditions of this Agreement apply only if the license to the Licensed Software is of a certain type or duration. The applicability of those terms and conditions will be determined by the License Type or License Term indicated in the Sales Order. Any terms or conditions of a Sales Order or other document submitted by Licensee that are in addition to or inconsistent with the terms of this Agreement will not be binding on Novotx unless Novotx expressly agrees to the applicability of such terms in writing signed by an authorized officer of Novotx.

1.3   Acceptance of Terms. Licensee will be deemed to have accepted this Agreement either by signing this document or by submitting the Sales Order.

2. LICENSE GRANT AND SCOPE

2.1   Grant. Subject to the terms and conditions of this Agreement, Novotx grants to Licensee a non-exclusive, non-transferable license, during the License Term and within the License Limits, to:

(a) install and use the Licensed Software, in executable form only, solely to the extent and for the purpose(s) described in Section 2.2 for the given License Type;

(b) configure the Licensed Software, using the macro or scripting languages, published application programming interfaces (APIs), and/or other mechanisms provided or specified by Novotx for that purpose, consistent with all applicable configuration instructions and other guidelines set forth in the Documentation; and

(c) reproduce the Licensed Software solely as necessary to facilitate its installation, configuration, and use as authorized above.

2.2   Scope of Use. Unless otherwise expressly agreed in the Sales Order, the Licensed Software may be installed only on servers owned or controlled by Licensee, configured and used only for Licensee's internal business or organizational purposes, and accessed only on compatible devices via the web-based or other interface(s) enabled and documented by Novotx. The scope of Licensee's permitted installation and use of the Licensed Software is further limited based on the License Type, as follows.

(a)   Production License. If the License Type is a production license, the Licensed Software may be installed and used only: (i) on one server for production use; (ii) on one server solely for non-production staging and testing purposes; and (iii) on one server solely for backup or emergency fail-over purposes (to be used only if and when the primary production server is unavailable).

(b)   Non-Production Licenses Generally. If the License Type is not a production license, the Licensed Software may not be installed or used in a production environment, but may be installed and used only: (i) on one server solely for the kind(s) of use that are associated with the specific non-production License Type, as set forth below; and (ii) on one server solely for backup or emergency fail-over purposes (to be used only if and when the primary server is unavailable).

(c)   Beta or Evaluation. A beta and/or evaluation License Type allows Licensee to test and evaluate the Licensed Software in a non-production environment in order to: (i) identify issues in the Licensed Software and provide feedback to Novotx; and/or (ii) assess whether to procure a production license from Novotx.

(d)   Development. A development License Type allows Licensee to use the Licensed Software in a non-production environment directly in support of Licensee's development and testing of its own software applications or services that interface or interoperate with the Licensed Software. For clarity, a development License Type does not include or imply any rights to reverse engineer or create derivative works of the Licensed Software.

(e)   Demonstration. A demonstration License Type allows Licensee to use the Licensed Software in a non-production environment to demonstrate the Licensed Software and, if combined with a development License Type, to demonstrate Licensee's own software applications or services that interface or interoperate with the Licensed Software, in each case for the purpose of directly or indirectly encouraging third parties to license the Licensed Software from Novotx or its authorized channel partners. For clarity, a demonstration License Type does not include or imply any license rights under Novotx's trademarks, or any rights to sublicense or distribute the Licensed Software. Licensee will make no representations, warranties, or other statements regarding the Licensed Software that are inconsistent with Novotx's published literature or that state or imply any endorsement by Novotx or any authority to speak or act on Novotx's behalf.

(f)   Other License Types. If the License Type is of a kind not described above, the Licensed Software may be installed and used only to the extent and for the purpose(s) expressly described in the Sales Order.

2.3   Use by Representatives. The license rights granted above will extend to Licensee's employees, agents, consultants, and independent contractors, but solely to the extent they are acting on Licensee's behalf and otherwise comply with the terms and conditions of this Agreement. Licensee will be responsible for all of such persons' acts and omissions in relation to the Licensed Software as if they were Licensee's own acts and omissions.

2.4   License Limits. Licensee acknowledges that the pricing of the license granted under this Agreement is based in part on the License Limits set forth in the Sales Order.

(a)   User Limits. Any stated limit on the number of users indicates the maximum number of individuals who may at any time possess login credentials to access or use the Licensed Software under Licensee's license. Multiple individuals may not share the same login credentials.

(b)   Organizational Units. If the Sales Order indicates that the license is for use by or for any particular organizational unit(s) (for example, a department or division within Licensee's organization), then the license granted hereunder extends only to use by or for (as the case may be) such organizational unit(s).

(c)   Organization Size. Any stated limit on the size of Licensee's organization or applicable organizational unit shall, unless otherwise provided in the Sales Order, refer to the total number of individuals employed by or otherwise regularly working within that organization or organizational unit.

(d)   Increasing License Limits. If any change (such as any increase in the number of users or growth of Licensee's organization) would cause the License Limits to be exceeded, then in order to continue using the Licensed Software, Licensee must increase the License Limits commensurate with those changes, by executing a new or revised Sales Order with Novotx and paying the corresponding additional fees that are then in effect.

2.5   Restrictions. Licensee acknowledges that the Licensed Software and its structure, organization, and source code constitute valuable trade secrets of Novotx and its licensors. Except as expressly permitted by this Agreement, Licensee agrees that Licensee shall not, and shall not permit any third party that acquires access through its relationship with Licensee, to: (i) modify, adapt, alter, translate, or create derivative works of the Licensed Software; (ii) sublicense, distribute, sell, use for service bureau use, lease, rent, loan, or otherwise transfer the Licensed Software to any third party; (iii) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code for the Licensed Software (except to the extent, if any, that applicable law prohibits restrictions on such activities); (iv) remove, alter, cover or obfuscate any copyright notices or other proprietary rights notices included in the Licensed Software; or (v) otherwise install, configure, reproduce, or use the Licensed Software except as expressly permitted under Section 2.1.

2

2.6   Reservation of Rights. As between the parties, the Licensed Software, and all worldwide intellectual property rights therein, are the exclusive property of Novotx and its licensors. All rights in and to the Licensed Software not expressly granted to Licensee in this Agreement are reserved by Novotx and its licensors. Novotx shall have the unrestricted right to use or act upon any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Licensee or any other party relating to the Licensed Software, except to the extent, if any, that it contains Confidential Information of Licensee that is not specifically related to the Licensed Software, as acknowledged by Novotx in writing.

3.   DELIVERY AND ACCEPTANCE

3.1   Delivery. Novotx will deliver the Licensed Software to Licensee by making it available for download by Licensee, or by installing it via remote access to Licensee's designated server(s), as specified in the Sales Order or otherwise mutually agreed by the parties. Licensee agrees to provide Novotx will all cooperation reasonably necessary to enable such delivery, and acknowledges that installation or other implementation services by Novotx may be subject to additional fees, as specified in the Sales Order or a separate services agreement between the parties.

3.2   Additional Materials. The Licensed Software may be accompanied by, or Novotx may separately make available to Licensee, Documentation, additional software, software developer kits, APIs, scripts, templates, and/or other materials that relate to the Licensed Software (collectively, "**Additional Materials**"). The Additional Materials may be furnished under separate licensing terms (including open-source license terms, where applicable), and you agree to read and comply with any such terms as they apply to the Additional Materials. Except as otherwise provided in any such licensing terms (as applicable), or in the absence of such terms, you may use the Additional Materials only in support of your authorized installation, configuration, and use of the Licensed Software, and such Additional Materials will be subject to the same restrictions and reservations of rights that apply to the Licensed Software as set forth in this Agreement.

3.3   Acceptance. The Licensed Software will be deemed accepted upon delivery as set forth above, except to the extent otherwise expressly agreed in the Sales Order. In any event, the Licensed Software will be deemed accepted no later than Licensee's deployment or use thereof in a production environment.

4.   TRAINING; MAINTENANCE AND SUPPORT

4.1   Training Services. Novotx will provide the training services defined in the applicable Sales Order, if any, in exchange for the fees specified therein. Licensee will be invoiced separately for any travel related expenses incurred by Novotx employees in connection with any such training services.

4.2   Maintenance and Support. If the License Type is a production license or other form of paid license, Novotx will provide Licensee with application maintenance and technical support services for the Licensed Software ("**Maintenance and Support**") as described in the attached **Exhibit A**, subject to Licensee's payment of all applicable fees as provided therein.

5.   FEES AND PAYMENT

5.1   Fees. Licensee will pay the license, Maintenance and Support, and other fees specified in the original Sales Order and any revised or subsequent Sales Orders executed by both parties.

5.2   Payments. The fees will be payable in accordance with the payment schedule, if any, specified in the applicable Sales Order. If not otherwise specified in the Sales Order: (i) license fees are due and payable in advance at the beginning of the License Term and, if applicable, each renewal period; and (ii) Maintenance and Support fees, if applicable, are due and payable in advance at the beginning of the relevant Maintenance and Support period, as more fully set forth in the attached **Exhibit A**. All payments must be made in U.S. dollars. Any amounts not paid within thirty (30) days of the invoice date will accrue interest at the lesser of one and one-half percent (1.5%) per month or the maximum rate permitted by applicable law, from the due date until paid. Licensee shall reimburse Novotx for all its costs and expenses, including reasonable fees of its legal counsel, reasonably incurred by Novotx in collecting any amounts past due from Licensee that are not subject to good faith dispute.

5.3   Price Changes. Novotx's prices are subject to change, except as otherwise agreed in the Sales Order. Any periodic license or Maintenance and Support renewals, and any increase in License Limits, will be charged at the fees then in effect. By permitting the License Term or Maintenance and Support term to renew after being informed of any price change, Licensee agrees to pay the updated fees upon such renewal.

5.4   Taxes. Fees exclude, and Licensee will bear, all applicable sales, use, and other taxes and all applicable export and import fees, customs duties and similar charges. When applicable, Novotx may include any taxes that it is required to collect as a separate line item on an invoice.

5.5   Audit Rights. On Novotx's request, no more frequently than annually, Licensee shall furnish to Novotx an executed certification: (i) verifying that the Licensed Software is being used pursuant to the terms of this Agreement; (ii) verifying the number of users or metrics relevant to the applicable License Limits; and (iii) listing the site(s) where the Licensed Software is installed. Licensee agrees to grant Novotx reasonable access to Licensee's relevant site(s), systems and personnel upon two (2) weeks prior written notice during normal business hours to audit the use of the Licensed Software for the purpose of verifying compliance with this Agreement.

6.   WARRANTY AND DISCLAIMERS

6.1   Performance Warranty. If the License Type is a production license, for a period of ninety (90) days after the Licensed Software is first accepted under Section 3.3 (the "**Warranty Period**"), Novotx warrants that the Licensed Software, when used as permitted by Novotx and in accordance with the Documentation, will operate substantially as described in the Documentation. Novotx does not warrant that the functions provided by the Licensed Software will meet all of the requirements of the Licensee or that the Licensee's use of the Licensed Software will be error-free or uninterrupted. If the foregoing warranty is breached, Novotx will, at its expense and for a

3

cure period of sixty (60) days after written notice of the breach, use commercially reasonable efforts to correct any material, reproducible error in the Licensed Software reported to Novotx by Licensee in writing during the Warranty Period. If Novotx is unable to remedy the breach of this warranty within the sixty (60) day cure period, Licensee shall have the right to terminate this license upon the end of such cure period for a refund of Licensee's prepaid license fees. The foregoing sets forth Novotx's sole obligation and Licensee's exclusive remedy for any breach of warranty. Any error corrections, updates, or the like provided to Licensee will not extend the Warranty Period. The limited warranty granted under this Section does not extend to: (i) changes or errors in the operating system or hardware on which the Licensed Software operates; (ii) problems caused by the improper installation or use of, or any alterations to, the Licensed Software by Licensee or any third party receiving access to the License Software through Licensee; (iii) problems caused by any data input into the Licensed Software; or (iv) problems caused by third-party equipment, software, or services, including but not limited to any unavailability of, errors in, or changes to any Online Services.

6.2   No Other Warranties. THE EXPRESS WARRANTIES IN SECTION 6.1 ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, REGARDING THE LICENSED SOFTWARE, ADDITIONAL MATERIALS, MAINTENANCE AND SUPPORT, AND OTHER SERVICES FURNISHED HEREUNDER, AND NOVOTX EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SECURITY, TITLE AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. LICENSEE ACKNOWLEDGES THAT IT HAS RELIED ON NO WARRANTIES OTHER THAN THE EXPRESS WARRANTIES PROVIDED HEREIN AND THAT NO WARRANTIES ARE MADE HEREIN BY ANY OF NOVOTX'S LICENSORS.

6.3   Online Services. Any Online Services that Novotx leverages or makes accessible through the Licensed Software will be obtained from sources believed to be reliable, but their availability, accuracy, completeness, timeliness, and suitability are not guaranteed. Licensee agrees that Novotx is not responsible for the Online Services, for any change, interruption, error, or discontinuation of any Online Services, or for any resulting adverse effects upon the performance or output of the Licensed Software.

6.4   Licensee Responsibilities.

(a)   Business Expertise; Suitability. Licensee acknowledges that the Maintenance and Support and other services furnished hereunder are provided to assist Licensee in the use of the Licensed Software and not as a replacement for Licensee's expertise and knowledge of its business. Licensee assumes all risks associated with the manner and application(s) in which it chooses to use or rely upon the Licensed Software. Licensee is responsible for confirming the accuracy, sufficiency, timeliness, and suitability of any output of the Licensed Software before acting or relying upon the same in any way that could cause property damage, personal injury, economic loss, or other harm. Licensee shall not use the Licensed Software in

applications or environments requiring fault-tolerant or fail-safe performance.

(b)   Professional Advice. Given the complex and changing nature of laws, rules and regulations, the Licensed Software and Maintenance and Support may not reflect, and cannot ensure licensee's compliance with, all applicable legal requirements. Novotx is not rendering accounting, tax, legal, or other professional advice. The software and services furnished by Novotx, and the information obtained through use of the Licensed Software, should not be used as a substitute for consultation with professional accounting, tax, legal or other competent advisers.

(c)   Input and Configuration. Licensee is solely responsible for any data input into the Licensed Software, for providing all necessary internet connectivity and other infrastructure or system resources necessary for proper operation of the Licensed Software, and for the accuracy and suitability of any configuration of the Licensed Software requested or made by Licensee, including situations where Novotx has worked with licensee to configure the Licensed Software at Licensee's request. Licensee should perform a complete review and testing of the Licensed Software and any Additional Materials, as each may be updated from time to time, before implementing or using the same in a production environment.

(d)   Security. Licensee agrees that it has full responsibility for the security of its systems and data.

7.   INDEMNITIES

7.1   Infringement Claims. Novotx will defend at its own expense any action against Licensee brought by a third party to the extent that the action is based upon a claim that the Licensed Software infringes any patents or any copyrights or misappropriates any trade secrets of a third party, and Novotx will pay those costs and damages finally awarded against Licensee in any such action that are specifically attributable to such claim or those costs and damages agreed to in a monetary settlement of such action. If the Licensed Software becomes, or in Novotx's opinion is likely to become, the subject of an infringement claim, Novotx may, at its option and expense, either: (i) procure for Licensee the right to continue using the Licensed Software; (ii) replace or modify the Licensed Software so that it becomes non-infringing; or (iii) accept return of the Licensed Software, terminate this Agreement in whole or in part as appropriate upon written notice to Licensee, and refund to Licensee a pro-rata portion of the fees paid for such Licensed Software (if any) to reflect the period of lost use. If the License Term is perpetual, such pro-rata refund will be computed according to a thirty-six (36) month straight-line amortization schedule beginning upon delivery of the Licensed Software; otherwise, the pro-rata refund will be the unused portion of license fees paid for the period affected by the termination. Notwithstanding the foregoing, Novotx will have no obligation under this Section 7.1 or otherwise with respect to any infringement claim based upon: (i) use of the Licensed Software not in accordance with this Agreement; (ii) use of the Licensed Software in combination with products, equipment, software, data, or services not supplied by Novotx; (iii) use of any release of the Licensed Software other than the most current release made available to Licensee; or (iv) modification of the

4

Licensed Software by any person other than Novotx or its authorized agents or subcontractors. THIS SECTION 7.1 STATES NOVOTX'S ENTIRE LIABILITY AND LICENSEE'S EXCLUSIVE REMEDY FOR ANY CLAIMS OF INFRINGEMENT.

7.2 Third-Party Claims. Licensee will defend at its own expense any action against Novotx brought by a third party arising out of Licensee's use of the Licensed Software except to the extent that the action is covered under Section 7.1, and Licensee will pay those costs and damages finally awarded against Novotx in any such action that are specifically attributable to such claim or those costs and damages agreed to in a monetary settlement of such action.

7.3 Conditions. The indemnifying party's obligations under this Section 7 are conditioned on the other party: (i) notifying the indemnifying party promptly in writing of the action for which defense or indemnity is sought; (ii) giving the indemnifying party sole control of the defense thereof and any related settlement negotiations; and (iii) cooperating and, at the indemnifying party's request and expense, assisting in such defense.

8. LIMITATION OF LIABILITY. NOVOTX'S TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH ANY LICENSED SOFTWARE, ADDITIONAL MATERIALS, OR MAINTENANCE AND SUPPORT OR OTHER SERVICES PROVIDED UNDER THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR OTHERWISE, WILL NOT EXCEED THE AMOUNT OF FEES PAID BY LICENSEE TO NOVOTX UNDER THIS AGREEMENT FOR THE LICENSE OF THE LICENSED SOFTWARE OR (IF APPLICABLE) FOR THE RELEVANT SERVICES. IN NO EVENT WILL NOVOTX BE LIABLE TO LICENSEE OR ANY THIRD PARTY CLAIMING THROUGH LICENSEE FOR ANY CONSEQUENTIAL, INDIRECT, EXEMPLARY, PUNITIVE, SPECIAL, OR INCIDENTAL DAMAGES, OR FOR ANY LOST, DAMAGED OR CORRUPTED DATA, LOST PROFITS, LOST BUSINESS OPPORTUNITIES, LOSS OF GOODWILL OR REPUTATION, BUSINESS INTERRUPTION, WASTED MANAGEMENT TIME, DATA CONVERSION ISSUES, DAMAGE TO LICENSEE'S COMPUTERS OR COMMUNICATIONS NETWORK, OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, ARISING FROM OR RELATING TO THIS AGREEMENT OR THE LICENSED SOFTWARE, ADDITIONAL MATERIALS, MAINTENANCE AND SUPPORT, OR OTHER SERVICES PROVIDED HEREUNDER, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY, INCLUDING BUT NOT LIMITED TO NEGLIGENCE, TORT, INTENTIONAL MISCONDUCT, STRICT LIABILITY, CONTRACT OR OTHERWISE, EVEN IF SUCH DAMAGES WERE FORESEEABLE OR NOVOTX HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9. CONFIDENTIALITY

9.1 Confidentiality Obligations. Each party agrees to maintain any Confidential Information received from the other party in confidence using the same degree of care that it uses to maintain its own Confidential Information in confidence, but in no event not less than reasonable care. The recipient of any Confidential Information shall not disclose such Confidential Information to any third party without prior written approval of the disclosing party or use

such Confidential Information for any purpose not contemplated by this Agreement. The foregoing restrictions shall not apply to any information for which the receiving party can document: (i) was already lawfully known to the receiving party at the time of disclosure by the disclosing party; (ii) is disclosed to the receiving party by a third party who had the right to make such disclosure without any confidentiality restrictions; (iii) is, or through no fault of the receiving party has become, generally available to the public; or (iv) is independently developed by the receiving party without access to, or use of, the disclosing party's Confidential Information. In addition, the receiving party may disclose Confidential Information of the other party to the extent required by applicable law or regulation; provided that the party required to make such disclosure gives the other party prompt written notice and sufficient opportunity to object to such disclosure, or to request confidential treatment.

9.2 Return of Confidential Information. The receiving party will return to the disclosing party or destroy all Confidential Information of the disclosing party in the receiving party's possession or control and permanently erase all electronic copies of such Confidential Information promptly upon the written request of the disclosing party upon the expiration or termination of the Agreement. The receiving party will certify in writing signed by an officer of the receiving party that it has fully complied with its obligations under this Section 9.2.

10. TERM AND TERMINATION

10.1 Term. The term of the Agreement will begin on the Effective Date and will continue in force until the expiration of the License Term (as the same may be renewed in accordance with this Agreement) or indefinitely if the License Term is perpetual, subject to termination as provided in **Section 10.2**.

10.2 Termination.

(a) For Breach. Either party may terminate the License Term and this Agreement if the other party breaches any material provision of the Agreement and does not cure such breach within thirty (30) days after receiving written notice thereof.

(b) Evaluation Licenses. If the License Type is a non-production beta and/or evaluation license, the License Term and this Agreement may be terminated by Novotx at any time, and will automatically expire (without renewal option, unless otherwise specified in the Sales Order) at the end of the stated License Term. License is under no obligation to purchase a paid license during the evaluation License Term, but must do so in order to continue using the Licensed Software after the evaluation License Term ends.

10.3 License Renewal. If the License Term is not perpetual, it will be renewable (i.e., subscription-based) or non-renewable (i.e., fixed-term) as specified in the Sales Order. If not so specified, it will be presumed to be renewable if the License Type is a production license or non-renewable otherwise. If the License Term is renewable, it will automatically extend for successive renewal periods, each equal to the initial license duration stated in the Sales Order (unless otherwise indicated therein), unless and until either party notifies the other of non-renewal at least thirty

5

(30) days in advance. Either party may exercise its non-renewal right for any reason or no reason.

10.4 Effects of Termination. Upon termination or expiration of the Agreement for any reason: (i) any amounts owed to Novotx under this Agreement before such termination or expiration will be immediately due and payable; (ii) all license rights granted in the Agreement will immediately cease to exist; and (iii) Licensee must promptly discontinue all use of the Licensed Software, erase all copies of the Licensed Software from Licensee's computers, and return to Novotx or destroy all copies of the Licensed Software on tangible media in Licensee's possession. For avoidance of doubt, termination of this Agreement will not preclude either party from pursuing any available legal remedies for any default of the other party's obligations.

10.5 Survival. Sections 0, 2.6, 5.3, 5.5, 6.1, 6.3, 7, 8, 9, 10.4, 10.5, and 11, together with any accrued payment obligations, will survive expiration or termination of the Agreement for any reason.

11. GENERAL

11.1 Assignment. Except as permitted below, this Agreement may not be assigned or transferred by either party without the other party's prior written consent, and any attempt to do so will be void. Either party shall have the right to assign this Agreement to any successor to its business or assets to which this Agreement relates, whether by merger, sale of assets, sale of stock, reorganization or otherwise; provided, however, that Licensee may not transfer this Agreement, by assignment, merger, change of control, operation of law, or otherwise, to any software company or competitor of Novotx. In the event of an assignment, merger or change of control of Licensee, Licensee will promptly notify Novotx of the transaction, consult with Novotx regarding the anticipated impact of such transaction in relation to the License Limits and other restrictions of this Agreement, and take all actions (including those described in Section 2.4(d)) reasonably necessary in order to remain in compliance with this Agreement.

11.2 Notices. Any notice required or permitted by this Agreement will be in writing and will be deemed effective upon receipt, when sent by confirmed email or when delivered in person or by express delivery service, or mailed, first class, registered or certified mail, postage prepaid, to the address of the party specified in this Agreement or such other address as such party may specify in writing.

11.3 Governing Law. This Agreement will be governed by and interpreted in accordance with the laws of the State of Nebraska, without reference to its choice of laws rules. The prevailing party in any dispute under this Agreement will be entitled to recover from the other party its reasonable attorney fees incurred with respect to that dispute.

11.4 Waivers. All waivers must be in writing to be effective. Any waiver or failure to enforce any provision of the Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

11.5 Severability. If any provision of the Agreement is unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect.

11.6 Force Majeure. No party shall be liable for failure or delay in performing its obligation (other than payment of money) for causes beyond its reasonable control.

11.7 Entire Agreement; Counterparts. This Agreement, together with any Exhibits and related Sales Orders, constitutes the entire agreement between the parties regarding the subject hereof and supersedes all prior or contemporaneous agreements, understandings, and communication, whether written or oral. This Agreement shall not be modified except by a subsequently dated written amendment signed by an officer of Novotx and a duly authorized representative of Licensee. This Agreement may be executed in counterparts, which taken together shall form one legal instrument.

The parties by their authorized representatives have entered into this Agreement as of the Effective Date.

NOVOTX LLC	**LICENSEE:** _____
Signed: _____	Signed: _____
Name:	Name:
Title:	Title:
Date: _____	Date: _____

6

Exhibit A
Maintenance and Support

Novotx will provide technical support and maintenance services for the Licensed Software based upon the following terms and conditions and those set forth in the Software License Agreement ("**Agreement**") to which this Exhibit is attached. Capitalized terms used but not defined in this Exhibit have the meanings given in the Agreement.

1.   Technical Support Services: Technical support services shall include call management, entitlement verification, issue prioritization, basic installation assistance, issue analysis, program error re-creation, application diagnostics and the corresponding resolution of such issue or issues through operational instruction, work-arounds, or corrections to the object code of the application. Training, implementation, configuration, and customization services are outside the scope of technical support, and are subject to additional charges.

2.   Maintenance Services: Maintenance services shall include delivery of all updates (as described below) for the Licensed Software that are commercially released during the term of Licensee's Maintenance and Support entitlement. Updates consist of new releases that may provide functional enhancements and error corrections. New products, separately serialized modules, and software customizations are not considered updates and are not included in the maintenance services. Licensee will have sole responsibility for the installation of any updates.

3.   Scope of Services: Services will be provided during Novotx's normal hours of operation, Monday through Friday from 7:00 AM to 6:00 PM Central Time, excluding national holidays. Basic services will include unlimited phone and email access to technical support as well as online access to Novotx's client services website. Enhanced services may also be made available by Novotx from time to time and contracted by Licensee.

4.   Term: Subject to the terms of the Agreement and Licensee's payment of all fees specified below, Licensee is entitled to receive the Maintenance and Support described herein: (i) for the duration of the License Term if the License Term is fixed-term or subscription-based; or (ii) for a period of one year, measured from the the end of the Warranty Period (and subject to renewal as provided below), if the License Term is perpetual.

5.   Annual Renewal of Service: If the License Term is perpetual, then thirty (30) days prior to the annual expiration date of Maintenance and Support service, Novotx will invoice Licensee for the annual renewal of service pursuant to the current terms, conditions and pricing then in effect. Such service will be automatically renewed unless canceled in writing by Licensee prior to the annual expiration date or in the event of non-payment by the renewal date.

6.   Fees: Fees for Maintenance and Support services are: (i) included in the fees paid for a fixed-term or subscription-based license to the Licensed Software (provided such license is not granted free of charge); or (ii) charged on an annual basis, in an amount equal to twenty percent (20%) of the then-current list price of the Licensed Software (or the most recent list price if the Licensed Software version being used is no longer available for sale by Novotx) if the License Term is perpetual. The annual fee for Maintenance and Support in connection with perpetual license will be calculated as of the beginning of the annual period based upon the list price of the Licensed Software as if a perpetual license were being purchased at such time. Licensee will be invoiced for annual renewals on or before the date of expiration of the then current term. Novotx reserves the right to amend its fees annually with prior written notice and Licensee shall have the right to no longer subscribe for Maintenance and Support.

7.   Applicability to Free Licenses: If the license for the Licensed Software is granted free of charge, Licensee will not be entitled to Maintenance and Support unless expressly agreed by Novotx in the Sales Order, in which case fees for Maintenance and Support will be as set forth in the Sales Order, subject to change as provided above.

8.   Exclusions: Novotx has no obligation to perform technical support services related to: (i) hardware, software, data, or services not supplied by Novotx (including but not limited to Online Services); (ii) modifications or customizations made to the Licensed Software by anyone other than Novotx or its representatives; (iii) installation or use of the Licensed Software other than as authorized in the Agreement and described in the Documentation; or (iv) Licensee's failure to implement error corrections, work-arounds, or updates furnished by Novotx (collectively, the "**Excluded Causes**"). Without limiting the foregoing, Novotx reserves the right to charge Licensee additional fees for services rendered in connection with reported program errors that are subsequently determined to have been due to any of the Excluded Causes. Any such fees will be charged on a time-and-materials basis.

9.   Payment: Licensee is responsible for the full payment, including any applicable sales and/or use taxes, for services received. Licensee's Maintenance and Support entitlement shall immediately expire if payment is thirty (30) days past due. If Licensee cancels services at any time, no refund, pro-rated or otherwise, will be provided.

10. Reinstatement of Services: In the event of cancellation of or non-payment for Maintenance and Support, any subsequent renewals will be subject to a reinstatement charge of 25% of the then-current Licensed Software perpetual license fee, plus any unpaid historical and current annual fees.

11. Registered Users: Licensee shall provide and maintain a list of registered users that may be contacted by Novotx in relation to Maintenance and Support. Licensee may amend the list of registered users at any time by providing written notice to Novotx.

12. Conditions of Service: The receipt and use of the Licensed Software and associated Maintenance and Support is subject to the terms and conditions of the original Agreement and Licensee's adherence to associated documentation and maintenance of the system requirements of the Licensed Software. Novotx reserves the right to suspend Maintenance and Support for any outdated versions of the Licensed Software with prior notification to Licensee.

Novotx LLC | 1979 W 1900 S Suite A | Syracuse, UT 84075 | sales@novotx.com

Sales Agreement

Agreement No.	00000062	Created Date	1/10/2022
Created By	Ken Peterson	Expiration Date	11/30/2021

This agreement describes the products and/or services to be provided and/or licensed by the Customer at the address below. Prior to installation and/or use, an authorized representative of the Customer must agree to the terms and conditions of the License Agreement(s) associated with the product(s) listed below (provided separately).

Customer Information

Bill To Name	City of Scottsbluff, NE
Bill To	2525 Circle Drive Scottsbluff, NE 69361
Ship To Name	City of Scottsbluff, NE
Website	http://scottsbluff.org

Vendor Information

Company Name	Novotx	Prepared By	Ken Peterson
Company Address	1979 W 1900 S Suite A Syracuse, UT 84075 US	Title	Sales / Central US
		Email	kpeterson@novotx.com
		Phone	(402) 309-5701

Products and Services

Product	Product Description	Line Item Description	Quantity	Sales Price	Total Price
Elements XS Annual Subscription	Elements XS Annual Subscription. Enterprise License; includes unlimited named users. Subscription renews annually beginning 12 months after installation.		1.00	$10,000.00	$10,000.00
Connect Annual Subscription	Elements XS Connect annual subscription.	Required for external users to submit permits, applications, and related records.	1.00	$10,000.00	$10,000.00
Data Migration / Conversion Services	Data migration and/or conversion as detailed below.	Work Order Data Migration from Beehive	1.00	$10,000.00	$10,000.00
Asset Management Implementation Services	Fixed price for Elements XS implementation services as outlined below.	Up to 33 billable days of permitting implementation for building and city clerk permits.	1.00	$33,000.00	$33,000.00
Asset Management Implementation Services	Fixed price for Elements XS implementation services as outlined below.	Elements XS Implementation Services, includes up to 22 billable days of services including application installation, configuration, and training for the Department of Public Works, Water Works, and Engineering.	1.00	$33,000.00	$33,000.00
	Annual hosting services fee for				

Confidential | Do Not Distribute | Initials _____

Novotx LLC | 1979 W 1900 S Suite A | Syracuse, UT 84075 | sales@novotx.com

Hosting Services (AWS)	Elements XS. Includes setup, maintenance, and support of Elements XS environment and up to 150gb of cloud storage for file attachments.		1.00	$6,500.00	$6,500.00
Third Party Integrations	Integration with third-party technology as described below.	Tyler Encode 10 Integration	1.00	$10,000.00	$10,000.00
811 Integration	Elements XS 811 integration with positive response where required by law.		1.00	$6,000.00	$6,000.00

Total Price $118,500.00

Payment Terms

Payment Terms

50% ($59,250) due at contract signature with the remaining 50% ($59,250) due at project completion.

Annual Charges: Elements XS: $10,000, Connect: $10,000, AWS Cloud Hosting: $ 6,500

Annual Total: $26,500

Standard Implementation Items

The items below describe what is included with a standard deployment of Elements XS. Any additional configuration or deployment requests must be listed separately on this Sales Agreement.

What's Included

Pre-Installation Items

- Business process review and consultation for best practices with Elements XS
- Review IT infrastructure
- Review GIS infrastructure Review Reporting Requirements

Installation

- Installation of Elements XS
- Installation of Geocortex Essentials

Map Integration

- Integration of one Geocortex Essentials map viewer in Elements XS
- Configuration to load map-based (GIS) assets from Geocortex map viewer
- Training to Configure GIS Layers in Elements and Geocortex
- Provide sample SQL statements and training required to implement Esri-based query layers (requires ArcGIS Enterprise)

Deployment of the following Geocortex workflows:

- Create Service Order from GIS Asset
- Report a GIS Problem from Map
- Select Multiple Assets from Map using the Elements Select Tool Add GIS Asset Relationships to Tasks
- Zoom to GIS Assets

General Application Setup

- Setting up company, department, and division structure o Setup of default navigation menus
- Configure SMTP settings for Email notifications
- Active Directory Integration with LDAP

Service Orders Setup

Confidential | Do Not Distribute | Initials _____

- Configuration of Default Statuses
  - 1 – Pending
  - 2 – In Progress
  - 3 – Ready for Review
  - 4 – Complete
  - 5 – Cancelled
- Configuration of Default Priorities:
  - 1 – Low
  - 2 – Medium
  - 3 – High
  - 4 – Emergency

Delivery of standard Service Order templates using default Status and Priority configurations

Training on the following items:

- Configure custom application menus
- Configure service order templates
- Configure preventive and routine maintenance schedules
- Configure users and user permissions
- Configure basic Elements XS workflows
- Configure custom Service Order Task Status and Priority types
- Configuration of custom Elements XS forms
- Configuration of default Service Order Task assignments

One-Time Data Imports (Includes Test Imports and Data Validations)

- Non-spatial assets
- Inventory Items (materials, equipment).

Utility Billing Integration (as specified on sales agreement)

Standard Reports and Dashboards

Service Orders & Work Management Reports

- Task Charges
- Task Contractor Usage
- Task Costs
- Task Equipment Usage
- Task Labor Usage
- Task Material Usage

Inventory Reports

- Purchase Order Details
- Item Receiving Details
- Invoice Details
- Material Usage by Asset Type
- Contractor Purchase Order History
- FIFO Valuation Report
- Item Quantity Transaction History
- Item Purchase Order History
- Parts Used by Account / Date
- Stock Levels Report
- Vendor Purchase Order History

Other Included Reports

- Activities Details
- Notes Details
- Phone Calls Details
- Timesheet Hours
- SystemConfigurationReports

What's Not Included

- Installing or configuring Microsoft SQL Server, Esri products, or any other third-party applications that may be required for Elements XS.
- Configuring and/or publishing map or feature services, including query layers
- Configuring Esri web maps, dashboards, or other Esri technology

Confidential | Do Not Distribute | Initials _____

- Setting up preventive and routine maintenance schedules *
- Setting up asset scoring *
- Setting up service order templates *
- Setting up user accounts and user permissions *
- Setting up custom application menus *
- Setting up basic Elements XS workflows *
- Configuring default assignments for Service Order templates *
- Creation of Geocortex workflows to support custom business processes (unless specified in sales agreement)
- IT setup (opening ports, installing IIS, etc.)
- Creating dynamic forms
- Creating Custom Reports

* Training on how to configure and use these features is provided

Required Licensing

All Elements XS deployments require Esri's ArcGIS Enterprise and/or an active subscription to ArcGIS Online. On-premise deployments also require Microsoft SQL Server and a standard Windows server operating environment. Pricing in this agreement does not include these products and Customer is responsible for purchasing, installing, and maintaining these applications.

Additional Transaction Terms

Scope Limitations & Additional Services

For all items beyond the original project scope, additional professional services are billed at $1,800 per day ($225 per hour). Services beyond the project scope must be approved by Customer prior to services being performed and will be billed separately. Services beyond the scope of this agreement include:

- Any scripts, interfaces, reports or program code requested by the Licensee, other than Program Modifications to the Elements XS applications that provide specific functionality uniquely designed for the Licensee
- Consulting services for Custom Applications or Custom Programming performed specifically for the Licensee

Travel Expenses

Unless specified otherwise, all travel expenses will be billed actual, as incurred, for any services performed onsite.

Sales Tax

Customer agrees to pay any and all sales, use, excise or transaction taxes with respect to the products and services under this Sales Agreement.

Additional Terms

"This agreement equals the 'Sales Order' defined in the corresponding license agreement."

Purchase Authorization

By signing below, Customer agrees to purchase the products and services listed above.

Customer Authorized Signature   _____   Date _____

Printed Name   _____   Title   _____

Novotx Authorized Signature   _____   Date _____

Printed Name   _____   Title   _____