

**PLANIMETRIC AND IMPERVIOUS COVER DATA INTERLOCAL CONTRACT**

**FOR GEOMAP 2015 WORK ORDER**

**Article 1. Parties and Purpose**

1.1. The Capital Area Council of Governments ("CAPCOG") is a regional planning commission and political subdivision of the State of Texas organized and operating under the Texas Regional Planning Act of 1965, as amended, Chapter 391 of the Local Government Code.

1.2. The City of Austin, Texas ("Austin") is a local government that is seeking to obtain updated planimetric and impervious cover data to be created from City of Austin 2013 planimetric data and 2015 aerial imagery.

1.3. CAPCOG has contracted with Fugro EarthData, Inc. ("FEDI") to provide these services to Austin. This contract is entered into between CAPCOG and Austin under Chapter 791 of the Government Code so that Austin can contribute funding toward the development of updated planimetric and impervious cover data being developed jointly by the Austin, CAPCOG, and FEDI.

**Article 2. Goods and Services**

2.1. CAPCOG agrees to furnish the Austin with updated planimetric and impervious cover data to be created from City of Austin 2013 planimetric data and 2015 aerial imagery according to the delivery schedule described in Section 3.2 of this Agreement and in accordance with the attached Exhibit A to this contract. The services will be performed by FEDI for Austin under FEDI's contract with CAPCOG.

**Article 3. Contract Price and Payment Terms**

3.1. The City of Austin agrees to provide funding to CAPCOG under this contract, solely from current revenues available to Austin with a total value of not to exceed \$499,932.13 (“Total Contract Amount”). The Total Contract Amount includes a project management fee of \$14,561.13, which is equal to 3% of the price to be paid to FEDI by CAPCOG under the particular work order as defined in Exhibit B (GeoMap 2015 Work Order [REDACTED]) executed to provide goods and services for Austin. In each invoice submitted for an installment payment under Section 3.2, CAPCOG agrees to invoice Austin for the percentage of the project management fee as applied to each installment percentage due under Section 3.2.

3.2. The City of Austin agrees to provide installment payments to CAPCOG based on the Deliverable Schedule shown below:

- 30% upon completion and delivery of the Project Plan from CAPCOG to Austin, with written approval by Austin
- 30% upon written confirmation to Austin from CAPCOG that processing, reviewing, and categorizing has been completed.
- 30% upon completion and delivery of QA/QC report to Austin from CAPCOG.
- 10% upon Austin’s final written acceptance of planimetric data and reports and Austin’s receipt of CAPCOG’s written report that all planimetric data corrections have been made to the data.

3.3. CAPCOG agrees to submit each invoice to Austin for payment of completed services and deliverables, including the project management percentage fee due, requesting payment along with attached documentation provided by FEDI to CAPCOG stating that the deliverable milestones have been met, as per Article 3.2. The invoices and documentation shall be delivered to: City of Austin, CTM Accounts Payable, P.O. Box 1088, Austin, TX 78767-1088. Questions or concerns for CTM should be directed to the CTM Contract Administrator, Ross Clark (512)-974-2764.

3.4. Austin agrees to pay the invoice within 30 days after it receives the invoice, as required by the Prompt Payment Act, chapter 2251 of the Government Code.

3.5 Austin may withhold or set off the entire payment or part of any payment otherwise due CAPCOG to such extent as may be necessary on account of:

- (1) Delivery of defective or non-conforming deliverables and services by CAPCOG or FEDI, as determined in reference to Exhibit A (Scope of Work).
- (2) Failure of CAPCOG to submit proper invoices with all required attachments and supporting documentation; or

(3) Overpayment of any earlier invoice.

3.6. Unless otherwise instructed in writing, Austin may rely on the remittance address specified in CAPCOG's invoice. No pre-printed terms on notices or invoices shall modify or change the terms of this contract. Federal excise taxes, State taxes, or City sales taxes must be not included in the invoiced amount. Austin will furnish a tax exemption certificate upon request. Under no circumstances shall Austin be liable to pay exempt taxes under this contract.

3.7. CAPCOG agrees to provide funding and/or in-kind services to FEDI under its Contract for the Capital Area Geospatial Base Map Project, as currently amended, with a total value of not to exceed \$499,932.13 in order to provide funding for performance of this contract.

#### **Article 4. Effective Date and Term of Contract**

4.1. This contract begins when the contract has been signed by both parties, and ends on September 30, 2016, unless terminated earlier under Article 6 or 7, or when the Total Contract Amount as set out in Article 3.1, has been furnished by Austin to CAPCOG, whichever comes first.

#### **Article 5. Nondiscrimination and Equal Opportunity**

CAPCOG and Austin shall not exclude anyone from participating under this contract, deny anyone benefits under this contract, or otherwise unlawfully discriminate against anyone in carrying out this contract because of race, color, religion, national origin, sex, age, disability, or veteran status.

#### **Article 6. Termination of Contract for Unavailability of Funds**

6.1. Each party acknowledges that the other party is a governmental entity whose sole source of funding for this contract is current revenue obligated for the contract purpose. Each party agrees that either party may terminate this contract in whole or part if the party learns that funds to pay for the goods and services will not be available at the time of delivery or performance.

6.2. A party terminates this contract for unavailability of funds by giving the other party written notice of the termination, as soon as it learns of the funding unavailability, and specifying the termination date, which may not be less than 15 calendar days from the notice date. The contract terminates on the specified termination date.

### **Article 7. Termination for Breach of Contract**

7.1. (a) If Austin or CAPCOG breaches a material provision of this contract, the other may notify the breaching party by describing the breach and request corrective action in writing. The breaching party has five business days from its receipt of the notice to correct the breach, or to begin and continue with reasonable diligence and in good faith to correct the breach. If the breach cannot be corrected within a reasonable time, despite the breaching party's reasonable diligence and good faith effort to do so, the parties may agree to terminate the contract or either party may invoke the dispute resolution process of Article 8.

(b) If FEDI breaches its contract with CAPCOG, so that the planimetric and impervious cover data contracted for is not delivered to the Austin, CAPCOG may terminate this contract by giving written notice of the termination to Austin, as soon as CAPCOG learns of the non-delivery, and specifying the termination date, which may not be less than 15 calendar days from the notice date. The contract terminates on the specified termination date.

7.2. Termination for breach under Article 7.1 does not waive either party's claim for damages resulting from the breach.

### **Article 8. Dispute Resolution**

8.1. The parties desire to resolve disputes arising under this contract without litigation. Accordingly, if a dispute arises, the parties agree to attempt in good faith to resolve the dispute between them. To this end, the parties agree not to sue one another, except to enforce compliance with this Article 8, toll the statute of limitations, or seek an injunction, until they have exhausted the procedures set out in this Article 8.

8.2. At the written request of either party, each party shall appoint one non-lawyer representative to negotiate informally and in good faith to resolve any dispute arising under this contract. The representatives appointed shall determine the location, format, frequency, and duration of the negotiations.

8.3. If the representatives cannot resolve the dispute within 30 calendar days after the first negotiation meeting, the parties agree to refer the dispute to the Dispute Resolution Center of Austin for mediation in accordance with the Center's mediation procedures by a single mediator assigned by the Center. Each party shall pay half the cost of the Center's mediation services.

8.4. The parties agree to continue performing their duties under this contract, which are unaffected by the dispute, during the negotiation and mediation process.

#### **Article 9. Notice to Parties**

9.1. Notice to be effective under this contract must be in writing and received by the party against whom it is to operate. Notice is received by a party: (1) when it is delivered to the party personally; (2) on the date shown on the return receipt if mailed by registered or certified mail, return receipt requested, to the party's address specified in Article 9.2 and signed for on behalf of the party; or (3) three business days after its deposit in the United States mail, with first-class postage affixed, addressed to the party's address specified in Article 9.2.

9.2. CAPCOG's address is 6800 Burleson Road, Building 310, Suite 165, Austin, TX 78744, Attention: Betty Voights, Executive Director. The City of Austin's address is: Austin, City of Austin, CTM-EGS, 1124 South IH-35, Suite 300, Austin, TX 78704, Attention: Ross Clark, CTM Contract Administrator.

9.3. A party may change its address by providing notice of the change in accordance with Article 9.1.

#### **Article 10. Miscellaneous**

10.1. Each individual signing this contract on behalf of a party warrants that he or she is legally authorized to do so and that the party is legally authorized to perform the obligations undertaken.

10.2. (a) This contract states the entire agreement of the parties, and an amendment to it is not effective unless in writing and signed by all parties.

10.2. (b) The following Exhibits are attached and incorporated by reference in this contract: Exhibit A (Statement of Work), Exhibit B (GeoMap 2015 Work Order [redacted]), and Attachment (GeoMap 2015) to Exhibit B.

10.4. This contract is binding on and inures to the benefit of the parties' successors in interest.

10.5. This contract is executed in duplicate originals.

CITY OF AUSTIN, TEXAS

CAPITAL AREA COUNCIL OF GOVERNMENTS

By \_\_\_\_\_

By \_\_\_\_\_

Marc A. Ott  
City Manager

Betty Voights  
Executive Director

Date \_\_\_\_\_

Date \_\_\_\_\_

**EXHIBIT A**  
**SCOPE OF WORK**

Attach Scope of Work here.

**EXHIBIT B**  
**CAPITAL AREA COUNCIL OF GOVERNMENTS**  
**GEOMAP 2015 WORK ORDER**

When signed on behalf of CAPCOG, this Work Order authorizes FEDI to provide the goods and services described in the Scope of Work set out below in accordance with the timetable set out in the Scope of Work.

CAPCOG agrees to pay FEDI the firm fixed price of \$499,932.13 for the goods and services provided under the Scope of Work to the Contract for the Capital Area GeoMap Project, as currently amended, between CAPCOG and FEDI.

This Work Order is subject to all of the terms and conditions of the Contract for the Capital Area Geospatial Base Map Project, as currently amended, between CAPCOG and FEDI.

Acquisition of planimetric and impervious cover data to be created from City of Austin 2013 planimetric data and 2015 aerial imagery, totaling \$499,932.13. Further details of the overall Scope of Work and Work Order are provided as exhibits to the contract between CAPCOG and FEDI, which are available upon making a request to CAPCOG.