

EXHIBIT

"A"

CAPITAL AREA COUNCIL OF GOVERNMENTS AND CITY OF ROUND ROCK

GEOSPATIAL DATA INTERLOCAL CONTRACT FOR GEOMAP 2017 (ORTHOPHOTOS) WORK ORDER 2017-6-6

Art. 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. City of Round Rock is a local government that is seeking to obtain 6-inch resolution orthoimagery.

1.3. CAPCOG has contracted with Fugro Geospatial, Inc. to provide these services to City of Round Rock. This contract is entered into between CAPCOG and City of Round Rock under chapter 791 of the Government Code so that City of Round Rock can contribute funding toward the development of 6-inch resolution orthoimagery being developed jointly by City of Round Rock, CAPCOG, and Fugro Geospatial.

Art. 2. Goods and Services

2.1. CAPCOG agrees to furnish City of Round Rock the orthoimagery 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 Fugro Geospatial for City of Round Rock under its contract with CAPCOG.

Art. 3. Contract Price and Payment Terms

3.1. City of Round Rock agrees to provide funding to CAPCOG under this contract, solely from current revenues available to City of Round Rock with a total value of not to exceed \$8,329.24. The total contract value includes a project management fee of \$471.47 which equal to 6% of the price to be paid to Fugro Geospatial under the particular work order executed to provide goods and services for City of Round Rock. In each invoice submitted for an installment payment under Section 3.2, CAPCOG agrees to invoice City of Round Rock for the percentage of the project management fee equal to the installment percentage due under Section 3.2.

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

- 30% upon acquisition complete
- 30% upon survey report and AT report delivery
- 30% upon initiation of online QA/QC ortho process
- 10% upon final acceptance

3.3. Invoices requesting payment along with attached documentation provided by Fugro Geospatial to CAPCOG that the deliverable milestones have been met, as per Art. 3.2, shall be delivered to: City of Round Rock, 221 E. Main St., Round Rock, Texas 78664, Attention: Brian Finger.

3.4. City of Round Rock 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. CAPCOG agrees to provide funding and/or in-kind services to Fugro Geospatial under its Contract for the Capital Area Geospatial Base Map Project the amount due in accordance with Exhibit A.

Art. 4. Effective Date and Term of Contract

4.1. (a) Except as provided in paragraph (b), this contract takes effect on the date it is signed on behalf of CAPCOG and it ends, unless sooner terminated under Art. 6 or 7, when the total value of funding, as set out in Art. 3.1, has been furnished by City of Round Rock, or on December 31, 2017.

(b) Exhibit B, the Copyright License, takes effect on the date all geospatial data products are delivered to CAPCOG and expires, unless sooner terminated under Sec. 6 of Exhibit B, two years from that date.

Art. 5. Nondiscrimination and Equal Opportunity

5.1. CAPCOG and City of Round Rock 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.

Art. 6. Termination of Contract for Unavailability of Funds

6.1. City of Round Rock acknowledges that CAPCOG is a governmental entity without taxing power and agrees that CAPCOG may terminate this contract in whole or part if CAPCOG learns that funds to pay for the goods or services will not be available at the time of delivery or performance.

6.2. CAPCOG terminates this contract for unavailability of funds by giving City of Round Rock 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.

Art. 7. Termination for Breach of Contract

7.1. (a) If City of Round Rock or CAPCOG breaches a material provision of this contract, the other may notify the breaching party describing the breach and demanding corrective action. 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 Art. 8.

(b) If Fugro Geospatial breaches its contract with CAPCOG, so that the orthoimagery contracted for is not delivered to City of Round Rock, CAPCOG may terminate this contract by giving the City of Round Rock notice of the termination, as soon as it learns of the nondelivery, 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 Art. 7.1 does not waive either party's claim for damages resulting from the breach.

Art. 8. Dispute Resolution

8.1. The parties desire to resolve disputes arising under this contract without litigation, as encouraged by chapter 2009, Government Code. 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 Art. 8, toll the statute of limitations, or seek an injunction, until they have exhausted the procedures set out in this Art. 8.

8.2. At the written request of either party, each party shall appoint one nonlawyer 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.

Art. 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 Art. 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 Art. 9.2.

9.2. CAPCOG's address is 6800 Burleson Road, Building 310, Suite 165, Austin, TX 78744, Attention: Betty Voights, Executive Director. City of Round Rock, 221 E. Main St., Round Rock, Texas 78664, Attention: Brian Finger.

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

Art. 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.

(b) The following Exhibits are part of this contract:

- A. Work Order
- B. Copyright License

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 Round Rock, TEXAS

CAPITAL AREA COUNCIL OF
GOVERNMENTS

By _____

By _____

Alan McGraw

Betty Voights
Executive Director

Date _____

Date _____

EXHIBIT A

GEOMAP 2017, WORK ORDER 2017

When signed on behalf of CAPCOG, this Work Order authorizes Fugro Geospatial 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 Fugro Geospatial the firm fixed price of \$7,857.77 for the goods and services provided under the Scope of Work.

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 Fugro Geospatial.

Scope of Work

Orthophoto acquisition is for 6" resolution covering 97 square miles, which includes some overlap with neighboring project participants in a cost-sharing model. Further details of the overall Scope of Work and Work Order are provided as exhibits to the contract between CAPCOG and Fugro Geospatial, which are available upon request.

EXHIBIT B

COPYRIGHT LICENSE

Sec. 1. Preamble

CAPCOG will own the copyright to all the geospatial data delivered by Fugro Geospatial, Inc. under this contract as the *GeoMap 2017 Data* (“Copyrighted Materials”). CAPCOG intends to register the copyright with the U.S. Copyright Office, and this Copyright License (the “License”) authorizes the City of Round Rock (the “Licensee”) to use the Copyrighted Materials under the terms and conditions set out below.

Sec. 2. Copyright Ownership

CAPCOG owns all right, title and interest in and to the Copyrighted Materials and reserves all rights therein not expressly granted under this License. Except as provided in Sec. 3, this License does not transfer to Licensee title to or any proprietary or intellectual property rights in the Copyrighted Materials.

Sec. 3. Grant of License

3.1. CAPCOG grants Licensee a nonexclusive, nontransferable, royalty-free license to reproduce, distribute, and use the Copyrighted Materials, as provided in Sec. 3.2, during the term of this License.

3.2. Licensee may reproduce and distribute the Copyrighted Materials to and permit their use only (1) by its elected officials and employees; and (2) by a third party in a contractual relationship with Licensee insofar as use of the Copyrighted Materials is necessary to carry out the requirements of the contract. Licensee may not reproduce or distribute to or permit use of the Copyrighted Materials by any other third party.

Sec. 4. No Warranty.

CAPCOG MAKES NO WARRANTY, WHETHER EXPRESS OR IMPLIED, REGARDING THE COPYRIGHTED MATERIALS LICENSED UNDER THIS LICENSE. CAPCOG SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT WITH RESPECT TO THE COPYRIGHTED MATERIALS.

Sec. 5. Term of License

This License takes effect on the date all geospatial data products are delivered to CAPCOG and expires, unless sooner terminated under Sec. 6, two years from that date. When this License expires, the Copyrighted Materials revert to the public domain and may be freely reproduced, distributed, and used by anyone

Sec. 6. Termination for Breach of License.

6.1. If Licensee or CAPCOG breaches a material provision of this License, the other may notify the breaching party describing the breach and demanding corrective action. 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 this License or, except as provided in Sec. 6.2, either party may invoke Art. 8, the dispute resolution process, of the contract.

6.2. If Licensee breaches this License by allowing use of the Copyrighted Materials by a third party in violation of Sec. 3.2, and the breach cannot be corrected under Sec. 6.1, CAPCOG may terminate this License, without resort to the dispute resolution process, by giving Licensee notice of the termination date, which may not be less than 10 calendar days from the notice date. This License terminates on the specified termination date, and Licensee shall immediately ensure removal of all Copyrighted Materials from the third party's computer hardware, including, but not limited to, hard disks, SANs, RAIDs, PCs or any other form of electronic computer device, and certify the removal to CAPCOG in writing.

6.3. Termination for breach under Sec. 6.1 or 6.2 does not waive either party's claim for damages resulting from the breach.