

CAPITAL AREA COUNCIL OF GOVERNMENTS

**GEOSPATIAL DATA INTERLOCAL CONTRACT FOR GEOMAP 2014 WORK
ORDER 4665-3 LIDAR AND CONTOURS**

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. The City of Pflugerville, Texas is a local government that is seeking to obtain lidar data and two-foot contours.

1.3. CAPCOG has contracted with Fugro EarthData, Inc. ("FEDI") to provide these services to the City of Pflugerville. This contract is entered into between CAPCOG and The City of Pflugerville under chapter 791 of the Government Code so that The City of Pflugerville can contribute funding toward the development of lidar data and two-foot contours being developed jointly by the City of Pflugerville, CAPCOG, and FEDI.

Art. 2. Goods and Services

2.1. CAPCOG agrees to furnish the City of Pflugerville the lidar data and two-foot contours 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 the City of Pflugerville under its contract with CAPCOG.

Art. 3. Contract Price and Payment Terms

3.1. The City of Pflugerville agrees to provide funding to CAPCOG under this contract, solely from current revenues available to The City of Pflugerville with a total value of not to exceed \$58,709. The total contract value includes a project management fee equal to 5% of the price to be paid to FEDI under the particular work order executed to provide goods and services for the City of Pflugerville. In each invoice submitted for an installment payment under Section 3.2, CAPCOG agrees to invoice the City of Pflugerville for the percentage of the project management fee equal to the installment percentage due under Section 3.2.

3.2. The City of Pflugerville 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 QA/QC process
- 10% upon final acceptance

3.3. Invoices requesting payment along with attached documentation provided by FEDI to CAPCOG that the deliverable milestones have been met, as per Art. 3.2, shall be delivered to: City of Pflugerville Finance, Monica Zambrano, Accounts Payable 100 E. Main Street, Ste. 100, P.O. Box 589, Pflugerville, TX 78691.

3.4. The City of Pflugerville 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 FEDI under its Contract for the Capital Area Geospatial Base Map Project, as currently amended, with a total value of not to exceed \$55,738 in order to provide funding for performance of this contract.

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 the City of Pflugerville, or on September 30, 2014, whichever comes first.

(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, four years from that date.

Art. 5. Nondiscrimination and Equal Opportunity

5.1. CAPCOG and the City of Pflugerville 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. The City of Pflugerville 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 the City of Pflugerville 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 the City of Pflugerville 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 FEDI breaches its contract with CAPCOG, so that the lidar data and two-foot contours contracted for is not delivered to the City of Pflugerville, CAPCOG may terminate this contract by giving the City of Pflugerville 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. The City of Pflugerville's address is City of Pflugerville, Attention: Brandon Wade, City Manager, 100 East Main Street Suite 300, P.O. Box 589, Pflugerville, TX 78691.

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 PFLUGERVILLE, TEXAS

CAPITAL AREA COUNCIL OF
GOVERNMENTS

By _____

By _____

Brandon Wade
City Manager

Betty Voights
Executive Director

Date _____

Date _____

EXHIBIT A

GEOMAP 2014 WORK ORDER 4665-3

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 \$55,738 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 FEDI.

Scope of Work

Acquisition of classified lidar data, two-foot contours, hydro breaklines and breaklines at major terrain breaks for 57 square miles (Q4 tiles), totaling \$58,709 or \$1,029.99 per unit tile. 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 request.

MAP

(SEE ATTACHMENT TO THIS EXHIBIT A)

EXHIBIT B

COPYRIGHT LICENSE

Sec. 1. Preamble

CAPCOG will own the copyright to all the geospatial data delivered by Fugro EarthData, Inc. under this contract as the *2014 CAPCOG Geospatial Data* the “Copyrighted Materials”). CAPCOG intends to register the copyright with the U.S. Copyright Office, and this Copyright License (the “License”) authorizes the City of Pflugerville (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, four 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

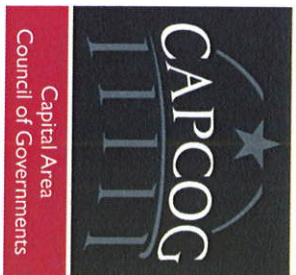
Sec. 6. Termination for Breach of License.

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.

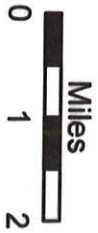
6.3. Termination for breach under Sec. 6.1 or 6.2 does not waive either party's claim for damages resulting from the breach.

GeoMap 2014 Pflugerville Map



Capital Area Council of Governments

- Legend**
-  Pflugerville City Limits
 -  County Boundary
 -  Pflugerville ETJ
 -  Pflugerville Lidar-Contour Tiles
 -  Pflugerville Topo Boundary



Disclaimer:

The Capital Area Council of Governments (CAPCOG) provides this map as well as its data "as is" and assumes no liability for its accuracy or completeness. This map is intended as a representation of the data being presented and is in no way intended to be survey grade information.

