

RESOLUTION NO.13-071

BE IT RESOLVED by the City Council of the City of Decatur, Alabama that the Mayor is authorized on behalf of the City to execute the attached Professional Services Contract Agreement with The Atlantic Group, LLC to provide orthophotography, updated planimetric mapping data and other related services as part of a county wide aerial photography program.

Adopted this 18th day of March 2013

**PROFESSIONAL SERVICES  
CONTRACT AGREEMENT**

**TERMS AND CONDITIONS**

**Between**

**City of Decatur, AL**

**And**

**The Atlantic Group, LLC**

**Contract No. 12-155**

**Aerial Data Acquisition 2013**

THIS CONTRACTUAL AGREEMENT, made this \_\_\_\_ day of \_\_\_\_\_ 2013 by and between **City of Decatur, Alabama**, a body corporate, located at 308 Cain Street NE, Decatur, AL 35603 hereinafter referred to as the “City”, and **The Atlantic Group, LLC**, located at 2223 Drake Avenue SW, Suite 200, Huntsville, Alabama 35805, hereinafter referred to as the “Contractor”.

**WITNESSETH THAT:**

WHEREAS, the City desires to engage the Contractor to render certain professional services and deliver certain incidental materials to said services hereinafter described; and WHEREAS, the Contractor represents that it is qualified, willing and able to provide the professional services and deliver the requested materials to the City according to the attached Scope of Work and the terms of this Contractual Agreement; it is therefore agreed and understood that:

**1. THE SCOPE OF CONTRACTUAL AGREEMENT:**

The Scope of this Contractual Agreement requires the Contractor to use its technical and professional resources to provide the City with 50 scale (0.25 ft. pixel ground resolution) true color, black and white vertical orthophotography, as well as updated planimetric mapping data for the entire County as outlined in “Attachment A Scope of Work” hereinafter referred to as the “Project Specifications.”

This project is to be conducted in eight (8) phases as described in the provisions herein. These phases are not necessarily consecutive and may overlap in several instances. The first phase of this project is to be effectuated within seven (7) business days of receipt of written authorization to proceed and as follows:

1. Notice to Proceed
2. Field Survey Operations
3. Acquire Digital Imagery
4. Aerial Triangulation
5. Compilation Update of Planimetric Files
6. Generation of the Digital Color Orthophotography
7. Submission of Contract Deliverables
8. Contract Completion

**1(a) SCOPE OF CONTRACTUAL AGREEMENT - ADDITIONAL SERVICES AND PRODUCTS:**

The City may request that the Contractor provide services, and/or creation and delivery of mapping and GIS-related products that are additional to those specifically listed in Paragraph 1 above and described in Attachment A – Scope of Work. It shall be the City’s responsibility to submit a written request to the Contractor that describes the requirement. It shall be the Contractor’s responsibility to

describe the technical approach that will be used to satisfy each requested service and/or product and to develop the associated price.

Approved Project Task Orders shall be attached to this contract and sequentially numbered, starting with Task Order No. 1. Prices and schedules for Project Task Orders shall remain autonomous to the particular Project Task Orders and shall not be cause to modify the Contract price or schedule.

**2. CONTRACT NOTICE TO PROCEED:**

The project shall be started within seven (7) business days of written authorization to proceed.

**3. CONTRACTOR'S COMPENSATION:**

The fee for completion of the project, exclusive of any modifications to the services as stated herein, is **Two Hundred Twenty Three Thousand, Eight Hundred Eighty Five and 00/100 Dollars (\$223,885.00)**. Payment shall be made in accordance with the provisions of Attachment C – Payment Terms. The fee is inclusive of the Products and Services listed in Attachment A - Scope of Work under items 2(a) through 2(g).

**4. ATTACHMENTS TO THE CONTRACT:**

- Attachment A: Scope of Work
- Attachment B: Project Schedule
- Attachment C: Payment Terms
- Attachment D: General Terms and Conditions
- Attachment E: Project Area

Reference A:

DEPARTMENT OF REVENUE (DOR), PROPERTY TAX DIVISION SPECIFICATIONS FOR PROPERTY OWNERSHIP MAPS, GIS/COMPUTER ASSISTED PROPERTY TAX MAPPING AND AERIAL PHOTOGRAPHY – ADV-25. This document supersedes all previous editions, DRAFT DOR AERIAL PHOTOGRAPHY - PHOTOGRAPHIC REPRODUCTIONS, etc.

Reference B:

MORGAN COUNTY DATA COOPERATIVE ORIGINAL REQUEST FOR PROPOSALS (RFP) – Document Released on Monday, November 19, 2012.

## **ATTACHMENT A SCOPE OF WORK**

### **1. TECHNICAL REQUIREMENTS:**

- a. The DEPARTMENT OF REVENUE, PROPERTY TAX DIVISION SPECIFICATIONS FOR PROPERTY OWNERSHIP MAPS, GIS/COMPUTER ASSISTED PROPERTY TAX MAPPING AND AERIAL PHOTOGRAPHY – ADV-25 provides specific authoritative requirements, specifications and guidelines for:
  - i. The acquisition and development of photographic products are set forth in Reference A, Section 3: AERIAL PHOTOGRAPHY AND DIGITAL IMAGERY ACQUISITION. This section of the document is inclusive of requirements, specifications and guidelines to support both film based cameras and digital imagery sensors and will be the sole source document used during acquisition and production of City products. This document supersedes all previous edition of the DOR AERIAL PHOTOGRAPHY - PHOTOGRAPHIC REPRODUCTIONS.
  - ii. The development of GIS Base Mapping Layers set forth in Reference A, Section 3 AERIAL PHOTOGRAPHY AND DIGITAL IMAGERY ACQUISITION. Planimetric features further identified in paragraph 3.9.7. (1) through (14) are considered mandatory by the ADOR. In order to maintain consistency in the production and delivery of GIS Base Mapping Layers between respective Counties, the ADOR has set forth Reference A, Section 4: PLANIMETRIC MAPPING GUIDELINES. These guidelines identify specific features and methods for planimetric, DEM, DTM/breakline collection, and determination of digital orthophotography minimum bounding rectangle tile sizes. These guidelines will be used for new and updates of Base Mapping Layers. All existing City Mapping should be updated to these specifications during the normal digital orthophotography production cycle. This document supersedes all previous edition of the DOR AERIAL PHOTOGRAPHY - PHOTOGRAPHIC REPRODUCTIONS.
- b. This document supersedes the SPECIFICATIONS FOR PROPERTY OWNERSHIP MAPS AERIAL PHOTOGRAPHY AND COMPUTER ASSISTED MAPPING, DATED June 1, 1994 edition.

### **2. PRODUCTS AND SERVICES:**

#### **a. Establish Geodetic Control:**

The contractor will recover twenty-six (26) supplemental GPS Ground Control Points to support Airborne GPS for imagery production. The contractor will make every effort to utilize existing ground control provided by the Morgan County Data Cooperative. Where new ground control is required, the ground control points may be either unique photo identifiable (PID) features or temporary bench mark (TBM) locations marked with rebar/cap or PK nail and paneled. The panel material will be a white reflective material easy to identify on the imagery. The panel legs will be 10 ft. long and the material will be 2 ft. wide. The panels will be in the shape of a chevron with the control point located at the inside angle of the chevron. All panels will be retrieved once the imagery has been acquired.

The contractor survey personnel will acquire coordinates for each ground control point utilizing survey grade Leica GPS instruments. Using an OPUS solution, each control point will be occupied a minimum of 20 minutes.

All field control coordinates will be in the Alabama State Plane Coordinate System, West Zone, based on the North American 1983 (NAD83) horizontal datum (latest adjustment). The vertical

data component will be based on the North American Vertical Datum 1988 (NAVD88) referenced to the latest published geoid model. All data will be delivered using the units of U. S. Survey Feet. A survey report detailing the methodology used to obtain the point coordinates as well as a coordinate listing and “to reach” diagrams will be included in the report.

**b. True Color Vertical Digital Imagery Acquisition:**

The contractor owns two imagery acquisition aircraft; a Rockwell Turbo Commander AC-690B N771BA, and a Piper PA-31 Navajo Chieftain N1872H, customized to operate its own Zeiss/Intergraph Digital Mapping Cameras (DMC #00105463). Both aircraft are equipped with a T-AS Gyro-stabilized Suspension Mount to provide camera stability for the roll, pitch, and yaw. Both aircraft are maintained and operated in accordance with Federal Aviation Administration regulations.

Contractor will acquire vertical digital imagery for the City of Decatur to support one scale of mapping and orthophotography. Ninety-seven (97) flight lines with a total of 12,103 exposures will be acquired for the entire 1 in. = 50 ft. scale area. The exposures will be obtained at a flying height of 2,300 ft. Above Ground Level (AGL) which will result in a raw pixel size of .25 ft. at Ground Scale Distance (GSD). The imagery will provide stereo coverage for approximately 630.5 square miles.

True color vertical digital imagery will be obtained between the dates of January 15, 2013 and March 15, 2013. Imagery will be acquired with a minimum sun angle of 30 degrees. The imagery will be acquired under “leaf off” conditions, with no clouds or cloud shadows apparent on the imagery, when the atmosphere is clear of haze or fog and when waterways and standing water bodies are within their normal banks and bounds.

The contractor uses a combination of Airborne GPS (ABGPS) and Inertial Measurement Unit (IMU) to meet horizontal accuracy specifications. The contractor uses Trimble’s Qplan and Ashtech’s MPwin GPS planning software. The contractor uses its in-house Leica 530 and NovAtel GPS Systems and Leica AT502 and NovAtel NOV702\_3.00 antennas in the field as well as the Applanix Corporation on-board POS AV 510 processing system. PosPAC 5.3 MMS is used in post processing the POS/AV 510 with multiple ground control Base Station stations to develop each respective image exterior orientation (EO).

**c. Perform Aerial Triangulation (AT) on all imagery.**

The contractor will use Z/I Imaging *ImageStation Automatic Triangulation* (ISAT) as the primary software platform for developing Fully Automated Aerial Triangulation solutions. ISAT is an innovative automatic triangulation package that delivers the best-matched multi-ray tie points by using a robust built-in bundle adjustment during all phases of the image matching operation. ISAT will be used for accurate positioning of the photography utilizing the airborne GPS developed exterior orientation (EO) parameters for each respective photo center and the paneled control points located throughout the project area. All EO coordinates will be output in Alabama State Plane Coordinate System, West Zone (FIPS 101), referenced to the NAD83 horizontal datum, the NAVD88 vertical datum and output using the units of U.S. Survey Feet. The determined Root Mean Square Error (RMSE) will Meet ASPRS Class 1 accuracy standards and will not exceed 1/10,000th of the flight height of the digital imagery.

**d. City Designated Areas for Update Planimetric Mapping:**

Utilizing the newly acquired digital image files, the contractor stereo compilers will update approximately 630.5 square miles of existing Planimetric Mapping files in accordance with the Alabama Department of Revenue specifications for 1 in. = 50 ft. Base Mapping Layers, as well as in accordance with the Planimetric Collection Requirements found on pages 26-30 in Attachment B of the Morgan County Data Cooperative's Original Request for Proposal (RFP) for 1 in. = 50 ft. Base Mapping Layers. See Attachment E for the 1 in. = 50 ft. scale tile locations.

The following list of features will be updated in accordance with the Planimetric Collection Requirements found on pages 26-30 in Attachment B of the Morgan County Data Cooperative's Original Request for Proposal (RFP), as well as in accordance with ALDOR specifications:

- 1) Area
- 2) Buildings
- 3) Paved Roads
- 4) Un-Paved Roads
- 5) Paved Road Centerlines
- 6) Unpaved Road Centerlines
- 7) Hydrography
- 8) Bridges/Overpasses
- 9) Railroads
- 10) Airports
- 11) Fences
- 12) Dam's
- 13) Major Utility Lines
- 14) Other Utility Lines and Poles
- 15) Towers (Cell, Microwave, Radio)
- 16) Parking Lots

Once the planimetric data files have been updated, the files will undergo an intensive QA/QC review. Each layer will be delivered as a single, seamless layer in ESRI's Shapefile format and Microstation dgn format.

**e. Surface DEM:**

Utilizing the LiDAR Bare Earth surface data, the contractor will create a surface file which will support the generation of the digital orthophoto files.

**f. Vertical True Color and Black & White Digital Orthophotography Development:**

The contractor uses ImageStation OrthoPro™ software and Dell QuadCore 3.0 GHz Intel Xeon processor workstations to complete the orthophotography production workflow, starting with project planning, through rectification, dodging, orthophotography generation, tonal balancing, automatic seamline generation, mosaicking, and quality control evaluation.

The contractor uses a unique mosaicking process that yields smart, automatic seamlines that are computed for the entire project area creating mosaic polygons incorporating the "sweet spot" of each orthorectified image. This allows for tone balancing and mosaicking of the orthorectified images into a seamless mosaic cut to the City preferred tile layout.

For the 50 scale areas, the contractor will prepare and deliver vertical, true color, orthophoto files with 0.25 ft. pixels GSD. The files will be overlapping and delivered in uncompressed, 8-bit GeoTIF format with associated TIF world files. Along with the uncompressed TIF files, the contractor will deliver 2 or 3 MrSID compressed files with their associated MrSID world files. The contractor will work with the Morgan County Data Cooperative to design the extents and compression ratios of the MrSID files during the course of the project execution. All of the raster files will be georeferenced when displayed on the City's GIS system.

### **3. CLIENT PROVIDED DATA:**

The City will provide the contractor with all existing digital planimetric and topographic mapping files (non cadastral files) and all available support material used in the production of the current mapping to include:

- a. Ground Control including any published reports
- b. Digital Planimetric Files
- c. Digital Orthophoto Tile Grid and official Project Boundary

### **4. CONTRACT DELIVERABLES:**

At the conclusion of this project and as a condition of its completion, Contractor shall deliver to the City the following products and information where applicable:

- a. 4-band multi-spectral (R, G, B, NIR) Aerial Photography:
  - Ground control and photo control points in ESRI Shapefile format and Microstation dgn format.
  - Final flight plan in ESRI Shapefile format.
  - Ground Control Report in hard copy and digital PDF format.
  - Full set of color, full frame digital files in uncompressed or lossless compressed TIFF format.
  - Aerial Triangulation Report in hard copy and PDF format.
- b. 1"=50' 4-band multi-spectral (R, G, B, NIR) Digital Orthophotography with a 0.25' GSD (Ground Sample Distance):
  - Each tile image in uncompressed GeoTIFF format with associated world file.
  - Each tile image in a compressed MrSID format with a compression ratio as approved by the Cooperative
  - MrSID countywide mosaic file(s) at a compression ratio to be determined later
  - Managed ArcGIS raster catalogs to help the Morgan County Data Cooperative manage the display of color and color infrared imagery from the 4-band stacked files.
  - ArcGIS Server 10.1 cache of countywide mosaic in JPEG format with a compression quality of 75 delivered as a Microsoft Windows Server 2003 backup file. The cache will be created at the following scale ranges:
    - 1:160,000
    - 1:96,000
    - 1:48,000
    - 1:24,000
    - 1:12,000
    - 1:8,400
    - 1:4,800
    - 1:2,400

- 1:1,200
- 1:600
- c. 1"=50' Black and White Digital Orthophotography with a 0.25' GSD (Ground Sample Distance):
  - Each tile image in uncompressed GeoTIFF format with associated world file.
  - Each tile image in a compressed MrSID format with a compression ratio as approved by the Cooperative
  - MrSID countywide mosaic file(s) at a compression ratio to be determined later
  - ArcGIS Server 10.1 cache of countywide mosaic in JPEG format with a compression quality of 75 delivered as a Microsoft Windows Server 2003 backup file. The cache will be created at the following scale ranges:
    - 1:160,000
    - 1:96,000
    - 1:48,000
    - 1:24,000
    - 1:12,000
    - 1:8,400
    - 1:4,800
    - 1:2,400
    - 1:1,200
    - 1:600
- d. Planimetric Data:
  - Each layer shall be delivered as a single, seamless layer in ESRI's Shapefile format and Microstation dgn format.
- e. Options:
  - Development of 100 scale orthophotography tiles from the 50 scale orthophotography for Morgan County



**ATTACHMENT B  
PROJECT SCHEDULE**

The following is the Project Schedule, which contains the projected starting and ending dates for the major categories of services.

ID	Task Name	Start	Finish
1	<b>Project Management</b>	<b>Tue 1/22/13</b>	<b>Fri 10/4/13</b>
2	Contract Award	Tue 1/22/13	Tue 1/22/13
3	Project Kick-off Meeting	Thu 1/31/13	Thu 1/31/13
4	Pilot Review Meeting	Fri 5/10/13	Fri 5/10/13
5	Project Wrap-up Meeting	Fri 10/4/13	Fri 10/4/13
6	<b>Production Tasks</b>	<b>Mon 2/4/13</b>	<b>Wed 8/21/13</b>
7	Recover & Target Control	Mon 2/4/13	Wed 2/6/13
8	Acquire Aerial Photography	Thu 2/7/13	Wed 3/6/13
9	Process Aerial Photography	Thu 3/7/13	Wed 3/27/13
10	Aerial Triangulation	Thu 3/28/13	Wed 4/10/13
11	DEM Normalization	Mon 2/11/13	Fri 2/15/13
12	Digital Orthophoto Production	Thu 4/11/13	Wed 7/10/13
13	Planimetric Updates	Thu 4/11/13	Wed 8/14/13
14	QA/QC	Thu 6/27/13	Wed 8/21/13
15	<b>Deliveries</b>	<b>Thu 4/25/13</b>	<b>Thu 8/22/13</b>
16	Pilot Delivery	Thu 4/25/13	Thu 4/25/13
17	Full Dataset Delivery	Thu 8/22/13	Thu 8/22/13
18	Reports & FGDC Metadata	Thu 8/22/13	Thu 8/22/13

**ATTACHMENT C  
PAYMENT TERMS**

**1. PRICE**

The FIRM FIXED PRICE for the Work described in Attachment A - Scope of Work, is **Two Hundred Twenty Three Thousand, Eight Hundred Eighty Five and 00/100 Dollars (\$223,885.00)** excluding any sales, use, value added or similar taxes.

**2. LIMITATION OF EXPENDITURE**

City shall not be obliged under this agreement to reimburse Contractor in excess of the firm fixed price noted above. However, should the City request work that is beyond the scope of services outlined herein, the Contractor will provide the City with a new Scope of Work with an estimate of cost for the additional requested services. The Contractor will proceed with additional work only upon receipt of written authorization from the City.

**3. BILLING**

The Contractor may secure payment for a percentage complete on a monthly work-in-progress basis or for the full amount of monies allocated to tasks under each Phase by submitting to the City the following:

- a. All deliverable items or evidence of work-in-progress representing that percentage or the full amount of work for which the Contractor is claiming payment.
- b. A dated invoice showing the amount of the claimed payment with a brief description of the work done for each separate amount being claimed. Invoices may be submitted on a monthly basis by email, fax, or U.S. Postal Service regular mail.
- c. A breakdown of the tasks for interim work-in-progress invoicing purposes is attached to this contractual agreement.
- d. City will have thirty (30) days from receipt of Contractor’s invoice to notify Contractor of any discrepancies in such invoice. Contractor’s invoice will be deemed approved by City if Contractor is not notified by City of a discrepancy within the thirty (30) day period.
- e. The Contractor understands that funding for this contract with the Morgan County Data Cooperative will comprise of the amounts shown in the table below and that the City shall only be responsible for the amounts that appear in **BOLD** print.

<b>Member</b>	<b>Share</b>	<b>Proposal</b>
<b>City of Decatur</b>	<b>1</b>	<b>\$ 29,851.33</b>
Decatur Utilities	1	\$ 29,851.33
Morgan County EMCD (E911)	1	\$ 29,851.33
Morgan County Revenue Commissioner	1	\$ 29,851.33
Morgan County Commission	1	\$ 29,851.34

Joe Wheeler EMC	1	\$ 29,851.33
City of Hartselle	0.5	\$ 14,925.67
Hartselle Utilities	0.5	\$ 14,925.67
NE Morgan County Water Authority	0.5	\$ 14,925.67
<b>Total</b>	<b>7.5</b>	<b>\$ 223,885.00</b>

f. The Contractor will bill each participating entity according to the following schedule:

<b>Morgan County Data Cooperative Payment Schedule</b>					
<b>Member</b>	<b>Flight/Control*</b>	<b>Pilot** Delivery</b>	<b>Interim Production</b>	<b>Final Delivery</b>	<b>Totals</b>
City of Decatur	\$ 17,639.43	\$ 4,070.63	\$ 6,784.40	\$ 1,356.87	\$ 29,851.33
Decatur Utilities	\$ 17,639.42	\$ 4,070.64	\$ 6,784.40	\$ 1,356.87	\$ 29,851.33
Morgan County EMCD (E911)	\$ 17,639.42	\$ 4,070.64	\$ 6,784.39	\$ 1,356.88	\$ 29,851.33
Morgan County Revenue Commissioner	\$17,639.42	\$ 4,070.64	\$ 6,784.39	\$ 1,356.88	\$ 29,851.33
Morgan County Commission	\$ 17,639.42	\$ 4,070.64	\$ 6,784.39	\$ 1,356.89	\$ 29,851.34
Joe Wheeler EMC	\$ 14,925.67	\$ 14,925.66	-	-	\$ 29,851.33
City of Hartselle	-	-	-	\$ 14,925.67	\$ 14,925.67
Hartselle Utilities	-	-	-	\$ 14,925.67	\$ 14,925.67
NE Morgan County Water Authority	\$ 8,819.72	\$ 2,035.31	\$ 3,392.20	\$ 678.44	\$ 14,925.67
	<b>\$ 111,942.50</b>	<b>\$ 37,314.16</b>	<b>\$ 37,314.17</b>	<b>\$ 37,314.17</b>	<b>\$ 223,885.00</b>

\* Flight/Control: Contractor will invoice based on percent of flight acquired in both February and/or March.

\*\* Pilot Delivery: Contractor will invoice City upon approval of "Pilot" area. All Members of the Morgan County Data Cooperative have up to 10 days from the date of delivery of the "Pilot" area to approve for invoicing. Should the Members require modifications to the Pilot delivery, Contractor will promptly make the requested modifications. Members will then have 5 days to approve the Pilot modifications.

#### **4. PAYMENT**

The City will make prompt payments to the Contractor following receipt of the items described in Attachments A and B, above, subject to the following:

- a. Formal acceptance by the City as complete, satisfactory and meeting applicable specifications of deliverable items, or evidence of work in progress, representing that percentage of the full amount required to substantiate the claimed payment.
- b. Unless otherwise noted in this agreement, the City shall pay within thirty (30) days of receipt of all payment claims submitted by the Contractor, meeting all of the above requirements, and not formally disputed by the City; provided however, if Contractor fails to perform this Contract within the time(s) specified or in the manner specified in the Contract, the City, at the City's option, may withhold the payment of any monies that may be due to Contractor and proceed in equity and law to enforce the City's rights under this Contract. If without cause, the City fails, neglects or refuses to perform this Contract, the Contractor, as allowed by law, may proceed in equity or law to enforce Contractor's rights under this Contract. All payment claims not paid within sixty (60) days or disputed by the City may be considered overdue by the Contractor and shall bear a monthly charge of 1% on the unpaid amount until paid. The City shall not use the dispute of one payment claim as a reason for disputing or not paying on time any other payment claim, unless the disputed claim materially affects the usability of any other part, portion or phase of the work contemplated by this Contractual Agreement.

**ATTACHMENT D**  
**GENERAL TERMS AND CONDITIONS**

**1. CONTRACTOR:** The Contractor is and shall at all times be an Independent Contractor to the City during performance under this Contract and at no time shall be considered an agent, servant, or partner of City. All persons employed by Contractor to perform its obligations under the Contract shall be its employees or servants and not the employees, servants, or agents of City.

All work conducted for a project shall be performed within the boundaries of the United States. Under no circumstances shall it be permitted to send any imagery, imagery derivatives, or any other data, whether digital or hard copy, associated with the performance of a contract to destinations outside of this country. The use of offshore labor or non US citizens in performance of any aspect of a project or work performed in the United States by a company that in any way is owned or partly owned or managed by a non United States Citizen must be considered on a case-by-case basis and advance approval requested from the City and the Department of Revenue. Contractor agrees to preserve and protect the rights of the Parties hereto in the provision of any goods or services to be performed under any and all subcontracts or purchase orders associated with this Contract.

**2. SOURCE MATERIALS:** Within seven (7) calendar days of contract signing, the City will provide the Contractor with the Source materials requested and set out in the Contractor's Proposal. Should the Contractor determine there is relevant information missing from the source materials provided, which missing information is mandatory in order to proceed with completion of the contract, the Contractor will request and obtain prior authorization from the City for the additional costs associated with obtaining the same, prior to proceeding further with the contract

The accuracy of the data contained in the source materials provided by the City, will be determined after the contractor has completed the flying, scanning and aerial triangulation portions of the contracted services. Should the Contractor discover that the City supplied data contains inaccuracies which inaccuracies must be either (1) corrected or (2) new data obtained, before contractor can proceed with the completion of the orthophotography work, the contractor will quantify and provide the City with the additional costs associated with either correcting or obtaining new data. The City will provide written authorization for the additional costs prior to the Contractor proceeding further with the Contract. Upon receipt of notice of any additional costs the City has the option to (a) approve the additional costs and work required, or (b) approve the work to proceed without correcting inaccuracies. Any delay in obtaining direction or authorization from the City will be deemed an excusable delay.

**3. TITLE TO GOODS AND SERVICES - RISK OF LOSS**

a. Except as may otherwise be provided herein, City shall acquire title to each and every of the goods and services to be provided by Contractor in this Contract. Contractor warrants that it has good and marketable title to each and every product of such goods and services and that they are and shall be free of and from any claims, liens, charges or encumbrances of any kind. Title to such goods and services shall pass to City upon receipt and acceptance at the place or places designated herein.

b. The risk of loss to such goods and services shall pass to City upon delivery to the City at the delivery point specified in this Contract.

**4. INSPECTION AND ACCEPTANCE**

a. Contractor shall inspect and test as required in the Contract and maintain records and a system thereof.

b. City, its representatives, or Client may from time to time wish to view Contractor's performance

under the Contract or conduct tests or inspections. Contractor agrees to cooperate fully with such activities and to allow reasonable access to its facilities and those of its subcontractors or Contractors at all reasonable times for these purposes.

c. Any inspections, tests, review, or comments by City, its representatives, or Client shall in no way relieve Contractor of any of its obligations in the Contract, unless otherwise expressly provided herein and then only to the extent provided.

d. If any of the goods and services do not conform to the requirements of this Contract, City may, within thirty (30) days of receipt, reject any or all of the goods and services. If the City has not rejected the goods and services within thirty (30) days of receipt thereof the goods and services shall be deemed to be accepted. Rejected goods may, at the option of City, be held for Contractor's disposition instructions or returned to Contractor. Any approval or acceptance by City of part of the goods and services shall not relieve Contractor of its obligations. No act of payment by City shall be considered an approval or acceptance of any or all of the goods and services.

## **5. WARRANTIES/GUARANTEES**

a. Contractor warrants that the goods and services to be provided herein shall: be new and of the best quality where no quality is specified; conform with the requirements of the Contract and any specifications or drawings incorporated herein; and be free from defects in workmanship, materials, and design, where design is the responsibility of Contractor.

b. If at any time prior to the expiration of NINETY (90) DAYS from the date of the acceptance of the goods or services provided by Contractor, the goods or services, or any part thereof, do not in any way conform to the requirements of the Contract, then upon Notice to Contractor by City within a reasonable period of time after the discovery thereof, Contractor shall promptly repair, replace, correct or re-perform such defective goods or services to the satisfaction of and at no cost to City.

c. This sole and limited warranty is in lieu of all other warranties, guarantees or representations, whether express or implied, with respect to the goods and services, including but not limited to, those relating to merchantability or fitness for a particular purpose or function and whether arising out of statute, law, equity, course of dealing, usage of trade or otherwise. In no event shall Contractor be liable for any consequential losses or damage including loss of profit, data, use, or capital, by City, arising here from.

d. The Contractor shall, at its own expense, maintain a copy of the final deliverables on archival media for a period of 5 years from the acceptance of all data.

## **6. TIME**

Every section and paragraph of this Contract including time, shall be deemed of the essence hereof, and any breach shall be deemed material to the Contract.

## **7. REPORTS AND MEETINGS**

Contractor shall furnish City with reports and attend meetings when and as reasonably required by City.

## **8. CHANGES - SUSPENSION**

a. City by Notice through its authorized representative shall at all times have the right to: make changes (Change) hereto including, but not limited to, the goods or services to be provided, the time, place, or method of delivery, design, specifications, or drawings; or suspend performance by Contractor (Suspension) herein, whereupon Contractor shall promptly comply with such Suspension as required, place no further orders or subcontracts, make all reasonable efforts to obtain suspension terms favorable to City, and use its personnel and facilities so as to minimize costs associated with

the Suspension.

b. If Contractor believes any instruction, interpretation, or decision by City affects its performance obligations herein and should be considered a Change, it may within ten (10) working days of receipt thereof, give written Notice to City's authorized representative of the effect upon Contractor's performance obligations. Receipt of such Notice by City or acquiescence thereto shall not be construed as a Change. In no event shall any instruction, interpretation or decision by City that results from an error, mistake, or omission of Contractor in the provision of goods or services herein be considered as a Change.

c. If any Change or Suspension results in an alteration to the cost of or time required for Contractor performance herein, an equitable adjustment will be made and the Contract amended accordingly. Contractor shall continue performance of its obligations herein during the period of Change or Suspension until such equitable adjustment is made. In no event shall any alteration, modification or other change to the Contract have effect or be binding upon either party unless in writing and signed by both parties.

d. If City fails to make payments to Contractor in accordance with the terms of this Contract, Contractor may suspend performance hereunder until all amounts owing have been paid.

## **9. TERMINATION**

a. City may at any time and without cause, upon thirty (30) days Notice to Contractor, terminate all or a portion of the Contract. Rights and obligations of the parties which may have accrued or arisen to the time of termination shall not be affected thereby. Contractor shall be paid for all work delivered and accepted in accordance with the Contract, the fully burdened cost of any work not completed or delivered up until the time of termination and reasonable costs of terminating the work plus overheads and a reasonable profit thereon.

b. Upon default by either party of any material term, condition, covenant or agreement to the contract, and upon mutual failure to cure such default within thirty (30) days of written notice thereof, either party may terminate all or a portion of this Contract. Contractor shall be paid for all work delivered to and accepted by City prior to the termination. Deemed acts of default by either party shall include but not be limited to: Entity ceasing to carry on its business in the ordinary course; or, insolvency or bankruptcy of either party, or the making of a general assignment for the benefit of creditors; or, an order of receivership, or for the liquidation; or, the appointment of a Custodian, Receiver or Manager or similar person in respect thereof.

## **10. FORCE MAJEURE / EXCUSABLE DELAYS**

A party hereto shall not be in default under the Contract from any failure to perform hereunder if such failure arises from causes beyond the control of and without the fault or negligence of such party. Such causes include but are not limited to: acts of God or of the public enemy; acts of Government in either its sovereign or contractual capacity (including but not limited to export/import control); fire; flood; strike; epidemic; quarantine restrictions; freight embargo; or unusually severe weather. The affected party shall immediately give Notice to the other, including all relevant information available, that any such actual or potential cause is delaying or threatens to delay the timely performance of the Contract.

## **11. COMPLIANCE WITH LAW**

Contractor shall comply with applicable federal, state, or municipal laws and regulations.

## **12. CONFIDENTIAL INFORMATION**

a. Both parties agree to:

receive and maintain as proprietary and confidential, any Confidential Information of the other party, and to protect same from disclosure to others or from use, by itself or others, for any purpose inconsistent with this Contract without the prior written consent of the providing party unless required by law to be disclosed upon the request of a citizen.

Confidential Information shall include information or property falling within the scope of a party's patents, copyright, trade secrets, technical data, know-how, or business information conveyed in written, graphic or other permanent tangible form; or if oral, if promptly reduced to a permanent tangible form, and shall also include all information received by a party under an obligation of secrecy or confidentiality, but shall not include information which:

was already known to the receiving Party without an obligation of secrecy at the time of disclosure under this Contract; or is lawfully in the public domain at the time of disclosure under this Contract, or becomes lawfully within the public domain but only after such time; or after disclosure is lawfully obtained by the receiving party from another source without restriction on disclosure.

b. The provisions contained within this Article, shall survive termination of the Contract for any reason whatsoever for ten (10) years from the effective date of this Contract.

### **13. SUBCONTRACTS/PURCHASE ORDERS**

Contractor must notify and receive prior written permission from City should Contractor subcontract or assign any of the work, rights or obligations under this Contract. All work shall be performed within the boundaries of the United States. Under no circumstances shall it be permitted to send any film, film derivatives, or any other data, whether digital or hard copy, associated with the performance of a contract to destinations outside of this country.

### **14. INDEMNITY FOR PATENT INFRINGEMENT**

Contractor shall defend, indemnify and save harmless City or its Client from and against all damages, costs and expenses, including attorneys' fees and costs either may sustain, pay, or incur as a result of any cause, action, suit, proceeding or claim brought against City or its Client as a result of the sale or use of the goods or services provided by Contractor under this Contract. City will provide Contractor with timely written Notice of any such claim, and will co-operate fully with Contractor in furtherance of Contractor obligations herein. Contractor obligations herein shall not apply to City-provided designs or specifications.

### **15. LIABILITY AND INDEMNIFICATION**

a. Contractor shall indemnify and save harmless City from and against all manner of actions, proceedings, claims, demands, losses, costs, damages, and expenses whatsoever which may be brought or made against, or which City may sustain, pay or incur, as a result of or in connection with the performance or non-performance of the Contract in whole or in part by Contractor, whether in contract, tort or otherwise.

b. City shall provide Contractor with timely written Notice of any such claim, and will provide all relevant information and co-operate fully with Contractor in furtherance of Contractor's obligation herein.

c. In no event shall contractor or City be liable for loss of profits, loss of revenue, special, indirect, or consequential damages.

d. Notwithstanding any other provisions of this Contract, Contractor's liability under this contract shall be limited to one million dollars (\$1,000,000.00).



e. The Contractor agrees to indemnify and hold the City and its agents, employees, assigns and successor's in interest harmless from and against any liabilities, damages, claims, judgments, awards or costs, including reasonable attorneys fees, incurred by the City as a result of any breach by the Contractor of any agreement, term, paragraph, representation and/or warranty contained in the Contract or as a result of any health insurance claim, unemployment claim, workmen's compensation claim, product liability claim, or tax liability resulting from any occurrence from Contractor operations or business. Upon the execution hereof, it is expressly understood that the City shall not be liable to the Contractor for any damages to Contractor's employees, agents, consultants, subcontractors or their employees, agents or assigns, or other person working in any way with or for the Contractor during the term of this agreement, on account of their presence at any time on the premises or the site of or related to the terms and conditions of this contract.

## **16. INSURANCE**

Contractor shall maintain in force during the term of this Contract insurance with the following minimum limits:

General Liability \$1,000,000

Automobile Liability \$1,000,000

Worker's Compensation as required in any jurisdiction in which work is to be performed

Within ten days of the execution of the Contract the Contractor shall provide City with a certificate of insurance:

showing evidence of the above coverage;

showing City as an Additional Insured;

providing for a minimum of thirty (30) days prior written notice to City of any cancellation or material alteration to any coverage.

## **17. NOTICES**

Any notice or communication pertaining to this Contractual Agreement shall be deemed to have been duly given by the parties hereto if sent to the other by registered or express mail or facsimile to the address hereinafter stated, or to other address as mutually agreed.

## **18. DISPUTES**

In the event of a dispute arising out of or relating to this Contract, the parties shall attempt to settle the matter amicably at the working level. Where the parties are unable to resolve the dispute, either party may by notice setting out the particulars of the dispute, refer the matter to the senior management of the parties. Notwithstanding anything in any Agreement, Contract Documents, plans, specifications or Service instruments to the contrary or that could be construed to the contrary, Arbitration shall not be utilized to resolve any conflict or dispute that may arise out of said Contract Agreement, document or instrument. All conflicts or disputes between the City and the Contractor and any sub contractor related to the project shall be resolved in the Circuit Court of Morgan County, Alabama, and shall not in any event be resolved or determined by binding Arbitration.

## **19. WAIVER**

Waiver by either party of the strict performance of any term, condition, covenant, or agreement in the Contract shall not of itself constitute a waiver of or abrogate such term, condition, covenant or agreement, nor be a waiver of any subsequent breach of same, or of any other term, condition, covenant or agreement.

## **20. HEADINGS**

Headings to any of the provisions of the Contract are for convenience only and shall not have the effect of modifying, amending, or altering any provision of the Contract.

## **21. SEVERABILITY**

If any provision of the Contract is held to be invalid in whole or in part, the remainder of the Contract or of such provision, as the case may be, and the application thereof, shall not be affected thereby.

## **22. LAW OF CONTRACT**

a. This Contract and any document executed pursuant to the terms of this Contract shall be governed, construed and enforced in accordance with the law of the State of Alabama. Notwithstanding the actions, conduct or course or place of performance of or by the parties hereto, Contractor and City agree that as between the parties to this Contract, it is established and it is conclusively determined hereby that at all times, this Contract is to be construed and deemed executed, accepted, agreed upon, performed and otherwise consummated in Morgan County, Alabama and both parties hereby acknowledge jurisdiction and venue of any dispute(s) relating to or rising out of this Contract to be in the Circuit Court of Morgan County, Alabama. All rights of the parties hereunder shall be cumulative with all rights which the parties hereto may have at law or in equity.

b. This Contract is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this Contract, or the application thereof to any person or circumstance, shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this Contract and the application of such provision to other persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

## **23. ASSIGNMENT**

This Contract may not be transferred or assigned by Contractor without the prior written consent of the City. A transfer or assignment of this Contract by the Contractor without the prior written consent of the City or a transfer or assignment by operation of law, shall be void, and shall at the option of the City terminate this Contract.

## **24. REPRESENTATIVES, SUCCESSORS AND ASSIGNS**

Each and every provision contained in this Contract on the part of either party shall apply to and enure to the benefit of and bind their respective legal representatives, successors and assigns.

## **26. NON WAIVER**

No failure of any party to exercise any power given hereunder or to insist upon strict compliance with any obligation specified herein shall constitute a waiver of any party's right to demand exact compliance with the terms hereof.

**27. ENTIRETY OF CONTRACT**

The terms and conditions of the Contractual Agreement and any document specifically incorporated herein by reference, if any, constitute the entire Contractual Agreement between the parties. No prior communications, whether written or oral, nor any course of prior dealings between the parties shall be read into such Contractual Agreement for purposes of construction, interpretation or any other purpose whatsoever.

This Contract may be executed in multiple counterparts, each of which shall constitute an original, but all of which taken together shall constitute one and the same Contract.

IN WITNESS WHEREOF, the parties have caused this instrument and Exhibits to be executed by themselves or their duly authorized officers or agents hereunto the day and year first written above.

City of Decatur, Alabama

The Atlantic Group, LLC

BY: \_\_\_\_\_ (Seal)

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

TITLE: \_\_\_\_\_

ATTEST:

WITNESS:

\_\_\_\_\_

\_\_\_\_\_

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

## **ATTACHMENT E**

**The entirety of Morgan County – Approximately 575 square miles**

**Decatur area north of the river in Limestone County – Approximately 24 square miles**

T4S; R4W; Sec. 28, 27, 32, 33, 34, 35, 36

T5S; R4W; Sec. 1, 2, 3, 4, 5, 9, 10, 11, 12, 13, 14, 15, 23, 24

T4S; R3W; W $\frac{1}{2}$  of Section 31

T5S; R3W; W $\frac{1}{2}$  of Sections 6, 7, 18, 19, 30

**JWEMC Service Area in Northern Cullman County – Approximately 31.5 square miles**

T8S; R4W; Sec. E  $\frac{1}{2}$  of 32, 33, 34, 35, 36

T8S; R3W; Sec 31, 32, 33, 34, 35, 36

T9S; R4W; Sec. E  $\frac{1}{2}$  of 8, 9, 10, 11, 12, E  $\frac{1}{2}$  of 5, 4, 3, 2, 1

T9S; R3W; Sec. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12