

**THE CITY OF RAPID CITY 2012 AERIAL FLIGHT DATA COLLECTION AND PROCESSING
AGREEMENT**

1. Identification of the Parties.

This Agreement is made between The City of Rapid City, with a principal place of business at 300 Sixth Street, Rapid City, South Dakota, 57701, hereinafter referred to as "City," and Fugro Earthdata, Inc., with a principal place of business at 3600 Jet Drive, Rapid City, SD 57703, hereinafter referred to as "Contractor."

2. Purpose and Scope of the Agreement.

The City desires to retain Contractor as an independent contractor to provide Aerial Flight Data Collection and Processing services as further described in the Scope of Work as presented in Exhibit 1, attached hereto and incorporated herein by reference.

3. Fees.

In consideration of the Services performed by Contractor, The City shall pay Contractor a total of FORTY THREE THOUSAND SEVENTY SIX DOLLARS (\$43,076.00 US) as further detailed as Exhibit 2, attached hereto and incorporated herein by reference.

Contractor shall submit invoices to The City following acquisition, and then monthly as work is completed. The City shall notify Contractor of any objection within (30) calendar days of the invoice date, identifying the reasons, therefore, in writing and paying that portion of the invoice not in dispute. City shall pay invoices within forty-five (45) days of presentment (excepting any portion of a disputed invoice amount).

4. Changes in Project Scope.

If at any time The City should desire a change or addition to tasks set forth under this Agreement, The City shall submit to Contractor a written proposal specifying the desired changes.

A "Change Order" shall evidence changes to this Agreement. The Change Order shall amend the Agreement appropriately to incorporate the desired changes and acknowledge any effect of such changes on the provisions of this Agreement. Authorized representatives of The City and Contractor shall sign the Change Order, whereupon Contractor shall commence performance in accordance with it.

For purposes of this Agreement, each Modification Agreement duly authorized in writing by The City and Contractor shall be deemed incorporated into and made part of this Agreement. Each such Modification Agreement shall constitute a formal change to this Agreement adjusting fees and completion dates as finally agreed upon.

5. Insurance

Contractor agrees that it now carries, and will continue to carry during the performance of this Agreement, at its own expense, the applicable insurance policies indicated below, including any coverage required by law, with limits not less than those specified. Excepting Worker's Compensation/ Employer's Liability and Professional Liability insurance, Contractor agrees that applicable insurance policies indicated below shall name the City as an additional insured with respect to all activities arising out of the performance of the work and/or services under this Agreement.

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Required Insurance Coverage and Limits		
1	Worker's Compensation/Employer's Liability	Statutory/ \$1,000,000 per occurrence
2	Commercial General and Contractual Liability	\$ 1,000,000 per occurrence
3	Aviation	\$ 50,000,000 per occurrence
4	Automobile Liability	\$1,000,000 per occurrence
5	Umbrella Liability	\$ 2,000,000 aggregate
	In excess of (2), and (4) above.	
6	Professional Liability	\$ 2,000,000 per claim / aggregate

Prior to the commencement of the Work, Contractor shall provide City with certificates of insurance evidencing the required insurance and including the additional insured and waiver of subrogation requirements. Such certificates shall be endorsed to include thirty (30) days prior written notice of cancellation or material change in any of the coverages. City's failure to insist upon any requirement in this Article shall not relieve Contractor of its obligations to fully comply with the requirements herein.

6. Indemnification

To the fullest extent permitted by law, Contractor agrees to indemnify, defend, and hold harmless, Contractor and City and each of their agents and employees, from any and all claims, demands, judgments, loss, damages, or liability on account of injuries, disease, or death to any person, including Contractor's employees (notwithstanding Worker's Compensation laws), or damage to property, or any type of claim, loss, damage, or liability whatsoever arising out of or in connection with the performance of Contractor's Work under this Agreement to the extent of any error, omission, negligent act, statutory violation, or breach of obligation of Contractor, its employees, suppliers or agents. In addition, to the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless Contractor and City and their employees and agents against all liability, cost, expense, attorneys' fees, claims, loss or damage arising from any patent or copyright infringement by Contractor, its employees, suppliers or agents; or any lien or other claim by Contractor, its employees, suppliers or agents inconsistent with this Agreement.

7. Warranties.

Contractor warrants that Contractor has the right to enter into this Agreement and further warrants:

- a) That all Work performed under this Agreement will be performed in accordance with the standards of care and diligence normally exercised by persons performing such Work in the industry, be free from defects in workmanship, and conform to the requirements of this Agreement.
- b) That Contractor shall not violate or infringe upon any third party rights, including but not limited to property, contract, employment, trade secret, confidential and proprietary information, or any trademark, copyright or patent rights; and
- c) That Contractor shall not violate any applicable federal, state or local laws, rules or regulations in the performance of services under this Agreement.
- d) If City determines that Contractor has failed to comply with the warranties set forth in this Article, Contractor agrees to re-perform any work necessary to cure such breach, without additional cost to City. Notwithstanding the foregoing, Contractor's obligation to cure any breach of its obligation in subpart a) above shall be limited to six (6) months from completion of the Work.

8. Force Majeure

Neither party shall be liable to the other for any loss, damage, failure, delay or breach in rendering any services or performing any obligations hereunder to the extent that such failure, delay or breach results from any cause or event beyond the control of the party being released hereby ("Force Majeure"), including but not limited to acts of God, acts or omissions of civil or military authorities (acting in their sovereign, but not in their contractual, capacity), floods, torrential rainfall, other severe or unusual weather or climatic conditions, (including weather phenomena and/or solar activity that may effect signals from the

U.S. Department of Defense's Global Positioning System satellites), laws, ordinances, regulations, rules or other acts of governments or public authorities (including any change to or denial of access to the U.S. Department of Defense's Global Position System), which would exist for a substantial period of time and would have an effect so as to substantially impair the completion deadline, epidemics, quarantines, other medical restrictions or emergencies, defects or failures in equipment or materials owned or supplied by the other party, strikes or other labor actions, embargoes, wars, civil disobedience, riots, terrorism, or of governmental rationing of fuel and/or power which would result in a severe shortage thereof, which would substantially impair the proposed completion deadline.

9. Third Party Reliance

Although Contractor has made reasonable effort to provide accurate information in its deliverables, conditions originating from physical sources used to develop the database may have resulted in errors in the data provided. The City must be aware of such data conditions and bear responsibility for the appropriate use and application of the data as respects possible errors, original map scale, collection methodology, current status of the data and other conditions specific to the data. Moreover, conditions may have changed since the data was collected such that some parts may no longer represent actual surface conditions. The data was prepared specifically for the City's use and application on a specific project and should not be relied on by any other entity or person.

10. Customer Material and Ownership of Data

At the time of completion or termination of the work, Contractor shall make available to The City all maps, reports, resource materials, and other documents pertaining to the work or to the Scope of Work. All work performed as part of this agreement, and paid for by The City, shall become the sole property of The City. Contractor may use the final report as a marketing tool. At the completion of the Scope of Work, Contractor will provide to The City an electronic version of all deliverable data, maps and reports. All rights, title, and interest including all intellectual property rights, in all materials conceived or originated by The City either individually or jointly with others, which arise out of the performance of this agreement, are owned by The City. All deliverables created or prepared by Contractor exclusively in the performance of its obligations under this Agreement are the exclusive property of The City.

11. Term of Agreement.

This Agreement commences on the date it is executed and shall continue in effect until terminated under the terms of this Agreement, or November 30, 2012, whichever comes first.

12. Termination for Cause.

Each party shall have the right to terminate this Agreement by written notice to the other party if the other party has materially breached any obligation herein, provided, in the case where such breach is capable of being cured, such breach remains uncured for a period of 30 days after written notice of such breach is sent to the other party.

13. Miscellaneous.

13.1 This agreement is made in the State of South Dakota, and shall for all purposes be construed in accordance with the laws of said State, without reference to choice of law provisions.

13.2 This agreement is performable in, and venue of any action related or pertaining to this Agreement shall lie in Pennington County, South Dakota

13.3 This Agreement and its Exhibits contain the entire agreement between the City and the Contractor and supersedes any and all previous agreements, written or oral, between the parties relating to the subject matter hereof.

13.4 This Agreement may be executed in counterparts, each of which shall be deemed an original.

13.5 In the event any provisions of this Agreement is held illegal or invalid, the remaining provisions of this Agreement shall not be affected thereby.

13.6 The waiver of a breach of any provision of this Agreement by any parties or the failure of any parties otherwise to insist upon strict performance of any provision hereof shall not constitute a waiver of any subsequent breach or failure to perform.

13.7 Notice required under this Agreement shall be in writing and personally delivered or sent by certified mail to the City at its principal executive offices or to the Contractor at the last filed by it in writing with the City.

13.8 This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, representatives, and successors and may be assigned by the City to any successor. This Agreement shall not be assignable by Contractor without the prior written consent of City.

14. Independent Business.

The parties agree that Contractor operates an independent business and is contracting to do work according to its own methods, without being subject to the control of the City, except as to the product or the result of the work. The relationship

between the City and the Contractor shall be that as between and independent contractor and the City and not as an employer-employee relationship. The payment to the Contractor is inclusive of any use, excise, income or any other tax arising out of this Agreement.

15. Funds Appropriation.

If funds are not budgeted or appropriated for any fiscal year for services provided by the terms of this Agreement, this Agreement shall impose no obligation on the City for payment. This Agreement is null and void except as to annual payments herein agreed upon for which funds have been budgeted or appropriated, and no right of action or damage shall accrue to the benefit of the Contractor, its successors or assignees, for any further payments. For future phases of this or any project, or project components not identified within this contract shall not constitute an obligation by the City until funding for that component has been appropriated.

IN WITNESS WHEREOF, this Agreement is executed as of the Effective Date.

The City of Rapid City, South Dakota

FUGRO EARTHDATA, INC.

Name: _____

Name: Jeremy Martin

Signed: _____

Signed: [Signature]

Date: _____

Date: Dec 13, 2011

Attest: _____

Attest: [Signature]

Finance Officer

Controller

Reviewed By:

_____, Project Manager

Date: _____