



**CITY OF TYLER
CITY COUNCIL COMMUNICATION**

Agenda Number: R-3

Date: January 10, 2007

Subject: Request that the City Council consider accepting participation by the Texas Department of Transportation in the 2006-2007 City of Tyler, Smith County, aerial photography project.

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Item Reference: M-4; January 11, 2007

On December 22, 2006, the City Council awarded a contract, in the amount of \$415,627.73, to Stewart Geo Technologies for the production of new aerial photography and updated planimetric data for the City of Tyler and Smith County.

Attached is an interlocal agreement from the Texas Department of Transportation that provides participation in the aerial photography project in the amount of \$46,150.00.

RECOMMENDATION:

It is recommended that the City Council accept participation by the Texas Department of Transportation in the 2006-2007 City of Tyler, Smith County, aerial photography project in the amount of \$46,150.00, and that the City Manager be authorized to execute an interlocal agreement with TxDOT for participation in funding the aerial photography project.

**Drafted/Recommended By:
Department Leader**

A handwritten signature in black ink that reads "Daniel B. Allee".

Dan Allee, GIS Department Leader

**Edited/Submitted By:
City Manager**

RESOLUTION NO. R-2007-3

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS
ACCEPTING PARTICIPATION BY THE TEXAS DEPARTMENT OF
TRANSPORTATION IN THE 2006-2007 CITY OF TYLER, SMITH COUNTY,
AERIAL PHOTOGRAPHY PROJECT.**

WHEREAS, Texas Local Government Code Chapter 791 authorizes local governments to contract to perform governmental functions and services; and

WHEREAS, the City of Tyler has found it beneficial and cost efficient to engage a project to acquire aerial photography data for all of Smith County; and

WHEREAS, the City of Tyler has made the Smith County aerial photography data available to public and private entities; and

WHEREAS, the Texas Department of Transportation desires to utilize the Smith County aerial photography data to develop federal, state and local transportation projects;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS:

PART 1. That the City Council of Tyler, Texas that the City of Tyler, Texas accept the participation of the Texas Department of Transportation in the amount of \$46,150.00 in exchange for the entitlement and right to utilize the aerial Smith County photography data as provided by the City of Tyler.

PART 2: That the City Manager is hereby authorized to execute an interlocal agreement with the Texas Department of Transportation for participation in funding the aerial photography project.

PART 3. That this Resolution shall become effective upon its passage and approval.

APPROVED this 10th day of January, 2007.

JOSEPH O. SEEBER, MAYOR
OF THE CITY OF TYLER, TEXAS

A T T E S T:

APPROVED:

CASSANDRA BRAGER, CITY CLERK

CITY ATTORNEY

Interlocal Agreement

Office of General Counsel – Contract Services Section Transmittal Form

From: Tyler District	Contact Person: Dale Spitz Phone No.: (903) 510-9119
Subject: Smith County Aerial Photography	
Other Entity City of Tyler	Contract Maximum Amount Payable \$46,150
Are any federal funds used in this contract? No	
Is the other party to this contract a county? Yes _____ No <u> X </u>	
Does this contract involve the construction, improvement, or repair of a building or road? Yes _____ No <u> X </u>	
If the answer to both questions is yes, a resolution from the commissioners court must be included as Attachment D.	
Was the standard interlocal or amendment format modified? Yes <u> X </u> No _____	
If modified, date of OGC-CSS approval: _____	
Modifications made are as follows:	
Remove Attachment E, Location Map Showing Property	

THE STATE OF TEXAS §

THE COUNTY OF TRAVIS §

INTERLOCAL AGREEMENT

THIS CONTRACT is entered into by the Contracting Parties under Government Code, Chapter 791.

I. CONTRACTING PARTIES:

The Texas Department of Transportation
City of Tyler

TxDOT
Local Government

II. PURPOSE: This agreement is being executed to authorize TxDOT to participate in the City of Tyler's Aerial Photography Project and in exchange for participation, the City of Tyler will provide data for IH-20 and grant TxDOT 3 years of access to all other locations where data has been generated by the project.

III. STATEMENT OF SERVICES TO BE PERFORMED: The Local Government will undertake and carry out services described in **Attachment A**, Scope of Services.

IV. CONTRACT PAYMENT: The total amount of this contract shall not exceed \$46,150 and shall conform to the provisions of **Attachment B**, Budget. Payments shall be billed monthly.

V. TERM OF CONTRACT: Payment under this contract beyond the end of the current fiscal biennium is subject to availability of appropriated funds. If funds are not appropriated, this contract shall be terminated immediately with no liability to either party. This contract begins when fully executed by both parties and terminates on August 31, 2009.

VI. LEGAL AUTHORITY:

THE PARTIES certify that the services provided under this contract are services that are properly within the legal authority of the Contracting Parties

The governing body, by resolution or ordinance _____, dated _____, has authorized the Local Government to provide the scope of services.

This contract incorporates the provisions of **Attachment A**, Scope of Services, **Attachment B**, Budget, **Attachment C**, General Terms and Conditions, **Attachment D**, Resolution or Ordinance.

CITY OF TYLER

By _____ Date _____

AUTHORIZED SIGNATURE

Bob Turner

TYPED OR PRINTED NAME AND TITLE

Title Tyler City Manager

FOR THE STATE OF TEXAS

Executed for the Executive Director and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.

By _____ Date _____

Janice Mullenix
Director, Contract Services Section
Office of General Counsel

ATTACHMENT A

Scope of Services

CITY plans to contract and obtain a license to access and use aerial photography and related GIS information developed for the City of Tyler and its ETJ, Smith County, Lake Palestine, the Cities of Whitehouse, Lindale, Chandler and Bullard and their ETJs (hereinafter called the "City of Tyler 2006-2007 Project")

CITY also plans to contract and obtain a license to access and use new color aerial photography for the development of orthophotography and mapping services for approximately 36 miles of Interstate 20 within the boundary of Smith County for the City of Tyler 2006-2007 aerial photography project. The requirements for Interstate (IH) 20 are approximately 36 miles of IH-20 within the boundary of Smith County and will produce mapping to TxDOT specifications at a scale of 1"=40' with DTM for 1' contours at a width of 600' and orthophotography with ¼' pixels with files delivered in TxDOT structure with a set of black & white contact prints. TxDOT shall have access to and use of aerial mapping products and mapping services developed for the Project.

TxDOT's participation in this project will provide a non-exclusive, non-transferable, 3 year, limited license from the City of Tyler to display, distribute, transmit, stream, perform, and reproduce the Geospatial Data developed for the Project with the exception of the IH-20 data, which will become TxDOT's property.

The City of Tyler agrees to allow the Texas Department of Transportation the right to use the results of the Smith County Aerial Photography Project in the development of Federal, State and local transportation projects.

ATTACHMENT B

Budget

The Texas Department of Transportation will pay the City of Tyler the amount of \$46,150.00, in consideration for the right to use the results of the Smith County Aerial Photography Project.

General Terms and Conditions

Article 1. Additional Work

- A. If the Local Government is of the opinion that any assigned work is beyond the scope of this contract and constitutes additional work, it shall promptly notify TxDOT in writing. The written notice shall present the relevant facts and show how the work constitutes additional work.
- B. If TxDOT in its sole discretion finds that the work does constitute additional work, TxDOT shall so advise the Local Government and a written amendment will be executed. The Local Government shall not perform any proposed additional work or incur any additional costs before the execution of an amendment.
- C. TxDOT shall not be responsible for actions by the Local Government or for any costs incurred by the Local Government relating to additional work that is performed before an amendment is executed or that is outside the scope of the contract, as amended.

Article 2. Amendments

This contract may only be amended by written agreement executed by both parties before the contract is terminated.

Article 3. Notice to Proceed

If Attachment A requires a notice to proceed, the Local Government shall not proceed with any work or incur any costs until TxDOT issues a written notice to the Local Government authorizing work to begin. Any costs incurred by the Local Government before receiving the notice are not eligible for reimbursement.

Article 4. Conflicts Between Agreements

If the terms of this contract conflict with the terms of any other contract between the parties, the most recent contract shall prevail.

Article 5. Nonconforming Work

If the Local Government submits work that does not comply with the terms of this contract, TxDOT shall instruct the Local Government to make any revisions that are necessary to bring the work into compliance with the contract. No additional compensation shall be paid for this work.

Article 6. Termination

This contract terminates at the end of the contract term, when all services and obligations contained in this contract have been satisfactorily completed, by mutual written agreement, or 30 days after either party gives notice to the other party, whichever occurs first. TxDOT shall compensate the Local Government only for those eligible expenses that are incurred during this contract and that are directly attributable to the completed portion of the work covered by this contract and only if the work has been completed in a manner satisfactory and acceptable to TxDOT. The Local Government shall neither incur nor be reimbursed for any new obligations after the date of termination.

Article 7. Funding

TxDOT shall pay for services from appropriation items or accounts from which like expenditures would normally be paid. Payments received by the Local Government shall be credited to the current appropriation items or accounts from which expenditures of that character were originally made. If for any reason subcontractors and suppliers, if any, are not paid before TxDOT reimburses the Local Government for their services, the Local Government shall pay the subcontractors and suppliers all undisputed amounts due for work no more than 10 days after the Local Government receives payment for the work unless a different time is specified by law. This requirement also applies to all lower-tier subcontractors and suppliers and must be incorporated in all subcontracts. If the Local Government fails to comply with this Article, TxDOT may withhold payments and suspend work until the subcontractors and suppliers are paid. The Local Government is authorized to submit requests for reimbursement no more frequently than monthly and no later than ninety (90) days after costs are incurred.

Article 8. Basis for Calculating Reimbursement Costs

TxDOT will reimburse the Local Government for actual costs incurred in carrying out the services authorized in Attachment A, Scope of Services, subject to the cost categories and estimated costs set forth in Attachment B, Budget. TxDOT shall compensate the Local Government for only those eligible expenses incurred during this contract that are directly attributable to the completed portion of the work covered by this contract, provided that the work has been completed in a manner satisfactory and acceptable to TxDOT. The Local Government shall not incur or be reimbursed for any new obligations after the effective date of termination. The Local Government shall bill TxDOT for actual travel expenses, not to exceed the limits reimbursable under state law. Out-of-state or out-of-country travel by the Local Government requires prior approval by TxDOT.

Article 9. Gratuities

Any person who is doing business with or who reasonably speaking may do business with TxDOT under this contract may not make any offer of benefits, gifts, or favors to employees of TxDOT. The only exceptions allowed are ordinary business lunches and items that have received the advanced written approval of the Executive Director of the Texas Department of Transportation.

Article 10. Conflict of Interest

The Local Government shall not assign an employee to a project if the employee:

- A. owns an interest in or is an officer or employee of a business entity that has or may have a contract with the state relating to the project;
- B. has a direct or indirect financial interest in the outcome of the project;
- C. has performed services regarding the subject matter of the project for an entity that has a direct or indirect financial interest in the outcome of the project or that has or may have a contract with TxDOT; or
- D. is a current part-time or full-time employee of TxDOT.

Article 11. Local Government Resources

All employees of the Local Government shall have adequate knowledge and experience to enable them to perform the duties assigned to them. The Local Government certifies that it currently has adequate qualified personnel in its employment to perform the work

required under this contract or will be able to obtain adequate qualified personnel from sources other than TxDOT. On receipt of written notice from TxDOT detailing supporting factors and evidence, the Local Government shall remove from the project any employee of the Local Government who is incompetent or whose conduct becomes detrimental to the work. Unless otherwise specified, the Local Government shall furnish all equipment, materials, supplies, and other resources required to perform the work.

Article 12. Assignment Subcontracts

A subcontract may not be executed by the Local Government without prior written authorization by TxDOT. Subcontracts in excess of \$25,000 shall contain all applicable terms and conditions of this contract. No subcontract will relieve the Local Government of its responsibility under this contract. Neither party shall assign any interest in this agreement.

Article 13. Responsibilities of the Parties

Each party acknowledges that it is not an agent, servant, or employee of the other party. Each party is responsible for its own acts and deeds and for those of its agents, servants, or employees.

Article 14. Disputes

The Local Government shall be responsible for the settlement of all contractual and administrative issues arising out of procurements entered in support of contract services. TxDOT shall be responsible for the settlement of any dispute concerning this contract unless the dispute involves a subcontract.

Article 15. Records and Ownership

- A. The Local Government agrees to maintain all books, documents, papers, accounting records, and other evidence pertaining to costs at its office during the contract period and for four years from the date of final payment under the contract. These materials shall be made available for inspection and copying by TxDOT, by the State Auditor's Office, and by their authorized representatives. If the contract is federally funded, these materials shall also be made available for inspection and copying by the U.S. Department of Transportation and by the Office of the Inspector General.
- B. After completion or termination of this contract, all documents prepared by the Local Government for or furnished to the Local Government by TxDOT shall be delivered to and become the property of TxDOT. After August 31, 2009, all sketches, photographs, calculations, and other data prepared under this contract shall be made available, on request, to TxDOT without restriction or limitation of further use.
- C. TxDOT shall own all title to, all interests in, all rights to, and all intellectual property (including copyrights, trade and service marks, trade secrets, and patentable devices or methods) arising from or developed under this contract and relating to the Geospatial Data developed for the approximately 36 miles of Interstate 20 within the boundary of Smith County.
- D. Except to the extent that a specific provision of this contract states to the contrary, all equipment purchased by the Local Government or its subcontractors under this contract shall be owned by TxDOT and will be delivered to TxDOT at the time the contract is completed or terminated.

- E. The State Auditor may conduct an audit or investigation of any entity receiving funds from TxDOT directly under the contract or indirectly through a subcontract under the contract. Acceptance of funds directly under the contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the State Auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the State Auditor with access to any information the State Auditor considers relevant to the investigation or audit.

Article 16. Reference to Costs Principles and Circulars

Reimbursement with state or federal funds will be limited to costs determined to be reasonable and allowable under cost principles established in OMB Circular A-21, "Cost Principles for Educational Institutions," or OMB Circular A-87, "Cost Principles for State and Local Governments." The parties shall comply with the requirements of the Single Audit Act of 1984, P.L. 98-502, ensuring that the single audit report includes the coverage stipulated in OMB Circular A-133.

Article 17. Equal Employment Opportunity

The Local Government agrees to comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 and as supplemented by Department of Labor regulations, 41 CFR Part 60. The Local Government agrees to consider minority universities for subcontracts when the opportunity exists. The Local Government warrants that it has developed and has on file appropriate affirmative action programs as required by applicable rules and regulations of the Secretary of Labor.

Article 18. Nondiscrimination

- A. The Local Government shall comply with the regulations of the U.S. Department of Transportation relating to nondiscrimination in federally-assisted programs, including 49 CFR, Part 21; 23 CFR, Subchapter C; and 41 CFR, Part 60-74 (the Regulations).
- B. The Local Government, with regard to the work performed during this agreement, shall not discriminate on the basis of race, color, sex, national origin, age, religion, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment.
- C. In all solicitations either by competitive bidding or negotiation made by the Local Government for work to be performed under a subcontract, including procurements of materials and leases of equipment, but not including routine purchase orders, each potential subcontractor or supplier shall be notified by the Local Government of the Local Government's obligations under this agreement and the Regulations.
- D. The Local Government shall provide all information and reports required by the Regulations and directives issued under the Regulations and shall permit access to its books, records, accounts, other sources of information, and facilities as may be determined by the Texas Department of Transportation or the U.S. Department of Transportation to be pertinent to ascertain compliance with the Regulations or directives. If any information required of the Local Government is in the exclusive possession of another who fails or refuses to furnish this information, the Local Government shall so certify to the Texas Department of Transportation or the U.S.

Department of Transportation, whichever is appropriate, and shall set forth what efforts the Local Government has made to obtain the requested information.

- E. In the event of the Local Government's noncompliance with the nondiscrimination provision of this agreement, the Texas Department of Transportation shall impose such sanctions as it or the U.S. Department of Transportation may determine to be appropriate.
- F. The Local Government shall include the provisions of paragraphs A through E in every subcontract, including procurements of materials and leases of equipment, except routine purchase orders, unless exempt by the Regulations or directives. The Local Government shall take such lawful action with respect to any subcontract or procurement as the Texas Department of Transportation may direct as a means of enforcing these provisions, including sanctions for noncompliance. In the event the Local Government becomes involved in or is threatened with litigation with a subcontractor or supplier as a result of directions given by TxDOT, the Local Government may request the Texas Department of Transportation to enter into the litigation to protect the interests of the State. In addition, the Local Government may request the United States to enter into litigation to protect the interests of the United States.

Article 19. Compliance with Laws

The parties shall comply with all federal, state, and local laws, statutes, ordinances, rules, and regulations and with the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this agreement. After receiving a written request from TxDOT, the Local Government shall furnish TxDOT with satisfactory proof of its compliance with this Article.

Article 20. Signatory Warranty

Each signatory warrants that the signatory has necessary authority to execute this agreement on behalf of the entity represented.