

**THE CITY OF CEDAR PARK, TEXAS
REGARDING THE 2010 AERIAL PHOTO PROJECT**

This Interlocal Agreement ("Agreement") is made by and between Williamson County, Texas, a Political Subdivision of the State of Texas (the "County") and the City of Cedar Park, Texas, (the "City"), both acting by and through their duly authorized representatives.

WITNESSETH:

WHEREAS, the County and the City are authorized to enter into this Agreement pursuant to the provisions of the Interlocal Cooperation Act, Texas Government Code Section 791.00 et seq;

WHEREAS, the County entered into that certain agreement with MJ Harden, Associates, Inc. ("MJ Harden") known as the CONTRACT FOR PHOTOGRAMMETRIC SERVICES-DIGITAL ORTHOPHOTOGRAPHY BY AND BETWEEN M.J. HARDEN ASSOCIATES, INC. AND WILLIAMSON COUNTY, TEXAS wherein the County received aerial photography data (the "MJ Harden Contract"). A copy of the form of the MJ Harden Contract is attached hereto and incorporated herein as Exhibit "A";

WHEREAS, the City currently has a need for such services and goods and would like to enter into this Agreement whereby the City would be able to use the aerial photography data;

WHEREAS, the County is willing to agree to allow the City to use the aerial photography data in exchange for a payment of contribution to the County;

NOW, THEREFORE, the County and the City agree as follows:

I. OBLIGATIONS AND AGREEMENTS OF THE COUNTY

- A. The County will be considered as the Contracting Agency for the aerial photography data, and will therefore handle all dealings with MJ Harden. All issues with the data shall be forwarded to the County so that the County can communicate such issues to MJ Harden.
- B. The County will provide one (1) set of DVDs with the aerial photography for the City. Additional copies may be created by the City at the County GIS offices during regular business hours.
- C. The County will not be obligated to provide any support or services to the City's end-users or any other services that are not specifically set forth herein.

II. OBLIGATIONS AND AGREEMENTS OF THE CITY

- A. The City shall pay the County \$1,375.00 in exchange for participation in the Project. The payment of the entire amount shall be due immediately upon complete execution of this Agreement.
- B. THE CITY AGREES AND ACKNOWLEDGES THAT THE COUNTY SHALL NOT BE LIABLE FOR ANY AND ALL CLAIMS THAT CITY MAY HAVE NOW OR IN THE FUTURE AGAINST MJ HARDEN ON THE BASIS OF BREACH OF CONTRACT, CONSTRUCTIVE FRAUD, FRAUD, BREACH OF WARRANTY OF ANY KIND, INCIDENTAL AND CONSEQUENTIAL DAMAGES, LOSS OF USE, REPLACEMENT COSTS, REPAIR COSTS, LOSS OF VALUE, LOSS OF REVENUE, LOSS OF DATA OR EQUIPMENT, COST OF RECOVERING SOFTWARE, DATA, OR MATERIALS, THE COST OF SUBSTITUTE SOFTWARE, DATA, OR MATERIALS, CLAIMS BY THIRD PARTIES, ATTORNEY'S FEES AND LEGAL EXPENSES, EXEMPLARY DAMAGES, PRE-JUDGMENT AND POST-JUDGMENT INTEREST, TAXES, AND AGREEMENTS, WARRANTIES, OR REPRESENTATIONS RELATED IN ANY WAY, DIRECTLY OR INDIRECTLY, WITH THE PRODUCTS PROVIDED BY MJ HARDEN, AND ANY OTHER DAMAGES OF ANY NATURE WHATSOEVER ALLEGEDLY SUSTAINED BY THE CITY, ITS AGENTS, OFFICERS, EMPLOYEES OR ANYONE HAVING A CLAIM BY, THROUGH OR UNDER THE CITY.
- C. THE CITY AGREES AND ACKNOWLEDGES THAT THE COUNTY IS ALLOWING THE CITY TO USE AERIAL PHOTOGRAPHY DATA, AS WELL AS ANY OTHER GOODS OR SERVICES THAT ARE OFFERED PURSUANT TO THIS AGREEMENT OR THE MJ HARDEN CONTRACT, ON AN 'AS IS' BASIS WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE COUNTY DOES NOT ASSUME ANY RESPONSIBILITY FOR DEFECTS IN MJ HARDEN'S AERIAL PHOTOGRAPHY DATA OR IN ANY OTHER GOODS OR SERVICES THAT ARE OFFERED PURSUANT TO THIS AGREEMENT OR THE MJ HARDEN CONTRACT, OR IN THE ACCURACY OR APPLICATION OF OR ERRORS OR OMISSIONS IN SAID GOODS AND SERVICES AND DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED THEREIN WILL MEET THE CITY'S REQUIREMENTS, OR THAT THE OPERATION OF SAID GOODS AND SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ANY DEFECTS IN SAME WILL BE CORRECTED.

III. TERM

This Agreement shall be effective from and after the date of execution by all parties.

IV. MISCELLANEOUS

- A. Severability. If any section, subsection, sentence, clause or phrase of this Agreement is for any reason held to be unconstitutional, void, or invalid, the validity of the remaining portions of the Agreement shall not be affected thereby. It is the intent of the parties signing this Agreement that no portion of it, or provision or regulations contained in it shall become inoperative or fail by reason of unconstitutionality or invalidity of any other

section, subsection, sentence, clause, phrase, provision, or regulation of this Agreement.

- B. Law and Venue. This Agreement shall be governed by the laws of the State of Texas. The obligations under this Agreement are performable in Williamson County, Texas. It is expressly understood that any lawsuit or litigation arising out of or relating to this contract will take place in Williamson County, Texas.
- C. Alteration, Amendment, or Modification. Except as otherwise set forth herein, this Agreement may not be altered, amended, or modified except in writing, approved by all parties hereto.
- D. Notice. Notices to either party shall be in writing, and may be either hand delivered or sent by certified or registered mail, postage paid, return receipt requested. If sent to the parties at the addresses designated herein, notice shall be deemed effective upon receipt in the case of hand delivery and three days after deposit in the U.S. Mail in case of mailing.

The address of City for all purposes shall be:

City of Cedar Park
600 N. Bell Boulevard
Cedar Park, Texas 78613

The address for the County for all notices hereunder shall be:

Williamson County Judge
Dan A. Gattis
710 Main Street, Suite 101
Georgetown, Texas 78626

with a copy to: Honorable Jana Duty (or successor)
Williamson County Attorney
405 M.L.K. Street, Box #7
Georgetown, Texas 78626

- F. Independent Relationship. Both parties hereto, in the performance of this Agreement, shall act in an individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever.
- G. No Waiver of Immunities. Nothing in this Agreement shall be deemed to waive, modify or amend any legal defense available at law or in equity to the parties hereto, their past or present officers, employees, or agents or employees, nor to create any legal rights or claim on behalf of any third party. Neither party waives, modifies, or alters to any extent whatsoever the availability of the defense of governmental immunity under the laws of

the State of Texas and of the United States.

- H. Compliance with Laws. The parties hereto shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, Worker's Compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations.
- I. Force Majeure. If the party obligated to perform is prevented from performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault or negligence of said party, the other party shall grant such party relief from the performance of this Agreement. The burden of proof for the need of such relief shall rest upon the party obligated to perform. To obtain release based on force majeure, the party obligated to perform shall file a written request with the other party.
- J. No Third Party Beneficiaries. This Agreement is for the sole and exclusive benefit of the parties hereto, and nothing in this Agreement, express or implied, is intended to confer or shall be construed as conferring upon any other person any rights, remedies or any other type or types of benefits.
- K. Incorporation of Exhibits and Attachments. All of the Exhibits referred to in this Agreement are incorporated by reference as if set forth verbatim herein.
- L. Execution in Counterparts. This Agreement may be executed in counterparts, each of which, when executed and delivered, shall be deemed to be an original and all of which together shall constitute one and the same document.
- M. Specific Performance. The parties hereto acknowledge that, in the event that a party defaults on any obligation under this Agreement and such default is not cured as set forth herein above, remedies at law will be inadequate and that, in addition to any other remedy at law or in equity, each party will be entitled to seek specific performance of this Agreement.
- N. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto, and supersedes all their oral and written negotiations, agreements, and understandings of every kind. The parties hereto understand, agree, and declare that no promise, warranty, statement, or representation of any kind whatsoever, which is not expressly stated in this Agreement, has been made by any party hereto or its officer, employees, or other agents to induce execution of this Agreement.

WHEREFORE, premises considered, in this Interlocal Agreement is executed to be effective the date of the last party to sign.

CITY OF CEDAR PARK, TEXAS

By: Brenda Eivens ^{SPL}

Printed Name: Brenda Eivens

Capacity: City Manager

Date: May 6, 2010

WILLIAMSON COUNTY, TEXAS

By: [Signature]
Dan A. Gattis
Williamson County Judge

Date: 06-02-2010

EXHIBIT "A"

MJ Harden Agreement