
Le Sueur County, MN

Tuesday, March 17, 2015

Board Meeting

Item 10

11:10 a.m. Justin Lutterman, GIS (5 min)

RE: AeroLogix Agreement

Staff Contact:

CONTRACTING/EXCLUSIVE USE AGREEMENT

THIS AGREEMENT is made by and between AeroLogix Consulting, Inc., a Minnesota corporation (hereinafter "Provider"), first party, and Le Sueur County, Minnesota (hereinafter "Customer"), second party.

RECITALS

A. Whereas, it is in the public interest for Customer to enter into a contract with Provider for the use of Provider's unmanned aerial vehicle (hereinafter "UAV"), for the following public purposes:

To support land and property planning, research and assessment activities;

To support civil engineering projects and planning;

To support disaster evaluation and relief efforts;

To support natural resource and wildlife management; and,

To support a variety of additional, unnamed, activities in the public interest; and,

B. Whereas, Provider is able to provide skilled UAV and information development services to Customer for the above public purposes.

NOW, THEREFORE, upon the mutual consideration provided by the respective promises of the parties, it is hereby agreed as follows:

1. Assignment of Exclusive Use of GIS Collection UAV. This contract establishes Le Sueur County, Minnesota, as the exclusive, contracted user of the AeroLogix Consulting, Inc. GeoStar UAV, serial number GS2014001 for the term of this agreement. This assignment of AeroLogix Consulting, Inc.'s GeoStar UAV establishes the UAV as a "public aircraft" for purposes defined by Federal Aviation Administration (hereinafter "FAA") regulations. A public aircraft is one owned or leased by a government entity for public functions. All use of the UAV identified herein shall be at the discretion of Customer and shall be in pursuit of the public interest, as provided for in the recital to this agreement. The UAV system subject to this agreement shall at all times remain in the exclusive possession of Provider. Justin Lutterman is hereby identified as Customer's contract manager for this agreement. Justin Lutterman shall have authority on behalf of Customer to task collection areas/order high resolution geospatial imagery products for Customer.

2. Term of Lease. This lease shall commence January 1, 2015, and terminate at the end of the day on August 31, 2016.

3. Certificate of Exception and Authorization (Hereinafter "COA"). Operations under this contract shall only be conducted in accordance with FAA COA 2014-CSA-35. Provider remains the primary coordinator with FAA concerning COA 2014-CSA-35 but shall copy Customer on all communications with the FAA concerning COA 2014-CSA-35.

4. Responsibilities of Provider and Description of Services. Provider is the owner of the UAV leased system to Customer under this agreement. Though the lease provides Customer shall be the exclusive user of the subject UAV system during the term of this agreement, Provider shall be exclusively tasked throughout this agreement with providing the operator of the UAV system. For the purposes of this contract the UAV system refers to all necessary components of the UAV system necessary to collect, process, and deliver geospatial imaging products to Customer. Provider's operation of the UAV system shall conform to all limitations and guidelines established within the FAA's COA obtained pursuant to the terms of this contract.

Provider shall deliver to Customer, upon order from Customer, high resolution geospatial imagery products. The geospatial imagery products which may be ordered by Customer are available in two formats:

A. AeroLogix Orthophotos. These photos are geographically registered color, 3cm resolution, mosaic orthophotographs and photogrammetry based textured relative digital elevation models (DEM).

B. AeroLogix Fusion Models. These are AeroLogix orthophotos and geographically registered, color, 3cm resolution, 3-dimensional "fused" imagery products, using UAV sourced orthophotographs and State of Minnesota LIDAR information.

The imagery collection parameters are as follows. On each flight the UAV is capable of:

30 minutes flying time and imagery collection;
Optimal flight parameters deliver 1 square mile (640 acres) of imagery per 30 minute flight;
Provider estimates four (4) collection flights per day are possible; and,
Photographic resolution shall be approximately 3cm average (terrain features can affect resolution).

Imagery collection assignments shall be assigned, understanding the manner of these collections will be based upon a 30-minute flight, per assignment. For each collection assignment, Customer shall fill in and complete for Provider a written assignment of order desired on the order form provided by Provider.

5. Cost of Service and Payment to Provider. Provider shall bill Customer for services ordered and calculate imagery costs ordered on a "per square mile/per 30-minute flight" basis. Provider's costs charged shall include all collection costs, processing costs, and imagery delivery media. Provider's cost to Customer per flight ordered are as follows:

<u>Services Ordered</u>	<u>Cost</u>
AeroLogix Orthophotos per collection area or fraction thereof: Optional product: AeroLogix Fusion Model:	\$500 per 30-minute collection flight Additional \$250 per 30-minute collection flight

Mileage: mileage to and from the collection sites shall be reimbursed to Provider at the current mileage rate. Mileage calculations are based on travel to and from New Prague, Minnesota.

Customer shall remit payment to Provider within 30 days of Provider's delivery to Customer of the GIS product(s) ordered by Customer. The 30-day reimbursement period shall apply to each individual customer order filled.

6. Independent Contractor. The parties acknowledge Provider is an independent contractor and not an employee of Customer. Provider shall have complete control over the timing and manner in which the ordered work/product is obtained and delivered to Customer.

7. Fair Hearing and Grievance Procedure.

- A. Provider will establish a system through which eligible recipients may present grievances about the operation of the service program, and Provider will advise eligible recipients of this right.
- B. Customer will advise applicants and eligible recipients of all of their rights to a fair hearing and the appeal process including, but not limited to, the right to appeal a denial or exclusion from the program or failure to recognize an eligible recipient's choice of a service and of his/her right to a fair hearing in these respects. Customer will make arrangements to provide such hearings.

8. Bonding, Indemnity, and Insurance.

A. Indemnity. Provider does hereby agree that it will defend, indemnify, and hold harmless Customer against any and all liability, loss, damages, costs, and expenses which Customer may hereafter sustain, incur, or be required to pay:

- (1) By reason of any person suffering bodily or personal injury, death, or property loss or damage while receiving services to be furnished under this agreement, or while on premises owned, leased, or operated by Provider, or while being transported to or from said premises in any vehicle owned, operated, leased, chartered, or otherwise contracted for by Provider or any officer, agent, or employee thereof; or
- (2) By reason of any person sustaining injury to, or damage to, the property of another person during any time when Provider or any officer, agent, or employee thereof has undertaken or is furnishing services called for under this agreement; or
- (3) By reason of any negligent act or omission or intentional act of Provider, its agents, officers, or employees which causes bodily injury, death, personal injury, property loss, or damage to another during the performance of purchased services under this agreement.

B. Insurance. Provider does further agree that in order to protect itself as well as Customer under the indemnity agreement provision hereinabove set forth, it will at all times during the term of the agreement have and keep in force:

- (1) A single limit or combined limit or excess umbrella general liability insurance policy of an amount of not less than \$1,500,000 for property damage arising from one occurrence, \$1,500,000 for total bodily or personal injuries or death and/or damages arising from one occurrence. Such policy shall also include contractual liability coverage protecting Customer, its officers, agents, and employees by specific endorsement or certificate acknowledging the contract between Provider and Customer, naming Customer as an additional insured.

- (2) A single limit or combined limit or excess umbrella automobile liability insurance policy, if applicable, covering agency-owned, non-owned, and hired vehicles used regularly in the provision of services under this agreement, in an amount of not less than \$1,500,000 per accident for property damage, \$300,000 for bodily injuries and/or damages to any one person, and \$1,500,000 for total bodily injuries and/or damages arising from any one accident.
- (3) Workers' compensation insurance, if applicable.
- C. Prior to the effective date of this agreement, Provider will furnish Customer with certificates of insurance.
- D. Customer may withhold payment for failure of Provider to furnish certificates of insurance as required above.
- E. In the event that claims or lawsuits shall arise jointly against Provider and Customer, and Customer elects to present its own defense, using its own counsel, in addition to or as opposed to legal representation available by the insurance carriers providing the coverage as stated above, then Provider shall be responsible for Provider's legal fees and Customer shall be responsible for Customer's legal fees.
- F. Any policy obtained and maintained under this clause shall provide that it shall not be cancelled, materially changed, or not renewed without thirty (30) days' prior notice by the insured to Customer.

9. Technical Assistance and Disputes.

- A. Customer will offer assistance to Provider to develop services, ensure compliance with the agreement, and provide ongoing consultation to Provider and liaison service between Provider and Customer. Justin Lutterman shall be Customer's authorized representative in dealing with Provider.
- B. Except as otherwise provided in this agreement, any dispute concerning a question of fact arising under this agreement which is not disposed of by negotiation and agreement shall be decided by the Contract Manager, who shall reduce the decision to writing and furnish a copy thereof to Provider. The decision of the Contract Manager shall be final and conclusive unless, within thirty

(30) days from the date of mailing of a copy of the decision to Provider, Provider furnishes to the Contract Manager a written appeal addressed to Customer. The decision of Customer, or its duly authorized representative for the determination of such appeals shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary, so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this clause, Provider shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, Provider shall proceed diligently with the performance of the agreement and in accordance with the Contract Manager's decision.

10. Laws Governing. This contract shall be governed under applicable federal law, as well as the applicable laws of the State of Minnesota.

11. Severability. If any term of this agreement is found to be void or invalid, such invalidity shall not affect the remaining terms of this agreement, which shall continue in full force and effect.

12. Complete Agreement. This agreement constitutes the entire agreement and understanding of the parties and supersedes all offers and negotiations, and other agreement of any kind. There are no representations or understandings of any kind not set forth herein. Any modification of or amendment to this agreement must be in writing and executed by both parties. This contract cannot be assigned by Provider without written permission of Customer.

IN WITNESS WHEREOF, the parties hereto have set their hands and affixed their representative seals the day and year first below written.

Le Sueur County, MN

By: _____

Its _____

AeroLogix Consulting, Inc.,
A Minnesota corporation

By: _____

Maureen A. Briggs
Its Vice President