



SERVICES AGREEMENT K-1415-90

This Services Agreement (this “Agreement”) is entered into as of the **27th** day of **January, 2015** (“Effective Date”) by and between The Sanborn Map Company, Inc., a Delaware corporation (“Sanborn”), and the **City of Norman, Oklahoma** (the “CLIENT”). There are no third parties to this Agreement nor any third party rights or benefits either expressed or implied.

RECITALS

Sanborn is in the business of creating specialized geographic information solutions products and services.

CLIENT wishes to enter into this Agreement with Sanborn in order to secure products and services from Sanborn.

CLIENT and Sanborn acknowledge the Agreement consists of the following, which are listed in their order of priority in the event of inconsistent or contradictory provisions:

1. This Agreement
2. Sanborn’s Technical Proposal and Fee Proposal dated December 17, 2014 – *Offshore Option* for the City of Norman, Oklahoma (Exhibit A.1.) and Exhibit B Compensation
3. Association of Central Oklahoma Governments (ACOG) RFP # 2015-01 for The Central Oklahoma Alliance of Government Agencies 2015 (COAGA 2015) Regional Digital Orthophoto Images and Associated Data dated November 26, 2014 and its RFP Deadline Extension dated December 9, 2014 (Exhibit A.2.)

NOW, THEREFORE, CLIENT and Sanborn mutually agree as follows:

Article 1 Services.

1.1 Sanborn agrees to perform those services for CLIENT that are specified in Exhibit A (the “Services”) and shall deliver to CLIENT those deliverables specified in Exhibit A (the “Deliverables”). *Additional* Services and Deliverables shall be defined by CLIENT as Purchase Orders from time to time as its needs dictate. The *additional* Purchase Orders shall

contain, at a minimum: (i) any flow down provisions from another buyer authorized to make purchases under this Agreement, if applicable, (ii) specifications, (iii) list of deliverable items and shipment instructions, (iv) acceptance criteria, and (v) schedule of deliverables. Sanborn shall respond to such Purchase Order request(s) with a price quotation. This Agreement and any Purchase Orders issued hereunder must be signed by authorized representatives of each party with the authority to bind their respective organizations. Execution of this Agreement, or a Purchase Order issued hereunder, by both parties shall constitute a notice to proceed with the Services.

1.2 Sanborn shall use its commercially reasonable efforts to render services under this Agreement in a professional and business-like manner and in accordance with the standards and practices recognized in the industry. Sanborn shall not be restricted in its use of subcontractors and suppliers (including, but not limited to, any socio-economically disadvantaged companies as defined in the U.S. System for Award Management (SAM) and/or the Small Business Administration (SBA); and any of Sanborn's qualified acquisition subcontractors) as Sanborn, in its sole discretion determines are necessary to meet its obligations under this Agreement or any Purchase Order issued hereunder. However, Sanborn shall obtain CLIENT's prior written approval for any subcontractors that it intends to utilize that are not already identified in Sanborn's Proposal, this Agreement, or any Purchase Order issued hereunder; such approval which shall not be unreasonably withheld.

1.3 Neither party shall be liable in damages or have the right to terminate this Agreement or any Purchase Order issued hereunder for any delay or default in performing if such delay or default is caused by events of Force Majeure. Force Majeure shall mean any events or actions beyond the reasonable control of either CLIENT or Sanborn preventing or delaying the execution of or compliance with any of the terms and conditions contained in this Agreement or any Purchase Order issued hereunder including but not limited to strikes, lockouts, labor shortages, actions or inactions of independent subcontractors and suppliers, power shortages, wars, acts of God, and governmental regulations, including the restrictions imposed by air traffic control personnel with authority over airspace required for flight operations, restricting normal operations, weather or atmospheric conditions that are not conducive for the collection of aerial imagery or terrain data in a manner that is necessary to meet or exceed the requirements of any Deliverable and inability of CLIENT to provide any specified Sources in a timely manner. Sources shall mean all information and/or materials as may be defined in this Agreement or any Purchase Order issued hereunder required to be provided by CLIENT to Sanborn for the performance of the Services.

1.4 Sanborn shall be the sole and exclusive owner of all right, title and interest in and to the work materials and Deliverables until such time as Sanborn has received full and final payment of all outstanding invoices with respect to the performance of the Services and delivery of the Deliverables hereunder. At such time as payment in full has been rendered to Sanborn, CLIENT shall have such rights, title, and interest in and to the Deliverables.

1.5 To the extent that the work materials and Deliverables are considered public domain information, Sanborn shall enjoy all rights to utilize the work materials and/or Deliverables in its business practices, without restriction. To the extent that the work materials

and Deliverables are not considered public domain information, CLIENT hereby grants to Sanborn a limited, non-exclusive, nontransferable, royalty-free, worldwide, perpetual license to copy, use, create derivative works of, use derivative works of, and distribute copies of the derivative works of, same unless specified otherwise in this Agreement or any Purchase Order(s) issued hereunder. Any Products that are purchased through this Agreement or any Purchase Order issued hereunder that are the property of a third party shall be subject to the owner's license agreements.

1.6 The parties mutually agree that the database design(s) for CLIENT shall be as contained in the specifications in Exhibit A, and each Purchase Order issued hereunder.

1.7 The parties mutually agree that the standards for quality validation of the Deliverables shall be as contained in the acceptance criteria of Exhibit A, and each Purchase Order issued hereunder. CLIENT shall be responsible for evaluating and determining the adherence of the Deliverables to the acceptance criteria or calculating error rates for the Deliverable units under this Agreement or any Purchase Order issued hereunder within thirty (30) days of receipt. To the extent that CLIENT assigns or contracts some or all of this responsibility to any third party ("Agent") such assignment or contracting of the responsibility shall not relieve CLIENT of responsibility and liability for all acts and omissions which may constitute CLIENT's default or breach of this Agreement.

1.8 CLIENT's point of contact for Sanborn shall be:

Joyce J. Green, Ph.D., GISP
 Manager of GIS Services Division
 City of Norman
 201 West Gray Street, Building A
 Norman, OK 73069
 (405) 366-5467
joyce.green@normanok.gov

Sanborn's point of contact for CLIENT shall be:

Kristopher (Kris) Andersen
 Project Manager
 Sanborn
 1935 Jamboree Drive, Suite 100
 Colorado Springs, CO 80920-5358
 (719) 264-5490
kandersen@sanborn.com

Article 2 Compensation. CLIENT shall pay Sanborn for the Deliverables and performance of the Services in accordance with the terms specified in Exhibit B. CLIENT is tax exempt and shall issue a tax exempt certificate to Sanborn upon execution of this Agreement.

Article 3 Independent Contractor Status.

3.1 Sanborn is an independent contractor and no employees, associates or agents of Sanborn shall be deemed to be an employee, associate or agent of CLIENT, or vice-versa. CLIENT and Sanborn are not and shall not be considered as employer/employee, joint adventurers, partners, or one as agent of the other under this Agreement, and neither shall have power to bind or obligate the other.

Article 4 Term and Termination.

4.1 This Agreement shall remain in effect from the date contained herein until terminated by either party by giving thirty (30) days' written notice to the other party. Upon the date so specified, Sanborn shall immediately terminate all activities on behalf of CLIENT. Notwithstanding any such termination, CLIENT shall in no event be released from its obligation to pay Sanborn for all Services performed and those in process at the time of such termination, and Deliverables delivered prior to such termination.

4.2 The provisions of Articles 1-6 shall survive any termination of this Agreement.

Article 5 Indemnification

5.1 By CLIENT. CLIENT agrees to indemnify, defend and hold harmless Sanborn and Sanborn's directors, officers, shareholders, employees, agents and affiliates from and against any and all third party actions, claims, liabilities, damages, losses and expenses, including reasonable attorneys' fees and costs (collectively, "Claims") arising out of or related to the acts, errors or omissions of CLIENT or any of CLIENT's officers, directors, employees, Agents or affiliates in connection with the performance of its obligations under this Agreement.

5.2 By Sanborn. Sanborn agrees to indemnify, defend and hold harmless CLIENT and CLIENT's directors, officers, shareholders, employees, agents and affiliates from and against any and all Claims arising out of or related to the acts, errors or omissions of Sanborn or any of Sanborn's officers, directors, employees, agents or affiliates in connection with the performance of its obligations under this Agreement.

5.3 Conditions of Indemnification of Third Party Claims. The obligations and liabilities of the parties hereunder with respect to Claims resulting from the assertion of liability by third parties shall be subject to the following terms and conditions:

(a) In the event that any claim or demand for which one party would be liable to the other hereunder (the "Indemnified Party" and the "Indemnifying Party" as applicable), is asserted against or sought to be collected by a third party, the Indemnified Party shall promptly notify the Indemnifying Party of such claim or demand, specifying the nature of such claim or demand and the amount or the estimated amount thereof (which estimate shall not be conclusive of the final amount of such claim or demand) (the "Claim Notice"). The Indemnifying Party shall have ten (10) days from its receipt of the Claim Notice (the "Notice Period") to notify the Indemnified Party (1) whether or not the Indemnifying Party disputes its liability to the Indemnified Party hereunder with respect to such claim or demand, and (2) if it does not dispute such liability, whether or not it desires, at its sole cost and expense, to defend the Indemnified

Party against such claim or demand; provided, however, that the Indemnified Party is hereby authorized prior to and during the Notice Period to file any motion, answer or other pleading that it shall deem necessary or appropriate to protect its interests. In the event that the Indemnifying Party notifies the Indemnified Party within the Notice Period that Indemnifying Party desires to defend against such claim or demand, then except as hereinafter provided, the Indemnifying Party shall have the right to defend the Indemnified Party by appropriate proceedings, which proceedings shall be promptly settled or prosecuted to a final conclusion in such a manner as to avoid any risk of an Indemnified Party becoming subject to liability for any other matter. If, in the reasonable opinion of an Indemnified Party, any such claim or demand involves an issue or matter that could have a material adverse effect on the business, operations, assets, properties or prospects of an Indemnified Party or an affiliate of an Indemnified Party, such Indemnified Party shall have the right to control the defense or settlement of any such claim or demand, and its reasonable costs and expenses thereof shall be included as part of the indemnification obligations of the Indemnifying Party hereunder. If the Indemnifying Party disputes its liability with respect to such claim or demand or elects not to defend against such claim or demand, whether by not giving timely notice as provided above or otherwise, then the amount of any such claim or demand, or, if the same be contested by the Indemnifying Party or by an Indemnified Party (but the Indemnified Party shall not have any obligation to contest any such claim or demand), then that portion thereof as to which such defense is unsuccessful, shall be presumptively deemed to be a liability of the Indemnifying Party hereunder (subject, if the Indemnifying Party has timely disputed liability, to a determination that the disputed liability is covered by these indemnification provisions).

(b) In the event that an Indemnified Party should have a claim against an Indemnifying Party hereunder that does not involve a claim or demand being asserted against or sought to be collected from it by a third party, the Indemnified Party shall promptly send a Claim Notice with respect to such claim to the Indemnifying Party; provided, that the failure to so notify shall not limit the Indemnified Party's right to indemnification unless such failure materially adversely affects the ability of the Indemnifying Party to defend such claim and then only to such extent. If the Indemnifying Party does not notify the Indemnified Party within the Notice Period that it disputes such claim, the amount of such claim shall be presumptively deemed a liability of the Indemnifying Party hereunder.

5.4 Participation; Cooperation. The Indemnified Party will at all times also have the right to participate fully in the defense at its own expense unless the third party Claim is made both against an Indemnifying Party and an Indemnified Party and the Indemnified Party has been advised by counsel that there are legal defenses available to such Indemnified Party that are materially different from those available to the Indemnifying Party, in which case the fees and expenses of one counsel in respect of such claim incurred by the Indemnified Party will be paid by Indemnifying Party. The parties will cooperate in the defense of all third-party Claims that may give rise to indemnifiable Claims hereunder. In connection with the defense of any claim, each party will make available to the party controlling such defense, any books, records or other documents within its control that are reasonably requested in the course of such defense.

5.5 Limitation on Damages. Notwithstanding any other provision of this Agreement, neither party will be liable to the other for any punitive, indirect, special, consequential or incidental damages whatsoever. Sanborn's maximum aggregate liability to CLIENT shall be

limited to the aggregate dollar value of fees paid to Sanborn by CLIENT pursuant to the terms hereof. CLIENT's maximum aggregate liability to Sanborn shall be limited to the aggregate dollar value of fees paid to Sanborn by CLIENT pursuant to the terms hereof or \$125,000, the maximum liability as allowed under the Oklahoma Tort Claims Act, whichever is less. EXCEPT FOR THE EXPRESS WARRANTIES MADE OR REFERENCED IN THIS AGREEMENT, NEITHER PARTY MAKES ANY WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE AS TO ANY ITEMS OR SERVICES PROVIDED UNDER THIS AGREEMENT.

Article 6 Miscellaneous.

6.1 This Agreement is made in the State of Oklahoma, and shall for all purposes be construed in accordance with the laws of said State, without reference to choice of law provisions.

6.2 This Agreement is performable in, and venue of any action related or pertaining to this Agreement shall lie in, the City of Norman, Oklahoma.

6.3 This Agreement and its Exhibits contains the entire agreement between CLIENT and Sanborn and supersedes any and all previous agreements, written or oral, between the parties relating to the subject matter hereof. No amendment or modification of the terms of this Agreement shall be binding upon the parties unless reduced to writing and signed by both parties as described in sections 6.9 and 6.10.

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

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

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

6.7 Notice required under this Agreement shall be in writing and either personally delivered; sent by certified mail, return receipt requested; sent by common courier (i.e., UPS, FedEx), with proof of delivery; or sent electronically (i.e., Facsimile, Email), with delivery/read receipt/confirmation, to CLIENT at its principal executive offices in section 1.8 or to Sanborn, Attention: Corporate Contracts at the last address filed by it in writing with CLIENT.

6.8 This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, representatives and successors. This Agreement may be assigned by Sanborn or CLIENT to any successor upon written consent of the party not seeking to assign the Contract.

6.9 This Agreement may only be modified through written amendment or Change Request Form as described in section 6.10, and signed by authorized representatives of the parties.

6.10 The Exhibits to this Agreement and any Purchase Order(s) issued hereunder may only be modified through the Change Request process which requires that any change to the specifications, deliverables, acceptance criteria, delivery schedule, fees or invoicing and payment terms be clearly quantified and reduced to writing utilizing a Change Request Form, and signed by authorized representatives of the parties.

6.11 All claims, disputes, and other matters in question between the parties arising out of or relating to this Agreement or the breach thereof, shall be formally discussed and negotiated between the parties for resolution. In the event that the parties are unable to resolve the claims, disputes, or other matters in question within thirty (30) days of written notification from the aggrieved party to the other party, the aggrieved party shall be free to pursue all remedies available at law or in equity.

6.12 The parties acknowledge that certain equipment, products, software and technical information provided pursuant to this Agreement may be subject to United States export laws and regulations and agrees that any use or transfer of such items must be authorized by the appropriate United States government agency. The parties shall not directly or indirectly use, distribute, transfer or transmit any item and/or information (even if incorporated into other equipment, products, software or technical information) except in compliance with United States export laws and regulations.

6.13 Sanborn may propose technology enhancement of Deliverables being provided under this Agreement or any Purchase Order(s) issued hereunder whenever newer technology becomes available that may save money, improve performance, or improve adherence to specifications. All proposed upgrades must meet the following requirements: (i) all mandatory requirements of this Agreement and any Purchase Order(s) must continue to be met, (ii) the proposed upgrade or enhancement will result in at least equal operability, maintainability, reliability, and overall performance while providing some additional benefit or advantage to CLIENT, (iii) the change will be mutually negotiated between the parties, (iv) as a minimum, the following information must be submitted by Sanborn with each such proposal: (a) a description of the difference between the existing Agreement and/or Purchase Order requirement and the proposed change along with the comparative advantages and disadvantages of each, (b) suggested Agreement and/or Purchase Order requirements which should be changed if the proposed technology enhancement is adopted, (c) a complete pricing proposal that evidences the commerciality of the pricing (the price for the upgraded product/service or configuration can be no greater than the standard commercial price of the replacement product/service), (v) an evaluation of the proposed change's effect on collateral costs, costs of related items, and costs of maintenance and operation, as applicable, (vi) timing as to when the modification adopting the technology enhancement must be issued to ensure the maximum benefit to CLIENT, and (vii) identify any effect on the Agreement and/or Purchase Order completion or delivery schedule.

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

THE SANBORN MAP COMPANY, INC.

By: _____

Name: John R. Copple

Title: President/CEO

Attest: _____

Name: Amy E. Kappel

Title: Corporate Secretary

CITY OF NORMAN, OKLAHOMA

By: _____

Name: Cindy Simon Rosenthal

Title: Mayor

Attest: _____

Name: Brenda Hall

Title: City Clerk

Approved as to form and legality this _____ day of _____, 2015

City Attorney



K-1415-90, EXHIBIT A

Services and Deliverables

Services

Sanborn shall produce the deliverables in this section to meet the accuracy standards specified in ACOG RFP # 2015-01 for COAGA 2015 for Regional Digital Orthophoto Images and Associated Data dated November 26, 2014. The topographic work will be documented sufficiently to meet the requirements of a map update performed by a Cooperating Technical Partner of the Federal Emergency Management Agency. The area to be mapped under this Agreement is delineated in Appendix H of ACOG RFP # 2015-01.

The work to be completed includes: updated color digital aerial orthophotography, one foot contours in the urban area, two foot contours for the rural portion of the project, a model (DEM), a digital terrain model (DTM), raw lidar products required to derive the contours, and updated planimetric mapping. Planimetric mapping layers to be collected include the following: streets, pavement, unpaved parking, driveways, existing train tracks, hydrology, building footprints, fences, sidewalks, and vegetation. Building heights will be collected if funded in 2016. The methods and schedule used to complete the work will be those specified in Sanborn's Proposal dated December 17, 2014.

Deliverables

1. All Items from Sanborn's Technical Proposal and Fee Proposal dated December 17, 2014 – *Offshore Option* for the City of Norman, Oklahoma, including:
 - a. Phase One
 - i. OrthoPhotos TIF: 164 miles @ 6" and 92 miles @ 3"
 1. Mr SID and JPG2000 of entire City
 - ii. Planimetrics – 82 miles @ 1"=50' and 115 miles @ 1"=100' including: streets, pavement, unpaved parking and driveways, existing train tracks, building outlines, fences, sidewalks, and vegetation
 - iii. Topo products

1. Hydro-flattened bare-earth raster digital elevation model (DEM)
 2. DTM
 3. Geodatabase of topographic contours at 1' intervals (lines) in urban area and 2' intervals in rural and spot elevations (points) with attributes for elevation
 4. Breaklines
 5. Raw Point Cloud fully compliant to LAS 1.4
 6. FEMA Compliant Vertical Accuracy Report (60 check points)
- b. Phase Two – *notice to proceed contingent on CLIENT FYE 2016 Funding Appropriation*
- i. Add Building height to planimetrics



K-1415-90, EXHIBIT B

Compensation

CLIENT shall pay, and Sanborn agrees to accept as full consideration for its Services and Deliverables under Exhibit A of this Agreement, the firm-fixed price of One Hundred Sixteen Thousand, Eight Hundred Seventy-three dollars and Ninety cents (**\$116,873.90**), including \$107,041.23 for Phase One and \$9,832.67 for Phase Two (*completion contingent on CLIENT FYE 2016 Funding Appropriation*).

Mobilization costs in the amount of 10% of the total price will be invoiced and paid upon survey and flight plan approval for all expenses incurred to collect the aerial data necessary for the project. Invoices shall be submitted thereafter based upon the delivery milestones as follows:

- 30% upon acquisition completion
- 20% upon survey report and AT report delivery
- 30% upon initial orthophoto/planimetric/topography delivery by area
- 10% upon final acceptance

Payment terms are thirty (30) days from receipt of invoice. There shall be no retainage of any invoiced amount.

Should any of CLIENT's payments be delayed by more than thirty (30) days from their due date, Sanborn shall have the right to take any one or more of the following actions:

- Stop-work without further obligation, liability, damages or penalty until all past-due payments are received;
- Collect interest on past-due payments in accordance with applicable laws and regulations;
- File appropriate liens against Services and Deliverables for which payment has not been received;
- Terminate this Agreement and collect all payments due in accordance with section 4.1 using all methods available at law and in equity.

CLIENT shall pay, and Sanborn agrees to accept as full consideration for any *additional* Services and Deliverables under this Agreement, invoices for work performed at CLIENT's request through mutually negotiated Purchase Orders.

For any Purchase Orders that are not firm-fixed price, CLIENT shall be responsible for all costs and expenses incident to the performance of Services for CLIENT, including but not limited to, all costs of equipment provided by Sanborn, all travel, food, lodging, all fees, fines, licenses, bonds or taxes required of or imposed against Sanborn and all other of Sanborn's costs of doing business.