CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number: _____

Meeting Type: Regular

Meeting Date: Jan 28, 2016

Action Requested By: Engineering

Agenda Type: Resolution

Subject Matter:

Agreement between the City of Huntsville and The Atlantic Group, L.L.C.

Exact Wording for the Agenda:

Resolution authorizing the Mayor to enter into an agreement between the City of Huntsville and the Atlantic Group, L.L.C. for New Digital Orthophotography Services, Project No. 71-16-SP22

Note: If amendment, Please state title and number of the original

Item to be considered for: Action

Unanimous Consent Required: No

Briefly state why the action is required; why it is recommended; what council action will provide, allow and accomplish and; any other information that might be helpful.

Contract is for aerial mapping to cover the City Limits of Huntsville. Orthophotography will be delivered at a 3 inch pixel resolution tiled to the public land survey system for a Lump Sum Amount of $59,497.71. Account No. 7000-74-74200-515250-00000000

Associated Cost: $59,497.71

Budgeted Item: _____

MAYOR RECOMMENDS OR CONCURS: _____

Department Head: Kathy [illegible]

Date: 1-25-16

Park

ROUTING SLIP
CONTRACTS AND AGREEMENTS

Originating Department: **Engineering** Council Meeting Date: **1/28/2016**

Department Contact: **Lynn Majors** Phone # **256-427-5201**

Contract or Agreement: **Mapping Services**

Document Name: **Atlantic-New Digital Orthophotography, Project No. 71-16-SP22**

City Obligation Amount: **$59,497.71**

Total Project Budget: **$59,497.71**

Uncommitted Account Balance: **0**

Account Number: **7000-74-74200-51520-00000000-**

Procurement Agreements

Not Applicable	**Not Applicable**

Grant-Funded Agreements

Not Applicable	**Grant Name:**

Department	Signature	Date
1) Originating	Kathy Mark	1-25-16
2) Legal	Mary C Cates	1-27-16
3) Finance	M Sargent	1.27.16
4) Originating		
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		

Revised 04/15/2011

RESOLUTION NO. 16-_____

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be, and is hereby authorized, to enter into an agreement between the City of Huntsville and the Atlantic Group, L.L.C. for New Digital Orthophotography Services in a Lump Sum Amount of FIFTY-NINE THOUSAND FOUR HUNDRED NINETY-SEVEN AND .71/100 DOLLARS ($59,497.71), on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said contract is substantially in words and figures similar to that document attached hereto and identified as "Contract between City of Huntsville and the Atlantic Group, L.L.C. for New Digital Orthophotography Services, Project No. 71-16-SP22", consisting of a total of thirteen (13) pages and the date of January 28, 2016, appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, and an executed copy of said document being permanently kept on file in the Office of the City Clerk of the City of Huntsville, Alabama.

ADOPTED this the 28th day of January, 2016.

_____
President or President Pro Tem of the City Council of the City of Huntsville, Alabama

APPROVED this the 28th day of January, 2016.

_____
Mayor of the City of Huntsville, Alabama

atlantic

PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT (hereinbelow referred to as the "Agreement") is made and entered into as of the 28 day of January 2016 ("Effective Date") by and between THE ATLANTIC GROUP, LLC, limited liability company organized and existing under the laws of the State of Alabama (hereinbelow referred to as "Atlantic") and the City of Huntsville, Alabama, a corporation organized and existing under the laws of the State of Alabama (hereinbelow referred to as "Client") ; Atlantic and Client may hereinbelow be individually referred to as a "Party" and be collectively referred to as the "Parties."

WITNESSETH

WHEREAS, Client wishes to procure certain "Services" (as that term is defined below) and to specify each party's respective roles and responsibilities related thereto, in the acquisition and production of geospatial services and products related to and/or supporting Surveying & Mapping, Aerial Photography, and CADD/GIS, all on the terms and conditions contained in this Agreement;

NOW, THEREFORE, for and in consideration of the promises, agreements and representations contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Article 1

DEFINITIONS

For the purposes of this Agreement, the following words and phrases shall have the meanings given below:

"Agreement" shall mean this Contract.

"Amendment" shall mean a revision to or modification of this Agreement, which shall be in writing and shall be executed and delivered to both Atlantic and Client.

"Business Day" shall mean every Day other than Saturday, Sunday or a legal holiday recognized by the federal government.

"Client" shall have the meaning set forth in the first paragraph of this Agreement.

"Confidential Information" shall mean all information or documents furnished orally, in written form, by electronic means, or by any other means which are marked by the disclosing Party as "Confidential" and/or "Proprietary" or, if not marked as "Confidential" and/or "Proprietary," will still be deemed "Confidential Information" if it would logically be considered "Confidential" and/or "Proprietary" in view of its relationship to the whole disclosure. Information furnished orally, in written form, by electronic means, or by any other means which was identified by the disclosing Party as confidential and/or proprietary at the time of disclosure, shall be treated by the receiving Party as Confidential Information in accordance with this Agreement and any oral discussions or visual information not identified by the disclosing Party as confidential and/or proprietary at the time of disclosure, shall be treated by the receiving Party as Confidential Information provided such oral discussions or visual information are identified by the disclosing Party as confidential and/or proprietary in writing within fifteen (15) calendar days of the date of disclosure.

"Contract" shall mean this agreement and any agreement for Services, including, without limitation, a letter agreement or price quotation, executed (signed) by Client with Atlantic.

"Contracts" shall mean each and every Contract.

President or President Pro Tem of the City Council of the City of Huntsville, AL
Date: January 28, 2016

"Day" shall mean a calendar day, including Saturdays, Sundays, and holidays.

"Effective Date" shall have the meaning set forth in the first paragraph of this Agreement.

"Force Majeure" shall mean any act, event or condition that causes delay in or failure of the performance of obligations under this Agreement if the act, event or condition (i) is beyond the reasonable anticipation and control of the Party relying on it, (ii) is not the result of the willful misconduct or negligent act or omission of that Party (or any person or entity over whom that Party has control), and (iii) is not an act, event or condition, the risk or consequence of which that Party has expressly assumed under this Agreement, and then only to the extent the same cannot be cured, remedied, avoided or otherwise overcome by the prompt exercise of reasonable diligence by the Party relying on it. For the avoidance of doubt, Force Majeure shall not include any shortage of labor, materials, equipment, supplies or transportation other than as defined in sub-part (e) below, and shall not include changes in general economic conditions such as inflation, interest rates or other factors of general application. To the extent that the following acts, events and conditions fall within the foregoing limitations, they will fall within the definition of Force Majeure:

(a) Acts of God, floods, hurricanes, tornadoes, earthquakes, lightning and other extreme natural calamities;

(b) War, riot, strikes or work stoppages, insurrection, acts of a public enemy, civil commotion, rebellion and acts of armed force;

(c) Acts or inaction of any duly constituted government or judicial authority; however, an enforcement action by a regulatory agency against a Party that results from noncompliance with a regulatory requirement of such agency and does not cause a delay in receiving a regulatory approval from such agency pursuant to the Work under this Agreement shall not constitute an act of Force Majeure;

(d) Explosions, fires, thefts, accidents, sabotage and other similar events causing damage to or destruction in whole or in part of the equipment or property necessary to perform the Work;

(e) Delays in obtaining Goods or Services from any subcontractor caused solely by the occurrence of any of the events described in the immediately preceding sub-parts (a) through (d).

"Government Authority" shall mean any federal, state, city, county, local, municipal or foreign government, authority or body or any department, agency, subdivision, court or other tribunal of any of the foregoing.

"Laws" shall mean all statutes, laws, codes, ordinances, orders, judgments, decrees, injunctions, licenses, rules, permits, approvals, agreements, and regulations, including all applicable codes, standards, rules and regulations of any Government Authority, including the State of Alabama, as applicable.

"Project Manager" shall mean the individual designated in writing at any time and from time to time by Atlantic as the Project Manager for a specific Task Order.

"Purchase Order" or "PO" shall mean a written purchase order issued by Client to Atlantic, whether or not issued under a Contract, provided, however, that any pre-printed terms or conditions which may appear or be reflected on the front or back of a Purchase Order or PO shall be deemed not to be part of said Purchase Order or PO and such pre-printed terms or conditions shall have no legal force or binding effect and said Purchase Order or PO shall be deemed issued as if such pre-printed terms or conditions did not appear.

"Services" shall mean all labor, services, products, materials, equipment, tools, vehicles, transportation, storage, design, engineering, procurement, preparation, construction, installation, equipping, testing, training, as well as any necessary and accompanying software, know-how, and other things and actions necessary to complete the Services, in accordance with the applicable Proposal, Task Order and/or applicable Purchase Order and this Agreement, that is provided by Atlantic and its respective third party subcontractors.

"Task Order" shall mean a work order that is executed by Client and Atlantic for a particular Contract and/or PO/Proposal and that specifies the Work to be performed by Atlantic, the delivery date(s), the compensation to be paid to Atlantic by Client, and any other pertinent information. (See Exhibit B - Option 1)

"Work" shall mean the supply of Services and performance of Services pursuant to this Agreement or any Proposal, Task Order or PO.

Article 2

PERFORMANCE AND RETENTION

Section 2.01 Scope of Agreement. Atlantic has been requested by Client to provide specific services. Services under this Agreement shall be procured under a Firm Fixed Price (FFP) Contract. Atlantic shall provide to Client, under the terms set forth in this Contract, those services, deliverables or products outlined and set forth in Article 2, Section 2.02 Statement of Work (SOW).

Section 2.02 Statement of Work (SOW). The products and/or services to be provided by Atlantic hereunder (hereinafter referred to collectively as "Deliverables") are defined below:

Services to be provided:
IMAGERY

1. Ground control survey support for aerial imagery
    a. Initial Ground Control will be provided by Huntsville Utilities
    b. Atlantic will provide necessary ground control stations for this project in support of aerial triangulation and subsequent ortho production. Photo-IDs are acceptable.
    c. The Coordinate System to be used will be – NAD83/07 - State Plane 83 (2007 Adjustment) Zone 101, Alabama East, US Survey Feet
2. Acquisition of new 4-band digital imagery
    a. Project Area of Interest (AOI): All of Madison County (excluding Redstone Arsenal) to include the City of Huntsville Corporate Limits and the Huntsville Utilities Service Area which extends into Limestone County and Marshall County as indicated in the boundary provided by the Client. (See Exhibit A)
    b. Imagery will be acquired to support a Ground Sample Distance (GSD) of 0.25' (3") for the City of Huntsville Corporate Limits AOI.
    c. Minimum Overlap will be 60% Forward Overlap and 30% Side Lap.
    d. The downtown area and the I-565/Memorial Parkway intersection imagery will be acquired with 80% Forward Overlap and 80% Side lap.
    e. Imagery will be acquired to support a Ground Sample Distance (GSD) of 0.5' (6") for the area of Madison County and Huntsville Utilities' Service Area outside of the City of Huntsville Corporate Limits AOI.
    f. The Imagery will be acquired with a minimum of 60% Forward Overlap and 30% Side Lap.
    g. Imagery will be acquired with a minimum 30 degrees sun angle.
    h. Imagery will be collected during Leaf-off conditions.
    i. No snow
    j. Water bodies within their normal banks.
    k. No clouds, fog, haze, smoke
    l. Cloud shadows should be avoided but are acceptable up to 5%
3. Post-Processing and Aerial Triangulation
4. Ortho-rectification using existing LiDAR surface or auto-correlated ortho-surface
5. Development of 4-band digital orthophoto tiles with a 0.25' (3") pixel resolution for the City of Huntsville Corporate Limits AOI, and 0.5' (6") pixel resolution for the area of Madison County and Huntsville Utilities' Service Area outside of the City of Huntsville Corporate Limits AOI. (See Exhibit A)

Products to be delivered:

IMAGERY

1. Ground Control Survey Report
2. Digital Aerial Triangulation Report
3. Provide 4-band digital orthophoto tiles with a 0.25' (3") pixel resolution for the City of Huntsville Corporate Limits AOI, and 0.5' (6") pixel resolution for the area of Madison County and Huntsville Utility Service Area outside of The City of Huntsville Corporate Limits AOI.

    a. Coordinate System – NAD83/07 - State Plane 83 (2007 Adjustment) Zone 101, Alabama East, US Survey Feet
    b. ASPRC Class II accuracy standard
    c. Tiles clipped to the AOI and butt-matched, tiling scheme TBD
    d. Digital Orthophoto tiles will be delivered in:
        - TIF/TFW format sections
        - JPG compressed sections
        - MrSID Generation 3 format mosaics per township and range
        - JPG compressed per township and range
    e. All Orthophoto tiles will be delivered on external drives.

Tentative Schedule:

1. Acquisition
    - Winter 2015/2016 flying season
    - Three to four days of acquisition (weather permitting)
2. Ground Survey
    - Winter 2015/2016
    - Three to four days of survey activities
3. Ortho-Imagery Processing and Production
    - The orthophoto processing will begin immediately following the completion and acceptance of the Aerial Triangulation.
    - Final orthos due August 30, 2016

Section 2.03 Inspection/Acceptance. Client shall inspect all deliverables within thirty (30) calendar days after receipt for conformance with the requirements contained in the Scope of Work. Unless Client notifies Atlantic in writing of any unacceptable deliverables within the above stated time frame, the subject deliverables shall be deemed as accepted by the Client.

As part of the inspection process, the Client shall mark all instances where the provided data is identified as being not in conformance with the stated Scope requirements. The Client shall identify Scope violations with either a point, line, or polygon feature depending on shape and extent. For this purpose, ESRI shapefiles are preferred. Google Earth files (KML/KMZ) or coordinate pairs are acceptable as well. Regardless of file format, each marked instance shall contain a comment clearly describing the identified defect.

Upon receipt of the identified features, Atlantic will verify the instances that do not meet the stated and agreed specifications, and will apply corrections to them. It is at Atlantic's sole discretion to edit marked instances that require corrections outside the Scope of Work. Only those tiles containing edits (or ones that are immediately affected by them) will be redelivered by Atlantic to the Client.

Article 3

TERM OF AGREEMENT

Section 3.01 **Term.** The term of this Agreement shall be in full force and effect from the Effective Date through the earliest of the following events (the "Term"): (i) one (1) year after the expiration or termination of any and all Contracts and POs; (ii) termination of this Agreement as provided in Section 3.02 below; (iii) dissolution, acquisition, merger where a Party is not the surviving entity of the merger, receivership or bankruptcy filing of either Party, or (iv) upon the occurrence of any corporate fraud, malfeasance or other illegal act or omission of either Party which impacts the ability of that Party to perform the Services.

Section 3.02 **Termination.** The Client shall have the right to terminate this Agreement prior to its expiration under the following conditions:

(a) **Termination for Default**: In the event that Atlantic breaches any of the terms of this Agreement, and said breach is not cured within thirty (30) days after notice thereof is received by Atlantic.

(b) **Termination for Convenience**: Without limiting any rights which Client may have for reason for any default by Atlantic, Client reserves the right to terminate this Agreement in whole or in part at its convenience by thirty (30) days written notice.

(c) **Upon default** by either party of any material term, condition, covenant of the Agreement, and upon mutual failure to cure such default within thirty (30) days of written notice thereof, either party may terminate all or a portion of this Agreement. Atlantic shall be paid for all work delivered to and accepted by Client prior to the termination.

(d) **Termination for Violation of Law.** This Agreement or any Task Order may be terminated by either Party immediately upon the other Party's violation of any state or federal law, rule, regulation or administrative order applicable to this Agreement or a Contract or a Task Order. Such termination of this Agreement or any Task Order will relieve the non-breaching Party of any further obligations under this Agreement but shall not relieve or release the Party who violated any such state or federal law, rule, regulation or administrative order from any liability resulting directly or indirectly from such Party's violation of any such state or federal law, rule, regulation or administrative order.

In the event of termination for convenience, Atlantic shall be paid for all work delivered and accepted in accordance with the Purchase Agreement, the fully burdened cost of any work not completed or delivered up until the time of termination and reasonable costs of terminating the work plus overheads and a reasonable profit thereon.

Termination of this Agreement shall not relieve Atlantic of its continuing compliance with the provisions of this Agreement, excepting the rendering of services.

Section 3.03 **Representations.** Atlantic represents that it, and its employees, is qualified to provide the services set forth in this Agreement, and that such Deliverables or any consulting shall meet the Client's specifications, as well as those standards of workmanship and quality normally recognized in the industry. No representation is made that the quality of surveying services to be performed is greater than the quality of surveying services performed by other surveyors.

Article 4

FEES, EXPENSES, AND PAYMENT

Section 4.01 **Fees.** Atlantic shall be paid a Firm, Fixed Price (FFP) of $59,497.71 in exchange for services rendered or products provided. The FFP is inclusive of all direct and indirect labor, overtime, facilities, incidental supplies, indirect charges, profit and travel.

Section 4.02 **Invoice and Payment.** A digital invoice will be submitted by Atlantic to the Client as follows: An initial invoice for 20% of project costs will be submitted at inception for project startup / mobilization costs. The

remaining balance will be billed at the end of each calendar month on a percent complete basis during the service period of the contract. The completion percentage is assessed on the total project cost minus initial startup invoice. Below is the tentative schedule for invoicing and payment as it relates to the percent of work complete.

City of Huntsville 2016 Imagery and Digital Ortho Project Invoicing Schedule					
Month	Description of Work	Cumulative % of total Fee	Invoice Amount	Submit Date	Due Date
January	Project Startup/ Planning	20%	$ 11,899.54	2/1/2016	3/2/2016
February	Flight Preparation/ Monitor Weather	25%	$ 2,974.89	2/29/2016	3/30/2016
March	Acquire Aerial Imagery (Weather Dependent)	60%	$ 20,824.20	3/31/2016	4/30/2016
April	Raw Image Processing	68%	$ 4,759.82	4/30/2016	5/30/2016
May	Aerial Triangulation	75%	$ 4,164.84	5/31/2016	6/30/2016
June	Surface Prep & Orthophoto Process Setup	80%	$ 2,974.89	6/30/2016	7/30/2016
July	Orthophoto Processing & Editing	95%	$ 8,924.66	7/31/2016	8/30/2016
August	Orthophoto Quality Control & Final Output	100%	$ 2,974.89	8/31/2016	9/30/2016
September	Project Wrap Up				
	Total Amount Invoiced		$ 59,497.71		

The Client will pay all invoices within thirty (30) days after receipt of a correct, formal invoice. Notice of an apparent error, defect, or impropriety in an invoice shall be given to Atlantic within fourteen (14) days of receipt of the invoice by the Client.

Section 4.03 Taxes and Withholdings. Each Party shall be responsible for the payment of its own taxes, benefits, deductions, withholdings, and fees, as may be customary, attributable to such Party's performance hereunder.

Article 5

RELATIONSHIP BETWEEN ATLANTIC AND CLIENT

Section 5.01 Independent Contractor Status. Atlantic shall at all times act as an independent contractor in the performance of this Agreement. Neither Atlantic, nor its employees, shall present themselves to be employees, agents or representatives of the Client.

Section 5.02 Confidentiality and Non-Disclosure.

(a) Each Party covenants and agrees that, during the Restrictive Period set forth in sub-part (b) of this Section 5.05, to maintain the Confidential Information received from the disclosing Party as secret and confidential and each Party (i) will hold the Confidential Information in trust and strictest confidence and not disclose the same to any third party, (ii) will protect the Confidential Information from disclosure and in no event take or fail to take any action causing, or fail to take the action necessary in order to prevent, any Confidential Information to lose its character as Confidential Information, and (iii) will not use, duplicate, reproduce, distribute, disclose or otherwise disseminate the Confidential Information except to perform its duties under this Agreement, a Purchase Order or a Task Order.

(b) The Restrictive Period shall be (i) the Term plus (ii) indefinitely from the expiration or termination of this Agreement.

(c) Neither Party shall have any further obligations of confidentiality or non-use with respect to any element of Confidential Information which it can demonstrate has ceased to be confidential or proprietary for any one or more of the following reasons:

(i) The information was in the public domain or was protected solely by patents, which patents have expired, or are invalid or otherwise unenforceable;

(ii) The information otherwise is or becomes publicly known through no act or omission of a Party in violation of this Agreement;

(iii) The information was known by the Party, without limitation as to use or disclosure, prior to the beginning of the Restrictive Period;

(iv) The information was developed independently by such Party during the Restrictive Period;

(v) The information is obtained by such Party during the Restrictive Period from a third party and the Party had no knowledge or reason to know that the information was wrongfully obtained or disclosed by the third party or disclosed by it in violation of a contractual obligation; or

(vi) The information is expressly authorized by the other Party to be used or disclosed without restriction.

(d) Confidential Information shall not be deemed to be publicly known or otherwise known prior to or during the Restrictive Period solely because the separate elements of the Confidential Information are known or embraced by more general information in a Party's possession or because they are embraced in general terms in publications or patents.

(e) If a Party is requested or compelled by a court, agency or other governmental entity to disclose Confidential Information, such Party shall, to the extent practicable, (i) promptly notify the other Party of the existence, terms and circumstances, surrounding the request or order; (ii) consult with the other Party on the advisability of taking steps to resist or narrow the request or order; (iii) cooperate with the other Party in any lawful effort the other Party undertakes to obtain any such relief and with any efforts to obtain reliable assurance that confidential treatment will be given to that portion of the Confidential Information which is to be disclosed, provided, that the Party requested or compelled to disclose the Confidential Information shall not be required to incur any expense or expose itself to any fines or penalties in connection therewith; and (iv) furnish only such portions of the Confidential Information as the Party is advised by its counsel legally must be disclosed, unless the other Party expressly authorizes broader disclosure.

(f) At the request of Provider, Receiver shall, at its own expense, promptly, and in any event no later than ten (10) days after receipt of such request, redeliver to Provider all written Confidential Information and any other written material containing or reflecting any information in the Confidential Information, and will not retain any copies, extracts or other reproductions (including any computer tapes or discs, other electronic images, or oral reproductions) in whole or in part of such written material. All documents, memoranda, notes and other writings or materials whatsoever prepared by Receiver based on information in the Confidential Information shall be destroyed, and such destruction shall be certified in writing to the Provider. Any oral Confidential Information will remain subject to this Agreement.

(g) Each Party acknowledges that the Confidential Information of the other Party is valuable and proprietary and gives such Party a competitive advantage. The loss of confidentiality with respect to any Confidential Information would cause irreparable injury. This Section 5.05 survives termination of this Agreement.

Section 5.03 DISCLAIMER OF WARRANTY. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, NEITHER PARTY MAKES ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES RENDERED BY IT OR ITS PERSONNEL OR THE RESULTS OBTAINED FROM IT OR THEIR WORK, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ALL WARRANTIES NOT EXPRESSLY PROVIDED FOR HEREIN ARE AFFIRMATIVELY DISCLAIMED.

Section 5.04 **LIMITATION OF LIABILITY.** EXCEPT AS PROVIDED IN SECTION 7.01 HEREIN, EACH PARTY'S CUMULATIVE LIABILITY UNDER OR FOR ANY AND ALL BREACHES OF THIS AGREEMENT SHALL BE LIMITED IN THE AGGREGATE TO THE TOTAL AMOUNT PAID TO SUCH PARTY UNDER THIS AGREEMENT. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY LOSS OF PROFITS, ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, OR FOR ANY CLAIMS OR DEMANDS BROUGHT AGAINST THE OTHER PARTY BY ANY THIRD PARTY EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH CLAIMS OR DEMANDS. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY FAILURE OR DELAY CAUSED BY EVENTS BEYOND SUCH PARTY'S CONTROL, INCLUDING, WITHOUT LIMITATION, THE CLIENT'S OR ATLANTIC'S FAILURE TO FURNISH NECESSARY INFORMATION; SABOTAGE; FAILURE OR DELAYS IN TRANSPORATION OR COMMUNICATION; FAILURES OR SUBSTITUTIONS OF EQUIPMENT; LABOR DISPUTES; ACCIDENTS; SHORTAGES OF LABOR, FUEL, RAW MATERIALS OR EQUIPMENT; OR TECHNICAL FAILURES. THIS LIMITATION UPON DAMAGES AND CLAIMS IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE.

Article 6

RESOLUTION OF DISPUTES

Section 6.01 **Claims.** This Article 6, including the Sections and subparagraphs contained herein, is referred to as the "Dispute Resolution Provision." This Dispute Resolution Provision is a material inducement for the Parties entering into this Agreement. This Dispute Resolution Provision concerns the resolution of any controversies or claims between the Parties, whether arising in contract, tort or by statute, including but not limited to controversies or claims that arise out of or relate to: (i) this Agreement (including any renewals, extensions or modifications); or (ii) any Task Order or other document related to this Agreement.

Section 6.02 **Governing Law.** The terms of this Agreement shall be governed by and construed in accordance with the laws of the State of Alabama without giving effect to any choice or conflict of law provision or rule (whether of the State of Alabama or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Alabama.

Article 7

MISCELLANEOUS

Section 7.01 **Insurance.** Atlantic shall maintain its own insurance, including, but not limited to, the following coverages:

(a)	Commercial General Liability	$1,000,000; Aggregate $2,000,000
(b)	Automobile Liability	$1,000,000
(c)	Umbrella Liability	$2,000,000
(d)	Workers Compensation	$1,000,000
(e)	Professional Liability	$1,000,000
(f)	Errors & Omissions	$1,000,000

Insurance shall be written on an "occurrence" basis. The City of Huntsville, its elected and appointed officials, employees and agents are to be covered as Additional Insureds, as their interests may appear, as respects: liability arising out of activities performed by or on behalf of Atlantic for products used by and completed operations of Atlantic; or automobiles, airplanes or other vehicles owned, leased, hired or borrowed by Atlantic. Additional insured status shall be through ISO Additional Endorsement CG 20 10 11 85 or equivalent that is sufficient to provide the coverage required by this Agreement.

Section 7.02 **Notices.** Except as specified herein, all notices and other communications and approvals permitted or required by the provisions of the Agreement shall be in writing and shall be personally delivered or

delivered through a recognized international air courier service or shall be deposited in a lawful mail depository in either the country of incorporation of the Party giving the notice or the country of incorporation of the Party receiving the notice, designated as registered or certified mail, return receipt requested (or the nearest functional equivalent thereto outside the United States of America) bearing adequate first class airmail postage (or the nearest functional equivalent thereto outside the United States of America) and addressed as provided below in this Section 7.02. Alternatively, all notices and other communications and approvals permitted or required by the provisions of this Agreement shall be in writing and shall be sent via electronic means such as e-mail or fax to the email address or fax number, as applicable, as provided below in this Section 7.02, provided that the Party giving such notice obtains acknowledgement or confirmation by email, facsimile transmission or from the courier service that such notice has been received by the Party to be notified. Notices delivered in person or by a recognized international air courier service or via email or fax shall be deemed received and effective upon the delivery thereof to the addressee. Notices by mail shall be effective upon receipt thereof by the addressee or upon the fifth (5th) Day subsequent to the postmark date, whichever is earlier. Rejection or the refusal to accept or the inability to deliver by mail because of a change in address of which no notice was given as provided herein shall be deemed to be receipt of the notice sent as of the fifth (5th) Day subsequent to the postmark date. Rejection or the refusal to accept or the inability to deliver by recognized international air courier service or via email or fax because of a change in address or a change of email address or fax numbers of which no notice was given as provided herein shall be deemed to be receipt of the notice sent as of the date delivery was attempted by the recognized international air courier service or as of the date of the email or fax transmission, as applicable. By giving to the other Party hereto at least ten (10) Days' notice thereof, each Party hereto shall have the right from time to time and at any time while this Agreement is in effect to change its respective address, email address or fax number and each shall have the right to specify as its new address, email address or fax number any other address, email address or fax number. Each notice shall be addressed, until notice of change as aforesaid has been made, as follows:

(a) If intended for Client, to:
City of Huntsville
Geographic Information Systems
308 Fountain Circle
Annex Building
Huntsville, Alabama 35801
UNITED STATES OF AMERICA
Attention: Mr. Tim Barnes, GIS Manager
Facsimile Number: (256) 427-5165
e-mail address: TIM.BARNES@huntsvilleal.gov

(b) If intended for Atlantic, to:
The Atlantic Group, LLC
2223 Drake Avenue SW, Suite 200
Huntsville, AL 35805
UNITED STATES OF AMERICA
Attention: Mr. Brian Mayfield, President & COO
Facsimile Number: (256) 971-1154
e-mail address: bmayfield@theatlgrp.com

Section 7.03 Force Majeure.

(a) For the purpose hereof, force majeure shall be any of the following events: acts of God, compliance with any order, regulation, decree of governmental authority or agency purporting to act therefore, acts of war, public disorder, rebellion, terrorism or floods, hurricanes or other storms; or strikes or disputes, or any other cause, not within the reasonable control of the party affected.

(b) A delay in or failure of performance of either the Client or Atlantic shall not constitute a default hereunder nor be the basis for any claim for damages, if such delay or failure is caused by force majeure.

(c) The party prevented from performing by force majeure (i) shall be obligated within a period not to exceed 14 days after the occurrence or detection of such event to give notice to the other party setting forth in reasonable detail the nature therefore and the anticipated extent of the delay, and (ii) shall remedy such cause as soon as reasonably possible.

Section 7.04 Entire Agreement of the Parties. This Agreement is the sole and complete agreement between the Parties relating to the subject matter hereof and supersedes all prior understandings, writings, proposals or communications, oral or written, of either Party. This Agreement may be amended only by a writing executed by the authorized representatives of both Parties and any Amendment to this Agreement must be in a writing executed by the authorized representatives of both Parties. This Agreement, and any Amendment to this Agreement, may be executed and delivered in counterparts all of which taken together constitute one single agreement between the Parties. This Agreement may not be assigned by either Party without the prior written consent of the other Party.

Section 7.05 Severability. If any of the provisions of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

Section 7.06 Headings. The section and article headings used herein are for reference only, and shall not limit or control any term or provision of this Agreement or the interpretation or construction hereof.

Section 7.07 Waiver. No waiver of any breach of any provisions of this Agreement shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions hereof and no waiver shall be effective unless made in writing. All remedies available to either Party for one or more breaches by the other Party are and shall be deemed cumulative and may be exercised separately or concurrently without waiver of any other remedies. The failure of either Party to act in the event of a breach of this Agreement by the other Party shall not be deemed a waiver of such breach or a waiver of future breaches. In the event that any provision of this Agreement shall be held invalid or otherwise unenforceable, such provision shall be severed and the remaining provisions of this Agreement shall continue in full force and effect. No failure of any Party to exercise any power given under this Agreement or to insist upon strict compliance with any obligation specified in this Agreement and no custom or practice at variance with the terms of this Agreement shall constitute a waiver of any Party's right to demand exact compliance with the terms of this Agreement. No waiver or alleged waiver shall be effective unless in writing and signed by the Party against whom such waiver is sought to be enforced, and no waiver shall be effective unless made in writing and signed by an authorized representative of the waiving Party.

Section 7.08 Survival of Certain Sections. Articles 1, 2, 4, 5 and 6 of this Agreement and Sections 7.01, 7.02, 7.04, 7.05, 7.06, 7.07 and this Section 7.08 of this Agreement shall survive the termination, cancellation or expiration of the Agreement and shall remain in full force and effect after the termination, cancellation or expiration of the Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

The Atlantic Group, LLC

By: _____

Print Name: Brian Mayfield

Its: President + COO

City of Huntsville, Alabama

By: _____

Print Name: Tim Barnes

Its: GES Manager

City of Huntsville, Alabama

By: _____

Print Name: _____

Its: _____

Exhibit A
Project Coverage Areas

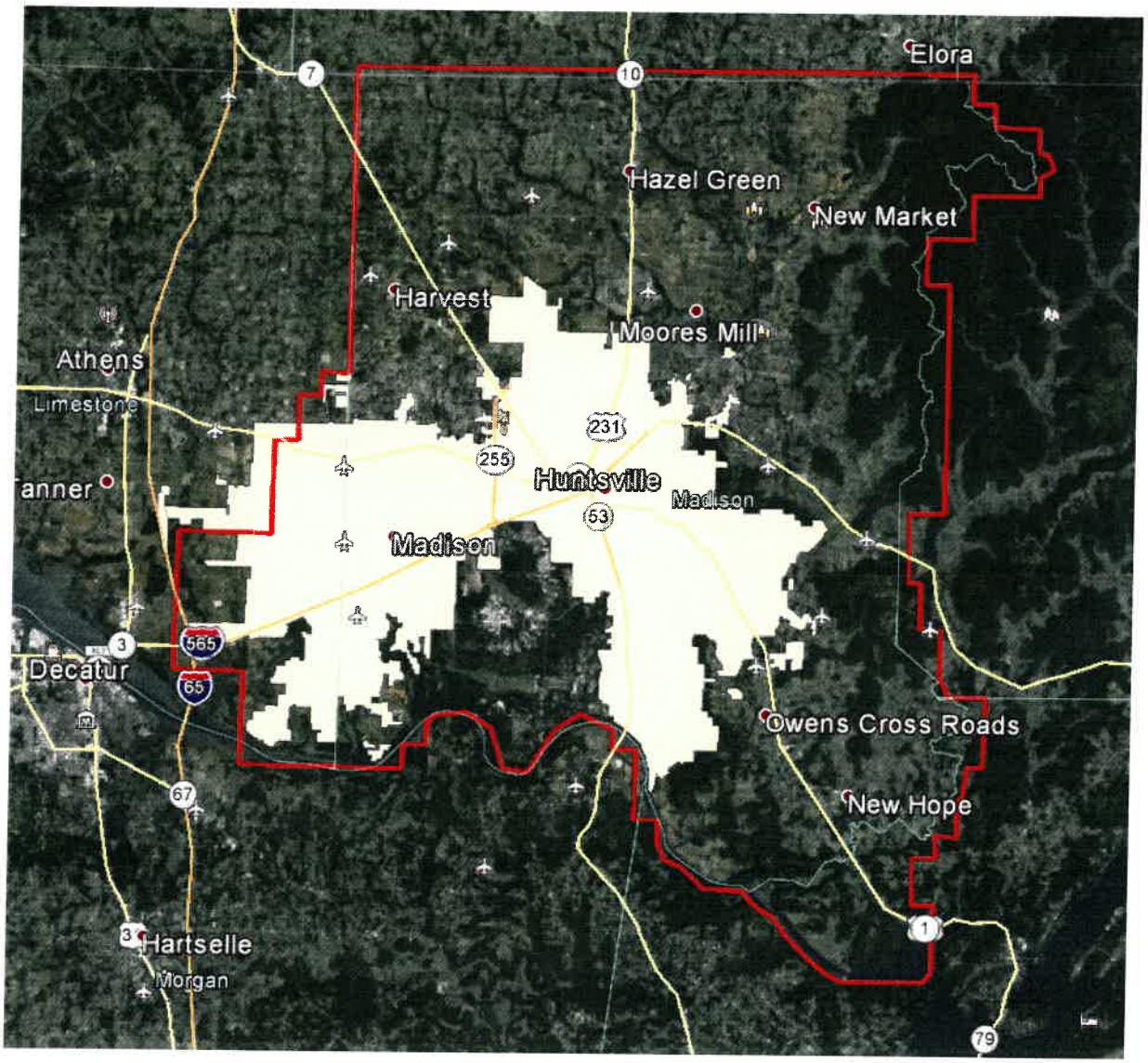

Exhibit B
Atlantic Proposal to City of Huntsville
(Project Option 1)

atlantic

PROJECT OPTIONS, DETAILS & COSTS:

Atlantic understands that consistent project support is imperative in not only earning, but also retaining trust with our client. In doing so, our team developed a customized project plan approach for the potential 2016 City of Huntsville project.

Our team agrees to supply the necessary labor and materials to deliver the following deliverables and services to the City of Huntsville, Alabama:

PROJECT OPTIONS	PRICE
1. 3", 4-band Digital Orthophotography with the following characteristics: - 60% Forward Overlap / 30% sidelap - 80% Forward Overlap / 80% sidelap over downtown and the I-565/Memorial Parkway intersection - Control will be provided by City of Huntsville	**$ 59,497.71**
2. 3", 4-band Digital Orthophotography with the following characteristics: - 60% Forward Overlap / 60% sidelap - 80% Forward Overlap / 80% sidelap over downtown and the I-565/Memorial Parkway intersection - Control will be provided by City of Huntsville	**$ 107,106.86**
3. 6", 4-band Digital Orthophotography with the following characteristics: - 60% Forward Overlap / 30% sidelap - 80% Forward Overlap / 80% sidelap over downtown and the I-565/Memorial Parkway intersection - Control will be provided by City of Huntsville	**$ 33,048.81**

CITY OF HUNTSVILLE
JUSTIFICATION FOR EXEMPTION FROM COMPETITIVE BIDDING
Rev 12/03/2015

DATE: January 12, 2016
FROM: Engineering
TO: Procurement Services

Title 41 Section 16 of the Code of Alabama 1975 as amended requires a competitive bid for contracts whose value exceeds $15,000.00. Under exceptional circumstances, such contracts may be awarded without bidding. Because these circumstances are quite specific, we have a duty to justify, document, and memorialize such cases to firmly establish that a claim for exemption is in accordance with the law:

- **VENDOR:** Atlantic
- **PRODUCT/SERVICE:** Ortho-Photo's for City Limits
- **ESTIMATED EXPENDITURE:** $ 59,497.71

This procurement is exempt from competitive bid because it is a contract for:

1. [ ] **Sole Source:**
Services or a product having only one vendor or supplier - §41-16-51(a)(13)

2. [ ] **WPC Provision:**
Purchase of equipment, supplies, or materials needed, used, and consumed in the normal and routine operation of any waterworks system or sanitary sewer system owned by a municipality and no part of the operating expenses have been paid from revenues derived from taxes or from appropriations of the state, county, or municipality - §41-16-51(b)(7)

3. [✓] **Professional Services:**
Professional services involving an attorney, physician, architect, teacher, superintendent of construction, artist, appraiser, engineer, consultant, certified public accountant, public accountant, or other individual possessing a high degree of professional skill where the personality of the individual plays a decisive part - §41-16-51(a)(3)

4. [ ] **Impossible to Compete:**
Purchase of personal property which by its very nature is impossible to award by competitive bidding - §41-16-51(a)(13)

5. [ ] **Security or Safety:**
Services or purchase of product related to, or having an impact upon, security plans, procedures, assessments, measures, or systems, or the security or safety of persons, structures, facilities, or infrastructures - §41-16-51(a)(15)

6. [ ] **Cooperative Purchasing Program (not valid for FTA Grantee):**
Services or purchase of a product offered through a national or regional governmental cooperative purchasing program approved by the Alabama Department of Examiners of Public Accounts §41-16-51(a) (16)

7. [ ] **Other:** exempt item not specifically listed above:

8. [ ] **FTA Sole Source:** See next page

Attach requesting department justification and supporting vendor statements to this page.

Kathy Mast
Requesting Department Head

Engineering
Department

Procurement Supervisor

M Sargent 1-27-16
Finance Director

Mary C. Cates
Legal Depar tment

Tommy Battle
Mayor or Administrator