

H-GAC

Houston-Galveston Area Council

P.O. Box 22777 · 3555 Timmons · Houston, Texas 77227-2777

Cost Share Agreement - Cost Share - Harris County Flood Control District - Data Analytics & Research - ID: 11908

INTERLOCAL AGREEMENT

THIS INTERLOCAL AGREEMENT (“Agreement”), is made and entered by and between the Houston-Galveston Area Council, hereinafter referred to as H-GAC, having its principal place of business at 3555 Timmons Lane, Suite 120, Houston, Texas 77027 and the Harris County Flood Control District, (the Local Government or Entity), hereinafter referred to as the District, having its principal place of business at 9900 Northwest Freeway, Houston, TX 77092. These entities are hereby defined as the Parties to this Agreement.

WITNESSETH:

WHEREAS, Houston-Galveston Area Council is a regional planning commission operating under Chapter 391 Texas Local Government Code and serves as the instrument of local government cooperation, promoting the region’s orderly development, and the safety and welfare of its citizens; and

WHEREAS, in support of this mission, H-GAC provides licenses to access GIS datasets, aerial imagery, and the STAR*Map to its members; and

WHEREAS, the District is a conservation and reclamation district created by the Texas Legislature in 1937 under Section 59 of Article XVI of the Texas Constitution and governed by Harris County Commissioners Court, whose mission is to provide flood damage reduction projects that work, with appropriate regard for community and natural values; and

WHEREAS, the District is a current member of H-GAC; and

WHEREAS, the District seeks to participate in the cost sharing program formed to purchase licenses from the H-GAC to access: GIS datasets, aerial imagery, and, STAR*Map, covering the H-GAC region, which the District may use in the planning, design, and construction of flood reduction projects; and

WHEREAS, under the provisions of the Interlocal Cooperation Act, Chapter 791, Texas Government Code, H-GAC and the District are authorized to enter into agreements to perform governmental functions and services, and under Texas Local Government Code § 391.005, H-GAC and the District are authorized to contract together for H-GAC to perform certain services for the District; and

WHEREAS, H-GAC hereby agrees to perform the scope of services outlined in Article 7, as hereinafter specified in accordance with the Agreement.

NOW, THEREFORE, H-GAC and the District do hereby agree as follows:

Article 1: Legal Authority

Both Parties mutually agree that they each possess adequate legal authority to enter into this Agreement. The District warrants and represents that it is not in breach of any other contract, obligation, or covenant that would affect its ability to perform hereunder and, as a result of entering into this Agreement, will not breach any such contract, obligation, or covenant.

Article 2: Applicable Laws

H-GAC and the District agree to conduct all activities under this Agreement in accordance with all applicable rules, regulations, ordinances, and laws in effect or promulgated during the term of this Agreement.

Article 3: Performance Period

This Agreement shall be performed during the period which begins Jan 31, 2024, and Dec 31, 2024. All services and/or deliverables under this Agreement must be rendered within this performance period unless extended by mutual consent through a written amendment to this Agreement. Please see Attachments A, B, and C to view License Agreements indicating exact time frames for licensed material. If any time frames for licensed materials fall outside of the period of performance window listed in this Article, the District agrees to continue to comply with the provisions required of the licensed material through the license end date.

Article 4: Whole Agreement

This Interlocal Agreement and Attachments, as provided herein, constitute the complete Agreement between the Parties hereto, and supersedes any and all oral and written agreements between the Parties relating to matters herein. Except as otherwise provided herein, this Agreement cannot be modified without written consent of the Parties.

Article 5: Independent Parties

The execution of this Agreement, and the rendering of services prescribed by this Agreement, do not change the independent status of H-GAC or the District. No provision of this Agreement or act of H-GAC in performance of the Agreement shall be construed as making the District the agent, servant, or employee of H-GAC, the State of Texas, or the United States Government, or vice versa.

Article 6: Party Liability

Each Party shall have no liability whatsoever for the actions of, or failure to act by, any employees, contractors, subcontractors, agents, representatives, or assigns of the other Party in connection with the Agreement, and the Parties covenant and agree, to the extent permitted by law, that each shall be solely responsible for, and with respect to any claim or cause of action arising out of or with respect to any act, omission, or failure to act by its respective employees, contractors, subcontractors, agents, representatives, or assigns, in connection with the Agreement.

Article 7: Scope of Services

On behalf of the Geographic Data Workgroup, H-GAC has partnered with vendors to provide the following licenses and/or access to:

A. Data Axle, Inc.

GIS datasets containing data derived from the Data Axle database provided by Data Axle, Inc.

B. Surdex Corporation

Digital Orthophotography, also referred to as aerial imagery, of specified areas within the 13 counties of the H-GAC region as provided by the Surdex Corporation.

C. STAR*Map

The STAR*Map, a digital address point, road centerline, and zip code database that covers the 13 counties of the H-GAC region as developed and provided by H-GAC.

H-GAC coordinates a cost sharing program each year to pay for licensing and access to the annually updated: GIS data, applications, and services provided by Data Axle, Inc.; aerial imagery provided by the Surdex Corporation; and, the STAR*Map. Invitation to participate in the cost sharing program is extended to members of the Houston-Galveston Area Council, the Geographic Data Workgroup, and other companies or organizations in association within one of the 13 counties in the H-GAC region.

H-GAC agrees to make good faith and best efforts to coordinate a cost share program with enough participants that agree to make sufficient contributions to bear the entirety of costs related to GIS data, applications, and services provided by Data Axle, Inc.; aerial imagery provided by the Surdex Corporation; and, the STAR*Map.

H-GAC's ability to pay for access to and licensing for the annually updated GIS data, applications, and services provided by Data Axle, Inc.; aerial imagery provided by the Surdex Corporation; and, the STAR*Map. is primarily dependent on obtaining sufficient contributions from the participants in the cost sharing program for each year the products are updated.

Upon obtaining sufficient pledges to bear the cost of the current year's licenses to access and use the GIS data, applications, and services provided by Data Axle, Inc.; aerial imagery provided by the Surdex Corporation; and, the STAR*Map, H-GAC will notify all participants in the cost sharing program and move forward with ordering aforementioned licenses.

H-GAC will provide licenses and access to H-GAC's updated GIS datasets containing data derived from the Data Axle, Inc.; aerial imagery provided by the Surdex Corporation; and, the STAR*Map, but not before receiving the pledged amount of payment from the participant.

In the event H-GAC is unable to assemble a successful cost sharing program providing sufficient contributions to bear the full costs of the program for the year timely, H-GAC will notify all Participants; (i) that the cost sharing program will be terminated for the current year, (ii) that each participant's previous years' licenses and subscriptions to the GIS data, applications, and services provided by Data Axle, Inc.; aerial imagery provided by the Surdex Corporation; and the STAR*Map expire without renewal, and (iii) participants must destroy all Data Axle data for previous years. Participants may continue to use the previous year's: aerial imagery provided by the Surdex Corporation, and STAR*Map data.

Article 8: License Grants**A. Date Axle, Inc.**

H-GAC grants the District a limited, non-exclusive, non-transferable, non-sublicensable license to use the Data Axle Product Suite, data and GIS datasets derived from Data Axle databases for the District's internal and marketing purposes during the performance period of this Agreement, but never to exceed more than one year. The District agrees to only use the Data Axle Product Suite, data and GIS datasets derived from Data Axle databases in accordance with this Agreement. All rights not expressly granted hereunder are reserved to Data Axle, Inc. Any use of the Data Axle Product Suite, data and GIS datasets derived from Data Axle databases not expressly authorized in this Agreement is strictly prohibited. *See Attachment A for License Agreement.*

B. Surdex Corporation

H-GAC grants the District a limited, non-exclusive, non-transferable, non-sublicensable license to use the Digital Orthophotography, also referred to as aerial imagery, of specified areas within the 13 counties of the H-GAC region as provided by the Surdex Corporation for the District's internal and marketing purposes during the performance period of this Agreement, but never to exceed more than one year. The District agrees to only use the aerial imagery in accordance with this Agreement. All rights not expressly granted hereunder are reserved to Surdex Corporation. Any use of the Surdex Corporation not expressly authorized in this Agreement is strictly prohibited. *See Attachment B for License Agreement.*

C. STAR*Map

H-GAC grants the District limited, non-exclusive, non-transferable permission to access STAR*Map for the District's internal and marketing purposes during the performance period of this Agreement. The District agrees to only use the STAR*Map in accordance with this Agreement. All rights not expressly granted hereunder are reserved to H-GAC. Any use of the STAR*Map not expressly authorized in this Agreement is strictly prohibited. *See Attachment C for License Agreement.*

Article 9: Unauthorized Use and Display of Cost Share Program Products**A. Date Axle, Inc.**

The District understands and agrees the data and GIS data sets derived from the Data Axle database is copyrighted materials. Except to the extent required by law, sharing the data and GIS data sets derived from the Data Axle database externally is strictly prohibited in any capacity and would result in a breach of contract.

The District understands and agrees that a violation of the Exhibit A Data Axle Database License Agreement, shall subject the District to penalties. The District is prohibited from providing third parties access to Data Axle database and the H-GAC GIS datasets containing data derived from the Data Axle database, except as required by law or permitted by the Exhibit A Data Axle Database License Agreement. Violation of this section will subject the District to penalties, which may include but is not limited to, paying additional license fees on behalf of and for each of the unauthorized parties the District shared Copyrighted Materials, penalties imposed by Data Axle, Inc., and being disallowed to participate in future H-GAC cost sharing programs for GIS and Digital Orthophotography.

B. Surdex Corporation

The District understands and agrees the Digital Orthophotography, also referred to as aerial imagery provided by Surdex is copyrighted materials. The District must submit a written request and receive written approval from H-GAC to share with its external consultants. Approval may be granted so long as the consultants use the aerial imagery only for predetermined District projects and the photos are destroyed immediately after use by the consultant.

The District understands and agrees that a violation of the Exhibit B Surdex Corporation License Agreement, shall subject Local Government or Entity to penalties. The District is prohibited from providing third parties access to the digital orthophotography, also referred to as aerial imagery, of specified areas within the 13 counties of the H-GAC region, except as required by law or permitted by the Exhibit B Surdex License Agreement. Violation of this section will subject the District to penalties, which may include but is not limited to, paying additional license fees on behalf of and for each of the unauthorized parties the District shared Copyrighted Materials, penalties imposed by Surdex Corporation, and being disallowed to participate in future H-GAC cost sharing programs for GIS and Digital Orthophotography.

C. STAR*Map

The District understands and agrees the STAR*Map provided by H-GAC is copyrighted materials. The District must submit a written request and receive written approval from H-GAC to share with its external consultants. Approval may be granted so long as the consultants use the STAR*Map only for predetermined District projects and the photos are destroyed immediately after use by the consultant.

The District understands and agrees that a violation of the Exhibit C STAR*Map License Agreement, shall subject Local Government or Entity to penalties. The District is prohibited from providing third parties access to STAR*Map, except as required by law or permitted by the Exhibit C STAR*Map License Agreement. Violation of this section will subject the District to penalties, which may include but is not limited to, paying additional license fees on behalf of and for each of the unauthorized parties the District shared Copyrighted Materials, penalties imposed by H-GAC, and being disallowed to participate in future H-GAC cost sharing programs for GIS and Digital Orthophotography.

Article 10: Confidential Information**A. Data Axle, Inc.**

Data Axle, Inc.'s Confidential Information includes, without limitation, non-public information, proprietary information, the Product Suite, financial statements, business and marketing plans, customer/client transactions, customer/client lists, pending or threatened litigation, prospective contractual relations, collection, tabulation and analysis of data, proprietary information, computer programming methods, source code, object code, designs, specifications, plans, drawings, programs, databases, intellectual property, inventions (whether or not eligible for legal protection under patent, trademark, or copyright laws), research and development, and work in progress.

Confidential Information does not include information that: (i) is publicly available as of the Effective Date or becomes publicly available thereafter through no fault of the District provided, however, that the Product Suite will remain Confidential Information notwithstanding any portion of the Product Suite being sourced from the public domain; (ii) the Receiving Party rightfully possessed the information before it was received from the Disclosing Party; or (iii) is subsequently furnished to the Receiving Party by a third-party without restrictions on disclosure. Notwithstanding these provisions, Product Suite, the data, and GIS datasets derived from the Data Axle database is always Data Axle Confidential Information.

The District must keep confidential Data Axle, Inc.'s Confidential Information using the same degree of care it uses to keep confidential its own Confidential Information, but in no event less than reasonable care. The District further agrees, to the extent allowable by law, not to disclose or permit any other person or entity access to the Data Axle, Inc.'s Confidential Information, except such disclosure or access of the Data Axle, Inc.'s Confidential Information will be permitted to a Representative of the District that requires access, with any such access limited only to the extent necessary in order to perform his or her employment or services as they relate to the District performance of its obligations under this Agreement. The District must ensure that such Representatives sign confidentiality agreements with the District and H-GAC containing protections not materially less protective of the Confidential Information than those in this Agreement.

The District must immediately notify the Data Axle, Inc. in writing of all circumstances which the District becomes aware of surrounding any possession, use, or knowledge of Confidential Information by any person or entity other than those authorized by this Agreement. Subject to the limitations set forth in this Agreement, the District is fully responsible and liable for any breach of this Section by any of its Representatives. Permitted uses pursuant to this Section are subject to all additional restrictions in the Agreement.

Upon the expiration or termination of this Agreement or upon request of Data Axle, Inc. or H-GAC during the term of this Agreement, the District shall return or irretrievably destroy all Confidential Information of the Data Axle, Inc. then in its possession or control. In the case of destruction, the District must certify such destruction to Data Axle, Inc. and H-GAC within thirty (30) days following the expiration or termination of this Agreement or a request by Data Axle, Inc. or H-GAC.

Article 11: No Assignment

Neither this Agreement, nor any of the rights, interests, or obligations under this Agreement, shall be assigned, in whole or in part, by operation of law or otherwise by any of the parties hereto without the prior written consent of the other party. Any purported assignment in violation of this section shall be void.

Article 12: Payment

Upon receiving confirmation that H-GAC has met the required amount of pledged contributions to move forward with paying for the licenses to access and use the : GIS datasets containing data derived from the Data Axle database provided by Data Axle, Inc.; the Digital Orthophotography, also referred to as aerial imagery, of specified areas within the 13 counties of the H-GAC region as provided by the Surdex Corporation; and the STAR*Map, the District agrees to pay its pledged contribution amount, a maximum sum of \$72,900.00, to H-GAC for the District's annual licenses (renewal) to access the Data Axle database and the H-GAC GIS datasets for the current year containing Data Axle data; the Digital Orthophotography, also referred to as aerial imagery, of specified areas within the 13 counties of the H-GAC region as provided by the Surdex Corporation; and the STAR*Map.

It is expressly understood and agreed to by the parties, such understanding and agreement being of the absolute essence to this Agreement, that the District has allocated said maximum sum to fully discharge any and all obligations created by the terms of this Agreement and that the total maximum sum the District shall become liable to expend under the terms of this Agreement shall not under any conditions, circumstances, or interpretations hereof exceed said sum provided for in this Article and certified as available therefor by the Harris County Auditor as evidenced by the issuance of a purchase order from the Harris County Purchasing Agent.

Payment or funding claimed under this agreement shall be paid only under the specific terms set forth in this ILA and any incorporated documents. As per the Interlocal Cooperation Act, each Party paying for the performance of governmental functions or services must make those payments from current revenues available.

Article 13: Retention of Records

The District and H-GAC shall maintain all records pertinent to this Agreement, and all other financial, programmatic, statistical, property, and supporting documentation for a period of no less than seven (7) years from the later of the date of acceptance of the final contract closeout. If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the retention period, the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the seven (7) years, whichever is later, and until any outstanding litigation, audit, or claim has been fully resolved.

Article 14: Audit

Notwithstanding any other audit requirement, H-GAC and the District agree that expenditures of cumulative state or federal funds exceeding seven-hundred fifty thousand dollars (\$750,000.00) in a fiscal year shall be subjected to audit in compliance with 2 CFR 200.

Article 15: Amendments

Any alterations, additions, or deletions to the terms of this Agreement which are required by changes in Federal and State law or regulations are automatically incorporated into this Agreement without written amendment hereto and shall become effective on the date designated by such law or regulation. Any other amendments to the terms of this Agreement and or its attachments shall be enacted by written amendment to this Agreement signed by both parties.

Article 16: Termination Procedures

The H-GAC and the District acknowledge that this Agreement may be terminated for Convenience or Default.

A. *Convenience*

Either Party may terminate this Agreement at any time, in whole or in part, with or without cause, whenever the Parties determines that for any reason such termination is in the best interest – including an inability to assemble sufficient contributions to bear the cost of the cost sharing program, and by providing thirty (30) days written notice by certified mail return receipt requested to the other Party. Upon receipt of notice of termination, all services hereunder shall cease to the extent specified in the notice of termination.

Neither Party may give notice of cancellation after it has received notice of default from the other Party.

B. *Default*

In the event of default, this Agreement may be terminated for the following scenarios:

- (1) If the performing Party fails to perform the services herein specified within the time specified herein or any extension thereof; or
- (2) If the performing Party fails to perform any of the other provisions of this Agreement for any reason whatsoever, or so fails to make progress or otherwise violates the Agreements that completion of services herein specified within the Agreement term is significantly endangered, and in either of these two instances the performing Party does not cure such failure within a period of ten (10) business days (or such longer period of time as may be authorized and agreed upon by the Parties in writing) after receiving written notice by certified mail of default.
- (3) If the local government or entity becomes subject to any involuntary receivership, insolvency, bankruptcy, moratorium, or similar proceeding.

- (4) If the local government or entity assigns, or attempts to assign, this Agreement in breach of the Assignment section of this Agreement.
- (5) If the local government or entity or any of its affiliates have materially breached any term or condition of this Agreement on 3 (three) or more occasions, even if previous breaches were cured.

Article 17: Effect of Termination

A. Data Axle, Inc.

Upon termination or expiration of this Agreement, the District shall immediately cease any and all use of the Data Axle Product Suite, including any data and GIS data sets derived from the Data Axle database. Within thirty (30) days after the expiration or termination of this Agreement, the District shall certify in writing that Data Axle's Confidential Information and Product Suite, including any data and GIS data sets derived from the Data Axle database, have been completely, securely, and permanently destroyed, unless legally prohibited.

B. Surdex Corporation.

Upon early termination of this Agreement, prior to the scheduled natural expiration of this Agreement, within thirty (30) days after the early termination of this Agreement, the District shall certify in writing that all of the Digital Orthophotography, also referred to as aerial imagery provided by Surdex Corporation have been completely, securely, and permanently destroyed, unless legally prohibited.

Upon the natural expiration of this Agreement all of the Digital Orthophotography, also referred to as aerial imagery provided by Surdex Corporation becomes public domain, at which time the District may use and share aerial imagery without consequence.

C. STAR*Map

Upon termination or expiration of this Agreement, the District may continue to use the previous years' STAR*Map.

Article 18: Severability

The Parties agree that should any provision of this Agreement be determined to be invalid or unenforceable, such determination shall not affect any other term of this Agreement, which shall continue in full force and effect.

Article 19: Contract Closeout Procedure

At completion of the Scope of Work requirements, H-GAC will conduct the contract closeout process in order to establish the following: Determine if all deliverables were met; and that the work was completed and acceptable to H-GAC as per the Agreement, ensure project funds were expended as per the Agreement funding requirements, process the final payment to close out the project, and complete the project audit (if applicable). Parties should securely store and protect all pertinent project data until the required document retention period is met as specified in these provisions.

Article 20: Force Majeure

To the extent that either Party to this Agreement shall be wholly or partially prevented from the performance of any obligation or duty placed on such Party by reason of or through strikes, stoppage of labor, riot, fire, flood, acts of war, insurrection, accident, order of any court, act of God, or specific cause reasonably beyond the performing Party's control and not attributable to its neglect or nonfeasance, in such event, the time for the performance of such obligation or duty shall be suspended until such disability to perform is removed. In the event of force majeure, the affected Party must provide the other Party written notice of force majeure and the estimated impact to performance of this Agreement.

Article 21: Ownership of Material

A. Data Axle, Inc.

Data Axle, Inc. is and will remain the sole and exclusive owner of all right, title, and interest, including all property rights, in and to the Product Suite, all information and data elements from one or more of Data Axle's proprietary databases, moral rights, rights of publicity, rights of privacy under applicable laws or regulations, any modifications, updates, improvements, upgrades, derivative works, Data Axle's Confidential Information and Feedback related thereto (collectively, "Proprietary Rights"). If H-GAC or District provides suggestions, comments, ideas or recommendations, requests for enhancements, additional features or functionality, or other feedback to Data Axle (collectively, "Feedback"), H-GAC and District hereby assigns all right, title, and interest including intellectual property rights, in and to feedback to Data Axle. H-GAC's and the District's confidential information used in the Data Axle Product Suite shall remain respectively H-GAC's and the District's property, and Data Axle shall have no ownership rights in said confidential information.

B. Surdex Corporation

Surdex Corporation is and will remain the sole and exclusive owner of all right, title, and interest, including all property rights, in and to all of the Digital Orthophotography, also referred to as aerial imagery provided by Surdex Corporation. If H-GAC or District provides suggestions, comments, ideas or recommendations, requests for enhancements, additional features or functionality, or other feedback to Surdex Corporation (collectively, "Feedback"), H-GAC and District hereby assigns all right, title, and interest including intellectual property rights, in and to feedback to Surdex Corporation.

C. STAR*Map

H-GAC is and will remain the sole and exclusive owner of all right, title, and interest, including all property rights, in and to STAR*Map. If District provides suggestions, comments, ideas or recommendations, requests for enhancements, additional features or functionality, or other feedback to H-GAC (collectively, "Feedback"), District hereby assigns all right, title, and interest including intellectual property rights, in and to feedback to H-GAC.

Article 22: Subcontracting

If the District uses subcontractors, the District shall apply the terms and conditions indicated in this Agreement and the Scope of Work to any subcontracted work. The District shall at all times be responsible for the performance of its subcontractors. No term or agreement of the District agreement with any Subcontractor shall alter the terms and conditions of this Agreement. The District remains responsible for the work of its subcontractors.

Pursuant to the attached licenses for each of the three products, the District may share GIS data, applications, and services provided by Data Axle, Inc.; aerial imagery provided by the Surdex Corporation; and, the STAR*Map in an unlimited fashion internally amongst District employees. However, the GIS data, applications, and services provided by Data Axle, Inc. may not be shared with external parties, including subcontractors and consultants. The aerial imagery provided by the Surdex Corporation and the STAR*Map may be shared with District consultants and subcontractors only: when provided notice to H-GAC; limited to specified project areas as indicated in the notice; and, if consultant and subcontractor are required, and District confirms, said shared data and materials are destroyed immediately after use by consultant and subcontractor.

Article 23: Indemnification

To the extent permitted by law, each Party shall indemnify and hold the other Party, its officers, agents and employees harmless against any and all claims, demands, damages, liabilities, and costs (including reasonable attorney fees) which directly or indirectly result from, or arise in connection with, any negligent act or omission of the other Party, its agents, or employees pertaining to its activities and obligations under this Agreement.

In no event will a Party be liable for any loss of use, loss of time, inconvenience, commercial loss, lost profits or savings; or other incidental special or consequential damages to the full extent such use may be disclaimed by law during the term of this Agreement. If either Party performs an act knowing or having reason to know that it is contrary to any law or regulation, said party shall bear all claims, costs, losses and damages caused by, arising out of, or resulting from that act.

Article 24: Federal Compliance

The District agrees to comply with all federal statutes relating to nondiscrimination, labor standards, and environmental compliance. Additionally, for work to be performed under the Agreement or subcontract thereof, including procurement of materials or leases of equipment, the District shall notify each potential subcontractor or supplier of the District's federal compliance obligations. These may include, but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color, or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) the Fair Labor Standards Act of 1938 (29 USC 676 et. seq.), (d) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps and the Americans with Disabilities Act of 1990; (e) the Age Discrimination in Employment Act of 1967 (29 USC 621 et. seq.) and the Age Discrimination Act of 1974, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (f) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (g) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to the nondiscrimination on the basis of alcohol abuse or alcoholism; (h) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (i) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (j) any other nondiscrimination provisions in any specific statute(s) applicable to any Federal funding for this Agreement; (k) the requirements of any other nondiscrimination statute(s) which may apply to this Agreement; (l) applicable provisions of the Clean Air Act (42 U.S.C. §7401 et seq.), the Federal Water Pollution Control Act, as amended (33 U.S.C. §1251 et seq.), Section 508 of the Clean Water Act (33 U.S.C. 1251), Executive Order 11738, and the Environmental Protection Agency regulations at 40 CFR Part 15; (m) applicable provisions of the Davis Bacon Act (40 U.S.C. 276a - 276a-7), the Copeland Act (40 U.S.C. 276c),

and the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708), as set forth in Department of Labor Regulations at 20 CFR 5.5a; (n) the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163).

Article 25: Texas Public Information Act

The Parties expressly acknowledge that this Agreement is subject to the Texas Public Information Act, TEX. GOV'T CODE ANN. §§ 552.001 *et seq.*, as amended (the "Act"). Since both Parties are subject to the Act, the parties shall be entitled to release any and all information necessary to comply with Texas law without the prior written consent of the other, with exception to the licensed products and data that are the proprietary trade information of Data Axle, Inc. TEX. GOV'T CODE ANN. §§ 552.110 *et seq.*, provides an exception for company "trade secrets" from the Texas Public Information Act.

Parties must consult with and seek the written approval of Data Axle, Inc.; Surdex Corporation; or H-GAC prior to releasing any information that would include the licensed products, data, and trade secrets belonging to Data Axle, Inc.; Surdex Corporation; or H-GAC. In the event a Party to this Agreement receives a written request for information pursuant to the Act that affects one rights, title to, or interest in any information or data or a part thereof under this Agreement, then the Party receiving the request shall promptly notify the other Party to this Agreement of such request. The Party receiving the request may, at its own option and expense, prepare comments and submit information directly to the Attorney General stating why the requested information is exempt from disclosure pursuant to the requirements of the Act. The Party receiving the request is solely responsible for submitting the memorandum brief and information to the Attorney General within the time period prescribed by the Act; however, the remaining Party, at its own expense, may submit its own comments to the Attorney General stating why the requested information should not be released. The Party opposed to the ruling of the Attorney General is solely responsible for seeking any declaratory or injunctive relief regarding the disclosure of information that it deems confidential or privileged.

Article 26: Universal Identifier and System for Award Management (SAM)

In accordance with 2 CFR Title 2, Subtitle A, Chapter I, Part 25 as it applies to a Federal awarding agency's grants, cooperative agreements, loans, and other types of Federal financial assistance as defined in 2 CFR 25.406. The District understands and as it relates to 2 CFR 25.205(a), a Federal awarding agency may not make a Federal award or financial modification to an existing Federal award to an applicant or recipient until the entity has complied with the requirements described in 2 CFR 25.200 to provide a valid unique entity identifier and maintain an active SAM registration (www.SAM.gov) with current information (other than any requirement that is not applicable because the entity is exempted under § 25.110). 2 CFR 25.200(b) requires that registration in the SAM **prior to submitting an application or plan**; and maintain an active SAM registration with current information, including information on a recipient's immediate and highest level owner and subsidiaries, as well as on all predecessors that have been awarded a Federal contract or grant within the last three years, if applicable, at all times during which it has an active Federal award or an application or plan under consideration by a Federal awarding agency; and provide its unique entity identifier in each application or plan it submits to the Federal awarding agency. To remain registered in the SAM database after the initial registration, the applicant is required to review and update its information in the SAM database on an annual basis from the date of initial registration or subsequent updates to ensure it is current, accurate and complete. At the time a Federal awarding agency is ready to make a Federal award, if the intended recipient has not complied with an applicable requirement to provide a unique entity identifier or maintain an active SAM registration with current information, the Federal awarding agency: (1) May determine that the applicant is not qualified to receive a Federal award; and (2) May use that determination as a basis for making a Federal award to another applicant.

Article 27: Information Resources Security Policy

The District shall maintain a written information security policy, which at minimum:

1. Ensures that all the District's employees and the District's subcontractor's employees shall complete a cybersecurity training program certified under section 2054.519 of the Texas Government Code. Such training must occur during the contract term and renewal period. The District shall provide H-GAC with verification of required training upon H-GAC's request;
2. Provides regular training of all District's employees and District's subcontractor's employees on applicable and up to date security procedures and techniques;
3. Requires that the District and the District's subcontractors maintain privacy policies that protect private data as prescribed by applicable state, local, federal privacy laws and regulations; and,
4. Requires that the District and the District's subcontractors utilize adequate safeguards to address any security vulnerabilities.

Upon request, the District shall provide H-GAC with a copy of the District's and the District's subcontractor's written information security policies.

Article 28: Access and Protections of H-GAC Information, Resources, Data, and Credentials

The District is responsible for, must protect, and shall provide adequate safeguards against any unauthorized use, modification, or disclosure of H-GAC information resources, data, and credentials. The District and the District's subcontractors shall stay up to date and aware of current, ongoing, and potential telecommunications security risks in the District and the District's subcontractors given environment(s) and must always consider information sensitivity and transmission security issues when selecting a communications medium. The District and the District's subcontractors are required to utilize up-to-date and adequate anti-virus or malware protection software for all systems and devices used to access H-GAC information resources, data, and credentials. The District is responsible for any incident arising from improperly protected H-GAC information resources, data, and credentials.

Article 29: Security Breach

The District shall notify H-GAC within 72 (seventy-two) hours of the District's discovery of a security incident, breach, or unauthorized use, modification, or disclosure of H-GAC information resources, data, or credentials. Hereinafter, such an event will be referred to as a "security breach" in this section. Upon immediate discovery of security breach, the District will coordinate with H-GAC to determine and implement an adequate and timely action plan to mitigate security breach and resolve any issues resulting from security breach.

Article 30: Procurement of Recovered Materials

In accordance with 2 CFR 200.323, the H-GAC and the District must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include: (1) procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000.00 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000.00; (2) procuring solid waste management services in a manner that maximizes energy and resource recovery; and (3) establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines. Pursuant to the Federal Rule above, as required by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6962(c)(3)(A)(i)), the Contractor or Subrecipient certifies that the percentage of recovered materials content for EPA-designated items to be delivered or used in the performance of the Agreement will be at least the amount required by the applicable contract specifications or other contractual requirements.

Article 31: Definitions

Unless otherwise stated in this Agreement, words which have well-known technical, or industry meanings are used in accordance with such recognized meaning.

Article 32: Choice of Law - Venue

This Agreement shall be governed by the laws of the State of Texas. Venue and jurisdiction of any suit or cause of action arising under or in connection with the Agreement shall lie exclusively in Harris County, Texas.

Article 33: Notice

All notices and communications under this Agreement shall be mailed by certified mail, return receipt requested, or delivered to the H-GAC at the following address:

Houston-Galveston Area Council
3555 Timmons Lane Suite 120
Houston, Texas 77027
Attn: Chuck Wemple, Executive Director

All notices and communications under this Agreement shall be mailed by certified mail, return receipt requested, or delivered to the District at the following address:

Harris County Flood Control District
9900 Northwest Freeway
Houston, Texas 77092
Attn: Executive Director

Signatures

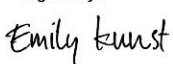
This Agreement, in duplicate originals, has been executed by the Parties hereto as follows:

Harris County Flood Control District

APPROVED AS TO FORM:

Christian D. Menefee
Harris County Attorney

Harris County Flood Control District

Signed by:

By ED17653073344AD
Emily Kunst
Assistant County Attorney

By _____
Lina Hidalgo
County Judge

Date: 8/22/2024

Date: _____

Houston-Galveston Area Council

DocuSigned by:

By 82EC270D5D61423...
Chuck Wemple
Executive Director

Date: 8/21/2024

DocuSign Envelope ID: 7CCE57D8-D9CA-47CA-B83F-8E4C392D0C87



HOUSTON-GALVESTON AREA COUNCIL
SERVING TODAY • PLANNING FOR TOMORROW

Data Axle, Inc
Mark Cullinane, President
1001 Fort Crook Rd North Suite 150L
Bellevue, NE 68005

HGAC-003-2024
March 5th, 2024
ID: 12128

Subject: Contract Extension Notice- Period of Performance Extension through March 21, 2025

Reference: Licensed Data Schedule dated March 22, 2021 (Parent Contract ID: 6594; Renewal ID: 8041; Renewal ID: 10086; Current Amendment ID: 12128) between H-GAC & Data Axle, Inc.

Dear Mr. Cullinane,

This letter provides written timely notification that the Houston-Galveston Area Council (H-GAC) intends to extend the above referenced Contract with Data Axle, Inc for an additional twelve (12) months from March 22, 2024, through March 21, 2025. All previously agreed terms and conditions within the MPSA Schedule, and prior amendments (as applicable), executed April 1st, 2021, will remain in place, unless explicitly stated otherwise and agreed upon in writing. Should the provisions in this letter be acceptable to Data Axle, Inc, please sign and date in the field below, and the attached Amendment NO.4 to Licensed Data Schedule and return copies to H-GAC.


Please do not hesitate to reach out to Contract Administrator, at ContractsAdmin@h-gac.com, should you have any contract related questions or concerns. The Houston-Galveston Area Council appreciates our continued partnership with Data Axle, Inc.

Sincerely,

DocuSigned by:

62EC270D6D61423...
Chuck Wemple
Executive Director
Houston-Galveston Area Council

Data Axle, Inc.

DocuSigned by:

1703A83A9A3D45B
3/21/2024

(Signature) (Date)
Mark Cullinane

(Printed Name)
President, LMS

(Title)

DocuSign Envelope ID: 7CCE57D8-D9CA-47CA-B83F-8E4C392D0C87

**AMENDMENT NO. 4
TO
LICENSED DATA SCHEDULE**

This Amendment No. 4 to Licensed Data Schedule (“Amendment 4”) is entered into and effective as of March 22, 2024 (the “Amendment 4 Effective Date”) by and between Data Axle, Inc. (“Data Axle”) and Houston-Galveston Area Council (H-GAC) (“Client”) to amend the Licensed Data Schedule to the Master Product Suite Agreement dated March 22, 2021 (the “Schedule”), which was entered into in accordance with the terms of the Master Product Suite Agreement dated March 22, 2021 (the “Agreement”). Capitalized words not otherwise defined herein shall have the meanings ascribed to them in the Schedule and the Agreement.

WHEREAS, the parties entered into the Schedule whereby Data Axle provides Licensed Data to Client; and

WHEREAS, due to necessary and other business considerations, the sufficiency of which is hereby acknowledged by the parties, the parties wish to amend the Schedule under this Amendment in the following particulars.

NOW, THEREFORE, the parties agree as follows:

1. The Section titled “Initial Term of the Schedule” of the Schedule shall be amended herein to extend the Term of the Schedule, commencing on March 22, 2024, and ending on March 21, 2025 (“Renewal Term”). The Initial Term and Renewal Term shall collectively be referred to as the “Term”.
2. The section of the Schedule titled “Licensed Data Selection” shall be amended herein specifically to update the maximum number of Records Client is permitted to download per database as reflected in the table below:

Licensed Data Selection:	Database	Max No. of Records Client is permitted to download	Applicable Use Case(s)	File Delivery Method	Refresh or Update Period
	US Business	894,755	Research, GIS, Planning, Modeling, Development	Data Axle API	One Time
	US Consumer	8,863,823	Research, GIS, Planning, Modeling, Development	Data Axle API	One Time

3. In the effort of avoidance of doubt, the Fees as stated in the Schedule shall remain unchanged and are restated herein as \$51,450.00 for this extension period, to be invoiced upon the delivery of the Licensed Data.
4. The table titled “Contributors” as listed in Appendix 2 to the Licensed Data Schedule shall be deleted in its entirety, and replaced with the following table below:

Contributors:

Harris County Office of the County Engineer
City of Houston
Harris County Appraisal District
Harris County Flood Control District
Harris County Toll Road Authority
City of Missouri City
Montgomery County, Texas
Rice University
Houston-Galveston Area Council
Workforce Solutions

5. This Amendment 4 will commence on the Amendment 4 Effective Date and will run concurrent with the Term of the Agreement, as amended herein.
6. Except as set forth in this Amendment 4, the Schedule shall continue in full force and effect in accordance with its terms. If there is conflict between this Amendment 4 and the Schedule or any earlier amendment,

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the terms of this Amendment 4 will prevail.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment 4 to be executed by their duly authorized representatives.

Houston Galveston Area Council (H-GAC)

DocuSigned by:

925c227015061423

Authorized Signature

Charles Wemple

Name

Executive Director

Title

3/26/2024

Date

Data Axle Inc.

DocuSigned by:

170346326930458

Authorized Signature

Mark Cullinane

Name

President, LMS

Title

3/21/2024

Date

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Houston-Galveston Area Council
P.O. Box 22777 3555 Timmons Houston, Texas 77227-2777

CHANGE ORDER

PROJECT TITLE: 2024 H-GAC Aerial Imagery Contract Extension

PROJECT NO. LOCL24.0501
CONTRACT NO. #8051, #4633 (Parent contract)
DATE 01/08/2024
CONTRACTOR: Surdex Corporation

The following changes are hereby made to the Contract Documents:

Justification: The 2022 H-GAC Aerial Imagery contract is set to expire on December 31,2023 and with this extension, titled 2024 H-GAC Aerial Imagery contract (ID 8051), will now expire on December 31,2024 allowing for one additional aerial imagery acquisition.

CHANGE TO CONTRACT PRICE – N/A

Original Contract Price: \$685,008.00 (ID 4633)

Current contract price, as adjusted by previous change orders: \$ 993,448.00 (ID 8051)

CHANGE TO CONTRACT TIME

The Contract Time will be **[increased]** **[decreased]** by 365 calendar days.

The date for completion of all work under the contract will be December 31, 2024.

Approvals Required:

To be effective, this order must be approved by Owner if it changes the scope or objective of the project, or as may otherwise be required under the terms of the Supplementary General Conditions of the Contract.

Approved by  Chuck Wemple, Executive Director date 1/24/2024

Accepted by  Ron Hoffmann President date 1/22/2024

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SCOPE OF WORK:

This Contract will separate into two tasks, and tasks will be completed as funds available.

Task 1: Acquisition and processing of 6-inch resolution RGB and CIR digital orthoimagery for MPO 8 county region. Contract pricing breakdown for this task;

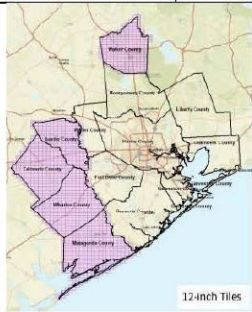
Product Type	Number of Lamberts	Area Square Miles	Cost per Lambert	Total Cost
6-inch	2,110	8,524	\$236	\$497,960
Mobilization Fee				\$12,950
Data Hosting Fee (2yrs)				\$7,200
Total Contract				\$518,110



Funding status for Task 1: Funds available

Task 2 (Optional – will require separate NTP): Acquisition and processing of 12-inch resolution RGB and CIR digital orthoimagery for 5 rural counties. Contract pricing breakdown for this task;

Product Type	Number of Lamberts	Area Square Miles	Cost per Lambert	Total Cost
12-inch	1,348	5,446	\$83	\$111,884
Mobilization Fee				\$0
Data Hosting Fee (2yrs)				\$0
Total Contract				\$111,884



Funding status for Task 2: Not fully available



EXHIBIT C 2024 STAR*Map License Agreement

An annual STAR*Map Subscription is \$18,900 a year, for which customer receives updates by shapefile/file geodatabase and STAR*Map map services on a monthly basis. The license period for the Harris County Flood Control District is from May 31st, 2024 to May 31st, 2025.

By using all or any portion of the H-GAC Star*Map, customer accepts all of the terms and conditions of this agreement, including:

Grant of License. H-GAC hereby grants to Licensee a non-transferable and non-exclusive right to use and reference the Trademarked Materials throughout the term of this license, unless the license should be revoked due to breach of license. The license granted hereunder includes the right of Licensee to develop and use derivations of the Trademarked Materials in the form of printed or plotted paper maps, maps created as a .PDF, or maps placed on websites for both private and public usage.

Authorized Use. Licensee shall be entitled to reproduce and distribute the Trademarked Materials and to permit their use only by (1) employees and officers of the Licensee for the purpose of the direct business or statutory authorized purposes of the Licensee and for no other purpose, and (2) a contractor of a public entity Licensee which is authorized to use the Trademarked Materials solely for a specific project of the Licensee (an "Authorized Contractor"). Licensee shall not reproduce or distribute the Trademarked Materials to any other parties without the prior written consent of the H-GAC.

Authorized Display. H-GAC grants to Licensee the right to display the Trademarked Materials to any web site or web service that is offered for public or private viewing; provided that any public display of the Trademarked Materials shall include the following statement: The Star*Map Data provided is the sole property of Houston-Galveston Area Council, which reserves all rights thereto. Use or reproduction of this data is strictly prohibited absent written consent from the Houston-Galveston Area Council.

STAR*Map Disclaimer

The maps and data presented herein are intended for general reference only. The Houston-Galveston Area Council makes no claim as to its accuracy and neither assumes nor will accept liability for its use. STAR*Map is a registered trademark of the Houston-Galveston Area Council and the Geographic Data Workgroup. They require use of the trademark with the map product, for three reasons:

- To protect against re-packaging of this public data for resale as a proprietary product.
- To advise the public of the source of the data.
- To acknowledge the labor of the contributors who make STAR*Map possible.

Pricing and availability posted on the H-GAC website are subject to change, and do not constitute any contractual commitment until an order has been placed via H-GAC's online ordering system. Furthermore, H-GAC does not make any service level agreement guarantees on availability of online map services that may be affiliated with this product.

These products, data, and/or tools are for informational purposes only and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. They do not represent an on-the-ground survey and represent only the approximate relative location of property boundaries. Mapping may not reflect on the ground conditions. The Houston-Galveston Area Council makes no further claims as to the accuracy or reliability of the data, and neither assumes, nor will accept liability for their use. Use or reproduction of this data without acknowledging the Houston-Galveston Area Council as the source is strictly prohibited.

The Houston-Galveston Area Council will not provide refunds once data has been delivered or shipped to customer. All sales are final once shipped or provided via delivery or FTP.

The Houston-Galveston Area Council does not provide prior purchased data as a restoration for lost or corrupted data previously purchases. Customers should ensure that all data is properly backed up and stored to prevent loss of data.

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

The Commissioners Court of Harris County, Texas, convened at a meeting of said Court at the Harris County Administration Building in the City of Houston, Texas, on _____, with all members present except _____.

A quorum was present. Among other business, the following was transacted:

**ORDER AUTHORIZING EXECUTION OF INTERLOCAL AGREEMENT
BETWEEN THE HARRIS COUNTY FLOOD CONTROL DISTRICT AND
THE HOUSTON-GALVESTON AREA COUNCIL**

Commissioner _____ introduced an order and made a motion that the same be adopted. Commissioner _____ seconded the motion for adoption of the order. The motion, carrying with it the adoption of the order, prevailed by the following vote:

		Yes	No	Abstain
AYES:	Judge Lina Hidalgo	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
NAYS:	Comm. Rodney Ellis	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
ABSTENTIONS:	Comm. Adrian Garcia	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Comm. Tom S. Ramsey, P.E.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Comm. Lesley Briones	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

The County Judge thereupon announced that the motion had duly and lawfully carried and that the order had been duly and lawfully adopted. The order thus adopted follows:

WHEREAS, Houston-Galveston Area Council is a regional planning commission operating under Chapter 391 Texas Local Government Code and serves as the instrument of local government cooperation, promoting the region’s orderly development and the safety and welfare of its citizens; and

WHEREAS, in support of this mission, Houston-Galveston Area Council provides licenses to access GIS datasets, aerial imagery, and the STAR*Map to its members; and

WHEREAS, the District is a conservation and reclamation district created by the Texas Legislature in 1937 under Section 59 of Article XVI of the Texas Constitution and governed by Harris County Commissioners Court, whose mission is to provide flood damage reduction projects that work, with appropriate regard for community and natural values; and

WHEREAS, the District is a current member of the H-GAC; and

WHEREAS, the District seeks to participate in the cost sharing program formed to purchase licenses from the H-GAC to access: GIS datasets, aerial imagery, and, STAR*Map, covering the H-GAC region, which the District may use in the planning, design, and construction of flood reduction projects; and

WHEREAS, under the provisions of the Interlocal Cooperation Act, Chapter 791, Texas Government Code, H-GAC and the District are authorized to enter into agreements to perform governmental functions and services, and under Texas Local Government Code § 391.005, H-GAC and the District are authorized to contract together for H-GAC to perform certain services for the District; and

WHEREAS, H-GAC hereby agrees to perform the scope of services outlined in Article 7, as hereinafter specified in accordance with the Agreement.

NOW, THEREFORE, BE IT ORDERED BY THE COMMISSIONERS COURT OF HARRIS COUNTY, TEXAS THAT:

Section 1: The recitals set forth in this order are true and correct.

Section 2: County Judge Lina Hidalgo is hereby authorized to execute for and on behalf of the Harris County Flood Control District, an Agreement by and between the Harris County Flood Control District and Houston-Galveston Area Council for a fee to be paid by the District of \$72,900.00, said Agreement being incorporated herein by reference for all purposes as though fully set forth verbatim herein.

Section 3: All Harris County and Harris County Flood Control District officials and employees are authorized to any and all things necessary or convenient to accomplish the purposes of this order.

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