

WHATCOM COUNTY
CONTRACT NO.
201912050

**INTERLOCAL COOPERATIVE AGREEMENT
BETWEEN WHATCOM COUNTY AND
THE WHATCOM TRANSPORTATION AUTHORITY
TO ESTABLISH A COST SHARING PARTNERSHIP
FOR LICENSED PICTOMETRY IMAGERY AND SOFTWARE**

WHEREAS, Whatcom County and the Whatcom Transportation Authority are authorized to provide cooperative information services under the interlocal Cooperative Act RCW Chapter 39.34; and

WHEREAS, Whatcom County has entered into Amendment 3 to Contract #201210015 with Pictometry International Corporation (hereinafter referred to as "Pictometry") for a third capture planned for Spring 2019 for certain licensed Pictometry products, encompassing, among others, specified aerial images of Whatcom County and selected adjacent jurisdictions; and

WHEREAS, the Whatcom Transportation Authority has evaluated the Pictometry products and determined that those products would be beneficial to its operations; and

WHEREAS, Whatcom County, the Whatcom Transportation Authority and other regional partners identified On Page 1, para3(d) of Amendment 3 to Whatcom County Contract #201210015 are interested in working cooperatively with each other in order to reduce project costs and eliminate duplication of services; and

WHEREAS, Whatcom County has identified Whatcom Transportation Authority to be recognized by Pictometry as an Authorized Subdivision of Whatcom County and as such employees of the Whatcom Transportation Authority are Authorized Users and will have access to the Pictometry imagery and software products; and

WHEREAS, the Whatcom Transportation Authority, recognized by Pictometry as an Authorized Subdivision of Whatcom County, shall have a perpetual license of Pictometry imagery and software products per Page 1 para 3(d) of Amendment 3 to Whatcom County Contract #201210015; and

WHEREAS, the public will benefit from both the products received and the cost savings of such relationships; and

WHEREAS, Whatcom County, the Whatcom Transportation Authority and other regional parties (Exhibit A) benefit from a promotional discount as referenced on page 1, para 3e of Amendment 3 to Whatcom County Contract #201210015.

NOW, THEREFORE, Whatcom County hereinafter "Provider" and the Whatcom Transportation Authority, hereinafter "Customer" agrees as follows:

RESPONSIBILITIES

1.1. **Provider Responsibilities:** Upon completion of the imagery acquisition, signed interlocal Cooperative Agreement with the Customer, and signed Authorized Subdivision/ Authorized Users License Agreement for Pictometry Imagery (Exhibit C) by Customer, the Provider agrees to furnish the Customer the following products and services:

1.1.1. Delivery of a portable USB hard drive containing all the licensed Pictometry products which shall include the image library.

1.1.2. Provide annual billing for the Customer's share for the use of licensed Pictometry products. This also includes oversight of the financial accounting between the Provider and the Customer(s).

1.1.3. Will provide online Pictometry Connect suborganization account(s) for three years for any Customer that has elected to participate as more fully defined in Exhibit D.

1.2 **Customer Responsibilities:** Upon completion of the imagery acquisition, signed interlocal Cooperative Agreement with the Provider, and signed Authorized Subdivision/ Authorized Users License Agreement for Pictometry Imagery (Exhibit C) by Customer, the Customer agrees to the following:

1.2.1. To comply with this interlocal Cooperative Agreement and the License Agreement between Whatcom County and Pictometry per the Authorized Subdivision / Authorized Users License Agreement for Pictometry Imagery (Exhibit C). This also applies to Pictometry Connect licensing requirements and restrictions.

1.2.2. Designate one employee as a liaison between the Provider and the Customer as a single point of contact for disseminating information to the Customer's end users. The designated Liaison and his/her contact information shall be reported to the Provider.

1.2.3. The Liaison or his/her designee shall distribute the Pictometry products to the Customer's employees in accordance with both this interlocal Cooperative Agreement and the Pictometry Software License Agreement contained within the agreement between Whatcom County and Pictometry (Whatcom County Contract #201210015 as amended in Amendment 1).

1.2.4. Provide training and technical support to its employees on the use of the Pictometry software and imagery.

2.0 SERVICE CONDITIONS AND DATA LIMITATIONS

2.1 **Acceptance of Completed Work:** The Provider's contract with Pictometry to acquire imagery is scheduled for the Spring of 2019 with the understanding that the imagery shall be captured with less than 30% leaf cover (off), with the exception of designated areas identified in Amendment 3 to Whatcom County Contract

#201210015 which allows for leaf-off flexibility. Imagery acquisition is contingent on favorable weather conditions and aircraft availability. When the image acquisition and processing is complete, Provider, with input from the Whatcom Region GIS Imagery Partnership, will evaluate the overall dataset for acceptance with Pictometry. Once the Provider has received and approved the Pictometry products, a copy of the accepted Pictometry products shall be created on a portable USS hard drive and delivered to the Customer. The Customer has 30 calendar days to inspect the USS hard drive and notify provider of any product errors, omissions, flaws, or incomplete work. Provider will review the original accepted dataset for any problems identified by the Customer and provide a new copy of the original accepted dataset if differences are identified. If no errors are brought to the attention of the Provider within 30 calendar days, the product delivery to Customer shall be considered complete.

- 2.2 Product Archival and Retention:** Provider is not responsible for the backup, retention, or archive of products provided to the Customer. In the event that the Customer requests from the Provider another copy of the Pictometry products, the Provider shall be financially compensated for its actual costs to create and deliver an additional copy of the Pictometry products.
- 2.3 Confidential and Proprietary Information:** The Customer acknowledges that it is a public agency and as such is required to allow members of the public access to certain materials within the Customer's control or possession, pursuant to the Washington State Public Records Act, RCW Chapter 42.56. In the event the Customer receives a public records request for information or intellectual property belonging to Pictometry, within five days of receiving such request and prior to providing any materials to the Requestor, the Customer will notify both the Provider and Pictometry of such request for information and will make attempts to provide Pictometry with adequate time to seek a protective order under applicable law. Customer shall clearly mark all confidential or proprietary documents. Notwithstanding the above, Customer shall release any documents that may contain information or intellectual property belonging to Pictometry that is not otherwise subject to an exemption applicable to Customer, unless otherwise prohibited by protective order obtained by Pictometry.
- 2.4 Data Limitations:** The Provider makes no warranty, expressed or implied, concerning the Pictometry products content, accuracy, currency or completeness, or concerning the results to be obtained from queries or use of the data. All Pictometry products are expressly provided as is and with all faults. The Provider makes no warranty of fitness for a particular purpose, and no representation as to the quality of any Pictometry products. No employee or agent of the Provider or the Customer is authorized nor may waive or modify this paragraph. Customer shall be entitled to any warranty that may extend from Pictometry to Customer.
- 2.5 Spatial Accuracy:** Electronic spatial data can be printed or represented at various scales other than the original source of the data. Customer is responsible for adhering to industry standard mapping practices, which specify that data utilized in a map or analysis, separately or in combination with other data, will be produced at the largest scale common to all data sets.

3.0 DATA LIABILITY AND INDEMNIFICATION

3.1 Liability: Provider, its elected or appointed officers, employees or agents shall not be liable to Customer (or transferees or vendees of Customer) for damages of any kind, including lost profits, lost savings or any other incidental or consequential damages relating to the providing of the data or the use of it. Customer shall have no remedy at law or equity against the Provider in case the data provided is inaccurate, incomplete or otherwise defective in any way. Customer's only remedies are those specified in this agreement.

3.2 Indemnification: Customer agrees to defend, indemnify and hold harmless Provider, its elected or appointed officers, employees or agents from any and all claims, judgments, settlements, attorneys' fees or any costs by reason of any and all claims and demands made against Provider, its elected or appointed officials, or employees, for all damages or loss sustained by any person or persons including third parties, arising out of Customer's use of any Pictometry product, unless such loss or damage is due to the sole negligence of Provider, its elected or appointed officers, employees or agents, or its breach of this Agreement. It is further provided that no liability shall attach to the County by reason of entering into this Agreement, except as expressly provided herein.

3.3 No Joint Venture or Partnership: It is understood and agreed that this Agreement is solely for the benefit of the parties hereto and gives no right to any other party. No joint venture or partnership is formed as a result of this Agreement.

3.4. Non-Conforming Service Remedy: For any services which fail to conform to the specification of this Agreement, and such failure is caused solely by the negligence of Provider, no charge will be invoiced. If both parties are negligent, they agree to apportion cost between them to the damage attributable to the actions of each.

3.5. Equipment Damage: For any equipment damaged as the result of negligence by either party, that party will be obligated to pay for repair or replacement of that equipment. If both parties are negligent, the parties agree to apportion between them the damage attributable to the actions of each.

4.0 TREATMENT OF ASSETS

4.1 Property Title: The Pictometry products are licensed through Pictometry International Corporation and are subject to the provisions of the Pictometry Delivered Content Terms and Conditions of Use in Amendment 1 to Contract #201210015 between Pictometry and the Provider.

4.2 Use of Property: Any property furnished by Provider to Customer shall, unless otherwise provided in this Agreement, or approved by the owner, be used for the performance of this Agreement.

4.3 **Notification:** If any Provider property is lost or stolen the Customer shall immediately notify both Pictometry and the Provider and shall take all reasonable steps to protect the property.

4.4 **No Real Property:** It is understood and agreed that no real property will be purchased under this interlocal Cooperative Agreement.

5.0 **SERVICE CHARGES AND PAYMENT PROVISIONS**

5.1 **Pictometry Product Fees:** The Provider is making Pictometry products available to Authorized Subdivisions / Authorized Users identified in Page 1 para. 3(d).of Amendment 3 to Whatcom County Contract #201210015. The Customer is identified as an Authorized Subdivision / Authorized User and therefore is eligible to cost share Pictometry products with the Provider (subject to the requirements outlined in Paragraph 2.1, Acceptance of Completed Work, of this agreement). A tier fee structure has been established to provide a simple and equitable cost plan for the cost sharing of Pictometry products for the Whatcom Region GIS Imagery Partnership. The Customer shall pay a total of \$2,080.00 to use Pictometry software and imagery. The cost of future software updates and technical support is not covered by this Agreement.

5.2 **Pictometry Connect Subscription Fees:** Pictometry provides multiple methods to access the aerial image library. This includes EFS software as well as Pictometry Connect web access. EFS is included with the Pictometry Product Fees in Paragraph 5.1. Pictometry Connect has an additional cost. The Customer shall pay a total of \$143.48 for a three-year subscription to the Pictometry Connect online service as in Exhibit D "Pictometry Connect Online Subscription Cost Sharing".

5.3 **Pictometry Payment Dates:** The Customer shall pay a total of \$2,223.48 for the Pictometry product fees and the Pictometry Connect subscription fees if applicable. The first payment of \$1,183.48 is due one month after the Customer has received the Pictometry imagery. The second payment of \$1,040.00 is due no later than one year after the first payment due date.

5.4 **Lower Project Costs:** The primary intention of this Agreement is to work cooperatively with other agencies in order to reduce project costs and eliminate duplication of services. In the event that the project costs are lower than expected, an equitable proportioned credit will be applied to the Customer's second year payment.

5.5 **Refunds Due to Uncaptured Areas:** Pictometry shall use commercially reasonable efforts to capture imagery of the areas designated on the Sector Map in Amendment 3 to Whatcom County Contract #201210015. In the event that Pictometry is unsuccessful in capturing certain sectors within the flight area, Provider will receive a credit from Pictometry and an equitable proportioned credit will be applied to the impacted Customer's second year payment.

5.6 Annual Support and Maintenance: Pictometry will provide desktop software and imagery maintenance and support for a period of two years from the initial date of shipment. At the end of the two years, an additional annual fee will be required for continued technical support and software updates. Provisions for these costs are beyond the scope of this Agreement.

6.0 AGREEMENT TERM AND TERMINATION

6.1 Agreement Term: This Agreement commences upon execution by signature of both parties and shall terminate three years after the date of product acceptance between Provider and Pictometry.

6.2 Termination for Public Convenience: Either party may terminate this Agreement in whole or in part upon 30 days written notice to the other whenever Provider or Customer determines, in its sole discretion that such termination is in its best interest. In the event this Agreement is terminated in accordance with this paragraph, the Provider shall be entitled to full payment for both years of the Pictometry Products.

7.0 MISCELLANOUS AGREEMENT PROVISIONS

7.1 Invoices and Late Payment: Provider will invoice Customer when products are delivered and accepted per the payment provisions in Paragraph 5.0 et. seq. above. Payment is due upon receipt of invoice by Customer and shall be paid 30 days thereafter. A late payment charge may be applied to any remaining balance 60 days after invoice. Late payment charges, if any, will be imposed on the unpaid balance at the rate of 1% per month. Agreements with balances more than 90 days past due may be terminated and services discontinued. Amounts disputed by Customer are not subject to late payment charges.

7.2 Disputes: Customer will promptly notify Provider of disputes regarding invoices, or of services which Customer believes do not conform to the agreed upon terms of this Agreement or Work Order.

7.3 Venue and Choice of Law: This Agreement has been and shall be construed as having been made and delivered within the State of Washington, and it is mutually understood and agreed to by each party hereto that this Agreement shall be governed by the laws of the State of Washington, both as to interpretation and performance. Any action in law, suit in equity or judicial proceedings for the enforcement of this Agreement or any provisions thereof shall be instituted and maintained only in the courts of competent jurisdiction in Whatcom County, Bellingham, Washington.

7.4 Assignment: This Agreement may not be assigned by either party to a third party without the prior written consent of both Provider and Customer.

- 7.5 **Waiver:** If a breach of a provision of this Agreement is waived for a particular transaction or occurrence, waiver for a similar breach in a subsequent similar transaction or occurrence may not be implied.
- 7.6 **Severability:** If any term or condition of this Agreement or application thereof is held invalid, such invalidity shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition, or application.
- 7.7 **Party Representatives:** Listed below are the parties' representatives for purposes of carrying out this Agreement. All notices and communications which may be required by this Agreement shall be in writing and may be given by delivery or by depositing in the U.S. Mail, first class, postage prepaid.

Customer Name: Whatcom Transportation Authority
Customer Address: 4011 Bakerview Spur
Customer City, State, ZIP: Bellingham WA, 98226
Contact Name: Magan Waltari
Contact Title: Procurement & Grants Coordinator
Contact Telephone: 360-788-9332
Contact E-Mail: maganw@ridewta.com

Provider Name: Whatcom County
Administrative Services Department
Division of Information Technology
Provider Address: 311 Grand Ave, Suite 305
Provider City, State, ZIP: Bellingham, WA 98225
Contact Name: Mike Pelela
Contact Title: GIS Supervisor
Contact Telephone: 360-778-5244
Contact E-Mail: mpelela@co.whatcom.wa.us



EXHIBIT A
Whatcom Region GIS Imagery Partnership

Organization
Bellingham Whatcom County Housing Authorities
Birch Bay Water & Sewer District
City of Bellingham
City of Blaine
City of Everson
City of Ferndale
City of Lynden
City of Nooksack
City of Sumas
Lake Whatcom Water & Sewer District
Lummi Indian Business Council
Nooksack Indian Tribe
Port of Bellingham
Public Utilities District #1
Whatcom Conservation District
Whatcom County
Whatcom Council of Governments
Whatcom Transportation Authority

EXHIBIT B

THIS EXHIBIT PURPOSELY KEPT BLANK.

EXHIBIT C

Authorized Subdivision/ Authorized Users License Agreement for Pictometry Imagery

The installation and use of Pictometry imagery products and software is governed by a license agreement between Pictometry and Whatcom County ("Licensee"). To use this software and the Pictometry Image Library you agree that your organization is an "Authorized Subdivision" and that you understand and will abide by the terms of the aforementioned license terms contained within Whatcom County Contract #201210015 and any amendments thereto.

Authorized Users shall mean such persons in the employment of the Customer. Customer has agreed: (a) that it will not allow any persons other than designated employees to use or operate, or to have any other access to, any of the Licensed Products, and (b) that it will cause all designated employees to comply with all of the terms, conditions, and limitations applicable to the Licensee under this Agreement, and (c) ortho images may be used in a public-facing website so long as any download feature is disabled and the Pictometry measurement tools are not exposed. Further, you agree that you will use the software and Pictometry Image Library in the conduct of your operations to use and execute the Licensed Products for internal use in pursuit of its or their public responsibilities and no others.

Customer shall remain obligated to the terms of the License Agreement for as long as they continue to use the product, regardless of the continued existence of this Interlocal Cooperative Agreement.

I Agree:

Effective Date: 12/16/19 _____

AUTHORIZED SUBDIVISION/ AUTHORIZED USERS: Whatcom Transportation Authority

By: 

Printed Name: Peter L. Stark

Title: General Manager

Address: 4011 Bakerview Spur

Bellingham, WA 98226

Phone: 360-788-9332

EXHIBIT D

Pictometry Connect Online Subscription

The Whatcom Region GIS Imagery Partnership partners have elected to participate in the Pictometry Connect Online subscription as described below:

Partner	Three Year Subscription Cost Pictometry Connect Online	# of Accounts
Bellingham Whatcom County Housing Authorities	\$143.48	1
Nooksack Indian Tribe	\$143.48	1
Whatcom Conservation District	\$143.48	1
Whatcom Transportation Authority	\$143.48	1
Lake Whatcom Water & Sewer	\$143.48	1
City of Nooksack	\$143.48	1
City of Everson	\$286.96	2
City of Sumas	\$286.96	2
City of Blaine	\$573.92	4
City of Ferndale	\$573.92	4
City of Lynden	\$573.92	4
Port of Bellingham	\$573.92	4
Public Utilities District #1	\$143.48	1
Birch Bay Water & Sewer District	\$573.92	4
Whatcom Council of Governments	\$143.48	1
Lummi Indian Business Council	Not Participating	0
City of Bellingham	Not Participating	0
Whatcom County	\$2,582.64	18
TOTAL	\$7,174.20	50