

 ORIGINAL

WHATCOM COUNTY
CONTRACT NO.

201309015

INTERLOCAL COOPERATIVE AGREEMENT
BETWEEN
WHATCOM COUNTY AND THE WHATCOM COUNCIL OF GOVERNMENTS
TO ESTABLISH A COST SHARING PARTNERSHIP
FOR LICENSED PICTOMETRY IMAGERY AND SOFTWARE

WHEREAS, Whatcom County and the Whatcom Council of Governments are authorized to provide cooperative information services under the Interlocal Cooperative Act RCW 39.34; and

WHEREAS, Whatcom County has entered into Contract #201210015 with Pictometry International Corporation (hereinafter referred to as "Pictometry") for the provision of certain licensed Pictometry products, encompassing, among others, specified aerial images of the County and selected adjacent jurisdictions; and

WHEREAS, Section B paragraph "c. Named Users" of Contract #201210015 has a provision granting Named Users a perpetual license of Pictometry imagery and software products; and

WHEREAS, the Whatcom Council of Governments is identified as a Named User of Whatcom County and has evaluated the Pictometry products and determined that those products would be beneficial to their operations; and

WHEREAS, Whatcom County, the Whatcom Council of Governments and other regional partners (Exhibit A) are interested in developing partnerships and working cooperatively with each other in order to reduce project costs and eliminate duplication of services; and

WHEREAS, the Whatcom Council of Governments has provided a Letter of Intent (Exhibit B) to participate in the Whatcom Region GIS Imagery Partnership; and

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

WHEREAS, Whatcom County, the Whatcom Council of Governments and other regional partners (Exhibit A) benefit from the Long Term Incentives (Section B of Whatcom County Contract #201210015) but are not obligated to participate in additional flights if funds are not appropriated; and

NOW, THEREFORE, Whatcom County hereinafter "Provider" and the Whatcom Council of Governments, hereinafter "Customer" agrees as follows:

1.0 **RESPONSIBILITIES**

1.1. **Provider Responsibilities:** Upon completion of the imagery acquisition, signed Interlocal Cooperative Agreement with the Customer, and signed Named User License Agreement (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. Shall organize an End User Orientation Training Session which will be taught by Pictometry. The Customer may designate one authorized representative to attend training session. In addition, the Provider will organize one Advanced User Technical Training Session which will be taught by Pictometry. Per the contract, Pictometry will provide telephone support to those people who have completed the Advanced User Technical Training Session.

1.1.3. Annual billing for the use of licensed Pictometry products. This also includes oversight of the financial accounting between the Provider and the Customer(s).

1.1.4. The Provider will notify and coordinate with Customer 180 days prior to a second and third flight to allow enough time for customer to determine if funding is available to participate in flights tentatively planned for Spring of 2015 and Spring of 2017.

1.2. **Customer Responsibilities:** Upon completion of the imagery acquisition, signed Interlocal Cooperative Agreement with the Provider, and signed Named User License Agreement (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 Named User License Agreement.

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 their contact information shall be reported to the Provider.

1.2.3. The Liaison or their 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).

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

- 1.2.5. The Customer will notify Provider in writing 120-days prior to a second and third flight if funding is or is not available to participate in flights tentatively planned for Spring of 2015 and Spring of 2017.

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 2013 with the understanding that the imagery shall be captured with less than 30% leaf cover (off). Imagery acquisition is contingent on favorable weather conditions and aircraft availability. When the image acquisition and processing is complete, Provider, with input from a Customer Evaluation Committee, 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 USB hard drive and delivered to the Customer. The Customer has 30 calendar days to inspect the USB 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 their actual costs to create and deliver an additional copy of the Pictometry products.
- 2.3 **Confidential and Proprietary Information:** The Customer acknowledges that they are a public agency and as such are required to allow members of the public access to certain materials within the Customer's control or possession. 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.
- 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.

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. Provider is supplying this information in good faith and Customer agrees to hold Provider, its elected or appointed officers, employees or agents harmless for any liability incurred as a result of using Pictometry products under this agreement.

3.2 **Indemnification:** Customer agrees to defend, indemnify and hold Provider, its elected or appointed officers, employees or agents from any and all claims, judgments, settlements, attorney's 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, unless such loss or damage is due to the sole gross negligence of Provider, its elected or appointed officers, employees or agents. It is further provided that no liability shall attach to the County by reason of entering into this contract, 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/or any Work Order pursuant to 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 and are subject to the provisions of the Software License Agreement 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 contract.
- 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 Named Users as defined in Section B. paragraph "c. Named Users" of the contract between Whatcom County and Pictometry (Contract #201210015). The Customer is identified as a Named 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 \$7,000 to use Pictometry software and imagery. The cost of future software updates and technical support is not covered by this agreement.
- 5.2 Pictometry Product Payment Dates:** The first payment of \$3,500 is due one month after the Customer has received the Pictometry products. The second payment of \$3,500 is due no later than one year after the first payment due date.
- 5.3 Lower Project Costs:** The primary intention of this Interlocal Cooperative Agreement is to develop partnerships and 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.
- 5.4 Annual Support and Maintenance:** At the end of the two (2) years of Pictometry software and imagery maintenance and support, an annual fee will be required for continued technical support and software updates. Provisions for these costs are beyond the scope of this Interlocal Cooperative Agreement. The annual maintenance fee is projected to be \$2,500 per year for the entire Whatcom Region GIS Imagery Partnership. This fee will be equitably distributed to customers who wish to participate. If a Customer chooses not to participate in

the annual maintenance fee, the licensed software will not be supported or upgraded, but the Customer may continue to use the existing software to view the imagery.

6.0 AGREEMENT TERM AND TERMINATION

6.1 Agreement Term: This Agreement commences upon execution by signature of both parties and shall terminate two years after the date of product acceptance between Provider and Pictometry, with the exception of provisions in paragraphs 1.1.4 and 1.2.5 of this agreement.

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 their best interests. 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 MISCELLANEOUS 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: | <u>Whatcom Council of Governments</u> |
| Customer Address: | 314 E. Champion St |
| Customer City, State, ZIP: | Bellingham WA 98225 |
| Contact Name: | Robert Wilson |
| Contact Title: | Executive Director |
| Contact Telephone: | 360-676-6974 |
| Contact E-Mail: | Bob@wcog.org |
| 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: | Perry Rice |
| Contact Title: | Information Technology Manager |
| Contact Telephone: | 360-676-7684 |
| Contact E-Mail: | price@co.whatcom.wa.us |



EXHIBIT A
Whatcom Region GIS Imagery Partnership

| Organization |
|---------------------------------------|
| Bellingham Housing Authority |
| City of Bellingham |
| City of Blaine |
| City of Everson |
| City of Ferndale |
| City of Lynden |
| City of Sumas |
| Lake Whatcom Water and Sewer District |
| Lummi Nation |
| Nooksack Tribe |
| Port of Bellingham |
| Public Utilities District |
| Whatcom Conservation District |
| Whatcom County |
| Whatcom Council of Governments |
| Whatcom Transportation Authority |

EXHIBIT B
Partner Letter of Intent



Whatcom
COUNCIL OF GOVERNMENTS

314 East Champion Street
Bellingham, Washington 98225
360 • 676 • 6974 fax 360 • 738 • 6282
www.wcog.org

October 18, 2012

Perry L. Rice
Information Technology Manager
Whatcom County
Administrative Services Department
Division of Information Technology
311 Grand Avenue, Suite #305
Bellingham, WA 98225

Re: Letter of Intent for 2013/2014 Pictometry Imagery Partnership

Mr. Rice,

Please let this letter serve as confirmation of Whatcom Council of Governments' intent to participate in the Whatcom Region Imagery Partnership at the following cost-sharing level:

Category 3
\$3,500 in 2013
\$3,500 in 2014
\$7,000 Total

It is Whatcom Council of Governments' intent to enter into an interlocal agreement with Whatcom County and a sub-agency license agreement with our vendor, Pictometry International Corporation in order to take receipt of the entire western Whatcom County imagery dataset with an estimated value at \$140,000.

Sincerely,

Robert H. Wilson,
Executive Director

EXHIBIT C

Named User 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 a "Named User" and that you understand and will abide by the terms of the aforementioned license agreement contained within Whatcom County Contract #201210015.

Named 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. 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: 8/23/2013

NAMED USER: Whatcom Council of Governments

By: 

Printed Name: Robert H. Wilson

Title: Executive Director

Address: 314 E Champion St

Bellingham WA 98225

Phone: 360-676-6974