

AN ORDINANCE ACCEPTING THE PROPOSAL OF PICTOMETRY INTERNATIONAL CORP. PERTAINING TO THE DIGITAL ORTHOPHOTOGRAPHY, PLANIMETRIC AND TOPOGRAPHIC MAPPING PROJECT AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT.

WHEREAS, through the regional GIS mapping coalition, the City of Branson has the opportunity to join forces with Taney County and the City of Hollister to update the 2011 data currently used by city departments.

WHEREAS, through the priority based budgeting process, this project was recommended for inclusion in the 2019 capital budget.

WHEREAS, the Capital Improvements Committee recommended the purchase at their meeting held on December 7, 2018.

WHEREAS, the Board of Aldermen desires to award the contract.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF BRANSON, MISSOURI, AS FOLLOWS:


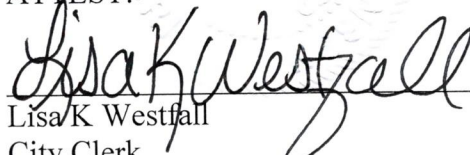
Section 1: The Board of Aldermen hereby accepts the proposal of Pictometry International Corp. for the Digital Orthophotography, Planimetric and Topographic Mapping Project in an amount not to exceed \$73,995.11 and authorizes the Mayor to execute the contract in the form attached as Exhibit "1".

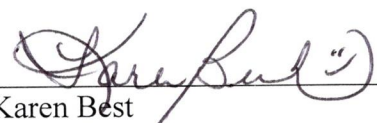
Section 2: This ordinance shall be in full force and effect upon and after its passage and approval.

Read, this first time on this 22nd day of January, 2019.

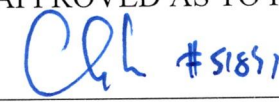
Read, this second time, passed, and truly agreed to by the Board of Aldermen of City of Branson, Missouri this 12th day of February, 2019.

ATTEST:



Lisa K Westfall
City Clerk


Karen Best
Mayor

APPROVED AS TO FORM:

 #51831 2/12/19
Chris Lebeck #51831
Associate City Attorney

**AGREEMENT BETWEEN
PICTOMETRY INTERNATIONAL CORP. ("PICTOMETRY") AND
CITY OF BRANSON, MO ("CUSTOMER")**

1. This order form ("Order Form"), in combination with the contract components listed below:

Section A: Product Descriptions, Prices and Payment Terms

Section B: License Terms:

- Delivered Content Terms and Conditions of Use
- Online Services General Terms and Conditions
- Software License Agreement

Section C: Non-Standard Terms and Conditions

Sector Maps

(all of which, collectively, constitute this "Agreement") set forth the entire understanding between Pictometry and Customer with respect to the subject matter hereof and supersedes all prior representations, agreements and arrangements, whether oral or written, relating to the subject matter hereof. Any modifications to this Agreement must be made in writing and be signed by duly authorized officers of each party. Any purchase order or similar document issued by Customer in connection with this Agreement is issued solely for Customer's internal administrative purposes and the terms and conditions set forth on any such purchase order shall be of no force or effect as between the parties.

2. In the event of any conflict among any contract components comprising this Agreement, order of precedence for resolving such conflict shall be, from highest (i.e., supersedes all others) to lowest (i.e., subordinate to all others): Non-Standard Terms and Conditions; Product Descriptions, Prices and Payment Terms; License Terms in order as listed above under the heading 'Section B: License Terms'; and Order Form.
3. All notices under this Agreement shall be in writing and shall be sent to the following respective addresses:

CUSTOMER NOTICE ADDRESS	PICTOMETRY NOTICE ADDRESS
110 W Maddux St	25 Methodist Hill Drive
Branson, MO 65616	Rochester, NY 14623
Attn: Curtis Copeland, GIS Coordinator	Attn: General Counsel
Phone: (417) 337-8540	Phone: (585) 486-0093 Fax: (585) 486-0098

Either party may change their respective notice address by giving written notice of such change to the other party at the other party's then-current notice address. Notices shall be given by any of the following methods: personal delivery; reputable express courier providing written receipt; or postage-paid certified or registered United States mail, return receipt requested. Notice shall be deemed given when actually received or when delivery is refused.

4. This Agreement, including all licenses granted pursuant to it, shall be binding upon and inure to the benefit of the parties hereto, their successors and permitted assigns, but shall not be assignable by either party except that (i) Pictometry shall have the right to assign its right to receive Fees under this Agreement, provided no such assignment shall affect Pictometry's obligations hereunder, and (ii) Pictometry shall have the right to assign all its rights under this Agreement to any person or entity, provided the assignee has assumed all of Pictometry's obligations under this Agreement.
5. IN NO EVENT SHALL EITHER PARTY BE LIABLE, UNDER ANY CAUSE OF ACTION OF ANY KIND ARISING OUT OF OR RELATED TO THIS AGREEMENT (INCLUDING UNDER THEORIES INVOLVING TORT, CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR BREACH OF WARRANTY), FOR ANY LOST PROFITS OR FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR OTHER SPECIAL DAMAGES SUFFERED BY THE OTHER PARTY OR OTHERS, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
6. With respect to any claims that Customer may have or assert against Pictometry on any matter relating to this Agreement, the total liability of Pictometry shall, in the aggregate, be limited to the aggregate amount received by Pictometry pursuant to this Agreement.
7. The waiver by either party of any default by the other shall not waive subsequent defaults of the same or different kind.
8. In the event that any of the provisions of this Agreement shall be held by a court or other tribunal of competent jurisdiction to be unenforceable, such provision will be enforced to the maximum extent permissible and the remaining portions of this Agreement shall remain in full force and effect.

9. Pictometry shall not be responsible for any failure on its part to perform due to unforeseen circumstances or to causes beyond Pictometry's reasonable control, including but not limited to acts of God, war, riot, embargoes, acts of civil or military authorities, fire, weather, floods, accidents, strikes, failure to obtain export licenses or shortages or delays of transportation, facilities, fuel, energy, supplies, labor or materials. In the event of any such delay, Pictometry may defer performance for a period of time reasonably related to the time and nature of the cause of the delay.
10. In consideration of, and subject to, payment by Customer of the Fees specified in Section A of this Agreement, Pictometry agrees to provide Customer with access to and use of the products specified in Section A of this Agreement, subject to the terms and conditions set forth in this Agreement. Customer hereby agrees to pay the Fees specified in Section A of this Agreement in accordance with the stated payment terms and accepts and agrees to abide by the terms of this Agreement.

This Agreement shall become effective upon execution by duly authorized officers of Customer and Pictometry and receipt by Pictometry of such fully executed document, such date of receipt by Pictometry being the "Effective Date."

PARTIES:

CUSTOMER	PICTOMETRY
CITY OF BRANSON, MO	PICTOMETRY INTERNATIONAL CORP.
(entity type)	a Delaware corporation
SIGNATURE:	SIGNATURE: <i>Brian Brockmann</i> DocuSigned by: 919C59280FF1419
NAME:	NAME: Brian Brockmann
TITLE:	TITLE: Corporate Vice President
DATE:	EXECUTION DATE: 1/14/2019
	DATE OF RECEIPT (EFFECTIVE DATE):

APPROVED AS TO FORM:

[Signature] #51871 1/14/19

City Attorney

SECTION A

PRODUCT DESCRIPTIONS, PRICES AND PAYMENT TERMS

Pictometry International Corp.
25 Methodist Hill Drive
Rochester, NY 14623

ORDER #

C1797564

BILL TO			SHIP TO		
City of Branson, MO			City of Branson, MO		
Curtis Copeland, GIS Coordinator			Curtis Copeland, GIS Coordinator		
110 W Maddux St			110 W Maddux St		
Branson, MO 65616			Branson, MO 65616		
(417) 337-8540			(417) 337-8540		
ccopeland@bransonmo.gov			ccopeland@bransonmo.gov		

CUSTOMER ID		SALES REP	FREQUENCY OF PROJECT		
A118566		CStit	Triennial		

FIRST PROJECT					
QTY	PRODUCT NAME	PRODUCT DESCRIPTION	LIST PRICE	DISCOUNT PRICE (%)	AMOUNT
67	LiDAR-PURCHASED-1.0m postings (sq mi) with AccuPlus	Available with purchase of AccuPlus product. LiDAR data delivered in tiled LAS format, nominal raw post spacing of 1.0m, vertical accuracy sufficient to support optional generation of 2-ft contours (available separately). 50 square mile minimum. Customer shall own the copy of this LiDAR product delivered to Customer pursuant to this Agreement. Pictometry shall retain copies of said LiDAR product and shall own those copies. Applicable Terms and Conditions: Order Form	\$425.83		\$28,530.61
31	AccuPLUS 3in - CUSTOMER DTM - Per Sector	Product includes: 3-inch GSD AccuPlus ortho mosaic tiles (GeoTIFF format), 3-inch GSD oblique frame images (4-way), 3-inch GSD orthogonal frame images, 3-inch GSD area-wide ortho mosaic (ECW format), 1-meter GSD ortho mosaic sector tiles and one area-wide 1-meter GSD mosaic (ECW format). Orthogonal GSD: 0.25 feet/pixel; Nominal Oblique GSD (all values +/-10%): Front Line: 0.24 feet/pixel, Middle Line: 0.28 feet/pixel, Back Line: 0.34 feet/pixel. Ortho-mosaic accuracy: 0.75 ft. RMSE (X or Y); 1.84 ft NSSDA 95%; meets or exceeds ASPRS Class 1 (1990) at 1"=100'; NMAS Class 1 at 1"=50'. Pricing discounted to reflect use of customer-provided DTM to support ortho-rectification (subject to Pictometry testing and validation). Refer to attached terms and conditions. Applicable Terms and Conditions: Delivered Content Terms and Conditions of Use	\$845.00	\$760.50 (10% - Long Term Incentive Discount)	\$23,575.50
36	AccuPLUS 3in - UPGRADE - CUSTOMER DTM	Available with corresponding 3" Imagery Purchase. Upgrade of existing image capture to AccuPlus. Product includes: 3-inch GSD AccuPlus ortho mosaic tiles (GeoTIFF format), 3-inch GSD area-wide ortho mosaic (ECW format). Orthogonal GSD: 0.25 feet/pixel; Ortho-mosaic accuracy: 0.75 ft. RMSE (X or Y); 1.84 ft NSSDA 95%; meets or exceeds NMAS & ASPRS Class 1 at 1"=100'. Pricing discounted to reflect use of customer-provided DTM to support ortho-rectification (subject to Pictometry testing and validation). Refer to attached terms and conditions. Applicable Terms and Conditions: Delivered Content Terms and Conditions of Use	\$440.00		\$15,840.00
67	LIDAR-DEM and 2ft Contours (sq mi)	Available with qualifying LiDAR purchase. Gridded bare earth DEM in ArcGIS GRID format and tiled contours at a 2-foot interval in ESRI Polyline Feature Class format. Refer to attached terms and conditions. Applicable Terms and Conditions: Delivered Content Terms and Conditions of Use	\$50.00		\$3,350.00
1	AccuPLUS Project Fee - CUSTOMER LIDAR	AccuPLUS project fee for projects with customer-supplied DTM Applicable Terms and Conditions: Delivered Content Terms and Conditions of Use	\$2,500.00		\$2,500.00
1	Media Drive Capacity 931G - Drive Model IT - EXTPOWER	External USB 2.0 / eSATA Externally Powered. Delivery media prices include copying a complete image library onto media. Sub-warehousing sold separately.	\$199.00		\$199.00

		Applicable Terms and Conditions: Order Form			
1	AccuPlus Imagery Bundle with Three (3) Years of EFS Maintenance & Support	Includes digital copy of the Licensed Documentation for the License Software, two (2) End User Training Sessions, one (1) Advanced User Technical Training, one (1) Administration / IT Training Session, fifteen (15) hours of telephone support, one copy of Pictometry Electronic Field Study (EFS) software, latest version, on the storage media specified herein, and access to download updated versions of the EFS Licensed Software for a period of three years from the initial date of shipment of the EFS software, along with a copy of the updated documentation. Applicable Terms and Conditions: Software License Agreement	\$0.00		\$0.00
1	RapidAccess - Disaster Response Program	RapidAccess - Disaster Response Program is an emergency response program offering flights after an emergency or disaster. Refer to the attached detailed description of the Disaster Response Program. Applicable Terms and Conditions: Order Form	\$0.00		\$0.00
1	Pictometry Connect - EarlyAccess	Pictometry Connect - EarlyAccess provides authorized users the ability to login and access the imagery, as specified elsewhere in this agreement, immediately following its preliminary processing and quality control checks and prior to its final processing. Early Access imagery will become available in CONNECT Explorer incrementally as it is processed and it will remain available until final, fully processed imagery is made available through other means. This offering requires an active Pictometry CONNECT account and the current purchase of access to an imagery product. Applicable Terms and Conditions: Online Services General Terms and Conditions	\$10,000.00	\$0.00 (100%)	\$0.00
SUBTOTAL -- FIRST PROJECT					\$73,995.11

SECOND PROJECT

QTY	PRODUCT NAME	PRODUCT DESCRIPTION	LIST PRICE	DISCOUNT PRICE (%)	AMOUNT
67	LiDAR-PURCHASED-1.0m postings (sq mi) with AccuPlus	Available with purchase of AccuPlus product. LiDAR data delivered in tiled LAS format, nominal raw post spacing of 1.0m, vertical accuracy sufficient to support optional generation of 2-ft contours (available separately). 50 square mile minimum. Customer shall own the copy of this LiDAR product delivered to Customer pursuant to this Agreement. Pictometry shall retain copies of said LiDAR product and shall own those copies. Applicable Terms and Conditions: Order Form	\$425.83		\$28,530.61
31	AccuPLUS 3in - CUSTOMER DTM - Per Sector	Product includes: 3-inch GSD AccuPlus ortho mosaic tiles (GeoTIFF format), 3-inch GSD oblique frame images (4-way), 3-inch GSD orthogonal frame images, 3-inch GSD area-wide ortho mosaic (ECW format), 1-meter GSD ortho mosaic sector tiles and one area-wide 1-meter GSD mosaic (ECW format). Orthogonal GSD: 0.25 feet/pixel; Nominal Oblique GSD (all values +/-10%): Front Line: 0.24 feet/pixel, Middle Line: 0.28 feet/pixel, Back Line: 0.34 feet/pixel. Ortho-mosaic accuracy: 0.75 ft. RMSE (X or Y); 1.84 ft NSSDA 95%; meets or exceeds ASPRS Class 1 (1990) at 1"=100'; NMAS Class 1 at 1"=50'. Pricing discounted to reflect use of customer-provided DTM to support ortho-rectification (subject to Pictometry testing and validation). Refer to attached terms and conditions. Applicable Terms and Conditions: Delivered Content Terms and Conditions of Use	\$845.00	\$760.50 (10% - Long Term Incentive Discount)	\$23,575.50
36	AccuPLUS 3in - UPGRADE - CUSTOMER DTM	Available with corresponding 3" Imagery Purchase. Upgrade of existing image capture to AccuPlus. Product includes: 3-inch GSD AccuPlus ortho mosaic tiles (GeoTIFF format), 3-inch GSD area-wide ortho mosaic (ECW format). Orthogonal GSD: 0.25 feet/pixel; Ortho-mosaic accuracy: 0.75 ft. RMSE (X or Y); 1.84 ft NSSDA 95%; meets or exceeds NMAS & ASPRS Class 1 at 1"=100'. Pricing discounted to reflect use of customer-provided DTM to support ortho-rectification (subject to Pictometry testing and validation). Refer to attached terms and conditions.	\$440.00		\$15,840.00

		Applicable Terms and Conditions: Delivered Content Terms and Conditions of Use			
67	LIDAR-DEM and 2ft Contours (sq mi)	Available with qualifying LiDAR purchase. Gridded bare earth DEM in ArcGIS GRID format and tiled contours at a 2-foot interval in ESRI Polyline Feature Class format. Refer to attached terms and conditions. Applicable Terms and Conditions: Delivered Content Terms and Conditions of Use	\$50.00		\$3,350.00
1	AccuPLUS Project Fee - CUSTOMER LIDAR	AccuPLUS project fee for projects with customer-supplied DIM. Applicable Terms and Conditions: Delivered Content Terms and Conditions of Use	\$2,500.00		\$2,500.00
1	Media Drive Capacity 931G - Drive Model 1T - EXTPOWER	External USB 2.0 / eSATA Externally Powered. Delivery media prices include copying a complete image library onto media. Sub-warehousing sold separately. Applicable Terms and Conditions: Order Form	\$199.00		\$199.00
1	Pictometry Connect - Early Access	Pictometry Connect - Early Access provides authorized users the ability to login and access the imagery, as specified elsewhere in this agreement, immediately following its preliminary processing and quality control checks and prior to its final processing. Early Access imagery will become available in CONNECT Explorer incrementally as it is processed and it will remain available until final, fully processed imagery is made available through other means. This offering requires an active Pictometry CONNECT account and the current purchase of access to an imagery product. Applicable Terms and Conditions: Online Services General Terms and Conditions	\$10,000.00	\$0.00 (100%)	\$0.00
1	AccuPlus Imagery Bundle with Three (3) Years of EFS Maintenance & Support	Includes digital copy of the Licensed Documentation for the License Software, two (2) End User Training Sessions, one (1) Advanced User Technical Training, one (1) Administration / IT Training Session, fifteen (15) hours of telephone support, one copy of Pictometry Electronic Field Study (EFS) software, latest version, on the storage media specified herein, and access to download updated versions of the EFS Licensed Software for a period of three years from the initial date of shipment of the EFS software, along with a copy of the updated documentation. Applicable Terms and Conditions: Software License Agreement	\$0.00		\$0.00
1	RapidAccess - Disaster Response Program	RapidAccess - Disaster Response Program is an emergency response program offering flights after an emergency or disaster. Refer to the attached detailed description of the Disaster Response Program. Applicable Terms and Conditions: Order Form	\$0.00		\$0.00
SUBTOTAL - SECOND PROJECT					\$73,995.11

Thank you for choosing Pictometry as your service provider.	TOTAL	\$147,990.22
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¹Amount per product = ((1-Discount %) * Qty * List Price)

FEES; PAYMENT TERMS

All amounts due to Pictometry pursuant to this Agreement ("Fees") are expressed in United States dollars and do not include any duties, taxes (including, without limitation, any sales, use, ad valorem or withholding, value added or other taxes) or handling fees, all of which are in addition to the amounts shown above and, to the extent applicable to purchases by Customer, shall be paid by Customer to Pictometry without reducing any amount owed to Pictometry unless documents satisfactory to Pictometry evidencing exemption from such taxes is provided to Pictometry prior to billing. To the extent any amounts properly invoiced pursuant to this Agreement are not paid within thirty (30) days following the invoice due date, such unpaid amounts shall accrue, and Customer shall pay, interest at the rate of 1.5% per month (or at the maximum rate allowed by law, if less). In addition, Customer shall pay Pictometry all costs Pictometry incurs in collecting past due amounts due under this Agreement including, but not limited to, attorneys' fees and court costs.

FIRST PROJECT

Due January 15, 2019	\$6,166.25
Due at Shipment of Imagery	\$67,828.86

Total Payments SECOND PROJECT

Due at Shipment of Imagery	\$73,995.11
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Total Payments

\$73,995.11

PRODUCT PARAMETERS**FIRST PROJECT****ACCUPLUS IMAGERY**

Product: AccuPLUS 3in - CUSTOMER DTM - Per Sector
 Coverage Area Format: Shapefile
 Leaf: Leaf Off: Less than 30% leaf cover

Product: AccuPLUS 3in - UPGRADE - CUSTOMER DTM
 Coverage Area Format: Shapefile
 Leaf: Leaf Off: Less than 30% leaf cover

LIDAR

Product: LIDAR-PURCHASED-1.0m postings (sq mi) with AccuPlus
 Funding Source: Self-funded / None
 (see related Terms & Conditions as applicable)

Product: LIDAR-DEM and 2ft Contours (sq mi)
 Funding Source: Self-funded / None
 (see related Terms & Conditions as applicable)

SECOND PROJECT**ACCUPLUS IMAGERY**

Product: AccuPLUS 3in - CUSTOMER DTM - Per Sector
 Coverage Area Format: Shapefile
 Leaf: Leaf Off: Less than 30% leaf cover

Product: AccuPLUS 3in - UPGRADE - CUSTOMER DTM
 Coverage Area Format: Shapefile
 Leaf: Leaf Off: Less than 30% leaf cover

LIDAR

Product: LIDAR-PURCHASED-1.0m postings (sq mi) with AccuPlus
 Funding Source: Self-funded / None
 (see related Terms & Conditions as applicable)

Product: LIDAR-DEM and 2ft Contours (sq mi)
 Funding Source: Self-funded / None
 (see related Terms & Conditions as applicable)

RapidAccess—Disaster Response Program ("DRP")

Customer is eligible for DRP described below from the Effective Date through the second anniversary of the initial Project delivery. Following payment to Pictometry of amounts due with respect to each subsequent Project, Customer will be eligible for the then-current DRP for a period of two years from delivery of such subsequent Project. Customer must be in good-standing with Pictometry to maintain eligibility for DRP.

- A. Disaster Coverage Imagery at No Additional Charge** – Pictometry will, upon request of Customer and at no additional charge, provide standard quality imagery of up to 200 square miles of affected areas (as determined by Pictometry) upon the occurrence of any of the following events during any period Customer is eligible for DRP:

- ☐ **Hurricane:** areas affected by hurricanes of Category 2 and higher.
- ☐ **Tornado:** areas affected by tornadoes rated EF4 and higher.
- ☐ **Terrorist:** areas affected by damage from terrorist attack.
- ☐ **Earthquake:** areas affected by damage to critical infrastructure resulting from earthquakes measured at 6.0 or higher on the Richter scale.
- ☐ **Tsunami:** areas affected by damage to critical infrastructure resulting from tsunamis.

- B. Discounted Rate** – Coverage for areas affected by the events set forth above exceeding 200 square miles will be, subject to Pictometry resource availability, offered to Customer at the then current DRP rates. Also, coverage for areas affected by hurricanes below Category II, tornadoes below EF4 or earthquakes rated below 6.0 on the Richter scale will be, subject to Pictometry resource availability, offered to Customer at the then current DRP rates.
- C. Online Services – Use of Pictometry Connect Explorer™** – Pictometry's DRP includes the use of Connect Explorer for a term of ninety days from the date of delivery of the DRP imagery. Customer shall have access to the DRP imagery for as long as they maintain an active Connect account.

SECTION B**LICENSE TERMS****PICTOMETRY DELIVERED CONTENT
TERMS AND CONDITIONS OF USE**

These Pictometry Delivered Content Terms and Conditions of Use (the "Delivered Content Terms and Conditions"), in combination with the corresponding Agreement into which these terms are incorporated, collectively set forth the terms and conditions that govern use of Delivered Content (as hereinafter defined) for use within computing environments operated by parties other than Pictometry. As used in the Delivered Content Terms and Conditions the terms "you" and "your" in uppercase or lowercase shall mean the Customer that entered into the Agreement into which the Delivered Content Terms and Conditions are incorporated.

1. DEFINITIONS

- 1.1 "Authorized Subdivision" means, if you are a county or a non-state consortium of counties, any political unit or subdivision located totally or substantially within your boundaries that you authorize to have access to Delivered Content pursuant to the Delivered Content Terms and Conditions.
- 1.2 "Authorized System" means a workstation or server that meets each of the following criteria (i) it is owned or leased by you or an Authorized Subdivision, (ii) it is located within and only accessible from facilities that are owned or leased by you or an Authorized Subdivision, and (iii) it is under the control of and may only be used by you or Authorized Subdivisions.
- 1.3 "Authorized User" means any employee of you or Authorized Subdivisions that is authorized by you to have access to the Delivered Content through an Authorized System.
- 1.4 "Delivered Content" means the images, metadata, data layers, models, reports and other geographic or structural visualizations or embodiments included in, provided with, or derived from the information delivered to you by or on behalf of Pictometry pursuant to the Agreement.
- 1.5 "Project Participant" means any employee or contractor of persons or entities performing services for compensation for you or an Authorized Subdivision that has been identified by written notice to Pictometry prior to being granted access to Delivered Content and, unless Pictometry expressly waives such requirement for any individual, has entered into a written agreement with Pictometry authorizing such access.

2. GRANT OF RIGHTS; RESTRICTIONS ON USE; OWNERSHIP

- 2.1 Subject to the terms and conditions of the Agreement, you are granted nonexclusive, nontransferable, limited rights to:
 - (a) install the Delivered Content on Authorized Systems;
 - (b) permit access and use of the Delivered Content through Authorized Systems by:
 - (i) Authorized Users for performance of public responsibilities of you or Authorized Subdivisions that are to be performed entirely within facilities of you or Authorized Subdivisions;
 - (ii) Project Participants under the supervision of Authorized Users for performance of tasks or preparation of materials using only hard copies (or jpg copies) of Delivered Content solely for fulfilling public responsibilities of you or Authorized Subdivisions to be performed entirely within facilities of you or Authorized Subdivisions; and
 - (iii) individual members of the public, but only through Authorized Users and solely for the purpose of making hard copies or jpg copies of images of individual properties or structures (but not bulk orders of multiple properties or structures) to the individual members of the public requesting them.
- 2.2 You may not reproduce, distribute or make derivative works based upon the Delivered Content in any medium, except as expressly permitted in the Delivered Content Terms and Conditions.
- 2.3 You may not offer any part of the Delivered Content for commercial resale or commercial redistribution in any medium.
- 2.4 You may not distribute or otherwise make available any Delivered Content to Google or its affiliates, either directly or indirectly.
- 2.5 You may not exploit the goodwill of Pictometry, including its trademarks, service marks, or logos, without the express written consent of Pictometry.
- 2.6 You may not remove, alter or obscure copyright notices or other notices contained in the Delivered Content.
- 2.7 All right, title, and interest (including all copyrights, trademarks and other intellectual property rights) in Delivered Content in all media belong to Pictometry or its third party suppliers. Neither you nor any users of the Delivered Content acquire any proprietary interest in the Delivered Content, or any copies thereof, except the limited use rights granted herein.

3. OBLIGATIONS OF CUSTOMER

- 3.1 **Geographic Data.** If available, you agree to provide to Pictometry geographic data in industry standard format (e.g., shape, DBF) including, but not limited to, digital elevation models, street centerline maps, tax parcel maps and centroids, which data, to the extent practicable, shall be incorporated into the Delivered Content. You agree that any of this data that is owned by you may be distributed and modified by Pictometry as part of its products and services, provided that at no time shall Pictometry claim ownership of that data.
- 3.2 **Notification.** You shall (a) notify Pictometry in writing of any claims or proceedings involving any of the Delivered Content within ten (10) days after you learn of the claim or proceeding, and (b) report promptly to Pictometry all claimed or suspected defects in Delivered Content.
- 3.3 **Authorized User Compliance.** You shall at all times be responsible for compliance by each Authorized User with the Delivered Content Terms and Conditions.
- 3.4 **Authorized Subdivision Compliance.** You shall at all times be responsible for compliance by each Authorized Subdivision with the Delivered Content Terms and Conditions.
- 3.5 **Project Participants.** Each notice to Pictometry identifying a potential Project Participant shall include a detailed description of the scope and nature of the Project Participants' planned work and the intended use of the Delivered Content in such work. Pictometry retains the right to restrict or revoke access to Delivered Content by any Project Participant who does not comply with the terms of the Delivered Content Terms and Conditions.

4. LICENSE DURATION; EFFECT OF TERMINATION

- 4.1 **Term.** The license granted to you in the Delivered Content Terms and Conditions is perpetual, subject to Pictometry's right to terminate the license in the event you do not pay in full the Fees specified elsewhere in the Agreement, the Agreement is terminated for any reason other than a breach of the Agreement by Pictometry, or as otherwise provided in the Agreement.
- 4.2 **Effect of Termination.** Upon termination of the license granted to you in the Delivered Content Terms and Conditions, you shall immediately cease all use of the Delivered Content, promptly purge all copies of the Delivered Content from all workstations and servers on which any of it may be stored or available at the time, and return hard drive/media containing Delivered Content to Pictometry.

5. TRADEMARKS; CONFIDENTIALITY

- 5.1 **Use of Pictometry's Marks.** You agree not to attach any additional trademarks, trade names, logos or designations to any Delivered Content or to any copies

of any Delivered Content without prior written approval from Pictometry. You may, however, include an appropriate government seal and your contact information so long as the seal and contact information in no way obscure or deface the Pictometry marks. You further agree that you will not use any Pictometry trademark, trade name, logo, or designation in connection with any product or service other than the Delivered Content. Your nonexclusive right to use Pictometry's trademarks, trade name, logos, and designations are coterminous with the license granted to you in the Delivered Content Terms.

- 5.2 **Confidentiality of Delivered Content.** The Delivered Content consists of commercially valuable, proprietary products owned by Pictometry, the design and development of which reflect an investment of considerable time, effort, and money. The Delivered Content is treated by Pictometry as confidential and contains substantial trade secrets of Pictometry. You agree that you will not disclose, provide a copy of, or disseminate the Delivered Content (other than as expressly permitted in the Delivered Content Terms and Conditions) or any part thereof to any person in any manner or for any purpose inconsistent with the license granted to you in the Delivered Content Terms and Conditions. You agree to use your best efforts to assure that your personnel, and any others afforded access to the Delivered Content, protect the Delivered Content against unauthorized use, disclosure, copying, and dissemination, and that access to the Delivered Content and each part thereof will be strictly limited.

6. LIMITED WARRANTY; DISCLAIMER OF WARRANTIES

- 6.1 **Limited Warranties; Exclusive Remedy.** Pictometry warrants that the Delivered Content will contain true and usable copies of the designated imagery as of the date of capture. As the sole and exclusive remedy for any breach of the foregoing warranty, Pictometry shall use reasonable efforts to correct any deficiency that precludes use of the Delivered Content in the manner intended.
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- 7.2 **Governing Law.** This License Agreement shall be governed by and interpreted in accordance with the laws of the State of New York, excluding its conflicts of law principles.

[END OF DELIVERED CONTENT TERMS AND CONDITIONS]

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- 5.1 No Covered Party (as defined below) shall be liable for any loss, injury, claim, liability, or damage of any kind resulting in any way from (a) any errors in or omissions from the Online Services or the Licensed Content, (b) the unavailability or interruption of the Online Services or any features thereof or the Licensed Content, (c) your or an Eligible User's use of the Online Services or the Licensed Content, (d) the loss or corruption of any data or equipment in connection with the Online Services or the Licensed Content, (e) the content, accuracy, or completeness of the Licensed Content, all regardless of whether you received assistance in the use of the Online Service from a Covered Party, (f) any delay or failure in performance beyond the reasonable control of a Covered Party, or (g) any content retrieved from the Internet even if retrieved or linked to from within the Online Services.
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 - (c) The provisions of Sections 5.5(a) and (b) shall constitute your sole and exclusive remedy for the respective matters specified therein.

6. MISCELLANEOUS

- 6.1 The terms and conditions of this License Agreement may be changed from time to time immediately upon notice to you. If any changes are made to this License Agreement, such changes will: (a) only be applied prospectively; and (b) not be specifically directed against you or your Eligible Users but will apply to all similarly situated Pictometry customers using the Online Services. You may terminate this License Agreement upon written notice to Pictometry if any change to the terms and conditions of this License Agreement is unacceptable to you. For termination to be effective under this Section 6.1, written notice of termination must be provided to Pictometry within 90 days of the effective date of the change. Continued use of the Online Services following the effective date of any change constitutes acceptance of the change, but does not affect the foregoing termination right. Except as provided above, this License Agreement may not be supplemented, modified or otherwise revised unless signed by duly authorized representatives of both parties. Furthermore, this License Agreement may not be supplemented, modified or otherwise revised by email exchange, even if the email contains a printed name or signature line bearing signature-like font. The foregoing does not prohibit the execution of electronic contracts bearing electronic signatures of authorized representatives of both parties, provided such signatures include digital certifications or are otherwise authenticated.
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- 6.6 This License Agreement shall be governed by and interpreted in accordance with the laws of the State of New York, excluding its conflicts of law principles. Unless you are a government entity, in the event that any legal proceedings are commenced with respect to any matter arising under this License Agreement, the parties specifically consent and agree that the courts of the State of New York or, in the alternative, the Federal Courts located in the State of New York

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- 6.7 This License Agreement will be enforced to the fullest extent permitted by applicable law. If any provision of this License Agreement is held to be invalid or unenforceable to any extent, then (a) such provision will be interpreted, construed and reformed to the extent reasonably required to render it valid, enforceable and consistent with its original intent and (b) such invalidity or unenforceability will not affect any other provision of this License Agreement.
- 6.8 Where applicable, each affiliated company of Pictometry and each third party supplier of the Online Services or any Licensed Content has the right to assert and enforce the provisions of this License Agreement directly on its own behalf as a third party beneficiary.
- 6.9 In the event of a breach of your obligations under this License Agreement or your payment obligations with respect to access to the Online Services or the Licensed Content, you agree to pay all of Pictometry's costs of enforcement and collection, including court costs and reasonable attorneys' fees.
- 6.10 This License Agreement constitutes the entire agreement of the parties with respect to its subject matter and replaces and supersedes any prior written or verbal communications, representations, proposals or quotations relating to that subject matter.

[END OF ONLINE SERVICES GENERAL TERMS AND CONDITIONS]

SECTION B**LICENSE TERMS****PICTOMETRY SOFTWARE
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- G. **Waiver.** No waiver of a breach of any term of this License will be effective unless in writing and duly executed by the waiving party. No such waiver will constitute a waiver of any subsequent breach of the same or any other term of this License. No failure on the part of a party to exercise, and no delay in exercising any of its rights hereunder will operate as a waiver thereof, nor will any single or partial exercise by a party of any right preclude any other or future exercise thereof or the exercise of any other right. No course of dealing between the parties will be deemed effective to modify, amend or discharge any part of this License or the rights or obligations of any party hereunder.
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[END OF SOFTWARE LICENSE AGREEMENT]

SECTION C

NON-STANDARD TERMS AND CONDITIONS

1. Online Services Eligible Users: Notwithstanding anything in the Online Services General Terms and Conditions incorporated in this Agreement to the contrary, the terms 'Eligible User' and 'Eligible Users' as defined in those Online Services General Terms and Conditions shall, for the purposes of this Agreement, also include each 'Authorized User' as that term is defined in the Delivered Content Terms and Conditions of Use incorporated in this Agreement.

2. Applicable Law: Notwithstanding anything to the contrary set forth elsewhere in this Agreement, this Agreement and any modifications, amendments or alterations shall be interpreted, construed and enforced in all respects in accordance with the laws of the State of Missouri, excluding its conflicts of law principles. Each party irrevocably consents to the exclusive jurisdiction of the courts of the State of Missouri in connection with any action to enforce the provisions of this Agreement, to recover damages or other relief for breach or default under this Agreement, or otherwise arising under or by reason of this Agreement.

3. Non-Appropriation of Funds: Notwithstanding anything herein to the contrary, the Customer is obligated only to make the payments set forth under the conditions of this Agreement as may lawfully be made from funds budgeted and appropriated for that purpose during the Customer's then current fiscal year at the discretion of the Customer. If no funds are appropriated or otherwise made legally available to make the required payments with respect to the postponed project and all subsequent projects included in this Agreement during the next occurring fiscal year, this Agreement will terminate at the end of the then current fiscal year as if terminated expressly. The failure or inability of the Customer to appropriate funds for this Agreement in any subsequent fiscal year for the postponed project and all subsequent projects included in this Agreement shall not be deemed a breach of this Agreement by any party:

a. Pictometry reserves the right to terminate any and all obligations with respect to the postponed project and all subsequent projects included in this Agreement.

b. If Customer, or any party authorized under the terms and conditions of this Agreement to use the licensed products set forth in Section A, is in possession of licensed products for which Pictometry has not been fully compensated in accordance with the payment terms of this Agreement, Customer or such authorized party shall immediately cease use of those licensed products, purge those licensed products from all Customer and authorized party computers, and return those licensed products to Pictometry.

[END OF NON-STANDARD TERMS AND CONDITIONS]

SECTOR MAPS (2)

