

**LICENSE FOR USE OF
DIGITAL ORTHO AND OBLIQUE AERIAL PHOTOGRAPHS**

THIS LICENSE AGREEMENT is made and entered into this ____ day of _____, 2011, by and between the County of Anoka, a political subdivision of the State of Minnesota ("County") and _____, ("Licensee.")

WITNESSETH

WHEREAS, the County entered into an agreement with Pictometry International Corp., a Delaware corporation ("Pictometry") for the purchase of digital ortho and oblique aerial photographs and an information system license for software identified as Anoka County Contract No. 2011-0036 ("Contract"); and

WHEREAS, as part of the Contract, Pictometry granted to the County a license to share the software and images with cities, townships, school districts, political subdivisions, quasi-governmental entities and others within the County of Anoka; and

WHEREAS, subject to the terms and conditions contained herein, Licensee wishes to use and the County agrees to provide the Pictometry software and images associated with the Agreement.

NOW, THEREFORE, in consideration of the covenants and conditions contained herein, the parties agree as follows.

**Section 1
GRANT OF LIMITED LICENSE**

1.1 The County hereby grants to Licensee a non-exclusive, non-transferrable and non-assignable limited use license to use the digital orthographic photographs, oblique aerial photographs, the Pictometry On-Line (POL) website and information system software associated with the Pictometry images described in Exhibit A ("Pictometry Imagery").

**Section 2
ACKNOWLEDGEMENT OF PROPRIETARY INFORMATION
AND RESERVATION OF TITLE**

- 2.1 Licensee acknowledges and agrees that the Pictometry Imagery is the exclusive property of Pictometry and is duly licensed by the County.
- 2.2 Licensee agrees that Pictometry owns the Pictometry Imagery and reserves all ownership, proprietary rights, confidential and/or trade secret rights, and all protections and benefits afforded under law. The granting of this license does not affect and does not transfer any title in or to any Pictometry Imagery to the Licensee.

**Section 3
PROTECTION OF PROPRIETARY INFORMATION**

- 3.1 Licensee agrees to only use the Pictometry Imagery in the ordinary course of its business and all such use shall bear the provided notices of copyright by Pictometry. Licensee shall protect the Pictometry Imagery from unauthorized access, use, duplication, dissemination, or

disclosure. Licensee agrees to immediately notify the County of any unauthorized access to the Pictometry Imagery. Under no circumstances may the Licensee disclose or disseminate any Pictometry software to any other public or private entity.

- 3.2 Licensee expressly agrees not to add or attach any trademarks, trade names, logos or other marks to any Pictometry Imagery.

Section 4 TERM AND TERMINATION

- 4.1 This License shall commence on the day and year first written above and continue in effect until termination is hereinafter provided.
- 4.1 This agreement shall terminate upon termination and/or expiration of the County's agreement with Pictometry.
- 4.3 Either party may terminate this agreement upon ninety calendar days written notice to the other.
- 4.4 Within five days after expiration or termination of this agreement, the Licensee shall return the Pictometry Imagery and all copies thereof to the County, or by the request of the County, the Licensee shall destroy all of the same and all copies thereof and certify in writing to the County that the same has been destroyed.

Section 5 OTHER TERMS AND CONDITIONS

- 5.1 **No Agency.** The parties hereto are independent contractors, and nothing herein shall be construed to create an agency, joint venture, partnership or other form of business association between the parties hereto.
- 5.2 **No Waiver.** No delay or omission to exercise any right or power occurring upon any noncompliance or default by the other party with respect to any of the terms of this Agreement shall impair any such right or power or be construed to be a waiver thereof unless the same is consented to in writing. All remedies provided for in this Agreement shall be cumulative and in addition to, and not in lieu of, any other remedies available to either party at law, in equity, or otherwise.
- 5.3 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.
- 5.4 **Entire Agreement.** This License Agreement constitutes the entire agreement between the parties, and there are no understandings or agreements relative hereto other than those that are expressed herein. No change, waiver, or discharge hereof shall be valid unless in writing and executed by the party against whom such change, waiver, or discharge is sought to be enforced.
- 5.5 **No Assignment.** The Licensee shall not assign or transfer this Agreement, either in whole or in part, without the prior written consent of the County, and any attempt to do so shall be void and of no force and effect.
- 5.6 **THE LICENSEE AGREES THAT THE COUNTY IS FURNISHING THE PICTOMETRY IMAGERY ON AN "AS IS" BASIS, WITHOUT ANY SUPPORT WHATSOEVER, AND WITHOUT REPRESENTATION OR ANY EXPRESS OR IMPLIED WARRANTIES,**

INCLUDING BUT NOT IN ANY MANNER LIMITED TO, FITNESS FOR PARTICULAR PURPOSE, MERCHANTABILITY OR THE ACCURACY AND COMPLETENESS OF THE PICTOMETRY IMAGERY.

THE COUNTY'S SOLE LIABILITY AND THE LICENSEE'S EXCLUSIVE REMEDY FOR ANY SUBSTANTIAL DEFECT WHICH IMPAIRS THE USE OF THE PICTOMETRY IMAGERY FOR THE PURPOSE STATED HEREIN SHALL BE THE RIGHT TO TERMINATE THIS AGREEMENT. THE COUNTY DOES NOT WARRANT THAT THE PICTOMETRY IMAGERY ARE ERROR FREE. THE PICTOMETRY IMAGERY WERE DEVELOPED AND/OR LICENSED FOR THE COUNTY'S OWN INTERNAL BUSINESS PURPOSES AND THE COUNTY DOES NOT REPRESENT THAT THE PICTOMETRY IMAGERY CAN BE USED FOR NAVIGATIONAL, TRACKING OR ANY OTHER PURPOSE REQUIRING EXACTING MEASUREMENT OF DISTANCE OR DIRECTION OR PRECISION IN THE DEPICTION OF GEOGRAPHIC FEATURES. THE COUNTY DISCLAIMS ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, RESPECTING THIS LICENSE AGREEMENT OR THE PICTOMETRY IMAGERY.

- 5.7 **Damages.** The County and the Licensee agree each will be responsible for their own acts and omissions under this Agreement and the results thereof to the extent authorized by law and shall not be responsible for the acts or omissions of the other party under the Agreement and the results thereof. In no event shall the County be liable for actual, direct, indirect, special, incidental, consequential damages (even if the County has been advised of the possibility of such damage) or loss of profit, loss of business or any other financial loss or any other damage arising out of performance or failure of performance of this Agreement by the County. The parties' respective liabilities shall be governed by the provisions of the Municipal Tort Claims Act, Minnesota Statutes Chapter 466, and other applicable law. This paragraph shall not be construed to bar legal remedies one party may have for the other party's failure to fulfill its obligations under this Agreement.
- 5.8 **Compliance.** The parties shall comply with all applicable federal, state and local statutes, regulations, rules and ordinances in force or hereafter enacted.
- 5.9 **Notice.** Any notice or demand shall be in writing and shall be sent registered or certified mail to the other party address as follows:

To Licensee:

To County: Anoka County Administrator's Office
2100 Third Avenue
Anoka, MN 55303

Copy to: Anoka County Attorney's Office
2100 Third Avenue
Anoka, MN 55303

- 5.10 **Whereas Clauses.** The matters set forth in the "Whereas" clauses on page one of this

Agreement are incorporated into and made a part hereof by this reference.

5.11 **Survival of Provisions.** It is expressly understood and agreed that the obligations and warranties which by their sense and context are intended to survive the performance thereof, including but not limited to obligations respecting proprietary rights and confidentiality, shall so survive the completion of performance and/or termination or cancellation of this Agreement.

5.12 **Authority.** The person or persons executing this License Agreement on behalf of Licensee represent that they are duly authorized to execute this License Agreement on behalf of Licensee and represent and warrant that this License Agreement is a legal, valid and binding obligation and is enforceable in accordance with its terms.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands on the dates so indicated.

**COUNTY OF ANOKA, A POLITICAL
SUBDIVISION OF THE STATE OF
MINNESOTA**

By: _____
Its: _____
Dated: _____

By: _____
Its: _____
Dated: _____

ATTEST

By: _____
Its: _____
Dated: _____

By: _____
Its: _____
Dated: _____

APPROVED AS TO FORM

By: _____
Dan Klint
Assistant County Attorney

Dated: _____

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Oblique Aerial Photographs-la.doc

Exhibit A
To License Agreement
Between Anoka County and _____

Images:

The term Pictometry Imagery, as used in this Agreement, shall mean the digital orthographic photographs, oblique aerial photographs, the Pictometry On-Line (POL) website and information system associated with Pictometry software and the following:

- 1) those selected images, as mutually defined by the parties, associated with the aerial photography performed in 2011 ("2011 Pictometry Images"); and
- 2) Licensee understands and agrees that the granting of this License shall in no way be construed as the granting or continuation of this License to view digital orthographic and oblique photographs for later flyovers.
- 3) Licensee may provide access to the Pictometry On-Line (POL) website to all staff within their respective agency and to consultants who wish to use the POL website for projects and/or work being done for said Licensee only.

Cost:

- A. Licensee understands that the County will be providing the 2011 Pictometry Images as part of a cost share between Anoka County and participating public agencies within the County. Licensee acknowledges that fees charged for the cost of aerial photography performed in future years may change.
- B. For those Licensees who wish to access the actual Pictometry Imagery and software (beyond what POL provides), the County will deliver the imagery/data via an external digital storage device. Prior to the delivery of the storage device, the Licensee shall reimburse the County for the cost of downloading the information into the storage device and the storage device itself. Licensee further acknowledges and understands that to have full access to the Pictometry Images the Licensee will need access to the County GIS database, which the Licensee shall procure under separate license from the County.