

**INTERLOCAL AGREEMENT BETWEEN
WILLIAMSON COUNTY, TEXAS AND
THE CITY OF LEANDER, TEXAS
REGARDING THE 2008-2009 PICTOMETRY AERIAL PHOTO PROJECT**

This Interlocal Agreement ("Agreement") is made by and between Williamson County, Texas, a Political Subdivision of the State of Texas (the "County") and the City of Leander, Texas, (the "City"), both acting by and through their duly authorized representatives.

W I T N E S S E T H:

WHEREAS, the County and the City are authorized to enter into this Agreement pursuant to the provisions of the Interlocal Cooperation Act, Texas Government Code Section 791.00 et seq;

WHEREAS, the County entered into that certain agreement with Pictometry International, Corp. ("Pictometry") known as the Pictometry International Corp. General License Terms and Conditions wherein the County received a license to use Pictometry's aerial image software and data (the "Pictometry Agreement"). A copy of the form of the Pictometry Agreement is attached hereto and incorporated herein as Exhibit "A";

WHEREAS, the City currently has a need for such services and goods and would like to enter into this Agreement whereby the City would be able to use Pictometry's aerial image software and data strictly in accordance with the terms and conditions of the Pictometry Agreement;

WHEREAS, the County is willing to agree, only to the extent authorized by Pictometry and the Pictometry Agreement, to allow the City to use Pictometry's aerial image software and data in exchange for a payment of contribution to the County;

NOW, THEREFORE, the County and the City agree as follows:

I. OBLIGATIONS AND AGREEMENTS OF THE COUNTY

- A. Only to the extent authorized by Pictometry and only in strict accordance with the terms and conditions set forth in the Pictometry Agreement, the County will allow the City to use the Licensed Products described in the Pictometry Agreement.
- B. The County will be considered as the Licensed Agency for Pictometry's aerial image software and data, and will therefore handle all dealings with Pictometry. Updates, bug-fixes and general support issues shall be forwarded to the County so that the County can communicate such issues to Pictometry. Training sessions will be conducted for a maximum of 2 parties from the City.
- C. The County will not be obligated to provide any support or services to the City's end-users or any other services that are not specifically set forth herein.

II. OBLIGATIONS AND AGREEMENTS OF THE CITY

- A. The City accepts and approves, as to both form and substance, each term and condition of the Pictometry Agreement, except as provided in Paragraph II.B. below, and hereby acknowledges that it understands that the County may allow the City to use the Licensed Products described in the Pictometry Agreement only to the extent authorized by Pictometry and only in strict accordance with the terms and conditions set forth in the Pictometry Agreement.
- B. The City does hereby agree to be bound by, and to assume and comply with each and all of the terms, covenants and conditions of the Pictometry Agreement (as defined in the Pictometry Agreement) in the same manner and to the same extent as if it were a party thereto, except that the City shall not be bound by, assume, or be required to comply with the County's financial obligations to Pictometry under the Pictometry Agreement. The City's obligation to comply with the confidentiality provisions of the Pictometry Agreement shall be subject to the Texas Public Information Act, Chapter 551, Texas Local Government Code.
- C. The City acknowledges and agrees that Pictometry and the County may amend all or any portion of the Pictometry Agreement, as set forth therein, and the City hereby agrees to be bound by any such amendment, subject to the City being given prior notice of the amendment and the City's right to terminate this Agreement as provided herein. The County shall give the City reasonable notice prior to the effective date of any such amendment and, if such amendment is adverse to the City, the City may, within thirty (30) days of receiving such notice from the County, terminate its further participation in this Agreement by giving prior written notice to the County. In the event of such termination, the terms set forth under Section III below and the terms of the Pictometry Agreement shall control.
- D. The City shall pay the County \$11,685.00 per year for two years (\$23,370.00 in total) (the "Annual Payment") in exchange for the right to use Pictometry's aerial image software and data and to participate in the Project. The first payment shall be due immediately upon execution of this Agreement and the second payment shall thereafter be due upon the first anniversary of this Agreement. In the event of termination of this Agreement, the City shall be reimbursed a pro-rata share of the Annual Payment within thirty days of the date of termination. The pro-rata share of the Annual Payment shall be calculated by multiplying \$32.01 by the number of days between the termination date and the subsequent anniversary of the Agreement.
- E. **THE CITY AGREES AND ACKNOWLEDGES THAT THE COUNTY SHALL NOT BE LIABLE FOR ANY AND ALL CLAIMS THAT CITY MAY HAVE NOW OR IN THE FUTURE AGAINST PICTOMETRY ON THE BASIS OF BREACH OF CONTRACT, CONSTRUCTIVE FRAUD, FRAUD, BREACH OF WARRANTY OF ANY KIND, INCIDENTAL AND CONSEQUENTIAL DAMAGES, LOSS OF USE, REPLACEMENT COSTS, REPAIR COSTS, LOSS OF VALUE, LOSS OF REVENUE, LOSS OF DATA OR EQUIPMENT, COST OF RECOVERING SOFTWARE, DATA, OR MATERIALS, THE COST OF SUBSTITUTE SOFTWARE, DATA, OR MATERIALS, CLAIMS BY THIRD PARTIES, ATTORNEY'S FEES AND LEGAL EXPENSES, EXEMPLARY DAMAGES, PRE-JUDGMENT AND POST-JUDGMENT**

INTEREST, TAXES, AND AGREEMENTS, WARRANTIES, OR REPRESENTATIONS RELATED IN ANY WAY, DIRECTLY OR INDIRECTLY, WITH THE PRODUCTS OR SERVICES PROVIDED BY PICTOMETRY, AND ANY OTHER DAMAGES OF ANY NATURE WHATSOEVER ALLEGEDLY SUSTAINED BY THE CITY, ITS AGENTS, OFFICERS, EMPLOYEES OR ANYONE HAVING A CLAIM BY, THROUGH OR UNDER THE CITY.

- F. **THE CITY AGREES AND ACKNOWLEDGES THAT THE COUNTY IS ALLOWING THE CITY TO USE PICTOMETRY'S AERIAL IMAGE SOFTWARE AND DATA, AS WELL AS ANY OTHER GOODS OR SERVICES THAT ARE OFFERED PURSUANT TO THIS AGREEMENT OR THE PICTOMETRY AGREEMENT, ON AN 'AS IS' BASIS WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE COUNTY DOES NOT ASSUME ANY RESPONSIBILITY FOR DEFECTS IN PICTOMETRY'S AERIAL IMAGE SOFTWARE AND DATA OR IN ANY OTHER GOODS OR SERVICES THAT ARE OFFERED PURSUANT TO THIS AGREEMENT OR THE PICTOMETRY AGREEMENT, OR IN THE ACCURACY OR APPLICATION OF OR ERRORS OR OMISSIONS IN SAID GOODS AND SERVICES AND DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED THEREIN WILL MEET THE CITY'S REQUIREMENTS, OR THAT THE OPERATION OF SAID GOODS AND SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ANY DEFECTS IN SAME WILL BE CORRECTED.**

III. TERM AND TERMINATION

- A. Term. This Agreement shall be effective from and after the date of execution by all parties and shall terminate on the second anniversary following such date, unless sooner terminated pursuant to the terms hereof.
- B. Termination of Pictometry Agreement. In the event that either Pictometry or the County terminate the Pictometry Agreement pursuant to its terms, this Agreement shall thereafter terminate as well. As soon as possibly practical, the County shall provide notice to the City of such termination of the Pictometry Agreement.
- C. Termination for Convenience. Either party may terminate this Agreement for convenience and without cause or further liability upon thirty (30) days written notice to the other party. In the event of termination for convenience, it is understood and agreed that only the amounts due to the County for goods and/or services provided and expenses incurred to and including the date of termination, will be due and payable.
- D. Termination for Cause. If either party defaults in the performance of any of the terms or conditions of this Agreement, the non-defaulting party shall deliver written notice of such default to the defaulting party. Such notice must specify the nature of the default and inform the defaulting party that unless the default is cured within thirty (30) days of receipt of the notice, additional steps may be taken to terminate this Agreement. If the defaulting party begins a good faith attempt to cure the default within thirty (30) days, then and in that instance, the thirty (30) day period may be extended by the non-defaulting party, so long as the defaulting party continues to prosecute a cure diligently to completion and continues to

make a good faith attempt to cure the default. If, in the opinion of the non-defaulting party, the defaulting party does not cure the breach within thirty (30) days or otherwise fails to make any diligent attempt to correct the default, the defaulting party shall be deemed to be in default and the non-defaulting party may, in addition to seeking any other remedies available at law or in equity, terminate this Agreement.

- E. Effect of Termination or Expiration. As with other matters pertaining to this Agreement, the City acknowledges that the terms and conditions of the Pictometry Agreement shall control in relation to the actions and conditions that are required following the termination or expiration of this Agreement and/or the Pictometry Agreement.
- F. Current Revenues. The City's financial obligations under this Agreement shall be paid from current revenues available to the City. Notwithstanding any provision to the contrary, the City's financial obligations under this Agreement shall be subject to and contingent upon appropriations by the governing body of the City of such funds or other revenues being available, received, and appropriated by the City in amounts sufficient to satisfy said obligations.

IV. MISCELLANEOUS

- A. Definitions. For purposes of this Agreement, the terms set forth herein shall have the same meanings and definitions as the terms set forth in the Pictometry Agreement.
- B. Severability. If any section, subsection, sentence, clause or phrase of this Agreement is for any reason held to be unconstitutional, void, or invalid, the validity of the remaining portions of the Agreement shall not be affected thereby. It is the intent of the parties signing this Agreement that no portion of it, or provision or regulations contained in it shall become inoperative or fail by reason of unconstitutionality or invalidity of any other section, subsection, sentence, clause, phrase, provision, or regulation of this Agreement.
- C. Law and Venue. This Agreement shall be governed by the laws of the State of Texas. The obligations under this Agreement are performable in Williamson County, Texas. It is expressly understood that any lawsuit or litigation arising out of or relating to this contract will take place in Williamson County, Texas.
- D. Alteration, Amendment, or Modification. Except as otherwise set forth herein, this Agreement may not be altered, amended, or modified except in writing, approved by all parties hereto.
- E. Notice. Notices to either party shall be in writing, and may be either hand delivered or sent by certified or registered mail, postage paid, return receipt requested. If sent to the parties at the addresses designated herein, notice shall be deemed effective upon receipt in the case of hand delivery and three days after deposit in the U.S. Mail in case of mailing.

The address of City for all purposes shall be:

City of Leander
Attn: City Manager
P.O. Box 319
Leander, Texas 78646-0319

The address for the County for all notices hereunder shall be:

Williamson County Judge
Dan A. Gattis
710 Main Street, Suite 101
Georgetown, Texas 78626

with a copy to: Honorable Jana Duty (or successor)
Williamson County Attorney
405 M.L.K. Street, Box #7
Georgetown, Texas 78626

- F. Independent Relationship. Both parties hereto, in the performance of this Agreement, shall act in an individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever.
- G. No Waiver of Immunities. Nothing in this Agreement shall be deemed to waive, modify or amend any legal defense available at law or in equity to the parties hereto, their past or present officers, employees, or agents or employees, nor to create any legal rights or claim on behalf of any third party. Neither party waives, modifies, or alters to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas and of the United States.
- H. Compliance with Laws. The parties hereto shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, Worker's Compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations.
- I. Force Majeure. If the party obligated to perform is prevented from performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault or negligence of said party, the other party shall grant such party relief from the performance of this Agreement. The burden of proof for the need of such relief shall rest upon the party obligated to perform. To obtain release based on force majeure, the party obligated to perform shall file a written request with the other party.
- J. No Third Party Beneficiaries. This Agreement is for the sole and exclusive benefit of the parties hereto, and nothing in this Agreement, express or implied, is intended to confer or

shall be construed as conferring upon any other person any rights, remedies or any other type or types of benefits.

- K. Incorporation of Exhibits and Attachments. All of the Exhibits referred to in this Agreement are incorporated by reference as if set forth verbatim herein.
- L. Execution in Counterparts. This Agreement may be executed in counterparts, each of which, when executed and delivered, shall be deemed to be an original and all of which together shall constitute one and the same document.
- M. Specific Performance. The parties hereto acknowledge that, in the event that a party defaults on any obligation under this Agreement and such default is not cured as set forth herein above, remedies at law will be inadequate and that, in addition to any other remedy at law or in equity, each party will be entitled to seek specific performance of this Agreement.
- N. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto, and supersedes all their oral and written negotiations, agreements, and understandings of every kind. The parties hereto understand, agree, and declare that no promise, warranty, statement, or representation of any kind whatsoever, which is not expressly stated in this Agreement, has been made by any party hereto or its officer, employees, or other agents to induce execution of this Agreement.

WHEREFORE, premises considered, in this Interlocal Agreement is executed to be effective the date of the last party to sign.

CITY OF LEANDER, TEXAS

By: _____

Printed Name: _____

Capacity: _____

Date: _____

WILLIAMSON COUNTY, TEXAS

By: _____

Dan A. Gattis
Williamson County Judge

Date: _____

Approved as to Form:

By: _____

Hal C. Hawes,
Assistant Williamson
County Attorney

By: _____

Jim Gilger,
Williamson County
Contracts Auditor

EXHIBIT “A”

Pictometry Agreement