

**INTERLOCAL AGREEMENT BETWEEN  
THE WILLIAMSON CENTRAL APPRAISAL DISTRICT AND  
WILLIAMSON COUNTY, TEXAS  
REGARDING THE 2010 PICTOMETRY AERIAL PHOTO PROJECT**

This Interlocal Agreement ("Agreement") is made by and between the Williamson Central Appraisal District, (the "WCAD") and Williamson County, (the "County"), both acting by and through their duly authorized representatives.

**WITNESSETH:**

**WHEREAS**, the WCAD and the County 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 WCAD entered into that certain agreement with Pictometry International, Corp. ("Pictometry") known as the Pictometry International Corp. General License Terms and Conditions wherein the WCAD 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 County currently has a need for such services and goods and would like to enter into this Agreement whereby the County 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 WCAD is willing to agree, only to the extent authorized by Pictometry and the Pictometry Agreement, to allow the County to use Pictometry's aerial image software and data at no cost to the County;

**NOW, THEREFORE**, the WCAD and the County agree as follows:

**I. OBLIGATIONS AND AGREEMENTS OF THE WCAD**

- 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 WCAD will allow the County to use the Licensed Products described in the Pictometry Agreement at no charge.
- B. The WCAD 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 WCAD so that the WCAD can communicate such issues to Pictometry.
- C. The WCAD will not be obligated to provide any support or services to the County's end-users or any other services that are not specifically set forth herein.

## II. OBLIGATIONS AND AGREEMENTS OF THE COUNTY

- A. The County accepts and approves, as to both form and substance, each term and condition of the Pictometry Agreement and hereby acknowledges that it understands that the WCAD may allow the County 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 County 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.
- C. The County acknowledges and agrees that Pictometry and the WCAD may amend all or any portion of the Pictometry Agreement, as set forth therein, and the County hereby agrees to be bound by any such amendment. The WCAD shall give the County reasonable notice prior to the effective date of any such amendment and, if such amendment is adverse to the County, the County may, within thirty (30) days of receiving such notice from the WCAD, terminate its further participation in this Agreement by giving prior written notice to the WCAD. 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 County shall pay the WCAD \$0.00 (zero dollars) in exchange for the right to use Pictometry's aerial image software and data and to participate in the Project.
- E. **THE COUNTY AGREES AND ACKNOWLEDGES THAT THE WCAD SHALL NOT BE LIABLE FOR ANY AND ALL CLAIMS THAT COUNTY 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 COUNTY, ITS AGENTS, OFFICERS, EMPLOYEES OR ANYONE HAVING A CLAIM BY, THROUGH OR UNDER THE COUNTY.**
- F. **THE COUNTY AGREES AND ACKNOWLEDGES THAT THE WCAD IS ALLOWING THE COUNTY 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 WCAD 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 COUNTY'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 sixth 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 WCAD terminates the Pictometry Agreement pursuant to its terms, this Agreement shall thereafter terminate as well. As soon as possibly practical, the WCAD shall provide notice to the County 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.
- 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.
- E. Effect of Termination or Expiration. As with other matters pertaining to this Agreement, the County 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.

### 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 County for all purposes shall be:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

Williamson Central Appraisal District  
Harry Gibbs (or successor)  
Board of Directors Chairman  
625 FM 1460  
Georgetown, Texas 78626

with a copy to: Williamson Central Appraisal District  
Alvin Lankford (or successor)  
Chief Appraiser  
625 FM 1460  
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.

**WILLIAMSON COUNTY, TX**

By: 

Printed Name: DAN P. GATTIS

Capacity: County Judge

Date: 04-13-2010

**WILLIAMSON CENTRAL  
APPRAISAL DISTRICT**

By: 

Alvin Lankford

Chief Appraiser

Date: 3/29/10

EXHIBIT "A"

Pictometry Agreement



**PICTOMETRY INTERNATIONAL CORP.  
GENERAL LICENSE TERMS AND CONDITIONS**

THIS AGREEMENT is made as of the date set forth below (the "Effective Date") by and between Pictometry International, Corp., a Delaware corporation with offices at 100 Town Centre Drive, Suite A, Rochester, NY 14623 ("Pictometry"), and Williamson Central Appraisal District with offices located at 626 FM 1460, Georgetown, Texas (the "Licensee").

Intending to be legally bound, Pictometry and the Licensee (each a "party") hereby agree:

**1. ARTICLE – DEFINITIONS** for purposes of this Agreement:

- 1.1 **"Pictometric Licensed Images" ("Licensed Images")** means orthogonal and oblique digital images of portions of the earth's surface, captured from airborne platforms using Pictometry's patented and proprietary hardware and software capture system.
- 1.2 **"Community Images" ("CI")** means a set of views, each covering an entire Image Sector. One view from directly overhead and other views from different oblique angles.
- 1.3 **"Neighborhood Images" ("NI")** means a set of overlapping, orthogonal and oblique views blanketing the entire sector, providing for a higher degree of detail than Community Images.
- 1.4 **"Image Sector"** means a portion of an image collection project and defined as approximately one square mile in area.
- 1.5 **"Geographic MetaData" ("Metadata")** means data supplied by Pictometry that is captured from airborne platforms using Pictometry's patented and proprietary hardware and software capture system.
- 1.6 **"Electronic Field Study" ("EFS")** means a proprietary software and file structure package that allows for the display, navigation, measurement, annotation and analysis of Pictometric Licensed Images.
- 1.7 **"Pictometry Licensed Software" ("Licensed Software")** means any proprietary software provided by Pictometry. This includes, but is not limited to, programs such as EFS and Change Analysis and program modules such as 911 or GIS integration / interfaces.
- 1.8 **"Image Warehouse" ("IW")** means a hierarchical storage system of Pictometric Images, as well as data and elevation models, that allows fast, random access by geo-location.
- 1.9 **"Digital Elevation Model" ("DEM")** means a general definition for a file containing ground elevation data. This may be a digital elevation model, a digital terrain model, or a reflective surface model and is meant to encompass all means of production, including LIDAR and stereo pairs.
- 1.10 **"Licensed Documentation" ("Documentation")** means written and/or electronic materials containing instructions and other information related to the use of the Licensed Images and the Licensed Software.

**2. ARTICLE – GENERAL**

- 2.1 **Licensed Products.** This Agreement pertains to the particular Images described in Schedule A and attached to this Agreement (the "Licensed Images"), the particular copies of the Software listed in Schedule A (the "Licensed Software"), the associated Metadata (the "Licensed Metadata"), and the DEM described in Schedule A attached to this Agreement (the "Licensed DEM"), all of which, along with the Documentation, are together referred to as the "Licensed Products." The terms and conditions of this Agreement may also apply to other products or services that may from time to time be licensed from Pictometry by the Licensee.
- 2.2 **System Installation.** Pictometry shall install a copy of the Licensed Products on storage media either provided by Licensee or purchased from Pictometry, as specified in Schedule A. With the assistance of Pictometry, the Licensee will install the Licensed Products from that media onto computers, including server computers. The Licensee will be responsible for assuring that the computer system being used for these purposes will satisfy the minimum system requirements set forth on Schedule A. Licensee and its Authorized Subdivisions (as provided in Section 2.3) may use and execute the Licensed Software for official purposes only.
- 2.3 **Licensee May Authorize Subdivisions and Users.** The Licensee may authorize any department, sub unit, or location within the Licensee (hereinafter "Authorized Subdivisions") to have the Licensed Products installed on computers owned (or leased) and used by those Authorized Subdivisions. The installation of the Licensed Imagery and EFS, and the training of the Licensee and Authorized Subdivision Personnel ("Authorized Users"), may be performed only by Pictometry or by the Licensee's employees who have received special training from Pictometry. All Authorized Subdivisions and Authorized Users shall operate under this Agreement as agents of the Licensee and comply with all obligations of Licensee with respect to the use and distribution of the Licensed Products, and Pictometry may look to the Licensee alone for assuring compliance with the terms and conditions of this Agreement. Licensee agrees: (a) that it will not allow any persons other than Authorized Users to use or operate, or to have any other access to, any of the Licensed Products (other than as described in Article 3.1 of this Agreement), (b) that it will not allow access to any of the Licensed Software except through Licensee and Authorized Subdivisions workstations, and (c) that it will cause all Authorized Users to comply with all of the terms, conditions, and limitations applicable to the Licensee under this Agreement.

**3. ARTICLE - GRANT OF LICENSE**

- 3.1 **License Grant, Uses and Certain Fees.** In consideration for the payment of the License Fees provided for in Article 4 below, and subject to the other terms and conditions of this Agreement, Pictometry hereby grants to Licensee, and Licensee hereby accepts, a nonexclusive, nontransferable, limited license (the "License") for the following:
  - (a) **Installation.** To install the Image Warehouse on servers and install related Licensed Products on workstations, all of which shall be owned (or leased) by, shall be located on the owned or leased property of, shall be under the control of, and shall be used only by the Licensee or by Authorized Subdivisions. None of the Licensed Products (except Licensed Images) shall be accessed except through such designated servers and workstations.
  - (b) **Documentation.** To copy and use the related Documentation included in the Licensed Products in connection with the activities described in this Section 3.1.
  - (c) **Uses.** Through Authorized Users only, to use and operate the Licensed Software on those designated servers and workstations in the conduct of the public business of the Licensee, or of the Authorized Subdivisions, and to use the Licensed Products in the following activities (and no others):
    - (1) **For Internal Business.** To use and execute the Licensed Products for internal pursuit of its or their public responsibilities.



- (2) **For Persons Doing Business With Licensee** ("Project Participants"). Under the supervision of Authorized Users, allow representatives of persons doing business with the Licensee or an Authorized Subdivision on Licensee Projects (defined below) to use and execute the Licensed Software at the Licensee's or Authorized Subdivisions' facilities only. For these purposes, "Licensee Projects" shall mean any plan or effort, tangible or intangible, such as construction, real estate disposition, facilities management, environmental studies, or public information brochures or notices used or to be used by the Licensee or an Authorized Subdivision in pursuit of its public responsibilities. The Licensee or Authorized Subdivisions shall cause each Project Participant to agree to use the hard copies (or jpg copies) of Licensed Images solely in connection with the Licensee's or Authorized Subdivision's Project.
- (3) **For Public Use.** Through Authorized Users only, to use and execute the Licensed Software solely for the purpose of making hard copies and/or digital copies of Licensed Images for persons desiring them (which copies may contain annotations of information stored in the Licensed Software and related to the property shown). Reproductions of individual (or limited quantities of) Licensed Images using the Licensed Software, or reproduction or copying of the Licensed Images in any form by any other means by Licensee or an Authorized Subdivision thereof, shall be permitted for distribution to Licensee's or Subdivision's constituency and/or public users. Licensee may charge reproduction fees or no fees to the persons or entities receiving the Images.

**3.2 Limitations on License.** Licensee agrees: (a) that nothing under this Agreement authorizes it to engage in any service bureau work, to exercise or provide any multiple-user license, or to enter into any time-sharing arrangement, except as expressly authorized with respect to Authorized Subdivisions, (b) that Licensee will not authorize or allow any remote access, by any unauthorized persons, to the Licensed Products except as expressly provided in this Agreement for Licensee and Authorized Subdivisions workstations, (c) that Pictometry shall not be obligated to revise, improve, or otherwise change the Licensed Software in any way, (d) that the Licensee is responsible for selecting Authorized Users who are qualified to operate the Licensed Products on licensee workstations and are familiar with the Licensed Products and trained as provided in Section 2.3, (e) that the Licensee and its Authorized Subdivisions may not copy, download, store, publish, transmit, transfer, sell, or otherwise install or use the Licensed Products (except for Licensed Images) in any form or by any means, except (i) as expressly permitted by this Agreement, (ii) with Pictometry's prior written permission, or (iii) to the extent not expressly prohibited by this Agreement, as allowed under the fair use provision of the Copyright Act (17 U.S.C. § 107). Licensee agrees that it will deliver to all recipients of any hard copies, and to any other persons who may have access to any of the Images, all such disclaimers and other information so as to assist those persons in understanding the limitations on the accuracy of the information developed through the Licensed Products. For purposes of this Agreement, service bureau work shall be deemed to include, without limitation, use of the Licensed Products to process or to generate output data for the benefit of or for purposes of, rendering services to, any third party over the Internet or other public communications medium. Authorized access through designated servers and workstations includes remote access by Licensee's employees for the business/governmental purposes of Licensee.

**3.3 Pictometry's Reserved Rights.** Pictometry reserves the right, at its sole discretion and without liability to Licensee, to create new versions of, or modules, with additional functionality for any part of the Licensed Products, which may be acquired on a nonexclusive basis by Licensee under a separate agreement. Pictometry may, in addition, produce upgrades to enhance operations of the Licensed Products, which will be supplied without additional cost to Licensee during the initial term of this License Agreement.

#### **4. ARTICLE - LICENSE FEES**

**4.1 License Fees.** In consideration for the License, and subject to the other terms and conditions of this Agreement, the Licensee hereby agrees to pay to Pictometry the fees described on Schedule A (altogether the "License Fees") and payment shall be made as provided in Schedule A. Any tax, including sales tax, is in addition to the License Fees and is the responsibility of the Licensee unless documentation of tax exemption is provided to Pictometry. All License Fees shall be earned on the date Licensed Products are shipped. For the convenience of the Licensee, the payment of these fees may be spread over the initial term of this Agreement as provided on the attached Schedule A.

#### **5. ARTICLE - OBLIGATIONS OF LICENSEE**

**5.1 Geographic Data.** If available, Licensee agrees to provide to Pictometry geographic data in industry standard format, shape, DBF, etc., including digital elevation models, street centerline maps, tax parcel maps, centroids, etc., which data, to the extent practicable, shall be incorporated into the Image Library licensed to the Licensee. Licensee agrees that any of this data that is owned by the Licensee, may be distributed by Pictometry with the Image Library that is used in the Pictometry On-Line product and in licensing the Image Library to other licensees. At no time shall Pictometry claim ownership of that data.

**5.2 Notification.** Licensee will: (a) notify Pictometry in writing of any claim or proceeding involving any of the Licensed Products within ten (10) days after Licensee learns of the claim or proceeding; and (b) report promptly to Pictometry all claimed or suspected defects in any Licensed Product.

#### **6. ARTICLE - ASSIGNMENT**

**6.1 General.** The provisions of this Agreement shall be binding upon and inure to the benefit of the parties, their successors and permitted assigns, but shall not be assignable by either party except as provided in Sections 6.2 and 6.3 below.

**6.2 Assignment By Licensee.** This Agreement will not be assignable by Licensee, and Licensee may not delegate its duties hereunder without the prior written consent of Pictometry.

**6.3 Assignment By Pictometry.** Pictometry shall have the right to assign its rights to receive License Fees under this Agreement, but no such assignment shall affect Pictometry's obligations hereunder. In addition, Pictometry shall have the right to assign all its rights to any person or entity, provided the assignee has assumed all of Pictometry's obligations under this Agreement. Except as provided above in this Section 6.3, this Agreement will not be assignable by Pictometry.

#### **7. ARTICLE - DURATION AND TERMINATION OF LICENSE**

**7.1 Initial Term.** The initial term of this Agreement shall commence upon the shipment of substantially all of the Image Warehouse and the initial term shall expire as indicated on Schedule A, unless the parties enter into a written agreement extending that initial term. At the end of that initial term of this Agreement, and after all License Fees for the initial term have been paid, this License shall automatically convert to a royalty-free, perpetual license and Pictometry shall allow the Licensee to keep, use, and operate the Licensed Products forever. Licensee will be responsible for ongoing support/maintenance/upgrade fees for this Perpetual License unless the Licensee has renewed this License for additional Image Libraries. Under the Perpetual License, Licensee's obligations under this agreement shall continue in perpetuity except for its obligations to pay License Fees. Pictometry shall have no obligations under this Agreement except for those with regard to the additional



Support, Upgrades and Maintenance for their Licensed Software. If Licensee renews this License Agreement for an additional term, all support, upgrades and maintenance on Licensed Products under a perpetual license shall be provided at no charge to Licensee during the term of the renewal. Effective as of the expiration of the initial term as provided in Schedule A, Licensee will no longer be able to add images to the existing Image Library unless a renewal occurs.

**7.2 Termination for Cause.** This Agreement may be terminated by either party in the event that the other party has failed to perform a material obligation or has otherwise breached a material term of this Agreement, and if that other party has failed to cure that failure or breach within thirty (30) days after receipt of written notice thereof from the other party.

**7.3 Effect of Termination.** Upon termination of this Agreement as provided in Section 7.2 above, Licensee shall immediately cease any and all further use of the Licensed Products and shall promptly purge all copies of the Licensed Products from all computers and workstations on which any of them may be stored or available at the time. Within thirty (30) days of the date of termination of this Agreement, Licensee shall also pay Pictometry all amounts, if any, due hereunder. The provisions of Articles 6, 7, 8, 9 and 10 of this Agreement shall survive any termination of this Agreement.

## **8. ARTICLE - INTELLECTUAL PROPERTY RIGHTS AND RESERVATION OF OWNERSHIP**

**8.1 Licensed Products.** The parties acknowledge and agree that Pictometry shall have and retain sole and exclusive ownership and all right, title, and interest in and to any Licensed Images, Licensed Metadata, Licensed Software, Licensed DEM and Licensed Documentation provided under this Agreement and all copyrights, patents, trademarks, trade names, logos, trade secrets, and other proprietary rights in or associated with each of the Licensed Products (altogether the "Proprietary Rights"). Licensee agrees; (a) that it will never assert or claim any interest in, or do anything that may adversely affect the validity of, or infringe on, or affect Pictometry's right, title, and interest in, any Proprietary Right, and (b) that it will use reasonable efforts to protect the Proprietary Rights, including placing or maintaining all copyright, patent, and other notices and other indications of Pictometry's ownership thereof on all Licensed Products and on all copies of Licensed Images and all other property of Pictometry when instructed by Pictometry, and (c) that it will notify Pictometry promptly after learning about any actual or suspected breach of any Proprietary Rights.

**8.2 Use of Pictometry's Marks.** Licensee agrees not to attach any additional trademarks, trade names, logos or designations to any Licensed Products or to any copies of any of the Licensed Images without prior written approval from Pictometry. Licensee may, however, include a Licensee seal and Licensee's contact information so long as the seal and contact information in no way obscure or deface the Pictometry marks. Licensee further agrees that Licensee will not use any Pictometry trademark, trade name, logo, or designation in connection with any product or service other than the Pictometry Licensed Images and the other Pictometry Licensed Products. Licensee's nonexclusive right to use Pictometry's trademarks, trade name, logos, and designations is coterminous with this Agreement.

**8.3 Electronic and Other Publishing.** Except as provided in Article 3.1 of this Agreement, Licensee is specifically prohibited from publishing any Licensed Products (other than Licensed Images) in any way, whether separately or as part of any other publication. For these purposes, publishing includes, making available on the Internet or World Wide Web or any other general access electronic network, method or medium.

**8.4 Confidentiality of Licensed Products.** The Licensed Products are commercially valuable, proprietary products owned by Pictometry, the design and development of which reflect an investment of considerable time, effort, and money. The Licensed Products are treated by Pictometry as confidential and contain substantial trade secrets of Pictometry. Licensee agrees that it will not disclose, provide a copy of, or disseminate the Licensed Products (other than Licensed Images) or any part thereof to any person who does not need to obtain access thereto consistent with Licensee's rights and obligations under this Agreement. Licensee agrees to use its best efforts to assure (a) that all its personnel, and any others afforded access to the Licensed Products, will protect the Products against unauthorized use, disclosure, copying, and dissemination, and (b) that access to the Licensed Products and each part thereof will be strictly limited. Licensee understands that Pictometry does not disclose source code and Licensee agrees that it will take all reasonable actions to assure that persons who might access the Licensed Software will not "unlock" or "reverse engineer" any part of the Licensed Software so as to find or uncover the source code or other trade secrets included therein.

## **9. ARTICLE - LIMITED WARRANTY; DISCLAIMER OF WARRANTIES; LIMITED REMEDIES**

**9.1 Limited Warranties.** Pictometry warrants that the Licensed Images and the Licensed Products installed by Pictometry on any Authorized Workstation supplied by Licensee pursuant to this Agreement will be true and usable copies as of the date of capture. Upon notice to Pictometry of any breach of that warranty, Pictometry will use its reasonable efforts to correct the problem so as to allow the Licensed Products to produce Images and related data that are usable for the general purposes intended. The foregoing warranty is the sole and exclusive warranty that Pictometry makes with respect to the Licensed Products, and the remedy set forth above is the sole and exclusive remedy for breach of that warranty.

**9.2 Disclaimer of Other Warranties.** Except as provided in Section 9.1 above, EACH OF THE LICENSED PRODUCTS IS PROVIDED TO LICENSEE "AS IS" AND "WITH ALL FAULTS." PICTOMETRY MAKES NO OTHER WARRANTIES OR REPRESENTATIONS OF ANY KIND, EXPRESS, IMPLIED, OR STATUTORY. ALL IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO WARRANTIES OF PERFORMANCE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, AND NON-INFRINGEMENT, ARE HEREBY DISCLAIMED AND EXCLUDED BY PICTOMETRY.

**9.3 Limitations and Exclusions of Remedies.** The remedy set forth in Section 9.1 is the sole and exclusive remedy provided for breach of the warranty given. With respect to any other claims that Licensee may have at any time against Pictometry on any matter relating to this Agreement, or the installation, operation, design, distribution, or use of the Licensed Products, the total liability of Pictometry shall in the aggregate be limited to the aggregate amounts of money that Licensee has paid to Pictometry under this Agreement. In addition, because of scheduling and other considerations in preparing current Licensed Images, Pictometry cannot assure delivery of the Licensed Products on a specified delivery date, and Pictometry shall not be liable for any such late delivery except in a case of its gross negligence or willful misconduct. IN NO EVENT SHALL EITHER PARTY BE LIABLE, UNDER ANY CAUSE OF ACTION OF ANY KIND ARISING OUT OF OR RELATED TO THIS AGREEMENT, THE LICENSED PRODUCTS, OR IMAGES (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 BY ITS CUSTOMERS OR OTHERS, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**9.4 Imagery Specifications.** Ground Sample Distance ("GSD") may be affected by Air Traffic Control or terrain restrictions. Images shall have an unobstructed view of the ground. In controlled airspace around airports (and other areas) and in areas of rapid elevation changes, the image



footprint sizes and resolutions may vary. There may be varying degrees of ground illumination and color variations due to lighting and cloud shadows. Pictometry's Orthogonal images provide the coordinate accuracy fulfilling most planimetric requirements. Pictometry data, however, are not intended for authoritative or definitive mapping or surveying replacement. If there is a need for authoritative mapping products, additional work is required by licensed individuals in order to certify Pictometry's orthogonal imagery.

#### 10. ARTICLE - GENERAL

- 10.1 Entire Agreement.** This Agreement, which includes the attached Schedules, contains the entire agreement between the parties and supersedes all written or oral agreements, descriptions, representations, and understandings with respect to the subject matter hereof. Where differences occur between the main body of the Agreement and the attached Schedules, the Schedules shall supersede the Agreement. Licensee acknowledges that it is not entering into this Agreement on the basis of any representations not expressly contained herein. Any modifications of this Agreement must be in writing and signed by a duly authorized officer of each party.
- 10.2 Rights of Others.** This Agreement is solely intended to provide rights to and be enforceable by Pictometry and Licensee (including its Authorized Subdivisions). No other person shall acquire or enforce any rights or any representations or warranties given under this Agreement.
- 10.3 Waiver.** The waiver by either party of any default by the other shall not waive subsequent defaults of the same or different kind.
- 10.4 Notices.** All notices and demands hereunder shall be in writing and shall be delivered by personal service, mail, courier service, or confirmed facsimile transmission at the address of the receiving party set forth below (or at such different address as may be designated by one party by written notice to the other). All notices or demands by mail shall be sent by certified or registered United States mail, return receipt requested, and all notices and demands shall be deemed complete upon receipt.

##### If to Licensee:

Company: Williamson Central Appraisal District  
Address: 625 FM 1460  
Georgetown, Texas 78626  
Attention: Harry Gibbs, Board Chairman  
Email: [alvinl@wcad.org](mailto:alvinl@wcad.org)  
Phone: (512) 930-3787 Fax: (512) 930-0391

##### If to Licensee Billing:

Company: Williamson Central Appraisal District  
Address: 625 FM 1460  
Georgetown, Texas 78626  
Attention: Alvin Lankford, Chief Appraiser  
Email: [alvinl@wcad.org](mailto:alvinl@wcad.org)  
Phone: (512) 930-3787 Fax: (512) 930-0391

##### If to Pictometry:

Company: Pictometry International, Corp.  
Address: 100 Town Centre Drive, Suite A  
Rochester, NY 14623  
Attention: Michael J. Neary  
Email: [Mike.Neary@Pictometry.com](mailto:Mike.Neary@Pictometry.com)  
Phone: (585) 486-0093 Fax: (585) 486-0098

##### If to Pictometry Billing:

Company: Pictometry International, Corp.  
Address: 100 Town Centre Drive, Suite A  
Rochester, NY 14623  
Attention: Accounts Receivable  
Email: [AccountsReceivable@Pictometry.com](mailto:AccountsReceivable@Pictometry.com)  
Phone: (585) 486-0093 Fax: (585) 486-0098

- 10.5 Export Control.** Licensee agrees to comply fully with the export laws and regulations of the United States Government with respect to the Licensed Products supplied by Pictometry. Accordingly, Licensee agrees that all technical data, software, or other information or assistance (other than publicly available information) furnished by Pictometry, and any product thereof, shall not be re-exported by Licensee, or its authorized transferees, if any, directly or indirectly from the United States unless explicitly permitted by U.S. export control laws and regulations. These obligations of the Licensee shall survive any satisfaction, termination, or discharge of this Agreement.
- 10.6 Severability.** 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.
- 10.7 Force Majeure.** Pictometry shall not be responsible for any failure 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, 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 the delivery of Licensed Products for a period equal to the time of the delay.