

**WHATCOM COUNTY CONTRACT
INFORMATION SHEET**

Whatcom County Contract No.

20211037

Originating Department:	Information Technology
Division/Program: <i>(i.e. Dept. Division and Program)</i>	AS - Information Technology - GIS
Contract or Grant Administrator:	Perry Rice
Contractor's / Agency Name:	Pictometry International Corporation
Is this a New Contract? If not, is this an Amendment or Renewal to an Existing Contract? Yes <input type="radio"/> No <input checked="" type="radio"/>	
Yes <input checked="" type="radio"/> No <input type="radio"/> If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: _____	
Does contract require Council Approval? Yes <input checked="" type="radio"/> No <input type="radio"/> If No, include WCC: _____	
Already approved? Council Approved Date: _____ (Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)	
Is this a grant agreement?	
Yes <input type="radio"/> No <input checked="" type="radio"/> If yes, grantor agency contract number(s): _____ CFDA#: _____	
Is this contract grant funded?	
Yes <input type="radio"/> No <input checked="" type="radio"/> If yes, Whatcom County grant contract number(s): _____	
Is this contract the result of a RFP or Bid process?	
Yes <input type="radio"/> No <input checked="" type="radio"/> If yes, RFP and Bid number(s): _____ Sole Source _____ Contract Cost Center: 507102	
Is this agreement excluded from E-Verify? No <input type="radio"/> Yes <input checked="" type="radio"/> If no, include Attachment D Contractor Declaration form.	
If YES, indicate exclusion(s) below:	
<input type="checkbox"/> Professional services agreement for certified/licensed professional. <input type="checkbox"/> Goods and services provided due to an emergency	
<input type="checkbox"/> Contract work is for less than \$100,000. <input checked="" type="checkbox"/> Contract for Commercial off the shelf items (COTS).	
<input type="checkbox"/> Contract work is for less than 120 days. <input type="checkbox"/> Work related subcontract less than \$25,000.	
<input type="checkbox"/> Interlocal Agreement (between Governments). <input type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA.	
Contract Amount:(sum of original contract amount and any prior amendments): \$ <u>489,600.00</u>	Council approval required for; all property leases, contracts or bid awards exceeding \$40,000 , and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, except when: <ol style="list-style-type: none"> 1. Exercising an option contained in a contract previously approved by the council. 2. Contract is for design, construction, r-o-w acquisition, prof. services, or other capital costs approved by council in a capital budget appropriation ordinance. 3. Bid or award is for supplies. 4. Equipment is included in Exhibit "B" of the Budget Ordinance. 5. Contract is for manufacturer's technical support and hardware maintenance of electronic systems and/or technical support and software maintenance from the developer of proprietary software currently used by Whatcom County.
This Amendment Amount: \$ _____	
Total Amended Amount: \$ _____	
Summary of Scope: _____	
Request authorization for the County Executive to enter into a 9-year agreement between Whatcom County and Pictometry International Corporation for three oblique and orthogonal aerial imagery flights, in the amount of \$489,600.	
Term of Contract: 9-Year	Expiration Date: December 2029

Contract Routing:	1. Prepared by: P. Rice \ M. Pelela <u>PJR</u>	Date: 11/29/2021
	2. Attorney signoff: <u>KnF</u>	Date: <u>11/29/21</u>
	3. AS Finance reviewed: <u>bbennet</u>	Date: <u>11/29/21</u>
	4. IT reviewed (if IT related): P. Rice <u>PJR</u>	Date: 11/29/2021
	5. Contractor signed: <u>✓</u>	Date: <u>12-13-21</u>
	6. Submitted to Exec.: _____	Date: <u>11-30-21</u>
	7. Council approved (if necessary): <u>✓</u> (AB2021-737)	Date: <u>12.7.21</u>
	8. Executive signed: _____	Date: <u>12-13-21</u>
	9. Original to Council: _____	Date: <u>12-17-21</u>

**AGREEMENT BETWEEN
 PICTOMETRY INTERNATIONAL CORP. (“PICTOMETRY”) AND
 WHATCOM COUNTY, WA (“CUSTOMER”)**

**WHATCOM COUNTY
 CONTRACT NO.
 202111037**

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

Appendix 1: Photogrammetric Product Specifications

Map(s)

(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): Section C: Non-Standard Terms and Conditions; Appendix 1: Photogrammetric Product Specifications; Section A: 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	
311 Grand Avenue, Suite #305	
Bellingham, WA 98225-4038	
Attn: Perry Rice, IT Manager	
Phone: (360) 778-5235	Fax: (360) 778-5231

PICTOMETRY NOTICE ADDRESS	
25 Methodist Hill Drive	
Rochester, New York 14623	
Attn: General Counsel	
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. Except with respect to Customer’s payment obligations for services delivered, reports delivered or any ongoing subscription payment obligation, each party will be excused from performance under this Agreement, will not be deemed to be in breach hereof, and will have no liability to the other party whatsoever if either party is prevented from performing any of its obligations hereunder, in whole or in part, as a result of a Force Majeure Event. A “Force Majeure Event” means an event or occurrence beyond the control of the nonperforming party, such as an act of God or of the public enemy, embargo or other act of government in either its sovereign or contractual capacity, government regulation, travel ban or request, court order, civil disturbance, terrorism, war, quarantine restriction, epidemic, virus, fire, weather, flood, accident, strike, slowdown, delay in transportation, electrical power outage, interruption or degradation in electronic communications systems, inability to obtain necessary labor, materials or manufacturing facilities, and other similar events. In the event of any delay resulting from a Force Majeure Event, any date of delivery hereunder will be extended for a period equal to the time lost because 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.”

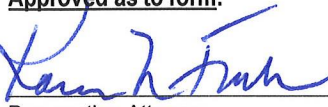
PARTIES:

CUSTOMER	PICTOMETRY
WHATCOM COUNTY, WA	PICTOMETRY INTERNATIONAL CORP.
	a Delaware corporation
SIGNATURE:	SIGNATURE:
SEE FOLLOWING PAGE	
NAME:	NAME: Robert Locke
TITLE:	TITLE: President
DATE:	EXECUTION DATE: 12/13/2021
	DATE OF RECEIPT (EFFECTIVE DATE): 12/13/2021

WHATCOM COUNTY:
Recommended for Approval:

 11/29/2021
IT Manager Date

Approved as to form:

 11/29/21
Prosecuting Attorney Date

Approved:

Accepted for Whatcom County:

By: 
Satpal Singh Sidhu, Whatcom County Executive

SECTION A

PRODUCT DESCRIPTIONS, PRICES AND PAYMENT TERMS

Pictometry International Corp.
 25 Methodist Hill Drive
 Rochester, New York 14623

ORDER #
C26126484

BILL TO
Whatcom County, WA
Perry Rice, IT Manager
311 Grand Avenue, Suite #305
Bellingham, WA 98225-4038
(360) 778-5235
price@co.whatcom.wa.us

SHIP TO
Whatcom County, WA
Mike Pelela, Supervisor, GIS
311 Grand Ave.
Bellingham, WA 98225
(360) 778-5244
mpelela@co.whatcom.wa.us

CUSTOMER ID	SALES REP	FREQUENCY OF PROJECT
A118229	dwalt	Triennial

FIRST PROJECT (SPRING 2022 INTENDED)

QTY	PRODUCT NAME	PRODUCT DESCRIPTION	LIST PRICE	DISCOUNT PRICE (%)	AMOUNT ¹
239	Reveal Essentials+ Property	Provides high resolution ortho and oblique imagery at a Property level. Deliverables include measurable oblique and ortho imagery at a property resolutions. Color balanced orthomosaic imagery is generated by a fully automated photogrammetric process and delivered digitally in various formats with the associated metadata. Applicable Terms and Conditions: Delivered Content Terms and Conditions of Use Product Parameters: <i>Leaf:</i> Leaf Off: Less than 30% leaf cover	\$ 400.00	\$ 360.00 (10% - Long Term Incentive Discount)	\$ 86,040.00
358	Reveal Essentials+ Neighborhood	Provides ortho and oblique imagery at a Neighborhood level. Deliverables include measurable oblique and ortho imagery at a neighborhood resolutions. Color balanced orthomosaic imagery is generated by a fully automated photogrammetric process and delivered digitally in various formats with the associated metadata. Applicable Terms and Conditions: Delivered Content Terms and Conditions of Use Product Parameters: <i>Leaf:</i> Leaf Off: Less than 30% leaf cover	\$ 160.00	\$ 120.00 (25%)	\$ 42,960.00
300	Reveal Essentials+ Community	Provides ortho and oblique imagery at a Community level. Deliverables include measurable oblique and ortho imagery at a community resolutions. Color balanced orthomosaic imagery is generated by a fully automated photogrammetric process and delivered digitally in various formats with the associated metadata. Applicable Terms and Conditions: Delivered Content Terms and Conditions of Use Product Parameters: <i>Leaf:</i> Leaf Off: Less than 30% leaf cover	\$ 70.00		\$ 21,000.00
897	Reveal Orthomosaic - Combined	This product represents a single orthomosaic, combining tiles of multiple resolutions with the best-available resolution preferred Applicable Terms and Conditions: Delivered Content Terms and Conditions of Use Product Parameters: <i>Leaf:</i> Leaf Off: Less than 30% leaf cover	\$ 0.00		\$ 0.00

3	Pictometry Connect - CA - 50	Pictometry Connect - CA - 50 (Custom Access) provides up to 50 concurrent authorized users the ability to login and access the Pictometry-hosted custom imagery libraries specified elsewhere in this Agreement via a web-based, server-based or desktop integration. The default deployment is through web-based Pictometry Connect. Term commences on date of activation. The quantity represents the number of years in the Connect term. Applicable Terms and Conditions: Online Services General Terms and Conditions; Software License Agreement Product Parameters: <i>Admin User Name:</i> Mike Pelela <i>Admin User Email:</i> mpelela@co.whatcom.wa.us	\$ 2,200.00	\$ 0.00 (100%)	\$ 0.00
1	Oblique Imagery Bundle w/Two(2) Yrs of EFS Maint & 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, ten (10) 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 two 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	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
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					\$150,000.00

SECOND PROJECT (SPRING 2025 INTENDED)

QTY	PRODUCT NAME	PRODUCT DESCRIPTION	LIST PRICE	DISCOUNT PRICE (%)	AMOUNT ¹
239	Reveal Essentials+ Property	Provides high resolution ortho and oblique imagery at a Property level. Deliverables include measurable oblique and ortho imagery at a property resolutions. Color balanced orthomosaic imagery is generated by a fully automated photogrammetric process and delivered digitally in various formats with the associated metadata. Applicable Terms and Conditions: Delivered Content Terms and Conditions of Use Product Parameters: <i>Leaf:</i> Leaf Off: Less than 30% leaf cover	\$ 400.00	\$ 360.00 (10% - Long Term Incentive Discount)	\$ 86,040.00
358	Reveal Essentials+ Neighborhood	Provides ortho and oblique imagery at a Neighborhood level. Deliverables include measurable oblique and ortho imagery at a neighborhood resolutions. Color balanced orthomosaic	\$ 160.00	\$ 120.00 (25%)	\$ 42,960.00

		<p>imagery is generated by a fully automated photogrammetric process and delivered digitally in various formats with the associated metadata.</p> <p>Applicable Terms and Conditions: Delivered Content Terms and Conditions of Use</p> <p>Product Parameters: <i>Leaf:</i> Leaf Off: Less than 30% leaf cover</p>			
300	Reveal Essentials+ Community	<p>Provides ortho and oblique imagery at a Community level. Deliverables include measurable oblique and ortho imagery at a community resolutions. Color balanced orthomosaic imagery is generated by a fully automated photogrammetric process and delivered digitally in various formats with the associated metadata.</p> <p>Applicable Terms and Conditions: Delivered Content Terms and Conditions of Use</p> <p>Product Parameters: <i>Leaf:</i> Leaf Off: Less than 30% leaf cover</p>	\$ 70.00		\$ 21,000.00
897	Reveal Orthomosaic - Combined	<p>This product represents a single orthomosaic, combining tiles of multiple resolutions with the best-available resolution preferred</p> <p>Applicable Terms and Conditions: Delivered Content Terms and Conditions of Use</p> <p>Product Parameters: <i>Leaf:</i> Leaf Off: Less than 30% leaf cover</p>	\$ 0.00		\$ 0.00
1	RapidAccess - Disaster Response Program	<p>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.</p> <p>Applicable Terms and Conditions: Order Form</p>	\$ 0.00		\$ 0.00
1	Oblique Imagery Bundle w/Two(2) Yrs of EFS Maint & Support	<p>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, ten (10) 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 two years from the initial date of shipment of the EFS software, along with a copy of the updated documentation.</p> <p>Applicable Terms and Conditions: Software License Agreement</p>	\$ 0.00		\$ 0.00
1	Pictometry Connect - EarlyAccess	<p>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.</p> <p>Applicable Terms and Conditions: Online Services General Terms and Conditions</p>	\$ 10,000.00	\$ 0.00 (100%)	\$ 0.00
SUBTOTAL					\$150,000.00

THIRD PROJECT (SPRING 2028 INTENDED)

QTY	PRODUCT NAME	PRODUCT DESCRIPTION	LIST PRICE	DISCOUNT PRICE (%)	AMOUNT ¹
239	Reveal Essentials+ Property	Provides high resolution ortho and oblique imagery at a Property level. Deliverables include measurable oblique and ortho imagery at a property resolutions. Color balanced orthomosaic imagery is generated by a fully automated photogrammetric process and delivered digitally in various formats with the associated metadata. Applicable Terms and Conditions: Delivered Content Terms and Conditions of Use Product Parameters: <i>Leaf:</i> Leaf Off: Less than 30% leaf cover	\$ 400.00	\$ 360.00 (10% - Long Term Incentive Discount)	\$ 86,040.00
358	Reveal Essentials+ Neighborhood	Provides ortho and oblique imagery at a Neighborhood level. Deliverables include measurable oblique and ortho imagery at a neighborhood resolutions. Color balanced orthomosaic imagery is generated by a fully automated photogrammetric process and delivered digitally in various formats with the associated metadata. Applicable Terms and Conditions: Delivered Content Terms and Conditions of Use Product Parameters: <i>Leaf:</i> Leaf Off: Less than 30% leaf cover	\$ 160.00	\$ 120.00 (25%)	\$ 42,960.00
300	Reveal Essentials+ Community	Provides ortho and oblique imagery at a Community level. Deliverables include measurable oblique and ortho imagery at a community resolutions. Color balanced orthomosaic imagery is generated by a fully automated photogrammetric process and delivered digitally in various formats with the associated metadata. Applicable Terms and Conditions: Delivered Content Terms and Conditions of Use Product Parameters: <i>Leaf:</i> Leaf Off: Less than 30% leaf cover	\$ 70.00		\$ 21,000.00
897	Reveal Orthomosaic - Combined	This product represents a single orthomosaic, combining tiles of multiple resolutions with the best-available resolution preferred Applicable Terms and Conditions: Delivered Content Terms and Conditions of Use Product Parameters: <i>Leaf:</i> Leaf Off: Less than 30% leaf cover	\$ 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
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	Oblique Imagery Bundle w/Two(2) Yrs of EFS Maint & 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, ten (10) 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 two 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
				SUBTOTAL	\$150,000.00

Thank you for choosing Pictometry as your service provider.	TOTAL	\$ 450,000.00
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¹Amount per product = ((1-Discout %) * Qty * List Price)

STANDARD ORTHO MOSAIC PRODUCTS

Pictometry standard ortho mosaic products are produced through automated mosaicking processes that incorporate digital elevation data with individual Pictometry ortho frames to create large-area mosaics on an extremely cost-effective basis. Because these products are produced through automated processes, rather than more expensive manual review and hand-touched corrective processes, there may be inherent artifacts in some of the resulting mosaics. While Pictometry works to minimize such artifacts, the Pictometry standard ortho mosaic products are provided on an 'AS IS' basis with respect to visible cutlines along mosaic seams resulting from the following types of artifacts:

- i. Disconnects in non-elevated surfaces generally caused by inaccurate elevation data;
- ii. Disconnects in elevated surfaces (e.g., roadways, bridges, etc.) generally caused by elevated surfaces not being represented in the elevation data;
- iii. Building intersect and clipping generally caused by buildings not being represented in the elevation data;
- iv. Seasonal variations caused by images taken at different times during a season, or during different seasons;
- v. Ground illumination variations caused by images taken under different illumination (e.g., sunny, high overcast, morning light, afternoon light, etc.) within one flight day or during different flight days;
- vi. Single GSD color variations caused by illumination differences or multiple-aircraft/camera captures;
- vii. Mixed GSD color variations caused by adjacent areas being flown at different ground sample distances (GSDs); and
- viii. Water body color variations caused by multiple individual frames being used to create a mosaic across a body of water (e.g., lakes, ponds, rivers, etc.).

Other Pictometry products may be available that are less prone to such artifacts than the Pictometry standard ortho mosaic products.

Geofences:

FIRST PROJECT

For the Pictometry Connect - CA - 50 product(s) in this project, the following geofences apply:
WA Whatcom (Primary)

SECOND PROJECT

For the Pictometry Connect - CA - 50 product(s) in this project, the following geofences apply:
WA Whatcom (Primary)

THIRD PROJECT

For the Pictometry Connect - CA - 50 product(s) in this project, the following geofences apply:
WA Whatcom (Primary)

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 tornados 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.

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 upon shipment of imagery	\$75,000.00
Due at First Anniversary of Shipment of Imagery	\$75,000.00
Total Payments	\$150,000.00

SECOND PROJECT

Due upon shipment of imagery	\$75,000.00
Due at First Anniversary of Shipment of Imagery	\$75,000.00
Total Payments	\$150,000.00

THIRD PROJECT

Due upon shipment of imagery	\$75,000.00
Due at First Anniversary of Shipment of Imagery	\$75,000.00
Total Payments	\$150,000.00

**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.
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[END OF DELIVERED CONTENT TERMS AND CONDITIONS]

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SECTION C

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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 Washington, excluding its conflicts of law principles. Each party irrevocably consents to the exclusive jurisdiction of the courts of the State of Washington 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:** Long Term Incentives ('LTI') have been applied to the imagery fees shown in Section A. Non-Appropriation of funds is applied to the Second and Third Projects. If such funds are not appropriated, Customer shall provide Pictometry with written documentation of non-appropriation from the funding source. Such notification shall be 90-days prior to any pending project commencement. If funds are not appropriated for subsequent Projects, the Agreement shall stay in force but subsequent Projects shall not be commenced or delivered until outstanding balances due have been paid.

4. Customer shall own the copy of the orthogonal imagery delivered to it by Pictometry pursuant to this Agreement. Customer is free to use, reproduce and redistribute copies of the orthogonal imagery so delivered in any manner without any accounting to Pictometry. Pictometry shall own those copies of the orthogonal imagery delivered pursuant to this Agreement that are in Pictometry's possession. Pictometry is free to use, reproduce and redistribute copies of the orthogonal imagery delivered pursuant to this Agreement in any manner without any accounting to Customer. Except for the copy of the orthogonal imagery delivered to Customer by Pictometry pursuant to this Agreement, all imagery (including associated metadata) and software delivered or otherwise made available to Customer pursuant to this Agreement constitute Delivered Content or Pictometry Software, as appropriate, and are and shall remain the exclusive property of Pictometry, subject to the rights of Customer to use the Delivered Content and the Pictometry Software pursuant to the licenses granted by Pictometry elsewhere in this Agreement.

5. It is acknowledged and agreed that this Agreement is between Pictometry International Corp and Whatcom County, provided, however, Whatcom County has agreed to allow the following entities to become Authorized Users for the products contained within this Agreement:

- Birch Bay Water & Sewer
- City of Bellingham
- City of Blaine
- City of Everson
- City of Ferndale
- City of Lynden
- City of Nooksack
- City of Sumas
- Lake Whatcom Water & Sewer
- Lummi Nation
- Nooksack Tribe
- Port of Bellingham
- Public Utilities District
- Whatcom Conservation District
- Whatcom Council of Governments
- Whatcom Transportation Authority

6. **Public Disclosure:** Pictometry acknowledges that Whatcom County is a public agency and as such is required to allow members of the public access to public records in accordance with Washington State public records laws. In the event that the Whatcom County Public Records Officer receives a public records request for information or intellectual property belonging to Pictometry, within five days of receiving such request and prior to providing any materials to the Requestor, Whatcom County will notify Pictometry of such request for information and will make attempts to provide Pictometry with adequate time to seek a protective order under applicable law, provided, nothing herein shall prohibit or preclude Whatcom County from complying with the Washington State Public Records Act, Chapter 42.56, RCW, and making all requested information available as shall be required by law.

7. Pictometry shall use commercially reasonable efforts to complete each image capture for the intended calendar year referenced herein. This is a target date only because the image capture process and the delivery dates may be affected by numerous conditions outside of Pictometry's control including weather and airspace permissions.

8. The initial term of this Agreement shall commence upon the Effective Date (noted in the Pictometry Signature Block of the Order Form), and coincide with the Fees and Payment Term section stated in Section A of the Agreement for a period of nine (9) years, (the "Initial Term") unless the parties enter into a written agreement extending or changing that Initial Term.

[END OF NON-STANDARD TERMS AND CONDITIONS]

APPENDIX 1

PHOTOGRAMMETRIC PRODUCT SPECIFICATIONS

Essentials+ Community deliverables

Product	Essentials+ Community
Orthomosaic Specifications	<ul style="list-style-type: none"> • Typical Positional Horizontal Accuracy: 1m at a 95% confidence level • Fully automated photogrammetric orthomosaic. Imagery may contain seamlines • Project-wide color and contrast balancing
Oblique Imagery	<p>Nominal 9in GSD oblique imagery or better:</p> <ul style="list-style-type: none"> • Where available fully automated photogrammetric mosaiced imagery. Imagery may contain seamlines
Metadata and Reporting	<p>Metadata:</p> <ul style="list-style-type: none"> • Metadata generated that meets FGDC Standards upon request • Shapefile(s) with discrete deliverable boundaries and directional metadata
Orthomosaic Deliverable Format (Online)	<p>Resolution:</p> <ul style="list-style-type: none"> • Nominal 9in GSD <p>Access Methods:</p> <ul style="list-style-type: none"> • Available via web-based viewer (Connect) - Contracted separately • Also available via WMS/WMTS (Image Service) - Contracted separately
Orthomosaic Deliverable Format (Physical)	<p>Resolution:</p> <ul style="list-style-type: none"> • Nominal 9in GSD <p>Projection/Coordinate System:</p> <ul style="list-style-type: none"> • Customer Selectable <p>Datum:</p> <ul style="list-style-type: none"> • Customer Selectable <p>File Format:</p> <ul style="list-style-type: none"> • Mosaic Tiles <ul style="list-style-type: none"> ○ Available as JPEG, GeoTIFF, JPEG2000, PNG, ECW, MrSID (All versions) with world file ○ Includes separate Pictometry Map Image (PMI) trailer file • Project-Wide Mosaic <ul style="list-style-type: none"> ○ Available in ECW, MrSID (All versions) format
Oblique Imagery Deliverable Format	<p>Access methods:</p> <ul style="list-style-type: none"> • Available via web-based viewer (Connect) - Contracted separately
Delivery Timeline	<ul style="list-style-type: none"> • Best efforts to make ortho and oblique imagery available online and/or ready for physical delivery within 30 days of capture completion

Essentials+ Neighborhood deliverables

Product	Essentials+ Neighborhood
Orthomosaic Specifications	<ul style="list-style-type: none"> • Typical Positional Horizontal Accuracy: 1m at a 95% confidence level • Fully automated photogrammetric orthomosaic. Imagery may contain seamlines • Project-wide color and contrast balancing
Oblique Imagery	<p>Nominal 6in GSD oblique imagery or better:</p> <ul style="list-style-type: none"> • Where available fully automated photogrammetric mosaiced imagery. Imagery may contain seamlines
Metadata and Reporting	<p>Metadata:</p> <ul style="list-style-type: none"> • Metadata generated that meets FGDC Standards upon request

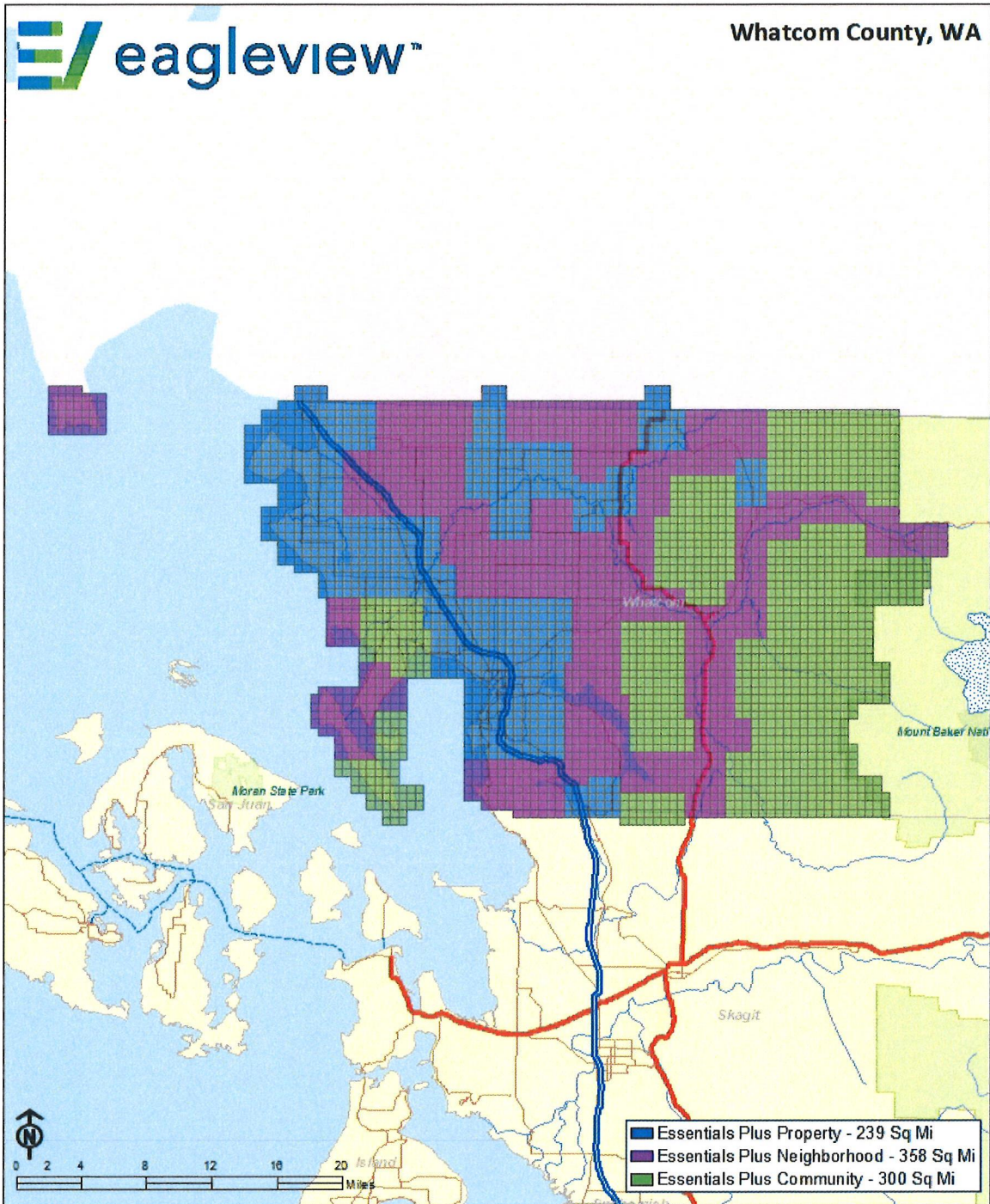
	<ul style="list-style-type: none"> Shapefile(s) with discrete deliverable boundaries and directional metadata
Orthomosaic Deliverable Format (Online)	Resolution: <ul style="list-style-type: none"> Nominal 6in GSD Access Methods: <ul style="list-style-type: none"> Available via web-based viewer (Connect) - Contracted separately Also available via WMS/WMTS (Image Service) - Contracted separately
Orthomosaic Deliverable Format (Physical)	Resolution: <ul style="list-style-type: none"> Nominal 6in GSD Projection/Coordinate System: <ul style="list-style-type: none"> Customer Selectable Datum: <ul style="list-style-type: none"> Customer Selectable File Format: <ul style="list-style-type: none"> Mosaic Tiles <ul style="list-style-type: none"> Available as JPEG, GeoTIFF, JPEG2000, PNG, ECW, MrSID (All versions) with world file Includes separate Pictometry Map Image (PMI) trailer file Project-Wide Mosaic <ul style="list-style-type: none"> Available in ECW, MrSID (All versions) format
Oblique Imagery Deliverable Format	Access methods: <ul style="list-style-type: none"> Available via web-based viewer (Connect) - Contracted separately
Delivery Timeline	<ul style="list-style-type: none"> Best efforts to make ortho and oblique imagery available online and/or ready for physical delivery within 30 days of capture completion

Essentials+ Property deliverables

Product	Essentials+ Property
Ortho Frame Imagery	<ul style="list-style-type: none"> Nominal 2in GSD ortho imagery, Imagery as good as 1.2in and no worse than 3in
Orthomosaic Specifications	<ul style="list-style-type: none"> Typical Positional Horizontal Accuracy: 1m at a 95% confidence level Fully automated photogrammetric orthomosaic. Imagery may contain seamlines Project-wide color and contrast balancing
Oblique Imagery	Nominal 2.6in GSD oblique imagery ranging from 1.7in to 3.5in GSD: <ul style="list-style-type: none"> Where available fully automated photogrammetric mosaiced imagery. Imagery may contain seamlines
Metadata and Reporting	Metadata: <ul style="list-style-type: none"> Metadata generated that meets FGDC Standards upon request Shapefile(s) with discrete deliverable boundaries and directional metadata
Orthomosaic Deliverable Format (Online)	Resolution: <ul style="list-style-type: none"> Nominal 2in GSD, no worse than 3in (Best Available Provided) Access Methods: <ul style="list-style-type: none"> Available via web-based viewer (Connect) - Contracted separately Also available via WMS/WMTS (Image Service) - Contracted separately
Orthomosaic Deliverable Format (Physical)	Resolution: <ul style="list-style-type: none"> Nominal 2in GSD, no worse than 3in (Best Available Provided) Projection/Coordinate System: <ul style="list-style-type: none"> Customer Selectable Datum: <ul style="list-style-type: none"> Customer Selectable File Format: <ul style="list-style-type: none"> Mosaic Tiles <ul style="list-style-type: none"> Available as JPEG, GeoTIFF, JPEG2000, PNG, ECW, MrSID (All versions) with world file Includes separate Pictometry Map Image (PMI) trailer file

	<ul style="list-style-type: none"> • Project-Wide Mosaic <ul style="list-style-type: none"> ○ Available in ECW, MrSID (All versions) format
Oblique Imagery & Frame Imagery Deliverable Format	<p>Access methods:</p> <ul style="list-style-type: none"> • Available via web-based viewer (Connect) - Contracted separately
Delivery Timeline	<ul style="list-style-type: none"> • Best efforts to make frame imagery available online within 20 days of capture complete • Best efforts to make ortho and oblique imagery available online and/or ready for physical delivery within 30 days of capture completion

MAP(S)





PERRY L. RICE
IT Manager

MEMORANDUM

RECEIVED

NOV 30 2021

TO: Satpal Singh Sidhu, County Executive
Whatcom County Council

WHATCOM COUNTY
EXECUTIVE'S OFFICE

Through: Tyler Schroeder, Deputy Executive \ Director of Administrative Services *TS*

FROM: Perry Rice, IT Manager *PR*

RE: Agreement for Pictometry Aerial Imagery

DATE: November 29, 2021

Enclosed is a proposed agreement between Whatcom County and Pictometry International Corporation (Pictometry) for aerial imagery of western Whatcom County for your review.

▪ **Background and Purpose**

In 2004, 2008, 2010, 2013, 2016 and 2019 Whatcom County acquired digital aerial imagery from Pictometry. This imagery has been widely used by numerous County departments such as Planning & Development Services, Public Works, Health, Assessor's Office, Treasurer's Office, and Administrative Services. The imagery is also now available to our citizens in our recently released on-line Geographic Information Systems (GIS) viewers such as the Tax Parcel Viewer and Public Works Travel Planner.

The purpose of this request is to enter into an agreement with Pictometry for a new spring 2022 flight to provide Whatcom County and its regional partners with updated orthogonal and oblique digital images for about 897 square miles.

▪ **Funding Amount and Source**

The amount of the contract is \$163,200 for the spring 2022 flight with an option for two additional flights for a total consideration of \$489,600. Funds have been appropriated in the 2021 Information Technology budget for the first flight. A regional cost-sharing partnership with the following organizations is in the process of being finalized:

- Birch Bay Water & Sewer
- City of Bellingham
- City of Blaine
- City of Everson
- City of Ferndale
- City of Lynden
- City of Nooksack
- City of Sumas
- Lake Whatcom Water & Sewer
- Lummi Nation
- Nooksack Tribe
- Port of Bellingham
- Public Utilities District
- Whatcom Conservation District
- Whatcom Council of Governments
- Whatcom Transportation Authority

In order to obtain favorable pricing, this contract is for the spring 2022 flight and two additional flights at two to three-year intervals:

Flight 1 – (2022):	\$163,200
Flight 2 – Optional (2025):	\$163,200
Flight 3 – Optional (2028):	<u>\$163,200</u>
Three Flight Total:	\$489,600

This is a sole source contract since it is advantageous for the county to have a common dataset and software to view and compare oblique and orthogonal aerial imagery from six flights over 18 years.

The contract contains a “non-appropriation of funds” clause for the second and third flight which allows Whatcom County to opt out of these flights if funding is not obtained. Funding Letters of Intent have been obtained from each regional cost-sharing partner.

Please contact Perry Rice at x5235 if you have any questions or concerns regarding the terms of this agreement.