

**INTERLOCAL COOPERATIVE AGREEMENT
BETWEEN
LEWIS COUNTY AND CENTRALIA
TO ESTABLISH A COST SHARING PARTNERSHIP
FOR LICENSED PICTOMETRY IMAGERY AND SOFTWARE SERVICES**

AMENDMENT #1

WHEREAS, on September 16, 2013, Lewis County (the County) and the City of Centralia (the Agency) (collectively the County and the Agency are referred to hereinafter as "Parties") entered into an Interlocal Cooperative Agreement to Establish a Cost Sharing Partnership for Licensed Pictometry Imagery and Software Services ("Interlocal Agreement") to share the costs of a 2013 aerial photo acquisition project and related services that Lewis County had contracted to acquire from Pictometry International Corporation (Pictometry) in that year; and

WHEREAS, the 2013 aerial photo acquisition project and related services were performed and delivered to the Agency in accordance with the Interlocal Agreement: and

WHEREAS, pursuant to the "Agreement Dated 3/4/2013 Between Pictometry International Corp. and Lewis County, WA," as amended ("Pictometry Agreement"), the County and Pictometry scheduled additional photo acquisition projects and services to be acquired and delivered in 2016 and to be paid for in installments beginning in 2016 and continuing through 2018; and

WHEREAS, the Agency has informed the County that it now desires to participate in the scheduled 2016 photo acquisition project and related services and to share in those costs; and

WHEREAS, the current Interlocal Agreement is set to expire September 30th, 2016, and both parties are desirous of extending and amending said Interlocal Agreement to include provision for the Agency to share in the scheduled 2016 photo acquisition project and related services;

NOW THEREFORE, IN CONSIDERATION OF THE PARTIES' MUTUAL UNDERTAKINGS, IT IS HEREBY AGREED by the Parties to amend their Interlocal Agreement as follows:

1. Paragraph 5.4 of the Interlocal Agreement is amended and restated to state the following:

5.4 Continuation Beyond Three Years: The County has contracted with Pictometry for nine years to provide three photo acquisition projects (in 2013, 2016, and 2019) at constant rates. Should the Agency wish to continue as a participant and contribute to the second and/or third photo acquisition projects and/or to participate and pay for a special (extra-scheduled) photo acquisition project, this Agreement may be amended to provide for the additional project(s).

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THIS AGREEMENT, made and entered into pursuant to authority of R.C.W. 39.34.080 and in conformance with R.C.W. 43.09.210, this day of 9/16, 2013, by and between LEWIS COUNTY, Washington, a political subdivision of the State of Washington, hereinafter referred to as the "County", and the City of Centralia, a municipal corporation, special purpose district, or other public agency hereinafter referred to as the "Agency" (collectively, the "Parties").

WITNESSETH:

IT IS HEREBY COVENANTED AND AGREED as follows:

1.0 RESPONSIBILITIES:

1.1. County Responsibilities: Upon completion of the image acquisition, a signed Interlocal Cooperative Agreement, signed License Agreement(s) between the County and Pictometry, and a signed Authorized Subdivision User Agreement (Exhibit A), the County agrees to furnish the Agency the following products and services:

1.1.1. Login credentials for the use of Pictometry Connect which provides internet-based access to the oblique and vertical aerial photos, "ChangeFindr" building footprints, and specialized Pictometry tools/software. Logins/seats to Pictometry Connect will be provided in the quantity specified by the Agency. Logins will be based on email addresses, so each login will require a valid email address provided by the Agency.

1.1.2. In lieu of, or in addition to, Pictometry Connect, and upon Agency's request, the County will deliver a portable USB hard drive containing all the licensed Pictometry products, including the image library. The blank USB hard drive is to be provided by the Agency or, if provided by the County, such cost shall be reimbursed to the County. Hard drive will include vertical aerialphotos, oblique aerialphotos, "ChangeFindr" building footprints, and Pictometry's desktop software: Electronic Field Study (EFS).

1.1.3 End User Orientation Training Session may be taught on two separate occasions by Pictometry. The Agency may designate two authorized representatives to attend each training session. In addition, the County may organize one Advanced User Technical Training Session which will be taught by Pictometry. The Agency may designate one authorized representative to attend this session. Additional periodic training for new users or as refresher may be provided either in a live instructor-led format or in a digital recorded tutorial format.

1.1.4. Three hours of telephone/in-person support per year by the County to help resolve issues and problems in the installation, maintenance, and use of the licensed products provided herewith.

1.1.5. Annual billing for the use of licensed Pictometry products. This also includes oversight of the financial accounting between the County and the Agency.

1.1.6. Extended support services beyond the aforementioned requirements for specialized training, support, or other service related to the support of Pictometry products. These extended services shall require a work order and financial compensation as specified in Section 5.5 Extended Services and Work Orders.

1.2 Agency Responsibilities: Upon completion of the image acquisition, a signed Interlocal Cooperative Agreement, signed License Agreement(s) between the County and Pictometry, and a signed Authorized Subdivision User Agreement (Exhibit A), the Agency agrees to the following:

1.2.1. Compliance with this Interlocal Cooperative Agreement and the License Agreement(s) between the County and Pictometry and execution of and compliance with the Authorized Subdivision User Agreement.

1.2.2. To designate one employee as the Liaison between the County and the Agency as a single point of contact for disseminating information to the Agency's end users. The designated Liaison and their contact information shall be reported to the County.

1.2.3. The Liaison or their designee shall distribute the Pictometry products to the Agency's authorized users in accordance with this Interlocal Cooperative Agreement, the Pictometry License Agreement, and the Authorized Subdivision User Agreement. Liaison shall provide additional Pictometry training and technical support to their Authorized Users (as defined in the Pictometry License Agreement and Authorized Subdivision User Agreement).

1.2.4. To furnish the County valid email addresses for use as Pictometry Connect logins and names and contact information that correspond to those email addresses. The number of requested Pictometry Connect seats must equal the number of email addresses furnished. Each Pictometry Connect seat (login account) can only be used in one location at a time.

1.2.6. If the Agency requires the data and software locally installed, it agrees to provide a USB hard drive for the County to use to deliver the Pictometry licensed products as stated in Section 1.1.2 above, or agrees to reimburse the County for same.

1.2.7. The Agency shall notify the County within ten business days after the Agency receives notice from Pictometry of any Pictometry actions, conditions, or circumstances which could affect the Agency's rights under this agreement.

2.0 SERVICE CONDITIONS AND DATA LIMITATIONS

2.1 Acceptance of Completed Work: The County's contract with Pictometry was scheduled for image acquisition between March and April (partial leaf-off tree condition to insure more visibility) of 2013. This was contingent upon weather conditions and there was a possibility that the image acquisition may occur at later dates. Due to weather delays, at least some image acquisition will occur later than April of 2013. When the image acquisition and processing is complete, County will evaluate the overall dataset for acceptance with Pictometry. Once the County has received and approved the Pictometry products, access to the products may be made to the Agency through Pictometry Connect service as stated in Section 1.1.1 above. In addition, a copy of the accepted Pictometry products may be created on a portable USB hard drive and delivered to the Agency upon Agency's request and at Agency's expense as stated in Sections 1.1.2 and 1.2.6, above. The Agency has 15 calendar days to inspect the products and notify County of any product errors, omissions, flaws, or incomplete work. County will review the original accepted dataset for any problems identified by the Agency and provide a new copy of the original accepted dataset if differences are identified. If no errors are brought to the attention of the County within 15 calendar days, the product delivery to Agency shall be considered complete.

2.2 Product Archival and Retention: County is not responsible for the backup, retention, or archive of products provided to Agency. It is Agency's responsibility to maintain hard copy and digital records in accordance with Public Records Laws (RCW, 42.56 and WAC, Section 434). In the event that the Agency requests from the County another copy of the Pictometry products, the County shall be financially compensated for their actual costs to create and deliver an additional copy of the Pictometry products.

2.3 Confidential and Proprietary Information: The Agency acknowledges that it is a public agency and as such is required to allow members of the public access to certain materials within the Agency's control or possession. In the event the Agency 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, the Agency will notify both the County and Pictometry of such request for information and will make attempts to provide Pictometry with adequate time to seek a protective order under applicable law. Agency shall clearly mark all confidential or proprietary documents.

2.4 Data Limitations: The County makes no warranty, expressed or implied, concerning the Pictometry products content, accuracy, currency or completeness, or concerning the results to be obtained from queries or use of the data. All Pictometry products are expressly provided "As Is" and with all faults. The County makes no warranty of fitness for a particular purpose and no representation as to the quality of any Pictometry products. No employee or agent of the County or the Agency is authorized to waive or modify this paragraph or make any representations or provide any warranties, expressed or implied, concerning the Pictometry products.

2.5 Spatial Accuracy: Electronic spatial data can be printed or represented at various scales other than the original source of the data. Agency is responsible for adhering to industry standard mapping practices, which specify that data utilized in a map or analysis, separately or in combination with other data, will be produced at the largest scale common to all data sets.

3.0 DATA LIABILITY AND INDEMINFICATION

3.1 Liability: County, its elected or appointed officers, employees or agents shall not be liable to Agency (or transferees or vendees of Agency) for damages of any kind, including personal injury damages, property damages, lost profits, lost savings, or any other incidental or consequential damages relating to the providing of the data or the use of it. Agency shall have no remedy at law or equity against the County in case the data provided is inaccurate, incomplete or otherwise defective in any way. Agency's only remedies are those specified in this agreement. County is supplying this information in good faith and Agency agrees to hold County, its elected or appointed officers, employees or agents harmless from any liability incurred as a result of using Pictometry products under this agreement.

3.2 Indemnification: Agency agrees to defend, indemnify and hold harmless County, its elected or appointed officers, employees or agents from any and all claims, judgments, settlements, attorney's fees or any costs by reason of any and all claims and demands made against County, its elected or appointed officials, or employees, for all damages or loss sustained by any person or persons including third parties, unless such loss or damage is due to the sole gross negligence of County, its elected or appointed officers, employees or agents. It is further provided that no liability shall attach to the County by reason of entering into this contract, except as expressly provided herein.

3.3 No Joint Venture or Partnership: It is understood and agreed that this Agreement is solely for the benefit of the Parties hereto and gives no right to any other person or entity. No joint venture or partnership is formed by or as a result of this Agreement.

3.4 Non-Conforming Service Remedy: For any services which fail to conform to the specification of this Agreement and/or of any Work Order issued pursuant to this Agreement, and if such failure is caused solely by the negligence of County, no charge will be invoiced. If both parties are negligent, they agree to apportion cost between them according to the damage attributable to the actions of each.

3.5 Equipment Damage: For any equipment damaged as the result of negligence by either party, that party will be obligated to pay for repair or replacement of that equipment. If both parties are negligent, the parties agree to apportion between them the damage attributable to the actions of each.

4.0 TREATMENT OF ASSETS

4.1 Property Title: The Pictometry products are licensed through Pictometry International and are subject to the provisions of the License Agreement between Pictometry and the County.

4.2 Use of Property: Any property furnished by County to Agency shall, unless otherwise provided in this Agreement, or approved by the owner, be used for the performance of this contract.

4.3 Notification: If any County property is lost or stolen the Agency shall immediately notify both Pictometry and the County and shall take all reasonable steps to protect the property.

5.0 SERVICE CHARGES AND PAYMENT PROVISIONS

5.1 Pictometry Product Fees: With Pictometry's approval, the County is making Pictometry products available to Authorized Subdivision Users as defined in the contract between the County and Pictometry. The Agency is identified as an Authorized Subdivision User and therefore is eligible to purchase Pictometry products from the County (subject to the requirements outlined in Section 2.1, Acceptance of Completed Work, of this agreement). The Agency shall pay a total of \$20763 for a three year license of Pictometry products (aerial images building footprints, and EFS desktop software), which will then turn into a perpetual use license for the existing EFS software and imagery. This cost will be split evenly over the three years and invoiced annually at \$6921 as described in Section 5.3. The cost of future software updates and technical support is not covered by this agreement.

5.2 Pictometry Connect Fees: Agency shall pay up to approximately \$29 per year on average over the three years of the agreement for each seat/login of Pictometry Connect that the Agency requests. The exact cost of each seat will be determined based on the total cost of the Pictometry Connect Service for a block of 200 seats plus County administration/support fee distributed amongst the total # of seats requested by all participating contributors. The Agency requests 42 seats, costing up to approximately \$1218 per year on average over the three years of the agreement. This fee is payable on the same dates as the Pictometry Product Fees as described in Sections 5.3. A detailed description of how the per seat cost was calculated will be included with invoice. More seats can be requested during the term of this agreement at the final established per seat price as long as the total number of all seats requested by all contributors does not exceed 200.

5.3 Pictometry Product Payment Dates: The first payment for the deliverables described in Sections 5.1 and 5.2 is due one month after the Agency has received the Pictometry products. The second and third payments are due no later than one year and two years, respectively, after the first payment due date. These payment amounts include fees for items in Sections 5.1 and 5.2, but do not include any fees for extended services per Section 5.5 or for delivery of the products on a USB hard drive per Section 1.1.1. Payment for items in 1.1.1 and 5.5 will be due upon fulfillment of those requests.

5.4 Continuation Beyond Three Years: The County has contracted with Pictometry for nine years to provide three flights (in 2013, 2016, and 2019) at constant rates. Should the Agency wish to continue as a participant and contribute to the second and third flights, new Interlocal Agreements for each flight shall be entered into by the County and the Agency, replacing this one.

5.5 Extended Services and Work Orders: As specified in Section 1.1.6 of this agreement, the Agency may require extended support services in addition to the County's Responsibilities as stated in Section 1.1. These extended services may include additional specialized training, technical support, product development, data development or conversion, or other services related to Pictometry ("Extended Services"). Rates for Extended Services provided will be at the Lewis County Board of County Commissioners adopted rate for GIS staff custom labor of \$50 per hour and as amended from time to time.

5.5 Annual Support and Maintenance: In the case that the Agency chooses not to participate in future flights or the contract between the County and Pictometry terminates, an annual fee will be required for continued technical support and software updates from Pictometry. If the Agency chooses not to purchase the annual maintenance fee, the licensed software will not be supported or upgraded, but the Agency may continue to use the existing software to view the imagery per the terms of the perpetual use license.

6.0 AGREEMENT TERM AND TERMINATION

6.1 Agreement Term: This Agreement commences upon execution by signature of the Parties and shall terminate three years after the date of product acceptance between the County and Pictometry, unless renewed.

6.2 Termination for Public Convenience: Either party may terminate this Agreement in whole or in part upon 30 days' written notice to the other whenever County or Agency determines, in its sole discretion that such termination is in its best interests. In the event this Agreement is terminated in accordance with this paragraph, the County shall be entitled to full payment for all three years of the Pictometry Products.

7.0 MISCELLANEOUS AGREEMENT PROVISIONS

7.1 Invoices and Late Payment: County will invoice Agency when products are delivered and accepted per the payment provisions in Section 5.0. Payment is due upon receipt of invoice by Agency and shall be paid 30 days thereafter. A late payment charge may be applied to any remaining balance 60 days after invoice. Late payment charges, if any, will be imposed on the unpaid balance at the rate of 1% per month. Agreements with balances more than 90 days past due may be terminated and services discontinued. Amounts disputed by Agency are not subject to late payment charges.

7.2 Disputes: Agency will promptly notify County of disputes regarding invoices and of services which Agency believes do not conform to the agreed upon terms of this Agreement or a Work Order.

7.3 Venue and Choice of Law: This Agreement has been and shall be construed as having been made and delivered within the State of Washington, and it is mutually understood and agreed to by each party hereto that this Agreement shall be governed by the laws of the State of Washington, both as to interpretation and performance. Any action in law, suit in equity or judicial proceeding for the enforcement of this Agreement or any provisions thereof shall be instituted and maintained only in the courts of competent jurisdiction in Lewis County, Chehalis, Washington.

7.4 Assignment: This Agreement may not be assigned by either party to a third party without the prior written consent of both County and Agency.

7.5 Waiver: If a breach of a provision of this Agreement is waived for a particular transaction or occurrence, waiver for a similar breach in a subsequent similar transaction or occurrence may not be implied.

7.6 Severability: If any term or condition of this Agreement or application thereof is held invalid, such invalidity shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition, or application.

7.7 Party Representatives: Listed below are the Parties' representatives for the purpose of carrying out this Agreement. All notices and communications which may be required by this Agreement shall be in writing and may be given by delivery or by depositing in the U.S. Mail, first class, postage prepaid.

Agency: City of Centralia
Contact: Owen Godsey, GIS/CADD Coordinator, Public Works
1100 N Tower Ave
Centralia, WA 98531
360-330-7512
ogodsey@cityofcentralia.com

County: Lewis County
Contact: Matt Hyatt, GIS Manager, Public Works
2025 NE Kresky Ave
Chehalis, WA 98532
360-740-1128
Matt.Hyatt@lewiscountywa.gov

EXHIBIT B

**PICTOMETRY INTERNATIONAL CORPORATION
Authorized Subdivision User Agreement**

The installation and use of this software is governed by a License Agreement between Pictometry and Lewis County ("Licensee"). To use this Software and the Pictometry Image Library you agree that you are an Authorized Licensee Subdivision and that you understand and will abide by the terms of the License Agreement.

"Authorized Users" shall mean such persons in the employ of Licensee, or in the employ of an Authorized Subdivision, as may be designated in writing by the Licensee from time to time to use and execute the Licensed Software on the designated computers. Licensee has agreed: (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, (b) that it will not allow access to any of the Licensed Software or any Images except through Authorized 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. You agree that you are an Authorized User.

Further you agree that you will use the Software and Pictometry Image Library in the conduct of the operations of the Licensee and/or of the Authorized Subdivisions and to use and execute the Licensed Products for internal use in pursuit of its or their public responsibilities.

Agency shall remain obligated to the terms of the License Agreement for as long as they continue to use the product, regardless of the continued existence of any Interlocal Cooperative Agreement.

I Agree:
Effective Date- 9/16/13

AUTHORIZED SUBDIVISION NAME-
CITY OF CENTRALIA

Signed- [Signature]
Printed Name- Rob Hill
Title- CITY Manager
Address- PO BOX 609 Centralia WA 98531
Phone- 360) 330-7674