

**AGREEMENT**

AN INTERLOCAL AGREEMENT BETWEEN THE OMAHA-COUNCIL BLUFFS METROPOLITAN AREA PLANNING AGENCY, AND CITY OF LINCOLN TO OBTAIN DIGITAL MAP PRODUCTS FOR LANCASTER COUNTY.

THIS INTERLOCAL AGREEMENT (“Agreement”) is made and entered into effective as of the 1st day of January, 2016, by and between the Omaha-Council Bluffs Metropolitan Area Planning Agency (hereinafter called MAPA), and the City of Lincoln, Nebraska.

**WITNESSETH:**

WHEREAS, the City of Lincoln is a member of a group of agencies from Eastern Nebraska and Western Iowa known as Nebraska-Iowa Regional Orthophotography Consortium, hereinafter called the NI-ROC; and

WHEREAS, NI-ROC has entered into an agreement with MAPA to obtain mapping products which allows NI-ROC members to engage in joint mapping efforts with MAPA to be performed over Cass, Dodge, Douglas, Lancaster, Sarpy, Saunders and/or Washington Counties, in the State of Nebraska and Mills and Pottawattamie Counties in the State of Iowa [“NI-ROC/MAPA Agreement”]; and

WHEREAS, the City of Lincoln desires to enter into this agreement to provide for the funding and administration of a Mapping Project over Lancaster County in the State of Nebraska (hereinafter called the Project). MAPA shall cause the Project to be undertaken by the firm of Pictometry, Inc. (“Project Contractor”) pursuant to an agreement between MAPA and Pictometry, Inc. (“MAPA/Pictometry Agreement”).

NOW, THEREFORE, the parties do agree that:

**I.**  
**CITY ADMINISTRATOR**

The City of Lincoln’s GIS Program Manager, Jeff McReynolds, will act as the “City Administrator” of this contract on behalf of the City of Lincoln. The City Administrator shall be responsible for preparing the Scope of Services, guiding the conduct of the Project, and deciding whether to accept the finished products of the Project Contractor. The City Administrator will be the point of contact between MAPA and the Project Contractor and will provide general direction relating to Project contract administration to be carried out by the City of Lincoln. The City Administrator will provide staff resources necessary to review the Mapping Products and to distribute and install the products for the City of Lincoln.

**II.**  
**SCOPE OF SERVICES**

The scope of services to be performed or procured pursuant to MAPA/Pictometry Agreement will be those developed by City Administrator and incorporated in the MAPA/Pictometry Agreement. The Scope of Services shall include aerial photography over Lancaster County in the State of Nebraska; updating the existing building footprints within Lancaster County and purchasing digital orthophotos and other digital mapping products as further specified in the MAPA/Pictometry Agreement.

**III.**  
**METHODS AND PROCEDURE**

All work described in the MAPA/Pictometry Agreement Scope of Services shall be performed by Project Contractor. The MAPA/Pictometry Agreement shall not be entered into between MAPA and Project Contractor until MAPA and the City of Lincoln have executed this Agreement. After completion of the Project by Project Contractor MAPA and the City of Lincoln shall receive a copy of the Digital Mapping Products which may be used for whatever purpose they desire.

**IV.**  
**FEES, RECORDS, PAYMENT**

MAPA shall make payment in response to the billings submitted to MAPA by Project Contractor.

The MAPA/Pictometry Agreement shall require Project Contractor to provide regular progress reports which shall be available to the City of Lincoln via the internet. An account of Project billings and payments by MAPA to Project Contractor shall be made available to the City of Lincoln upon request.

MAPA will submit one bill to the City Administrator for the City of Lincoln's share of the MAPA/Pictometry Agreement between MAPA and Project Contractor not to exceed a total amount of \$496,530.00 as shown on the attached Appendix A. Upon receipt, the City Administrator shall immediately present a copy of the bill to the City of Lincoln. The City of Lincoln shall be responsible for paying the bill in equal amounts of \$165,510.00 per year over three fiscal years (2015/16, 2016/17, 2017/18) as shown on Appendix A. Payments will be paid by the City of Lincoln to MAPA within 30 days of receipt of MAPA's presentation of a statement for reimbursement and documentation that services have been satisfactorily provided pursuant to this Agreement. The City Administrator shall distribute the payments from the City of Lincoln to MAPA. MAPA further agrees that upon request it will make any additional information available to the City of Lincoln to support any claim for services rendered. MAPA agrees that it shall not be paid until services have been satisfactorily provided to the City of Lincoln. The parties agree that compensation is not, nor shall it be, deemed a retainer.

The parties further agree that each party shall not be responsible or jointly and severally liable for the financial obligations and amounts due by any other party pursuant to this agreement. Should this Agreement be terminated each party shall only be responsible for payment of services that have been provided to it to the date of termination.

**V.**  
**ADMINISTRATION**

The MAPA/Pictometry Agreement shall require Project Contractor to transfer to the City of Lincoln as a third party beneficiary, all rights, including those of a property or copyright nature, in any reports, studies, information, data, digital files, imagery, metadata, maps, statistics, forms, and any other work or materials produced under the terms of the MAPA/ Pictometry Agreement. No such work or materials produced in whole or part under said Agreement shall be subject to private use or copyright by Project Contractor without the express written consent of the parties hereto. The City of Lincoln shall have unrestricted rights of ownership of such works or materials and may freely copy, reproduce, broadcast, or otherwise utilize such works or materials as the City of Lincoln deem appropriate. The City of Lincoln shall also retain all such rights for any derivative works based on such works or materials. In addition, the MAPA/Pictometry Agreement shall require Project Contractor to agree that the consideration paid to Project Contractor includes Project Contractor's payment for any and all royalties or costs arising from patents trademarks, copyrights, and other similar intangible rights in any way involved with or related to said Agreement. Under said Agreement Project Contractor shall be obligated to pay all related royalties, license fees or other similar fees for any such intangible rights and to agree to defend such suits or claims

for infringement of any patent, copyright, trademark or other intangible rights that Project Contractor has used in the course of performing the MAPA/Pictometry Agreement.

Supervision of the Project shall be the responsibility of MAPA. The City Administrator shall review payment decisions made by MAPA before payment is made to Project Contractor. Payment may be withheld by the City of Lincoln to MAPA if, in the opinion of the City of Lincoln that Project Contractor has not properly performed or documented the services provided to the City of Lincoln for which the billing has been made, or if said services provided to the City of Lincoln are not within the approved scope of services.

**VI.  
DURATION**

This Agreement shall remain in full force and effective until December 31, 2018, unless the Project contemplated by this Agreement has been fully performed to the satisfaction of the parties hereto prior to that date. This Agreement may be extended past December 31, 2018, upon the mutual agreement of all parties to this Agreement, if it is necessary for completion of the Project contemplated by it.

**VII.  
NON-DISCRIMINATION**

The parties to this Agreement shall not, in the performance of this Agreement, discriminate or permit discrimination in violation of federal or state laws or local ordinances because of race, color, sex, age, disability, political or religious opinions, affiliations or national origin.

**VIII.  
APPLICABLE LAW**

Parties to this Agreement shall conform with all existing and applicable local ordinances, resolutions, state and local laws, federal laws, and all existing and applicable rules and regulations. Nebraska law will govern the terms and the performance under this Agreement.

**IX.  
STRICT COMPLIANCE**

All provisions of this Agreement and each and every document that shall be attached shall be strictly complied with as written, and no substitution or change shall be made except upon written direction from an authorized representative.

**X.  
MERGER**

This Agreement shall not be merged into any other oral or written contract, lease or deed of any type. This is the complete and full agreement of the parties.

**XI.  
MODIFICATION**

This Agreement contains the entire agreement of the parties. No representations were made or relied upon by either party other than those that are expressly set forth herein. No agent, employee or other representative of either party is empowered to alter any of the terms hereof unless done in writing and signed by an authorized officer of the respective parties.

**XII.**  
**TERMINATION**

Either party to this Agreement may terminate this Agreement at any time and for any reason, with or without cause, upon providing the other party written notice of such termination not less than thirty (30) days prior to the effective date of termination.

**XIII.**  
**INDEMNIFICATION**

Each party agrees to indemnify and hold harmless, to the fullest extent allowed by law, the other party and its principals, officers, agents and employees from and against all claims, damages, suits, actions, payments, liabilities, judgments and expenses (including court-ordered attorneys' fees), arising out of or resulting from the acts or omissions of their principals, officers, or employees in the performance of this Agreement. Liability includes any claims, damages, losses, and expenses arising out of or resulting from performance of this Agreement that results in any claim for damage whatsoever including any bodily injury, civil rights liability, sickness, disease, or damage to or destruction of tangible property, including the loss of use resulting therefrom. Further, each party shall maintain a policy or policies of insurance (or a self-insurance program), sufficient in coverage and amount to pay any judgments or related expenses from or in conjunction with any such claims. Nothing in this Agreement shall require either party to indemnify or hold harmless the other party from liability for negligent or wrongful acts or omissions of said other party or its principals, officers, employees, or agents.

**XIV.**  
**INDEPENDENT CONTRACTOR**

It is the express intent of the parties that this Agreement shall not create an employer-employee relationship. Employees of one party shall not be deemed to be employees of any other party. Each party shall be responsible to their own respective employees for all salary and benefits. A party's employees shall be entitled to any salary, wages, or benefits from any other party, including but not limited to overtime, vacation, retirement benefits, workers' compensation, sick leave or injury leave.

**XV.**  
**ASSIGNMENT**

A party shall not assign its duties and responsibilities under this Agreement without the express written permission of the other party to the Agreement.

**XVI.**  
**CONTRACTORS**

The MAPA/Pictometry Agreement shall require Project Contractor to indemnify and hold the City of Lincoln, harmless to the same extent and as provided in the indemnification provision found in paragraph XIII of this Agreement.

**XVII.**  
**CONTRACTOR INSURANCE**

The MAPA/Pictometry Agreement shall require Project Contractor to agree to the insurance clause to be used for all City of Lincoln contracts, as provided in Appendix B attached hereto and incorporated by this reference. MAPA shall not commence work under this Agreement until it has obtained all insurance required pursuant to Appendix B except that (1) MAPA's umbrella policy limit may be reduced to \$1

million; (2) MAPA's insurance limits may be applied on a per policy period basis; and (3) MAPA's defense costs may be taken out of the policy limits. MAPA shall provide the City with a Certificate of Insurance showing the specific limits of insurance required by Appendix B, as amended by this paragraph, and showing the City of Lincoln as an additional insured. Such certificate shall specifically state that insurance policies are to be endorsed to require the insurer to provide the City of Lincoln thirty (30) days' notice of cancellation, non-renewal or any material reduction of insurance coverage.

**XVIII.**  
**AUDIT PROVISION**

MAPA shall be subject to audit pursuant to Chapter 4.66 of the Lincoln Municipal Code and shall make available to a contract auditor, as defined therein, copies of all financial and performance related records and materials germane to this Agreement, as allowed by law.

**XIX.**  
**E-VERIFY PROGRAM**

In accordance with Neb. Rev. Stat. 4-108 through 4-114, MAPA agrees to register with and use a federal immigration verification system, to determine the work eligibility status of new employees performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 USC 1324a, otherwise known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized. MAPA shall not discriminate against any employee or applicant for employment to be employed in the performance of this section pursuant to the requirements of state law and 8 U.S.C.A. 1324b. The MAPA/Pictometry Agreement shall require Project Contractor to comply with the provisions of this section. For information on the E-Verify Program, go to [www.uscis.gov/everify](http://www.uscis.gov/everify).

In WITNESSETH WHEREOF, the parties hereto have caused this instrument to be signed and sealed by their duly authorized representative.

(City Resolution No. A-89498; February 22, 2016).

## **Appendix ‘A’ – Item descriptions and Pricing**

**925 ea. – 3”, 4-way Oblique sectors @\$450.00/ea = \$416,250.00**

Product includes: 3-inch GSD oblique frame images (4-way), 3-inch GSD orthogonal frame images.

**925 ea. – Ortho tiff deliverable image files @ \$20/tile = \$18,500.00**

**925 ea. – Tiles for MrSID mosaic compression @ \$2/tile = \$1,850.00**

**ChangeFinder Product for 108,000 parcels @ \$0.35/parcel = \$37,800.00**

This product will analyze, by parcel, the change in the building outline information, and provide an updated account of any change in building footprint.

**Building Height Product Test for 108,000 parcels @ \$0.10/parcel + \$2,500 Setup = \$13,300.00**

This product will provide building height (Z-Value) for all building outlines provided within the ChangeFinder Product.

**Pictometry Connect up to 100 Users for 3 years @ \$1,500.00/year = \$4,500.00**

This product will serve as the primary web application for use by users at the City of Lincoln and Lancaster County for access to the Oblique Imagery.

**2 ea. FutureView Conference seats @ \$2,165.00/ea. = \$4,330.00**

Includes airfare, hotel room for three nights, event registration, and round-trip airfare up to \$500. Licensee will be provided with discount code to complete FutureView registration. (Air Travel Restrictions - 30 day advance purchase for airfare, Continental US only, per person round-trip airfare at standard coach class rates through Pictometry's travel provider only. Must be redeemed during active term of license agreement.

**Total Lincoln/Lancaster costs = \$496,530.00**

**Payment schedule and amounts to MAPA**

June 2016 - \$165,510.00

June 2017 - \$165,510.00

June 2018 - \$165,510.00