




HISTORIC
FRANKLIN
TENNESSEE

ITEM #5
WRKS 01/24/2012

MEMORANDUM

January 9, 2012

TO: Board of Mayor and Aldermen

FROM: Eric Stuckey, City Administrator 
Carl Alexander, GIS Manager
Fred Banner, MIT Director

SUBJECT: Pictometry International Corp. Contract

Purpose

The purpose of this memorandum is to provide the Board of Mayor and Aldermen (BOMA) with information to consider agreement (2011-0191) with Pictometry International to acquire LiDAR (Light Detection and Ranging) data. This data is used to update our Geographical Information System (GIS) for the City of Franklin.

Background

The City of Franklin operates a full-service geographical information system (GIS). The GIS is a highly-functional tool that assists the City and its citizens in many ways including: the creation of digital and paper maps of extraordinary detail, planning for future growth, performing trend modeling, monitoring environmental changes, assessing security and disaster requirements, and efficiently dispatching emergency services. The mapping, aerial photography and elevation data are a critical element of the City's GIS mapping capabilities. The elevation information was last updated in 2005 and aerial photos were last taken in 2009. Working in conjunction with the City of Brentwood, the City of Franklin has the opportunity to contract for aerial photo and elevation information updates. Through this service the City will be receiving a 4" aerial photo and 4" oblique imagery (bird's eye view). The City will also receive break lines and elevation points (LiDAR) to update the City's elevation data. The elevation data is used to create contours and also used in flood plain modeling.

The data capture must be completed when leaves are not on the trees in order to receive more accurate data. This fly is also being done in conjunction with Brentwood. By combining the two we receive a discount from the contractor. Pictometry International Corp. began operation as a corporation in 2000. In addition to their corporate office in New York, they have offices in Canada and Europe.

Financial Impact

This item is included in the current Municipal Information Technologies (MIT) budget, (110.82510.41350) Computer Services for \$75,000. Pictometry is registered with GSA (Government Services Administration) US GSA# 35F-080IN. The cost for the four components is \$70,977.60 of which half is due this fiscal year and the remainder next fiscal year. Payment is not due until we receive the data. Estimated date for receipt is fourth quarter of the current fiscal year. City of Franklin contract #2011-0191.

Recommendation

Approval of this agreement with Pictometry International is recommended.

**PICTOMETRY INTERNATIONAL CORP.
AND
CITY OF FRANKLIN, TN**

DESCRIPTION OF PRODUCTS (the "Products"):

Section A: Licensed Products
Section B: Product Terms, Conditions, and Specifications

TERM OF AGREEMENT (the "Term"):

Term of Agreement commences on the date of Shipment of the aforementioned Licensed Products and shall continue for the term defined on Section A to this Agreement.

FEES AND PAYMENT TERMS (the "License Fees"):

All fees referred to in this License Agreement and in any of its Sections are 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 exclusive of the license and other fees to be paid by Licensee to Pictometry and which duties, taxes and fees will be paid by Licensee without reducing any amount owed to Pictometry unless documentation of tax exemption is provided to Pictometry prior to billing. Any amount payable by Licensee that is not paid within 30 days after its invoice date will accrue interest at the rate of 1.5% per month or at the maximum lesser rate allowed by law. In addition to any applicable interest, Licensee will pay Pictometry all costs it incurs to collect any amount due under this License Agreement, including but not limited to, attorneys' fees and court costs.

LICENSEE NOTICE ADDRESS	PICTOMETRY NOTICE ADDRESS
Attn: Municipal Information Technology Franklin City Hall 109 3rd Ave South	100 Town Centre Drive, Suite A
Franklin, Tennessee 37064	Rochester, NY 14623
Attn: Carl Alexander, GIS Manager	Attn: Director, Contract Administration
Phone: (615) 550-6619 Fax:	Phone: 585-486-0093 Fax: (585) 486-0098

AGREEMENT:

This License Agreement, which includes this cover sheet and the Sections hereto (collectively, this "Agreement"), constitutes the entire agreement between Pictometry and Licensee with respect to the aforementioned Products and supersedes all prior representations, agreements or arrangements, whether oral or written, relating to the subject matter hereof. Any modifications of this Agreement must be in writing and signed by a duly authorized officer of each party. Any purchase order or similar document that Licensee may issue in connection with this Agreement will be for ordering purposes only and that any terms and conditions on such purchase order will be of no force or effect.

In consideration of and subject to the payment by Licensee of the License Fees, Pictometry agrees to provide Licensee with access to and use of the Products, subject to the terms and conditions set forth on Section B and the Licensee's current License Agreement to this Agreement. Licensee hereby agrees to pay the License Fees in accordance with the stated payment terms and accepts and agrees to abide by the General License Terms and Conditions.

This Agreement shall not become effective until signed by both duly authorized officers of Licensee and Pictometry.

PARTIES:

"LICENSEE"	"PICTOMETRY"
NAME: City of Franklin	PICTOMETRY INTERNATIONAL CORP.
(entity type)	a Delaware Corporation
SIGNATURE:	SIGNATURE:
NAME: Dr. Ken Moore	NAME:
TITLE: Mayor	TITLE:
DATE:	DATE:

ATTEST:

Eric S. Stuckey
City Administrator
Approved as to form:

Kristen L. Corn
Staff Attorney

SECTION A

LICENSED PRODUCTS

Pictometry International Corp.
 100 Town Centre Drive, Suite A
 Rochester, NY 14623

ORDER #
C110665

BILL TO
City of Franklin, TN
Carl Alexander
Attn: Municipal Information Technology Franklin City Hall 109 3rd Ave South
Franklin, Tennessee 37064
(615) 550-6619
carla@franklintn.gov

SHIP TO
City of Franklin, TN
Carl Alexander
Attn: Municipal Information Technology Franklin City Hall 109 3rd Ave South
Franklin, Tennessee 37064
(615) 550-6619
carla@franklintn.gov

CUSTOMER ID	SALES REP	TERM OF CONTRACT	TERM OF LICENSE	NUMBER OF FLIGHTS
A120160	JBlal	2 years	2 years	1

US GSA CONTRACT #	35F-080IN
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QTY	PRODUCT NAME	PRODUCT DESCRIPTION	LIST PRICE	DISCOUNT PRICE/TYPE	AMOUNT
94	AccuPLUS 4in - PICT DTM - Per Sector	Pictometry Provides DTM Data	\$795.00	\$651.90 Single GSD Grant	\$61,278.60
94	LIDAR Hydro Enforcement Breaklines - Pictometry	Uses Pictometry LIDAR Data.	\$50.00		\$4,700.00
94	LIDAR Transportation Breaklines - Pictometry	Uses Pictometry LIDAR Data.	\$50.00		\$4,700.00
1	Media Drive Capacity 931G - Drive Model 1T - EXTPOWER	External USB 2.0 / eSATA Externally Powered. Delivery media prices include copying a complete image library onto media. Sub-warehousing sold separately.	\$199.00		\$199.00

Thank you for choosing Pictometry as your service provider.	TOTAL	\$70,877.60
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PAYMENT TERMS

Due at Shipment of Product \$70,877.60

Total Payments \$70,877.60

SECTION B

PRODUCT TERMS, CONDITIONS, AND SPECIFICATIONS

The following are the terms, conditions, and specifications related to the products offered under the attached License Agreement.

MODIFICATIONS TO LICENSE AGREEMENT

Where conflicts may exist between the following language and the Standard Terms and Conditions of Section B and/or the License Agreement, this portion of Section B shall supercede and take precedence.

9.3 Limitations and Exclusions of Remedies. Only to the extent permitted by Tennessee law, 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. ONLY TO THE EXTENT PERMITTED BY TENNESSEE LAW, 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.

10.1 Entire Agreement. This Agreement, which includes the attached Sections and Addendum A, 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 Sections, the Sections 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.

PRODUCT PARAMETERS

ACCUPLUS IMAGERY

Product: AccuPLUS 4in - PICT DTM - Per Sector

Ortho Tile Projection:

Ortho Tile Format:

Units:

Elevation Source:

Coverage Area Format:

Leaf: Less than 30% leaf cover (Off)

Special Instructions:

STANDARD TERMS AND CONDITIONS

ACCUPLUS

AccuPlus Premium Ortho-Mosaic and 4-Way Obliques

Customer must provide coverage area definition in electronic format (i.e., shape files, KML, DXF, etc.). Inquire about other formats.

TECHNICAL SPECIFICATIONS: AccuPlus Premium Ortho-Mosaic

Product Overview:

Seamless ortho-mosaic produced from individual frames and tiled to customer's preferred tiling scheme. Available at 3-inch, 4-inch, 6-inch, and 12-inch GSD.

Acquisition:

Flight plans will be prepared to capture image frames with nominal 60% forward overlap and nominal 30% sidelap in order to provide sufficient overlap for automatic aerial triangulation and mitigation of building lean in orthophotography produced. Source imagery will be acquired during times of optimal environmental conditions. Imagery will generally be captured when solar altitude is 30 degrees or greater and/or by using the most optimal four-hour window, except where capture season offers significantly longer window. Imagery will be acquired with ground free of snow cover and deciduous vegetation less than 30% of full bloom. Frames with clouds will be rejected and reflight. Any planned deviation from these conditions imposed by capture window constraints will be discussed with client prior to commencement of acquisition.

Camera:

Pictometry utilizes its USGS certified, custom designed mapping camera incorporating a Kodak sensor and custom designed photogrammetric lenses. The sensor is fully calibrated according to Pictometry's USGS approved calibration process. Pictometry's sensor provides a dynamic range of 12 bits per band, RGB (resampled to 8 bits during processing).

Ortho-Rectification:

Prior to the production of orthophotography, Pictometry will perform automatic aerial triangulation, utilizing the directly observed Exterior Orientations (EOs) and ground control points (GCPs), measured by a licensed surveyor, for the purpose of orienting the individual frames for creation of the final ortho imagery. In addition to the GCPs, sophisticated matching techniques will be employed to automatically create tie points for use in performing a bundle adjustment. Pictometry will utilize best available Digital Terrain Models, combined with the calibrated camera interior orientations, ground control points, and triangulated EOs to rectify the images. When the rectification requires a resampling of the source imagery, a cubic convolution method will be utilized.

Horizontal Accuracy:

3" AccuPlus: $RMSE_r = 1.41$ ft, NSSDA (95%) = 2.5 ft., meets or exceeds NMAS 1" = 100'
4" AccuPlus: $RMSE_r = 1.63$ ft, NSSDA (95%) = 2.8 ft., meets or exceeds NMAS 1" = 100'
6" AccuPlus: $RMSE_r = 1.85$ ft, NSSDA (95%) = 3.2 ft., meets or exceeds NMAS 1" = 100'
12" AccuPlus: $RMSE_r = 4.40$ ft, NSSDA (95%) = 6.5ft., meets or exceeds NMAS 1" = 200'

Mosaic:

Global color balancing will be applied to all orthophotos to create homogeneous orthophotos within the project area. Local adjustments of brightness values, color and contrast will be performed if needed. There will be no obvious seam edge between two adjacent orthophotos. Mosaic will be created using automated seamline steering, with manual edits to eliminate feature misalignment caused by seamlines which pass thru features above the elevation surface. Feature alignment across seamlines will be 3 pixels or better. When possible, seamlines will be steered away from elevated features to improve orthophoto quality. Once the mosaic has been produced, the imagery will be tiled and named according to the customer provided (or Pictometry generated) schema for delivery.

Deliverables:

All deliverables in customer preferred coordinate system.

- Project-wide seamless mosaic in ECW (or MrSID if requested) format
- Tiled imagery according to customer provided tiling scheme – available as TIFF, GeoTIFF or JPG
- FGDC compliant metadata

**PICTOMETRY INTERNATIONAL CORP.
GENERAL LICENSE AGREEMENT**

THIS LICENSE AGREEMENT is made as of the date set forth above (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 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 Section A and Section B and attached to this Agreement (the "Licensed Images"), the particular copies of the Software listed in Section A and Section B (the "Licensed Software"), the associated Metadata (the "Licensed Metadata"), and the DEM described in Section A and Section B 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 Section 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 Section B. Licensee and its Authorized Subdivisions (as provided in Section 2.3) may use and execute the Licensed Software for official purposes only.
- 2.3 **Data.** Licensee agrees that Pictometry may audit Licensee's use of the Licensed Software and agrees to the sharing of supplementary data with Pictometry for the purpose of improving future software versions, providing for additional tools and enhancing the value of the software to the Licensee. Pictometry shall not transfer any data collected to any third party. Pictometry shall preserve at all times the confidentiality of information pertaining to data collections where the information is not in the public domain.
- 2.4 **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

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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 in this Agreement (altogether the "License Fees") and payment shall be made as provided in Section 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.

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 Section 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 Section 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 NONINFRINGEMENT, 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 Sections, the Sections 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 in this agreement (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.
- 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.

Addendum A to COF Contract #2011-0191

This addendum shall modify and supersede the contract titled **License Agreement**, as well as **Sections A and B**, (the "Agreement") and entered into on the ___ day of _____, 20__, by the City of Franklin, Tennessee ("City") and Pictometry International Corp. ("Vendor") and together with same shall constitute the entire agreement ("Contract"). Acceptance of payment as stated in the Contract constitutes Vendor's acceptance of all terms and conditions stated herein.

Standard Terms and Conditions

1. Time of the Essence. The parties agree that TIME IS OF THE ESSENCE with respect to the parties' performance of all provisions of the Agreement.
2. Confidentiality and Proprietary rights. It is understood and agreed that the Licensee is a political subdivision of the State of Tennessee, and, as such, is subject to certain open records and freedom of information laws, and nothing herein shall require the Licensee to act contrary to its legal obligations under the state and federal law. Vendor considers all portions of the Licensed Products provided under this Agreement, whether in electronic or hard copy form, to be protected under law. Vendor is identifying all Licensed Products under this Agreement to be "CONFIDENTIAL," "PROPRIETARY" and "BUSINESS SECRET." If a request is made for disclosure of such portion, and the City determines that the material is lawfully subject to disclosure, the City will notify Vendor of the request and allow Vendor seven (7) business days to take whatever action it deems necessary to protect its interests. At that time, Vendor shall defend against the claim. If the Vendor fails or neglects to take such action within said period, the City will release the portions of record(s) deemed by the City to be subject to disclosure.
3. Warranties/Limitation of Liability/Waiver. The City reserves all rights afforded to local governments under law for all general and implied warranties. The City does not waive any rights it may have to all remedies provided by law.
4. Indemnification. Vendor agrees to indemnify and hold City harmless from and against legal liability for all judgments, losses, damages, and expenses to the extent such judgments, losses, damages, or expenses are caused by Vendor's negligent act, error or omission in the performance of the services of this Contract. In the event judgments, losses, damages, or expenses are caused by the joint or concurrent negligence of Vendor and City, they shall be borne by each party in proportion to its own negligence. The terms and conditions of this paragraph shall survive completion of this Contract.
5. Arbitration/Mediation. No arbitration shall be required as a condition precedent to filing any legal claim arising out of or relating to the Contract. No arbitration or mediation shall be binding.
6. Applicable Law; Choice of Forum/Venue. The Contract is made under and will be construed in accordance with the laws of the State of Tennessee without giving effect to any state's choice-of-law rules. The choice of forum and venue shall be exclusively in the Courts of Williamson County, TN.
7. No Taxes, No Interest Payments. As a tax-exempt entity, per the provided Certificate of Exemption by the City, the City shall not be responsible for sales or use taxes incurred for products or services, per the provided Certificate of Exemption. The City shall supply Vendor with its Sales and Use Tax Exemption Certificate upon Vendor's request. Vendor shall bear the burden of providing its suppliers with a copy of the City's tax exemption certificate and shall assume all

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liability for such taxes, if any, that should be incurred. The City does not agree to pay any interest for late payments, having agreed to pay in a timely manner.

8. Licensed users/"seats". If and whenever the Agreement defines or refers to "licensed users" such shall be read to allow installation of the program to allow efficient dissemination of the licensed program, such as disk mastering and other methods of mass installation, without exceeding the licensed number of seats.
9. Waiver. Neither party's failure or delay to exercise any of its rights or powers under the Contract will constitute or be deemed a waiver or forfeiture of those rights or powers. For a waiver of a right or power to be effective, it must be in writing signed by the waiving party. An effective waiver of a right or power shall not be construed as either (a) a future or continuing waiver of that same right or power, or (b) the waiver of any other right or power. Vendor agrees to waive any convenience fee for the use of payment by purchasing card.
10. Precedence. In the event of conflict between this Addendum and the provisions of the Agreement, or any other contract, agreement or other document to which the Agreement or this Addendum may accompany or incorporate by reference, the provisions of this Addendum will, to the extent of such conflict (or to the extent the Agreement is silent), take precedence unless such document expressly states that it is amending this Addendum.
11. Assignment. Neither party may assign any rights or obligations under the Contract or any Statement of Work without the prior written consent of the other party. The Contract will be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. Vendor may subcontract any portion of the work only with the prior consent of the City, but such subcontracting will not relieve Vendor of its duties under the Contract.
12. Termination. The City reserves the right to terminate the Contract with fourteen (14) days notice, with or without cause. Upon termination by the City, the vendor shall be entitled to receive any amounts due as a result of goods and equipment already delivered and/or services already rendered; however, the City shall maintain ownership and control of any goods and equipment purchased. Upon termination of services, whether connected or unconnected to goods and equipment, such services shall be rendered until the conclusion of the 30th day as stated in the notice or until a contractual benchmark has been achieved, or as the parties may otherwise agree.

In the event the City terminates the Contract due to incompatibility of software or inability for Licensed Products to function, the Vendor shall refund the City all monies paid by City and the City 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.
13. Entire Agreement. This Addendum, including any contract, agreement or other document which this Addendum may accompany, constitutes the entire agreement between the parties and supersedes any prior or contemporaneous communications, representations or agreements between the parties, whether oral or written, regarding the subject matter of this Addendum. The terms and conditions of this Addendum may not be changed except by an amendment expressly referencing this

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Addendum by section number and signed by an authorized representative of each party.

14. Additions/Modifications. If seeking any addition or modification to the Contract, the parties agree to reference the specific paragraph number sought to be changed on any future document or purchase order issued in furtherance of the Contract, however, an omission of the reference to same shall not affect its applicability. In no event shall either party be bound by any terms contained in any purchase order, acknowledgement, or other writings unless: (a) such purchase order, acknowledgement, or other writings specifically refer to the Contract or to the specific clause they are intended to modify; (b) clearly indicate the intention of both parties to override and modify the Contract; and (c) such purchase order, acknowledgement, or other writings are signed, with specific material clauses separately initialed, by authorized representatives of both parties.
15. Breach. Upon deliberate breach of the Contract by either party, the non-breaching party shall be entitled to terminate the Contract without notice, with all of the remedies it would have in the event of termination, and may also have such other remedies as it may be entitled to in law or in equity.
16. Survival. This Addendum shall survive the completion of or any termination of the Contract, agreement or other document to which it may accompany or incorporate by reference.